

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

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

Applicant

AND:

**UNIGAR PTY LTD (TRADING AS DUNVEGAN REAL
ESTATE)**

Respondent

Date of hearing: 22 February 2023

Chairperson: Mr Mark Thomas
Consumer representative: Ms Lea Aitken
Departmental representative: Mr Robert Bradshaw

Appearances: Self-represented

Date of decision: 26 Oct 2023

STATEMENT OF REASONS FOR DECISION

PART A: BACKGROUND

1. The Registrar of Land, Business and Conveyancing Agents applied, pursuant to section 68 (2)¹ of the Agents Licensing Act 1979 (hereafter “The Act”), for disciplinary action to be taken against a licensed agent, Unigar Pty Ltd² trading as Dunvegan Real Estate.

¹ The Registrar’s application refers to the application being made pursuant to s 67, whereas s 68 (2) is the applicable section.

² When reference is made to Unigar it is always assumed that, unless specifically stated, it is Unigar **Pty Ltd** that is referred to.

PART B: GROUNDS & PARTICULARS OF APPLICATION

2. Section 68 (2) of the Act states that the Registrar may apply, by notice in writing, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67 of the Act. The ground referred to in the application is contained in section 67 (m), which states:

“Any other reasonable ground, which in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent.”

3. The Registrar in its application then refers to section s55 of the Act, which is stated in full. The principal components of s55, upon which reliance is placed, are:

Ss (1): a licensed agent shall keep such accounting records as disclose particulars of

- (a) All trust moneys received from day to day by the agent on behalf of each client for whom he or she acts; and*
- (b) All payments made by the agent from day to day out of the trust moneys so received.*

Ss (2): a licensed agent shall ...

- (c) cause those records to be kept in such a manner that they can be conveniently and properly audited.*

4. Section 55 is not the only section relevant to the allegation. The others are sections 52 and 59.

5. The **particulars of the allegation** forming the basis of the ground, are as follows:

5.1 Deposits totalling \$6,026.79 are currently held in the Rental Trust Account (as of November 2021), the origin of which is unknown, in breach of s 55 (2) of the Act;

5.2 The trust account audit for the financial year ending on 30/6/2021 was not completed until 9/11/2021, which breached the timeframe of 3-months, as required by s 59 of the Act;

5.3 The rental trust account reconciliation at the end of year (2021) included unreconciled adjustments of \$4,291.70, which has been outstanding for in excess of 3 years.

PART C: OUTLINE OF EVENTS TO DATE OF HEARING

6. TDH Chartered Accountants conducted an audit of Unigar for the financial year ending 30/6/2021. The result of this audit is contained in the tendered materials (DOCUMENT 3). The audit revealed clear evidence of the three items specified in the three particulars.
7. On 24 November 2021, the Deputy Registrar sent to Ms Dale Walker, business manager of Unigar Pty Ltd formal correspondence seeking a response to the anomalies revealed by the 2021 audit (DOCUMENT 2). After some delay, Ms Walker supplied the audit for Unigar's trust account for financial year ending 30/6/2022. On 19/1/2023 the Registrar sent correspondence to Ms Walker, which specified that the audit contained the qualification that the sum of \$4,291.70 remained unreconciled, (and that this had been outstanding for in excess of 4 years) (DOCUMENT 4). This was the only breach specified in the 2021 audit that remained outstanding.
8. Department officers have engaged in considerable correspondence with Ms Walker seeking to obtain further clarification as to the origin of the unreconciled adjustment of \$4,291.70. Ms Walker, in an email dated 2/11/2020, wrote to Ms Orlando, of the Licensing Dept, and produced a list of 11 transactions, totalling \$4,291.70, which dated from the period from 7/12/2011 to 31/5/2018. She was not able to provide any details as to the source and said so. On 2/11/2020, the then Registrar (Mr Gelding) wrote to Ms Walker in relation to her 2/11/20 email and said that her response was *"unacceptable as it failed to provide any explanation or evidence of rectification of the issues outlined by TDH Chartered Accountants"*.
9. On 19 January 2023 the Registrar wrote to Ms Walker seeking an explanation in relation to the unreconciled adjustment of \$4,291.70, that explanation to be provided by close of business on 1 February 2023.
10. On 1 February 2023 Ms Walker wrote back to the Registrar via email and essentially provided no further information as to the source of the unreconciled adjustment of \$4,291.70. She merely referred to it being included in the Inquiry Book (as document 5).

