

**IN A MATTER BEFORE  
THE AGENTS LICENSING BOARD OF  
THE NORTHERN TERRITORY**

**APPLICATION FOR DISCIPLINARY ACTION**

**BETWEEN:**

**JANINE POPE (for Rob Neill)**  
Applicant

**AND**

**KENNETH JONES trading as LITCHFIELD  
REALTY**  
Respondent

Date of hearing:

**26 October 2016**

Chairperson:  
Industry Member:  
Industry Member:  
Departmental Member:

John Tsoukalis  
Diane Davis  
Jo-Anne Pulsford  
Katrina Martin

Respondent represented by  
daughter:

Robbie Jones

Counsel Assisting the Board:

Tass Liveris

## STATEMENT OF REASONS FOR DECISION

### Background

1. The Applicant, Janine Pope on behalf of Rob Neill, made application to the Board under 68(3) *Agents Licensing Act* (the Act) for Disciplinary Action against the Respondent, Kenneth Jones trading as Litchfield Realty, on the ground set out in section 67(1) (c) of the Act of breach of the rules of conduct for agents, such rules being contained in section 65 of the Act.
2. The application alleged that the Respondent had breached section 65(1) (da) of the Act in that it had failed to exercise due skill, care and diligence in dealing with the Applicant, in the course of conducting business as an agent.
3. Following receipt of the application, the Registrar of Land, Business and Conveyancing Agents caused an Investigation Report to be prepared. That report was tabled and considered by the Agents' Licensing Board (hereinafter called "the Board") at its meeting held on 30 November 2015 and the Board determined that there might be grounds for disciplinary action. As required by section 68(4) of the Act, the matter was set down for an Inquiry.

### The Issues

4. The issues in this Inquiry were:
  - a. a consideration by the Board as to whether the Respondent's actions amounted to a breach of the rules of conduct as contemplated by the terms of section 65(1)(da) of the Act;
  - b. if so, the appropriate disciplinary sanction.

### Relevant Legislation

5. Disciplinary action may be taken against a licensed agent on the grounds provided in section 67 of the Act.

***"67. Grounds for disciplinary action***

*(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:*

*(c) the licensed agent has been guilty of a breach of the rules of conduct for agents;"*

6. Applications for such action are made under section 68 of the Act.

***"68. Applications for disciplinary action***

*(3) Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.*

(4) *Where-*

*(b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent, the Board shall hold an inquiry."*

7. In this case, the Board relied on section 65(1) (da) of the Act to ground the application for disciplinary action.

**"65. Rules of conduct**

(1) *A licensed agent who-*

*(da) fails to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent; or*

*is guilty of a breach of the rules of conduct for agents."*

8. Where the Board grants an application, the Respondent may be dealt with as provided in section 69 of the Act.

**"69. Powers of Board after inquiry**

(1) *Where, 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;*

*(b) by notice in writing, impose a fine not exceeding 50 penalty units on the agent;*

*(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."*

**Conduct of the Matter**

9. The central issue to be determined under section 65(1)(da) of the Act was whether the Respondent had, through its course of dealings as property manager with the Applicant, failed to exercise due skill, care and diligence as required by section 65(1)(da).
10. The Board was assisted by Tass Liveris and the Applicant appeared for themselves. Mr Liveris called Mr Neill and Ms Pope as witnesses and the Respondent was able to cross examine the Applicant and other witnesses, present evidence and make submissions.
11. Proceedings were conducted on the basis that there were 3 grounds of inquiry against the Respondent as follows -
- a. Ground 1: That the Respondent failed to exercise due skill, care or diligence through the failure to disclose to the Applicant what happened with the bond moneys from each of the tenancies relating to the Property (of which there were two), at the conclusion of each tenancy agreement or at all;

- b. Ground 2: That the Respondent failed to exercise due skill, care or diligence through the failure to advise to the Applicant of the work that had been done on the property and failed to provide copies of invoices and receipts for work performed on the Property by contractors, when requested to do so or at all;
  - c. Ground 3: That the Respondent failed to sufficiently or adequately communicate with the Applicant about matters that related to the tenancies and the Property, sufficiently or at all.
12. The Board was provided with an Inquiry Book which was supplemented by bundles of email correspondence tendered by Counsel Assisting and Counsel for the Respondent. Evidence was heard from Janine Pope and Rob Neill.

