

**IN THE MATTER OF A DISCIPLINARY  
INQUIRY PURSUANT TO THE  
AGENTS LICENSING ACT 1979, NT**

**BETWEEN:** **REGISTRAR OF LAND, BUSINESS AND  
CONVEYANCING AGENTS**

Applicant

**AND:** **LUKE HEMMINGS**

Respondent

Date of Hearing: **12 February 2019**

Chairperson: Mark Thomas  
Consumer Representative: Lea Aitken  
Industry Representative: Carol Need  
Industry Representative: Diane Davis  
Departmental Representative: Robert Bradshaw

**Appearances:**

Counsel Assisting the Board: Tass Liveris

**STATEMENT OF REASONS FOR DECISION**

1. On 12 February 2019, the Agents Licensing Board (the Board) met to hold a Disciplinary Inquiry into an application made by the Registrar of Land, Business and Conveyancing Agents (the Registrar), pursuant to section 68 (2) of the *Agents Licensing Act 1979* (the Act) for disciplinary action to be taken against licensed real estate agent Luke Hemmings RBL 1097 (the Respondent).
2. At the conclusion of the Disciplinary Inquiry the Board decided that it would revoke the real estate agent licence of Mr Hemmings (RBL 1097).
3. Mr Hemmings elected not to appear or be represented at the Disciplinary Inquiry hearing, but he did make written representations dated 28 August 2018 and 8 February 2019 (Inquiry Book [hereafter IB] 138-139), and also sent an email dated 8 February 2019 (which included an attachment) and some other

correspondence, which included a letter dated 31 August 2018 sent by him to the Victorian Business Licensing Authority<sup>1</sup>. The Board proceeded on the basis that Mr Hemmings was content for the hearing to proceed in his absence.

4. These are the reasons for the Board's decision.

#### **Part A: INTRODUCTION**

##### **Particulars of Allegations against the Respondent**

5. The particulars of the allegations are stated by the Registrar at section 2 of the application, which is specified at page 2 of the Inquiry Book (IB). The particulars were restated in the Chairperson's letter to Mr Hemmings, dated 4 February 2019 (IB 190-191) as follows:
  - a. Did Mr Hemmings make a false statement in his application, dated 28 April 2018, for a real estate and business agent licence (in the Northern Territory (NT)) wherein the box marked 'no' is ticked in response to question 7 of the Disclosures component of the application, which stated: "Do you hold, or have previously held, a licence or registration as an agent's representative under any corresponding law in any other State or Territory? If yes, please provide licence/registration number and State/Territory?"
  - b. If Mr Hemmings did make a false statement in respect of his response at question 7 above, does this constitute a false declaration, given that the application is declared to be, inter alia, "true and correct"?
  - c. If Mr Hemmings did make a false statement and/or declaration in his application for a licence does this constitute a breach of the rules of conduct for agents?
  - d. Was the NT licence that was granted to Mr Hemmings obtained by means of a misrepresentation or a false or misleading statement?

##### **A key principle**

6. The Board must examine the matter in accordance with key applicable principles. Of central importance is that in disciplinary matters, an issue needs to be proven to the reasonable satisfaction of the decision-making body, having regard to the seriousness of the allegation made, the inherent unlikelihood of an occurrence of a given description (or the inherent improbability of an explanation), or the gravity of the consequences flowing from a particular finding: **Briginshaw v Briginshaw**<sup>2</sup>.

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<sup>1</sup> Annexure D in these proceedings. This also included some attachments, which appear to be duplicated in the Inquiry Book

<sup>2</sup> (1938) 60 CLR 336 per Dixon J at 361-362.

## **Part B: THE POWERS OF THE BOARD**

7. The relevant law regarding Grounds for Disciplinary Action is as follows:

### *Grounds for Disciplinary Action*

*Section 67 (1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:*

- Item a. The licence was obtained by means of misrepresentation a false or misleading statement;*
- Item c. The licensed agent has been guilty of a breach of the rules of conduct for agents.*

8. The Powers of the Board after Inquiry are specified at section 69 (1) of the Act, which states :

*that at the conclusion of an inquiry conducted pursuant to section 68 (4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may:*

- a. Reprimand or caution the agent; or*
- b. By notice in writing, impose a fine not exceeding 50 penalty units on the agent; or*
- c. By notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice; or*
- d. By notice in writing, revoke the licence of the agent.*

## **Part C: THE CONDUCT OF THE DISCIPLINARY INQUIRY**

9. Mr Tass Liveris acted as counsel assisting the Board and supplied written submissions to the Board in respect of this matter.
10. No witnesses were called to give evidence. The Inquiry Book was tendered as well as a limited number of annexures. There was no indication made by Mr Hemmings of any challenge to the admissibility of any material in the Inquiry Book. The focus of attention in the inquiry was on the Inquiry book.

