

**IN THE MATTER OF AN INQUIRY
PURSUANT TO Ss 17, 67, 68, 69 & 77
OF THE *AGENTS LICENSING ACT 1979*
INTO AN APPLICATION FOR
DISCIPLINARY ACTION**

APPLICANT: ANNETTE GLAZEBROOK

FIRST RESPONDENT: GEORGE & HUCENT PTY LTD (T/A RAY
WHITE DARWIN)

SECOND RESPONDENT: STEPHANIE ADAMS

THIRD RESPONDENT: MARINA KELLY

DATE OF HEARINGS: 5 JULY 2023
10 AUGUST 2023

Deputy Chairperson: Gabrielle Martin
Departmental representative: Joseph Kuhn
Consumer representative: Lea Aitken

Appearances:

Counsel Assisting: Tass Liveris
Counsel for the First Respondent: Luke Officer
Counsel for the Second Respondent: Tom Hutton

STATEMENT OF REASONS FOR DECISION

1. This matter concerns an application for disciplinary action pursuant to s.77 of the *Agents Licensing Act 1979* (“the Act”), (“the Complaint”) by Annette Glazebrook (“the Complainant”).
2. The Inquiry focused on
 - i. Whether the premises at 2/2 Eonberry Circuit, Gray in the Northern Territory (“premises”) was habitable and/or handed over to the Complainant in a reasonably clean condition on 19 January 2021, when she entered into a Residential Tenancy Agreement, commencing on the same day (“Tenancy Agreement”) and commenced paying rent;
 - ii. The conduct of the Respondents, primarily through the actions and omissions of the Second Respondent (“Ms Adams”) and the Third Respondent (“Ms Kelly”) in February and March 2021, in dealing with the Complainant and acting on behalf of Benjamin

Robert Grimes and Emma Grimes (“the Landlords”), with the effect that the Complainant, as alleged, was abused, persecuted and intimidated, including with threats and actions, to evict her from the premises, and conduct which interfered with the Complainant’s right of possession and reasonable peace and privacy;

- iii. The central question in the inquiry is whether, due to the conduct set out broadly in the sub-paragraph above, any of the Respondents breached the rules of conduct for agents¹, particularly Rule 5(a)², Rule 11³ and Rule 12⁴;
- iv. If any of the allegations are established⁵, the Board may take disciplinary action under s.67(1)(c) of the Act and may take any one or more of the actions set out in s.69 of the Act.

JURISDICTION

- 3. It was brought to the attention of the Board that the Notice of Inquiry and the evidence had not been served on Ms Adams, Senior Property Manager during the relevant period. The Board held that it was a breach of procedural fairness for Ms Adams to appear as a Respondent without knowing the case against her. The Board could not, therefore, take any action against her under s69 of the Act. It determined that her only possible role was that of a witness, which she accepted.
- 4. The Third Respondent, Ms Kelly, the General Manager during the relevant period, was served with the Notice of Inquiry and the evidence. She failed to enter an appearance or attend the proceedings.
- 5. It is noted that Ms Kelly, a former licensed real estate agent, was not the holder of a licence under the Act at the time of the alleged conduct. Had the Board heard the complaint within six months of the alleged conduct, then it would have been open to the Board to consider the application of s.17(1) of the Act, “*Unlicensed persons not to act as agents*”.
- 6. The Board also has no jurisdiction to take action against Ms Kelly under s.69 of the Act because she was not a licensed agent at the relevant time. However, Ms Kelly’s conduct and Ms Adams’ conduct are relevant to the allegations against the First Respondent and, as such, the Board is not constrained in making findings in respect of its conduct.

¹ Prescribed under regulation 25 and Part 1, Schedule 4 of the Agents Licensing Regulations 1979 (Rules of Conduct).

² A failure to have due regard to and comply with rules of real estate practice published or approved by the Real Estate Institute of the Northern Territory (REINT) (Code), being a failure to uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and, in particular, conduct business and personal activities in compliance with the Code and Legislation

³ A failure to exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client

⁴ A failure to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.

⁵ In occupational disciplinary matters it is well established that the Board must reach a comfortable level of satisfaction in finding the matters proved on the balance of probabilities, consistent with the seriousness of the allegations and reflecting the serious consequences of any finding: *Briginshaw -v- Briginshaw* [1938] HCA 34; (1938) 60 CLR 336 at 362.

