

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

**APPLICATION FOR DISCIPLINARY ACTION**

**BETWEEN:** **FRANCES O'TOOLE**  
Applicant

**AND** **JULIE CRUMMY**  
Respondent

Date of hearing: **7th December, 2011**

Chairperson: Sue Philip  
Departmental Member: Robert Bradshaw  
Conveyancing Member: Dianne Jarrett

Appearances:

Respondent In Person

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On the 14<sup>th</sup> July 2011 the Applicant, Frances O'Toole, made application to the Board under 68(3) *Agents Licensing Act* (hereinafter called "ALA") for Disciplinary Action against the Respondent, Julie Crummy, on the ground set out in Section 67(1) (c) ALA of breaches of the rules of conduct for agents, such rules being contained in Section 65 ALA. The Respondent is a licensed Conveyancing Agent, holding licence number CAL99.
2. Following consideration of the Application on 14<sup>th</sup> November 2011 and admissions made by the Respondent, the Board found that there were grounds for disciplinary action and set the matter down for hearing on 7th December 2011, at which time the Respondent appeared in person.
3. As a preliminary matter, the Chairperson indicated that although the parties received less than the 7 days notice required by Section 77 ALA, both parties had agreed to waive their rights in respect of such notice and to have the matter proceed on the 7<sup>th</sup> December 2011.

The Board considered that, in those circumstances, it could continue with the Inquiry despite the failure to comply with section 77.

### **The Issues**

4. The issue in this Inquiry was, given that the Respondent had admitted her actions amounted to a breach of the rules of conduct as contemplated by the terms of Section 65 ALA, a consideration by the Board as to 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

#### **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 –*

*(a) subject to subsection (5), an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section; or*

*(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. The Applicant relied on Sections 65(1) (d) and (da) of the Act to ground the Application.

**65. Rules of conduct**

(1) *A licensed agent who –*

*(d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal; or*

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

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

8. In the event of the Board granting the applications, 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 fulfillment of a condition, specified in the notice; or*

*(d) by notice in writing, revoke the licence of the agent.*

*(3) Where the Board decides to take action of a kind specified in subsection (1)(a), (b) or (c), the Board may, by notice in writing, direct the licensed agent to take, or to refrain from taking, a specified action within such time as the Board shall in that notice specify*

## **Conduct of the Matter**

9. The Board was provided with an Investigation Report and various correspondence between the Applicant, Respondent and the Registrar of Land, Business and Conveyancing Agents, including a letter dated 19<sup>th</sup> August 2011, from Minter Ellison, Lawyers, acting on behalf of Hewdale Pty Ltd, trading as Territory Conveyancing Services (hereinafter called "TCS"), the employer of the Respondent, in which the conduct complained of in the Application was admitted. The respondent confirmed at the Inquiry that she admitted the breach of the Rules of Conduct and was prepared for the matter to proceed on the question of appropriate penalty. The Board was also provided with confirmation that the Applicant was prepared to have the matter proceed on the papers before the Board.

## **The Facts**

10. In or about October 2010, the Applicant purchased Unit 7, 18 Henry Street Stuart Park, Darwin (hereinafter called "Unit 7") after engaging the Respondent to act as Conveyancing agent on her behalf in the purchase.

11. At the time of purchase a current Development Permit was noted on the title search for Unit 7. That Development Permit allowed construction of a balcony addition to Unit 8 which directly impacted on the amenity of Unit 7. Unit 7 formed the ground floor of the multiple dwelling and the balcony extension to first floor Unit 8 would have resulted in shadowing of unit 7 and negative impact on the use and enjoyment of the garden area due to the supporting struts for the structure.

12. The Respondent failed to notify or advise the Applicant in respect of the Development Permit or to seek further instructions from the Applicant. The Applicant indicated that if the Permit had been brought to her attention and further inquiries made which would have revealed the nature and extent of the proposed balcony, she would not have proceeded with the purchase.

13. The Development Permit subsequently lapsed in or about March 2011 as the registered proprietors of Unit 8 did not commence construction of the balcony extension. However, the Applicant obtained an independent valuation of the Unit which estimated a decrease in value of \$20,000 - \$30,000 if the proposed balcony had been constructed.

14. Following service of the Application for Disciplinary Action on 25<sup>th</sup> July 2011, the Respondent replied through solicitors, Minter Ellison, on 19<sup>th</sup> August 2011, indicating that she failed to notice the Development Application on the title search when she performed it in connection with the conveyance. The Respondent confirmed that position during the Inquiry. The Respondent's employer, TCS, voluntarily offered to impose a condition on the Respondent's employment.

**Determination**

15. On the basis of admissions made by the Respondent the Board found that the Respondent was guilty of breach of the rules of conduct for agents within the meaning of Section 65(1) (d), in that she did not exercise due skill, care or diligence in carrying out her duties on behalf of her principal. Having determined that the Respondent had committed breaches of the rules of conduct in Section 65(1), the Board was authorised to take disciplinary action under Section 67(1)(c).

16. The Board also noted that the Respondent had made full and frank disclosure to the Board and had accepted responsibility for her error.

**Action**

The Board determined that it was satisfied that the Respondent, Julie Crummy, had committed breaches of the rules of conduct for agents that justified disciplinary action against her. In exercise of its powers under Section 69(1) ALA, the Board reprimanded the Respondent and pursuant to Section 69(3) directed that for a period of six months from the date of service of notice of this decision that she be supervised in the performance of her conveyancing activities in that prior to signing off on any conveyancing work, all of her title searches are to be checked by another Licensed Conveyancing Agent.

For the Board



Suzanne Philip  
Chairperson

20/12/11