## **Part D: MATTERS TO BE INQUIRED INTO**

**Matter 1: Did Mr Hemmings make a false statement in his application for a real estate and business agent licence?**

11. Mr Hemmings filled out and submitted a computer-generated online application for a real estate and business agent licence on a form headed "Property Agent: Application for a licence as an individual/sole trader". The application is dated 28/4/2018<sup>3</sup>. A copy of the application is at IB 6-8.
12. The relevant part of the application in respect to the issue raised here is under the sub-heading marked "disclosures" at IB 7. There, the following questions appear:

*Q6: "Do you hold, or have you previously held, a licence or registration as an agent's representative under the Agents Licensing Act? If yes, please provide licence/registration number"*

Two boxes are listed- either 'yes' or 'no'. The 'no' box is "ticked"<sup>4</sup>.
13. *Q7: "Do you hold, or have previously held, a licence or registration as an agent's representative under any corresponding law in any other State or Territory? If yes, please provide licence/registration number and State/Territory"*

Again, two boxes are listed, either 'yes' or 'no'. The 'no' box is ticked.
14. Question and answer 7 is the key matter here. This is because on 16 March 2018 Mr Hemmings had his South Australian Land Agent licence cancelled (IB 185-186).
15. The background to his South Australian (SA) licence is as follows: he originally submitted an online application for a Registered Land Agent (RLA) licence on 5 October 2015. He was granted a RLA licence on 26 October 2015. This licence was then surrendered on 23 December 2016 (RLA 269708). Mr Hemmings submitted a second online RLA application, which was granted on 30 December 2016 (RLA 278 282). This licence was renewed online on 21 December 2017.<sup>5</sup>
16. Mr Hemmings's response in the NT application at question 7 contained a matter that was incorrect, namely that contrary to his response, he had previously held a licence as an agent's representative under a corresponding law in another State. His licence as a Registered Land Agent in SA constituted holding a licence or registration as an agent's representative under a law corresponding to the Act.
17. On 16 March 2018, Mr Hemmings was sent a comprehensive letter from the Commissioner of Consumer and Business Affairs (CBS) of SA.<sup>6</sup> He was also sent a letter from the NT Registrar, dated 24 August 2018, which he responded to in an

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<sup>3</sup> IB 8

<sup>4</sup> The word 'ticked' here is used to describe of the computerised form being used to place a mark, in the form of a dot in the middle of a circle immediately to the left of the "No" box

<sup>5</sup> See, in particular, the comprehensive email from Ms Newstead of CBS Adelaide at IB 80-81.

<sup>6</sup> IB 185-186

email dated 28 August 2018.<sup>7</sup> In his response Mr Hemmings says the following at IB 142:

*“10. The application included the question, ‘you hold, or have previously held, a licence or registration as an agent’s representative under any corresponding law in any other State or Territory, to which I answered ‘no’.*

*11. I answered ‘no’ to the relevant question because I misunderstood the question to mean, ‘do I hold a licence in any other State or Territory where (sic) Agents Licensing Act’. Since the law in South Australia applies the Lands Agents Act, I unfortunately assumed that the cancelled South Australian licence was not relevant to this question.*

*12. When I answered ‘no’ to the relevant question, I had no intention to provide false or misleading information.”*