7. As a body corporate and licensed agent acting on behalf of the Landlord, the First Respondent (George & Hucent Pty Ltd (T/A Ray White Darwin)) may be guilty of a breach of the Rules of Conduct because of the actions and omissions of employees by virtue of s.65(4) of the Act. That section is a deeming provision which sets out the circumstances in which a company is guilty of a breach of the Rules of Conduct because of the actions and omissions of licensed employees, directors and other employees⁶.
8. The First Respondent argued initially that:
 - i. There is no current complaint before the Board, and therefore there is no jurisdiction to inquire; and
 - ii. In the event that submission is rejected, section 65(4) of the Act is not engaged such that the First Respondent is not liable for any of the matters the subject of the complaint.
9. The First Respondent submitted that, in those circumstances, the Registrar's letter dated 6 May 2021 ("the May Letter") is a final determination of the Complaint and therefore, it should be rejected.
10. The Board has a duty to hold an inquiry where an application for disciplinary action is made against a licensed agent or an agent's representative. Alternately, if the Board considers that there may be grounds for disciplinary action to be taken, the Board must hold an inquiry⁷. In the absence of statutory language to the contrary, a grant of jurisdiction ordinarily carries with it the duty to exercise it⁸.
11. The Board may reject an application without holding an inquiry only if it forms the opinion, or is satisfied of the matters set out in ss.44(6) or 68(5) of the Act. Provisions of this kind, which enable a decision-maker to desist from hearing procedures, assume that if the conditions are not met, there is no duty to hear the proceedings⁹
12. The doctrine of *functus officio* centres on the external manifestation of a statutory power or function in a final and irrevocable manner, such that decision-making power is exhausted or spent and cannot be revisited¹⁰.
13. The Board determined to find that it does have jurisdiction in these circumstances because the *May Letter* did not have the character of a final, irrevocable decision. The letter merely signified that Licensing NT effectively suspended referring the Complaint to the Board for consideration

⁶ *Gray -v- Andrews*, Agents Licensing Board, October 2013, pages 1 and 8; *Registrar -v- Henderson & A40F Group Pty Ltd*, Agents Licensing Board, paragraph 28; *Statute Law Revision and Repeals Bill 2019* and Explanatory Statement: cl.10.

⁷ See ss.44(5) and 68(4) of the ALA. The use of the word "shall" in s.68(4) ought to be construed as a mandatory requirement: see *R -v- Fire Service Promotions Board; Ex parte Evans* (1987) 87 FLR 153 at 155.

⁸ *Public Service Association of South Australia Inc -v- Industrial Relations Commission of South Australia* (2012) 249 CLR 398, per Heydon J at [91].

⁹ *Supra* at [96].

¹⁰ *Semunigus-v- Minister for Immigration and Multicultural Affairs* [2000] FCA 204; (2000) 96 FCR 533, per Spender J at 536 [12], Higgins J at 543 [78] and Madgwick J at 547 [103]; *Amir -v- Director of Professional Services Review* [2021] FCA 745 at [46] – [51]; *Minister for immigration and Ethic Affairs -v- Kurtovic* (1990) 21 FCR 193 at 211, per Gummow J.

as to whether to hold an inquiry or not, pending the determination of the Complainant's proceedings in the Northern Territory Civil and Administrative Tribunal.

14. Consideration was given to the fact that, even if the *May Letter* purported to be a rejection of the Complaint under s.68(5) of the Act, the Registrar had no power or authority under the Act to make that determination. A decision whether or not to hold an inquiry is a non-delegable power of the Board¹¹ and the Board had not yet made a decision on the Complaint at the date of the May letter.
15. Consequently, by the time the Complaint came to the Board on 5 July 2023, there had been no final determination of the Complaint.
16. The Board did not lack any jurisdiction to proceed with the inquiry.

THE COMPLAINT

17. The Complainant (Ms Glazebrook) raised the following issues in her Complaint citing statutory declarations of Ms Adams and Ms Kelly in the related NTCAT proceedings for alleged breaches of the Tenancy Agreement by the Landlord. The breaches concerned alleged interference with the Complainant's quiet enjoyment of the premises, and with her reasonable peace and privacy in its use. There were also claims for compensation for deficiencies at the premises relating to cleanliness, a balcony repair and a faulty air-conditioner.
18. It is alleged by the Complainant that Ms Kelly (and perhaps Ms Adams) entered the Complainant's property on 16 February 2021, without her consent and at this time, and that she took photos of documents. These photos were later emailed to the Complainant's previous partner, Mr Glen Hood.
19. Ms Kelly and Ms Adams both made declarations refuting that they went into the property on 16 February 2021, and denied taking photos which were transmitted to a third party.
20. Ms Kelly attended the property for an inspection on 17 February 2021 with a male. The Complainant alleges that she asked Ms Kelly who the male was and why he was there. Ms Kelly initially refused to tell her.
21. Ms Kelly advised later, that the male who attended the property with her on 17 February 2021 was there in the capacity as a witness as she did not feel safe around the Complainant.
22. The Complainant alleged that Ms Kelly had taken photos of the Complainant's vehicle and her clients' paperwork in the premises (the Complainant works as a bookkeeper from home), and had passed on the car details and whereabouts, and personal information relating to her son, to a third person, namely Mr Glen Hood. He was the Complainant's former

¹¹ The power to conduct an inquiry, or a power or function that requires an inquiry to be held before it is excised are the only powers in the ALA that the Board is not permitted to delegate: s.16(1) of the ALA. Further, the schedule of delegations currently in force (and in force at the time of the May Letter) do not attempt to delegate this power.

partner.