PART D: THE INQUIRY OF 22 FEBRUARY 2023

11. Ms Walker appeared before the Board, unrepresented. The material tendered (exhibit 1) was the Application for Disciplinary Action against Unigar Pty Ltd (DOCUMENT 1); the qualified audit report for the year ending 30/6/2020 and email correspondence between Registrar/Dept and Unigar (DOCUMENT 2); qualified audit report for year ending 30/6/2021 and email correspondence between Registrar/Dept and Unigar (DOCUMENT 3); qualified audit report for year ending 30/6/22 and correspondence between Registrar/Dept and Unigar (DOCUMENT 4); Statement of unreconciled items (\$4,291.70)(DOCUMENT 5).

12. Ms Walker addressed the Board and responded to questions asked of her. Her responses included that she did not know what to do with the unreconciled amount of \$4,291.70; that she did not understand the importance of addressing the matter; and finally, for much of the time, she did not know or understand what to do in relation to the unreconciled \$4,291.70.

PART E: THE BOARD'S FINDINGS

13. Ms Walker did not take her obligations regarding the rental trust account seriously. She was not proactive about the problem (as she candidly admitted in an email to the Dept, dated 31/1/2023). The three particulars of the application are made out. Firstly, the deposit of \$6,026.79 was (as of November 2021) unknown. This breaches s 55 of the Act, which requires particulars to be kept of trust monies received. Secondly, the trust account audit for the year ending 30/6/2021 was filed outside the three-month time limit. This breaches s 59 of the Act. Thirdly, the trust account included a sum of \$4,291.70 which was not reconciled. This breaches s 55 of the Act which requires particulars of the trust monies received to be kept.
14. There is a final step. The Board must determine if the particularised breaches constitute a reasonable ground, which in the opinion of the Board is sufficient to warrant the revocation of Unigar's licence. The breach of s 59 is not of itself sufficient to justify revocation of the licence. (The Board also notes that the 2022 audit was filed in time).
15. However, the two breaches of s 55, in particular, the long-running issue concerning the \$4,291.70 constitute key breaches of core requirements of trust account legal obligations, namely, to keep records as to the details of those monies, that is who they are obtained from and when. This is a key responsibility to the public, the failure of which can lead to integral issues concerning a general lowering of trust in real estate agents. The issue concerning the first breach (the \$6,026.79) was reconciled eventually. The second breach (\$4,291.70) was not. Due to the persistence and seriousness of this issue, the Board considers that the s 55 breach concerning the \$4,291.70, could lead to the revocation of Unigar's real estate agent licence.

PART F: SANCTION

16. The Board is satisfied, pursuant to s 69(1) of the Act, that it is authorised to take disciplinary action against Unigar Pty Ltd. The Board finds that there has been conduct that is sufficient to warrant the revocation of Unigar's real estate licence. The Board must determine what sanction is appropriate in the circumstances. The breach concerns a trust account issue which had been outstanding for at least 4 years. The Board has said before and repeats the point that it vital that real estate agents have their trust accounts in order. This is imperative in order to provide protection to members of the public. If there is a problem, as there clearly was in this case, professional help should be promptly sought to fix it. This did not occur. Instead, the

problem was left to continue- for 4 years. On the plus side however, it does appear to the Board that Ms Walker has realised the importance of this problem and the steps that she must take to address any trust account issue and prevent such an issue arising in the future. It is to be hoped that Ms Walker's appearance before the Board was, of itself, a salutary lesson to her.

17. The Board considers that it is appropriate in all the circumstances of this case to impose a REPRIMAND upon Unigar Pty Ltd.
18. In coming to its decision, the Board has considered the seriousness of Unigar's 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.

PART G: RIGHT OF APPEAL

19. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.
20. An appeal application must be made within 21 days of the date of this decision.

DATED 26 OCTOBER 2023 AT CANBERRA

Mark Thomas

MARK THOMAS,
CHAIRPERSON,
AGENTS LICENSING BOARD OF THE NORTHERN TERRITORY