18. Mr Hemmings’s defence appears to be simply that he misunderstood Question 7 to mean “did he hold a licence in any other State/Territory where the *Agents Licensing Act* existed?” His position appears to be that because the SA licence was not issued under an Act called the *Agents Licensing Act*, that this caused him to make a mistake. This is his sole defence. He appears to take no issue with the SA licence being concerned with somebody who falls within the parameters of an agent’s representative. The problem with his response is that it ignores the word “corresponding”, which is a clearly operative word in question 7. (Also, Question 7 refers to not merely to holding such a licence but to previously holding such a licence). The question is not complicated either in its grammatical structure or the language that it employs. It also follows on immediately from question 6, which is directed to agent’s licences in the NT.
19. The word ‘correspond’ is an ordinary English word. It means in this context, ‘analogous to’ or ‘similar or partly similar to’<sup>8</sup>. It ought to have been plain to anybody responding to Question 7 that it was directed to prior or current holding of an interstate licence as an agent’s representative under a law corresponding to the Act. The fact that the SA licence used the word “land” and “agent” in the title of the Act was a further matter that ought to have made it abundantly clear to Mr Hemmings that this corresponded to the Act.
20. An additional matter is that only 6 weeks prior to Mr Hemmings’s NT application he received a detailed response from the SA Consumer and Business Service Commissioner, explaining why his licence in SA was cancelled. The Commissioner focused attention on the fact that Mr Hemmings on two occasions in his SA renewal applications made false and misleading statements regarding not revealing his prior insolvency. The letter from the Commissioner ought to have further emphasised in Mr Hemmings’s mind the vital importance of an accurate response to any question asked of him in the NT form. Instead, in his response to the NT Registrar,<sup>9</sup> he says that, in regard to the SA response, he didn’t understand

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<sup>7</sup> IB 141-142

<sup>8</sup> Shorter Oxford English Dictionary, 1985, Clarendon Press.

<sup>9</sup> IB 8

the meaning of the question, which is very close to the response that he delivered to the NT matter, namely, that he misunderstood the question.

21. Given all of these matters, the Board is of the view that there is no credible basis for Mr Hemmings' response to Question 7 that he misunderstood the question.
22. Regarding the meaning of the word "false", this depends on its context.<sup>10</sup> Counsel assisting submitted that a false statement means if it is wrong in fact regardless of whether the applicant has knowledge of its falsity. Implicitly, at para 57 of **Lee v Health Care Complaints Commission**<sup>11</sup> the NSW Court of Appeal accepted<sup>12</sup> that a false statement did not necessarily require deliberate dishonesty. The Board accepts this interpretation of the word "false". It follows, that Mr Hemmings' response, at question 7, falls, at the very least, within the parameters of this definition of falsity.

**Matter 2: If Mr Hemmings made a false statement, does it constitute a false declaration?**

23. On the final page<sup>13</sup> of Mr Hemmings' application he was required to make a declaration that the information contained in it is true and correct. He did so. This declaration was made under section 21 of the *Oaths, Affidavits and Declarations Act 2010*, NT.
24. Knowingly providing false information "strikes at the heart of the licencing regime intended to protect consumers from unqualified and unsuitable operators": **Commercial and Consumer Tribunal v White**<sup>14</sup>
25. In addition to the matters referred to immediately above, the Board notes material placed before it in the Inquiry Book, which demonstrates that Mr Hemmings used the NT licence to obtain a licence in Victoria on 7 June 2018.<sup>15</sup> Further, the Board accepts that he attempted to obtain a licence in the ACT at one point, after using the SA licence before it was cancelled.<sup>16</sup> The Board also finds that there is clear evidence before it that demonstrates that Mr Hemmings' Victorian licence application did not contain details of his aliases. When this was discovered after his licence was issued, and not before then, he supplied those details in a letter dated 31 August 2018.

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<sup>10</sup> *Murphy v Farmer* (1988) 165 CLR 19

<sup>11</sup> [2012] NSW CA 80

<sup>12</sup> see para 42

<sup>13</sup> IB 8

<sup>14</sup> [2007] QCCTPAMD 027 at [62]

<sup>15</sup> IB 68-69

<sup>16</sup> IB 81

26. This history is important. In the light of all of this material the Board finds that Mr Hemmings was effectively using a licence gained in one state/territory as a means to secure a licence in another state/territory. The clear inference to be drawn from the chronology of events is that Mr Hemmings knowingly omitted information about his licence in SA, so as to obtain a licence in the NT and then to use it to obtain a licence in Victoria. Mr Hemmings' submission that he did not intend to provide false or misleading information is rejected. The Board finds that he made a false declaration in his NT application as that declaration stated that the contents of the application were true and correct. This was false due to the fact that the application included a false statement.