23. The Complainant alleged that when Ms Kelly was originally checking on the Complainant's references, she spoke to a person who she thought was the Complainant's original landlord. The person was instead Mr Hood.
24. In a statement given to NTCAT by Mr Hood, it appears that he, knowing who the Complainant's rental agency was, took it upon himself to contact Ms Kelly under another assumed identity of "Scott" and posed as a COVID-19 Inspector.
25. Although the Complainant and Mr Hood both had Family Violence Intervention Orders against each other (in Victoria) at this time, it would appear that they had a unique relationship where they still communicated with each other.
26. Mr Hood sent the Complainant copies of photos which he alleged Ms Kelly provided to him as a result of him purporting to be a COVID-19 inspector.
27. Also, in information tendered by Mr Hood to NTCAT, he advised that he has a bipolar disorder.
28. The Complainant submitted that, as Mr Hood resided in Victoria, he would have had to have been sent the images and information by someone in Darwin, ie Ms Kelly and/or Ms Adams.
29. Both Ms Kelly and Ms Adams denied that they took photographs and transmitted them to Mr Hood.
30. The Complainant was advised that NTCAT was unable to verify the authenticity of who transmitted the photos and the authenticity of the text messages provided to NTCAT.
31. On 28 September 2021, the matter was determined by NTCAT in favour of the Complainant who was the applicant in the matter. Her complaint was upheld and she was awarded legal costs (\$1,100.00) and compensation in the amount of \$3,706.52.
32. The Reasons For Decision 28 September 2021 ("Reasons") says that Ms Kelly was acting on false information supplied from the Complainant's ex-partner, Mr Hood and despite credible representations from other parties including the Victorian Police, Ms Kelly and under her direction, Ms Adams, continued to exert authority over the Complainant, in order to try and remove her from the tenancy.
33. Ms Adams, who was the Senior Property Manager at Ray White Darwin, under the direction of Ms Kelly (the "General Manager" at that time), signed at statutory declaration in which she asserted that neither she nor Ms Kelly gained access to the property tenanted by the Complainant on any of the dates.
34. The declared information is incongruent with the findings in the NTCAT Reasons at paragraphs 88, 89 and 90, in which it is found that Ms Adams did enter the property.
35. It was also found that Ms Kelly's entry into the premises, breached the Complainant's right to quiet enjoyment of the premises.

36. The Reasons also noted (at paragraph 149) that Ms Kelly's oral evidence was that Ms Lauren Crompton of Ray White Darwin took a photo of the Complainant's vehicle and registration number for the purpose of obtaining a record of the registration plate.
37. The Registrar of NTCAT (at paragraph 152) called into question how Mr Hood could have come into possession of this photo.
38. Ms Kelly was directly asked by the Registrar (paragraph 153) whether to her knowledge she or any other person at Ray White Darwin had forwarded the photograph of the Complainant's car to Scott (Mr Hood). She declined to answer and the Registrar determined (at paragraph 160) that despite her denial, he considered it likely that Ms Kelly forwarded Ms Crompton's photograph to the person that she knew as "Scott" (Mr Hood) particularly since, on the evidence, Ms Kelly was the only person at Ray White Darwin who was in touch with the person she knew as Scott (Mr Hood).
39. The Registrar determined (at paragraph 161) that the action by Ray White Darwin (of taking the photo of the Complainant's vehicle) on behalf of the Landlords, also constituted an interference in the Complainant's reasonable enjoyment or privacy under the lease in contravention of s 65 of the Act.
40. The Registrar held (at paragraph 179) that the range of conduct that may constitute a breach of the right to the quiet enjoyment of the rental property is almost limitless, but commonly includes wrongful eviction, or attempted wrongful evictions and unauthorised attendances by a landlord or an agent at rented premises.
41. Although the Registrar accepted that the person representing himself as Scott (Mr Hood) presented an extraordinary story (at paragraph 189), there were numerous occasions where both Ms Kelly and Ms Adams were presented with other information to assess the veracity of the claims against the Complainant, and they failed to do so.
42. The Registrar found that at paragraph (191) these actions occurred when the controlling mind of the agency was its Managing Director, Ms Kelly,
43. The breaches were not made by a junior or inexperienced officer (at paragraph 197) and the breaches could not be said to adhere to the professionalism required by the Real Estate Practitioners Code of Conduct.
44. The Complainant said in evidence that on 22 and 23 February 2021, she sent two emails to members of the Ray White Darwin management team about Ms Kelly's conduct.
45. The first email was sent to Mr Nicholas George, the Ray White Darwin Branch Manager, and Matt Lindblom, CEO Ray White SA/NT.
46. The Complainant lodged a complaint with Ray White Darwin against Ms Kelly and attached five documents in support of the complaint.
47. The Complainant received no response.
48. The second email was sent to the Mr George and Matt Lindblom, CEO Ray White SA/NT attaching the DV Order from Victoria. The email said:
"Hello again, This matter really should even make it to court, these

are all fabricated lies told by Glenn HOOD Ph: (not included here) as per my previous email. Can you please contact me.”