### **The Facts**

13. The Respondent holds an unrestricted Real Estate and Business Agent's Licence, AL 126, and at all material times conducted business under that licence.
14. At all relevant times, the Applicant was the registered proprietor of 195 Cox Peninsula Road, Berry Springs NT (*the Property*).
15. On or about 26 July 2010 the Applicant entered into a property management agreement with the Respondent, for the Respondent to manage the Property.
16. The Respondent managed the Property for a period of approximately four years.
17. The Property was tenanted twice, the first tenancy was with Mark Elliott and Lynn Herbert between September 2010 and May 2014. The second tenancy was with Haarslev Industries for a relatively short period between June 14 and September 14.
18. The Board heard evidence that at times there was a failure of proper communication by the Respondent as managing agent with the Applicant as the landlord,
19. The Applicant alleged a failure by the Respondent to communicate, to provide details of the disbursement of the bond moneys and to provide copies of invoices and receipts for works undertaken on the Property, despite repeated requests by the Applicant.
20. On or about 29 September 2014, the Applicant spoke to the Respondent and requested amongst other things, an itemised account of the disbursement of the previous rental bond (paid by the previous tenants). Although evidence was presented that the Applicant was aware that work needed to be undertaken to the Property, as a result of damage by the first tenants, no itemisation of the expenditure of the bond money on such work was provided in a timely manner or at all.
21. A follow-up email was sent by the Applicant on 15 October 2014, in which the applicant made a number of requests, including, "You have avoided the question of what happened to the previous tenant's bond money. We would like an itemised list of what that money was spent on please". Despite these repeated requests it does not appear that this information was provided.
22. Although monthly computer generated statements were being sent by the Respondent to the Applicant, these statements were standard monthly statements that showed income and expenses, but did not particularise the expenses, nor were copies of the invoices or receipts for works and expenses provided.



23. Again with the second tenancy, the Applicant was not provided with complete and detailed information of the work undertaken nor were copies of the invoices the tenancy ledger provided.

### Determination

24. The Board having considered the Investigation Report, the Inquiry Book, further materials tendered during the Inquiry, the evidence of the witnesses and the submissions of Counsel, the Board being satisfied that it was authorised to take disciplinary action, determined as follows:

25. **Ground 1: That the Respondent failed to exercise due skill, care or diligence through the failure to disclose to the Applicant what happened with the bond moneys from each of the tenancies relating to the Property (of which there were two), at the conclusion of each tenancy agreement or at all.**

The Board after hearing the evidence determined that Litchfield Realty was guilty of a breach of the rules of conduct for agents, specifically section 65(l)(da) - failed to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent.

26. **Ground 2: That the Respondent failed to exercise due skill, care or diligence through the failure to advise to the Applicant of the work that had been done on the property and failed to provide copies of invoices and receipts for work performed on the Property by contractors, when requested to do so or at all.**

The Board after hearing the evidence determined that Litchfield Realty was guilty of a breach of the rules of conduct for agents, specifically section 65(l)(da) - failed to exercise due skill, care or diligence when dealing with any person whomsoever in the course of conducting business as an agent

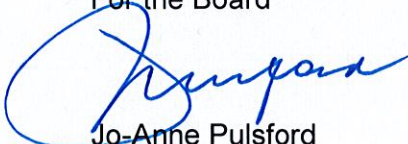
27. **Ground 3: That the Respondent failed to sufficiently or adequately communicate with the Applicant about matters that related to the tenancies and the Property, sufficiently or at all.**

The Board considered that this ground 3 overlapped grounds 1 and ground 2 and continued the theme of lack of proper communication by the Respondent towards the Applicant and as grounds one and two had already being dealt with, the Board decided not to take any specific action under ground 3.

28. Pursuant to section 69(l)(a) of the Act, the Board also issued a reprimand against the Respondent for its failings and pursuant to section 69(3), the Board directed the Respondent:

- to supply the Complainant with the information requested but not supplied; and
- to deliver a full set of revised policies and procedures relating to property management to the Board within 3 months of the date of the hearing.

For the Board



Jo-Anne Pulsford  
Member

21 August 2017