**Matter 3: If Mr Hemmings made a false statement and or declaration, does this constitute a breach of the rules of conduct for Agents?**

27. Under section 65 (1) / (1)(a) of the Act a licensed agent who breaches this Act or the regulations, whether or not he or she is found guilty of an offence in respect of the breach, is guilty of a breach of the rules of conduct for agents.

28. Making a false statement/declaration does constitute a breach of the Act and hence the rules of conduct for agents.

29. The Board is satisfied that Mr Hemmings has breached the Act and hence the rules of conduct for Agents.

**Matter 4: Was the licence granted to Mr Hemmings obtained by misrepresentation or a false or misleading statement?**

30. If Mr Hemmings had accurately filled out the application form for his NT licence, by stating that he had previously held a licence under a corresponding law in another State, he was then obliged to provide details of that SA licence. This would have meant that the NT regulator would have discovered that his SA licence had been cancelled- and the reasons for this cancellation. The result of this would have led to his licence application being rejected in the NT. Hence, answering 'no' at question 7 was of material significance in securing the NT licence. It concealed the egregious reality of what had occurred with regard to his SA licence. The Board is satisfied that Mr Hemmings answered 'no' at question 7 in order to conceal this information. The NT licence was obtained as a result of a false or misleading statement.

**PART E: CONCLUSION- SANCTION**

31. Under section 67 of the Act the Board may take disciplinary action if, relevantly, the licence was obtained by a misrepresentation or a false or misleading

statement. For the reasons specified in the immediately preceding paragraph the Board is satisfied that it is authorised to take disciplinary action due to the finding of a breach of section 67 (1) (a) of the Act.

32. Under section 69 of the Act, if the Board is, at the conclusion of the inquiry conducted pursuant to section 68 (4) of the Act, satisfied that it is authorised to take disciplinary action, it may deal with a licensed agent in a number of ways that are specified at section 67 (a)-(d). Given the facts and circumstances involved in this case, the Board has decided to revoke the licence of this agent. It is important to outline the principles relevant to this outcome. The Board must rely on the veracity of the information contained in applications for a licence. The public demands that in return for the significant trust reposed in real estate agents that they can be relied upon to act honestly in all aspects of their dealings with the public. This is particularly important given that agents frequently deal with items of significant financial significance- often the principal asset of a person. Mr Hemmings' conduct is fundamentally inconsistent with the trust obligations of a real estate agent; his cause is not assisted by a history of twice previously making false or misleading statements in SA in similar applications and pleading a very similar defence when answers were requested of him by the Regulator. The Board's functions in terms of the imposition of a sanction in a case such as this is, are to a considerable extent, protective of the public. The Board is aware that a decision to deny a person of their income or livelihood should only be made where there is no other lesser but appropriate sanction available. In the circumstances, given the nature of the offending, there can be no alternative but revocation of his real estate licence pursuant to section 69 (1) (d) of the Act.
33. The Board has the power, pursuant to section 69 (5) of the Act to specify a period that shall elapse or impose a condition that shall be fulfilled before the person formerly licensed may apply again for a licence.
34. The Board has decided to not specify such a period or impose such a condition. Instead, the Board has determined that the provisions of section 69 (7) of the Act should apply. That sub-section provides:
- “(7) Where the Board revokes a licence under sub-section (1) (d) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under sub-section (5), the person formerly licensed is not, without the approval of the Board eligible to apply for a licence.”*
35. The Board is concerned not to set an arbitrary date after which Mr Hemmings could apply for another real estate licence. Instead, the Board is of the view that Mr Hemmings's failure is so fundamentally inconsistent with the trust obligations of a real estate agent that he should bear the onus of re-establishing his fitness to hold a licence at some future time and to seek the Board's approval to apply for such a licence.



36. In coming to its decision the Board has considered the seriousness of Mr Hemmings' actions and the need to deter other real estate agents from acting in the same or similar manner, as the most weighty matters in formulating a sanction that would further the aims of community protection and maintaining confidence in the real estate industry.

For the Board

A handwritten signature in black ink, appearing to read 'Mark Thomas', with a long, sweeping underline.

Mark Thomas  
Chairperson  
Agents Licensing Board NT

Dated: 25 June 2019 at Darwin