49. Again, there was no response to her email.

50. Ms Kelly’s employment was eventually terminated on 12 November 2021.

LEGAL PRINCIPLES

51. In conducting an inquiry, the Board is not bound by the rules of evidence and may inform itself in such manner as it thinks fit¹². In occupational 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 finding¹³.
52. Disciplinary proceedings are proceedings *sui generis*¹⁴. Whereas civil proceedings are generally brought to protect and enforce private rights and seek compensation and damages for wrongs and the object of criminal proceedings is to deter and punish the commission of crimes, the purpose of disciplinary proceedings is to maintain proper ethical and professional standards, primarily for the protection of the public, but also for the protection of the profession¹⁵.
53. An extension of this principle is that because the onus of proof, purpose and focus of disciplinary proceedings is different, an acquittal does not inhibit disciplinary proceedings arising out of the same facts, despite the outcome. The facts can be investigated and determined adversely to the person who is subject to the disciplinary proceedings and the court or tribunal is not confined to the evidence in the criminal proceedings, let alone to an examination of the findings¹⁶. These principles ought equally to apply to civil proceedings that may precede a disciplinary inquiry, on this same rationale.
54. The Real Estate Code is designed to assist and guide members of the REINT in their conduct with the public and other real estate practitioners. Although it is voluntary, the Code seeks to set boundaries of acceptable conduct in real estate practice and determine minimum standards of behaviour expected of members, with the objectives being to encourage compliance with legislation and ethical conduct¹⁷.
55. Under the Code¹⁸, a practitioner should uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and in particular, conduct business and personal activities in

¹² S.77(9) of the Act

¹³Briginshaw -v- Briginshaw [1938] HCA 34; (1938) 60 CLR 336 at 362; Re Whittles Body Corporate Management Pty Ltd, Agents Licensing Board, 5 May 2021 (Re Whittles) at [15].

¹⁴. *Weaver -v- Law Society of NSW* (1979) 142 CLR 201 at 207.

¹⁵ *Health Care Complaints Commission -v- Litchfield* (1997) 41 NSWLR 630 at 635 - 636

¹⁶ *Jackson (formerly Subramaniam) -v- Legal Practitioners Admission Board* [2007] NSWCA 289 at [34]; *Health Care Complaints Commission -v- Litchfield* (1997) 41 NSWLR 630 at 635 - 636

¹⁷ Code, page 2.

¹⁸ 20 Defined to mean any licensed or registered agent, sales representative, property manager, strata/Body Corporate manager or auctioneer involved in real estate for fee or reward: see page 3

compliance with the Code and legislation¹⁹.

56. The use of rude and inappropriate language is unprofessional. It may tend to bring the profession into disrepute and is conduct that falls short to a substantial degree what reasonably would be expected of a professional in the industry by their peers²⁰.

Relevantly, s65 of the Act “Rules of Conduct” provides:

- (1) A licensed agent must not breach the rules of conduct.
 - (2) A licensed agent who attempts to do an act the doing of which would be a breach of the rules of conduct for agents, or agents of a class of which he is one, is guilty of a breach of the rules of conduct for agents.
 - (3) Where a licensed agent who carries on business as a member of a firm contravenes or fails to comply with a provision of Part V, each licensed agent who is a member of the firm shall be deemed to be guilty of the contravention of, or failure to comply with, that provision.
 - (4) A company or firm is guilty of a breach of the rules of conduct for agents if:
 - (a) the company or firm is a licensed agent acting on behalf of a client; and
 - (b) a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents.
57. Section 65(1) to (3) of the Act provides a formula upon which licensed agents are dealt with if they breach the Rules. Section 65(4) provides for the consequences of conduct of an employee of a company (ie not a licensed agent) where that person commits a breach of section 65(1) to (3) of the Act and, as such, the public is protected by the vicarious liability of the employer. However, the conduct of the employee must be within the scope of their employment. Section 65(4) of the Act has been held to be a “deeming provision” in this respect²¹.

Agents’ Duties

58. In carrying out duties on behalf of a client, an agent is required to exercise such skill, care and diligence as is usual or necessary for the ordinary or proper conduct of the business or profession in which they are employed, or is reasonably necessary for the proper performance of the duties undertaken by them²².

59. The terms “skill”, “care” and “diligence” are not defined in the Act. In

¹⁹ Code, p.4.

²⁰ *Re Russell* [2007] CCT PD021-05 at [56] and [71].

²¹ *Fowler (Respondent) v Commissioner for Her Majesty's Revenue and Customs (Appellant)* [2020] UKSC 22 at [27]

²² *Re Whittles* at [66] – [67], citing *Georgieff -v- Athans* (1981) 26 SASR 412 at 413.

Re Whittles, the Board applied dictionary definitions, specifically “the ability to do something well; expertise”, “serious attention or consideration applied to doing something correctly or to avoid damage or risk” and “careful and persistent work or effort”, respectively²³.

60. The Code is designed to assist and guide members of the REINT in their conduct with the public and other real estate practitioners. Although it is voluntary, the Code seeks to set boundaries of acceptable conduct in real estate practice and determine minimum standards of behaviour expected of members, with the objectives being to encourage compliance with legislation and ethical conduct²⁴.
61. Under the Code, a practitioner²⁵ should uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and in particular, conduct business and personal activities in compliance with the Code and legislation²⁶.
62. A practitioner must avoid the use of rude and inappropriate language in dealings with clients and staff.

Habitability and Cleanliness

63. It is a term of a tenancy agreement that a landlord must ensure that the premises and ancillary property to which a tenancy agreement relates are habitable and are reasonably clean when the tenant enters into occupation of the premises²⁷.
64. The “premises” relevantly means the residential premises and the ancillary property (ie the garden)²⁸.
65. The meaning of a “reasonably clean condition” means that the premises are kept to the standard of a weekly clean, not a spring clean. The premises need not be kept in pristine condition²⁹.
66. Questions of fitness for habitation, apart from health and safety, is “reasonable comfort”. Fitness for habitation is to be judged against a standard of reasonableness having regard to the age, character and locality of premises and to the effect of the defect on the state or condition of the premises as a whole³⁰.

Quiet Enjoyment

67. A tenant is entitled to quiet enjoyment of the premises without interruption by the landlord and the landlord will not cause an interference with the reasonable peace and privacy of a tenant in their use of the premises³¹.

²³ At 72.

²⁴ Code p.2

²⁵ Defined to mean any licensed or registered agent, sales representative, property manager, strata/Body Corporate manager or auctioneer involved in real estate for fee or reward: see page 3.

²⁶ Code p.4

²⁷ S.48 of the *Residential Tenancies Act 1999*

²⁸ S.4 of the *Residential Tenancies Act 1999*

²⁹ *Tomkinson -v- Telles* [2021] VCAT 1428 at [20].

³⁰ *Chief Executive Officer -v- Young* [2022] NTCA 1 (**Young**) at [30] – [50].

³¹ S.65 of the *Residential Tenancies Act 1999*

68. This is a right to enjoyment of premises for all usual purposes without interference and includes but is not limited to, the right to enjoy the premises free from harassment by the landlord or the landlord's agents³².
69. A deliberate and persistent attempt by a landlord to drive the tenant out of the premises by persecution and intimidation, including threats of physical eviction is a serious interference with the tenant's right of possession, even if there is no direct physical interference with the tenant's possession and enjoyment³³.
70. Depriving a tenant of their home is a serious and important matter³⁴ which has psychological, social and legal consequences³⁵.

EVIDENCE

71. The Complainant could not start living in the premises at the commencement of the Tenancy Agreement (19 January 2021) because of the extent of the mould inside the premises. As she needed a place to work, she used the premises as a home office from 15 February 2021.
72. Before she arrived in the Northern Territory, The Complainant's son inspected the premises and found an overgrown, weed choked garden, mould throughout the interior and a leak in the laundry³⁶.
73. Allegedly, Ray White Darwin arranged for the premises to be cleaned and brought back to a habitable state. But that was not the case by 15 February 2021. It was unsafe for the Complainant to take up permanent residence due to the extent of the mould in the premises. She had to stay with her son³⁷.
74. The Complainant took the issue to NTCAT and it was satisfied that the premises was not in a state of cleanliness at the commencement of the tenancy. It awarded her a reduced amount of rent paid³⁸. It also awarded her compensation for other claims, the repair to the balcony, the bedroom air conditioner and the breach of her right to quiet enjoyment and privacy³⁹.
75. In January 2021, Ms Adams was the property manager (licensed) and Ms Kelly, a former licensed agent, was the "General Manager" of Ray White Darwin. Ms Kelly had administrative duties only. Ms Adams said in evidence that Ms Kelly could be unpredictable, nice one minute and angry the next. Ms Adams tried to avoid her.
76. The evidence suggested (and Ms Adams agreed) that Kelly was an older, more experienced person and a bullying workplace personality, Ms Adams did not take any steps to report or manage the situation that was developing

³² *Martins Camera Corner Pty Ltd -v- Hotel Mayfair Ltd* [1976] 2 NSWLR 15 at 23; *Shkloar -v- Thomson* [2015] ACAT 21 (Shkloar) at [13] – [16].

³³ *Spathis -v- Hanave Investment Co Pty Ltd* [2002] NSWSC 304, citing *Kenny -v- Preen* [1963] QB 1 QB 499 at 513; Shkloar.

³⁴ *Williams -v- CEO Housing* (2013) 22 NTLR 88 (**Williams**) at 16, citing *Crook -v- Consumer, Trader and Tenancy Tribunal (NSW)* (2003) 59 NSWLR 300 at [20].

³⁵ *Williams* at [18], citing *Commissioner for Social Housing in the ACT -v- Canham* [2012] ACAT 41.

³⁶ ³³ See *Glazebrook -v- Grimes & Grimes (No. 2)*, Northern Territory Civil and Administrative Tribunal (NTCAT), 28 September 2021 (**Glazebrook -v- Grimes**), paragraph [38].

³⁷ *Glazebrook -v- Grimes*, paragraph [40] and [63].

³⁸ *Glazebrook -v- Grimes*, paragraph [164] - [165].

³⁹ *Glazebrook -v- Grimes*, paragraph [176] - [201].

with the premises and Kelly's interactions with the Complainant.

77. Ms Adams said in evidence on 5 July 2023 that, in her view, the premises were habitable at the beginning of the tenancy. However, that view is inconsistent with her decision to make arrangements for maintenance, cleaning and gardening works to be carried out at the premises after the Complainant's son contacted her on 5 February about the state of the premises.
78. NTCAT observed that on 15 February 2021 the Complainant sent photographs to Adams that depicted mould, sent Adams an e-mail and recorded her concerns in the incoming condition report⁴⁰. A finding of NTCAT was that the Complainant only utilised the premises during office hours and attended to some of the cleaning of the interior herself⁴¹.
79. The Board was concerned about the following conduct of Ms Adams and Ms Kelly.
80. They both demonstrated uncritical acceptance of allegations made by Glen Hood, the Complainant's former partner who had a diagnosed mental health condition, about the Complainant. They had no regard to the extreme nature of the allegations nor that they were unsolicited.
81. There was no effort to perform a background check on Mr Hood, how he knew the Complainant, nor investigate the veracity of his allegations.
82. They failed to check the Complainant's referees or put the allegations to her for her response.
83. Ms Adams said in evidence that after Ms Kelly had received Hood's phone call, she was concerned that she had let a monstrous tenant into the Landlords' property.
84. It was apparent to the Board that neither Ms Kelly nor Ms Adams displayed any concern for the Complainant's rights and proceeded to act on the false information that had been supplied to them, to the Complainant's detriment.
85. On 17 February 2021, there was an impromptu meeting in the Office of Ray White Darwin between the Complainant and Ms Kelly and Ms Adams. The Complainant was given no notice of the meeting. Ms Kelly directed the Complainant to leave the premises, immediately, and otherwise threatened her with eviction. The Complainant was not supplied with the substance of any of the allegations forming the basis of the decision to evict her. The Complainant said in evidence that she was of the opinion that both Ms Kelly and Ms Adams were licensed real estate agents.
86. The Complainant said in oral evidence that she was subjected to forty-five minutes of questioning by Ms Kelly and Ms Adams during the meeting. She became emotional and distraught. The Complainant tried to explain to Ms Kelly and Ms Adams about her situation in Victoria with Mr Hood and the Court Domestic Violence Orders.
87. The Complainant said that, after the meeting, she drove a short distance from

⁴⁰ *Glazebrook -v- Grimes*, paragraph [40] and [41].

⁴¹ *Glazebrook -v- Grimes*, paragraph [44]

the office, pulled over and had a complete breakdown. All her efforts to escape a domestic violence situation and make a new start in Darwin had failed.

88. It was apparent to the Board on the oral evidence of the Complainant and Ms Adams, that neither Ms Kelly nor Ms Adams made any inquiry into the Complainant's explanations given during the meeting.
89. While the Complainant was in the meeting, a photograph of her car registration was taken without her knowledge or permission ⁴². That photograph ended up in the possession of Mr Hood.
90. Also of concern to the Board is Ms Kelly's conduct when she entered the Complainant's ancillary premises and then the premises without notice, when she knew that the Complainant was not at home.
91. The NTCAT finding said that this conduct constituted a breach of the Complainant's right to quiet enjoyment⁴³.
92. The Complainant told the inquiry that she left invoices on her desk inside the premises. Screenshots of text messages provided by her to the Board showed an exchange between Kelly and Hood and photos of the Complainant's invoices⁴⁴.
93. The Complainant's oral evidence at the hearing was that when she arrived back at her unit, she saw Ms Kelly on the front step facing outward, as if she was exiting the unit. Ms Kelly had gone to the premises immediately after the meeting in the Ray White Darwin Office.
94. The Complainant said that when Ms Kelly saw her, she once again accused her of lying, yelled at her and, again, threatened to change the locks if she did not vacate the premises immediately.
95. The most obvious conclusion to how Mr Hood came into possession of the photos is that Ms Kelly took the photos and texted them to him⁴⁵.
96. Ms Kelly's filed an Initiating Application in NTCAT on 22 February 2021 seeking orders under the *Residential Tenancies Act* 1999 to terminate the Tenancy Agreement, alleging a serious breach by the Complainant and for the eviction of the Complainant.
97. There was no credible and reliable evidentiary foundation for the Application.
98. Neither Ms Kelly nor Ms Adams followed up the Complainant's theories of what may have occurred, or contacted the Victoria Police or her previous property manager of Ray White in Benalla as the Complainant asked.
99. At the time Ms Kelly was preparing the Application, it is the Complainant's evidence that the Victorian Police contacted her and said that they had contacted Ms Kelly. The Victoria Police told the Complainant that they verified the Complainant's reports to Ms Kelly about Mr Hood and that Ms Kelly failed to ask Victoria Police obvious questions about the

⁴² Inquiry Book p46

⁴³ *Glazebrook -v- Grimes*), paragraph [86] – [90]

⁴⁴ Inquiry Book pp 19-22

⁴⁵ Inquiry Book p56 (Attachment F "To Whom It May Concern" authored by Mr Hood)

Complainant's claims.

100. On 3 March 2021, Ms Kelly and Ms Adams appeared in NTCAT on behalf of the Landlords and prosecuted the Eviction Application.
101. The evidence before the Board showed that Ms Kelly received text messages from Hood on 26 February 2021 during which he admitted to lying to Ms Kelly about the Complainant and Ms Kelly speaking with Mr Hood on the telephone to confirm that he had lied to her.
102. The Eviction Application was withdrawn on 4 March 2021 by e-mail from Ms Kelly, only after the NTCAT required her response to a series of questions about the photographs taken of the Complainant's car and documents and the text messages between Kelly and Hood⁴⁶.
103. The text messages generally between Ms Kelly and Mr Hood included the divulging of personal and identifying information about the Complainant and her son from Ms Kelly to a third party and referred to the Complainant in language which was rude and inappropriate⁴⁷.
104. Of note, the OPTUS Call Log recording phone calls and text messages between Ms Kelly and Mr Hood show that between 22 February and 10 June 2021, there were:
 - i. 19 texts from Mr Hood to Ms Kelly
 - ii. 12 texts from Ms Kelly to Mr Hood
 - iii. 5 Calls from Mr Hood to Ms Kelly
 - iv. 6 Calls from Ms Kelly to Mr Hood
105. The duration of the longer phone calls were between 5 and 14 minutes.
106. In amongst the emails provided by Ms Adams in the Hearing, there was an email from her to Mr George on 10 November 2021. Apparently, it concerned allegedly, the Landlords' desire to sell the premises and what to do about the Complainant.
107. This email was about six weeks after the NTCAT Reasons For Decision were issued on 28 September 2021. The email stated:

On Wed, 10 Nov 2021 at 09:38, Stephanie Adams <stephanie.adams@raywhite.com> wrote:

Hi Nick,

Current legislation is 14 days notice to vacate if a lease commenced on or after the 28th of April 2020 (hers commenced on 19th of January, 2021),

The owners want to terminate her tenancy based on the nature along with wanting to put the unit up for sale,

Based on this, I will have to provide her with the termination notice in line with LL instructions - thoughts?

Thanks

108. Mr George replied:

On Wed, 10 Nov 2021 at 09:06, Nick George <ngeorge@raywhite.com> wrote:

Marina says owner wants to kick Annette Glazebrook out but I don't think that we

⁴⁶ *Glazebrook -v- Grimes*, paragraph [124]-[128]

⁴⁷ Inquiry Book Exhibit L - p.19

should rush into this
Find out when is the latest she can be given notice and ensure that it's not done
by marina as a parting shot
I don't need to aggravate this crazy woman any further
This is one of many examples of how we need to communicate as this whole
nitemare was caused unnecessarily and I wish to reduce our stress where
possible
The worst thing in real estate is making
things personal
Keep me posted

109. So, despite the Complainant's complaint being upheld by NTCAT, Mr George seemed to refer to the Complainant as a "crazy woman" or alternately, Ms Kelly. He did say that the events concerning her ("the nitemare" *sic*) were caused "unnecessarily" but he was more concerned about the stress suffered by the Ray White Darwin office staff (rather than the "nitemare" his staff visited upon the Complainant).

FINDINGS

110. There is no finding of a breach of conduct under the Act concerning Ms Adams because she was a witness in this proceeding not a party as explained in paragraph 3, above. The Board are concerned about her conduct in relation to the meeting on 17 March 2021 with Ms Kelly and the Complainant and Ms Adams' role in the NTCAT Application to evict the Complainant lodged on 17 February 2021.
111. There is no finding of a breach of conduct under the Act concerning Ms Kelly as explained in paragraph 5, above.
112. However, had the Board considered the Complaint within 6 months of the alleged conduct, there would have been sufficient evidence to support a finding that Ms Kelly was holding herself out as a licensed agent when she was not the holder of a licence under the Act at that time, in contravention of s.17(1) of the Act.
113. Further, had Ms Kelly held a licence under the Act at that time, there is sufficient evidence for the Board to have made findings against Ms Kelly. Her actions and omissions amount to conduct which would have resulted in a finding that she breached the Rules of Conduct, particularly Rules 5(a), 11 and 12, including:
- i. engaging in discussions with Mr Hood when she was not a property manager and not responsible for the management of the premises;
 - ii. accepting and acting on the lies and misinformation spread by Mr Hood;
 - iii. failing to investigate Mr Hood's allegations or put them to the Complainant;
 - iv. her role in the meeting on 17 February 2021 with Ms Adams at the offices of Ray White Darwin;
 - v. accusing the Complainant of lying;
 - vi. ordering the Complainant to leave the premises;

- vii. threatening her with eviction;
 - viii. failing to progress obvious and reasonable lines of enquiry with Victoria Police and Ray White Benalla;
 - ix. yelling and screaming at the Complainant;
 - x. entering the premises without the Complainant's knowledge or consent;
 - xi. taking photographs of the Complainant's office and documents;
 - xii. sending private and confidential information about the Complainant and her son to a third party, ie Mr Hood, including a photograph taken by a Ray White Darwin employee to Mr Hood; and
 - xiii. preparing, signing and causing the Eviction Application to be filed in NTCAT and representing the Landlords with Adams to prosecute the Eviction Application.
114. The conduct set out in paragraph 113, above, in general, is conduct which falls short of the minimum standards of behaviour expected of real estate practitioners under the Code, conduct that brings the profession into disrepute and is conduct that lacks the skill, care and diligence that is usual and necessary for the ordinary and proper conduct of the business of a real estate professional. The number of breaches, their seriousness and the impact of the breaches upon the Complainant were extraordinary, and had that conduct been before the Board, it would likely have attracted a higher order penalty.
115. Mr George is not a respondent in this Inquiry. However, his conduct is relevant to the allegations against the First Respondent and, as such, the Board is not constrained in making findings in respect of Mr George's conduct.
116. Among other things, the Complainant raised issues of her safety and wellbeing in the two emails she sent him on 22 and 23 February 2021. It is noted that Mr George did not respond to the two emails. In his role as the Business Manager for Ray White Darwin, he was obliged to respond personally or have someone respond on his behalf. Secondly, the language expressed by him in the use of the phrase "this crazy woman" in the email sent on 10 November 2021 was unprofessional.
117. In construing and applying s.65(4)(b) of the Act, as it relates to the conduct of the First Respondent, the central question is not whether an employee's acts, omissions or attempts were within the scope of the employee's authority and employment, but whether the acts, omissions or attempts would make them guilty of a breach of the Rules of Conduct.
118. To restrict the operation of s.65(4) to an employee's scope and authority of employment would read a qualification into the provision that is not open and would tend to defeat, rather than conform to, the object of the provision.
119. The clear language of s.65(4) and the legislative intent is to ensure that where a licensed agent is a company or firm acting on behalf of a client, conduct by employees or directors that would breach the Rules of Conduct

can be held to account through the corporate licensed agent.

120. The Board is compelled to apply s.65(4) to enforce this conclusion.
121. The Board is satisfied that the First Respondent is a licensed agent which was acting on behalf of the Landlords and that it failed to exercise due skill, care and diligence in carrying out duties on behalf of the Landlords⁴⁸ in dealing with any person in the course of conducting business as an agent⁴⁹ (ie the Complainant). In doing so, the honour and dignity of the profession was not upheld⁵⁰.
122. Accordingly, because of the actions of Ms Kelly in particular (at paragraph 113), Mr George's conduct (at paragraph 116), but also the conduct of Ms Adams (at paragraph 110) and the employee who took the photo of the Complainant's car registration, the First Respondent is guilty of a breach of the Rules of Conduct. As such, it is appropriate to impose a reprimand and a fine in the upper range. The relevant penalty unit for 2021 is \$158.00.
123. The Board is satisfied that it is authorised to take disciplinary action against the First Respondent in relation to the allegations that have been made and to go on to exercise power under s.69 of the Act.

The Decision of the Board

124. Pursuant to s.691(a) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a reprimand on George & Hucent Pty Ltd (T/A Ray White Darwin); and
125. Pursuant to s.691(b) of the Act, the Board is satisfied that it is authorised to take disciplinary action and imposes a fine on George & Hucent Pty Ltd (T/A Ray White Darwin) of 40 penalty units in the amount of \$6,320.00;

Right of Appeal

126. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.
127. An appeal application must be made within 21 days after the date the decision was issued

Dated 15 November 2023 at Darwin



Gabrielle Martin
Deputy Chairperson
Agents Licensing Board of the Northern Territory

⁴⁸ Rule 11

⁴⁹ Rule 12

⁵⁰ Rule 5(a)