

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

APPLICANTS

**TAMARA ROLPH AND
LUCAS FIDDAMAN (the Applicants)**

RESPONDENTS

**SUZANNE (SUZI) MILGATE AND
MILGATE REAL ESTATE PTY LTD (the Respondents)**

Date of hearing: 14 DECEMBER 2023

Chairperson: Mr Robert Bradshaw
Consumer representative: Ms Lea Aitken
Real Estate representatives: Ms Diane Davis
Ms Carol Need

Board support: Ben Tuffnell, Registrar
Abhi Jain, Senior Lawyer
Laine Cornish
Chris Bowman

Date of decision: 23 January 2024

STATEMENT OF REASONS FOR DECISION

PART A: INTRODUCTION

1. On 29 May 2023, Tamara Rolph and Lucas Fiddaman (the Applicants) applied to the Agents Licensing Board (the Board) for disciplinary action to be taken against Suzanne (Suzi) Milgate (Ms Milgate) and Milgate Real Estate Pty Ltd (Milgate Real Estate).
2. Ms Milgate is the holder of real estate agents licence number REL1237. Milgate Real Estate is the holder of real estate licence REL1238.
3. On 13 September 2023, the Board determined under section 68(4) of the *Agents Licensing Act 1979* (the Act) that there may be grounds for disciplinary action to be taken against both Ms Milgate and Milgate Real Estate (the Respondents).
4. The Board resolved to conduct an inquiry into the matters raised in the application and as well as other matters that arose in the course of the investigation up to the

time when the Board made its determination under section 68(4) of the Act (the application).

5. The grounds arose from a dispute that took place following two alleged break-ins at premises rented by the Applicants with the Respondents acting as agents for the landlord of the premises (the Landlord). The break-ins involved damage to a rear door (first break-in) and the removal of a security door (second break-in). In both cases, the offenders would have needed to get over a 6 foot front fence (according to Ms Milgate).
6. The grounds considered by the Board are those in the Inquiry Book provided by the Registrar to the Applicants and the Respondents.

PART B: GROUNDS FOR THE APPLICATION

Legislative provisions

7. Section 67(1) of the Act sets out the grounds on which the Board may take disciplinary action against a licensed agent.
8. Relevant to the matters set out in the Inquiry Book:
 - (1) section 67(1)(b) of the Act provides that disciplinary action may be taken if the licensed agent has been found guilty of an offence that involves dishonesty;
 - (2) section 67(1)(c) of the Act provides that disciplinary action may be taken if the licensed agent has been guilty of a breach of the rules of conduct for agents;
 - (3) section 67(1)(k) of the Act provides that the disciplinary action can be taken if an agent does not meet the conditions of eligibility specified in Division 2 of Part III of the Act; and
 - (4) section 67(1)(m) of the Act provides that disciplinary action may be taken on any other reasonable ground that the Board considers sufficient to warrant revocation of the agent's licence.
9. Section 4 of the Act defines "rules of conduct" as meaning the rules of conduct prescribed in the *Agents Licensing Regulations 1979* (the Regulations). Regulation 25 provides that the rules of conduct for all agents are the rules set out in Schedule 4, Part 1 of the Regulations.

Alleged possible breaches of the Rules and the Act as raised in the Inquiry Book

10. The provisions alleged to have been possibly breached are:
 - (1) **Breach of section 67(1)(a) of the Act**

Section 67(1)(a) of the Act provides that the Board may take disciplinary action if an agent has been found guilty of an offence of dishonesty.
 - (2) **Rules 11 and 12**

Rules 11 and 12 require an agent to exercise due skill, care and diligence when dealing with both their client and any other person in the course of conducting business as an agent. The Board notes that in the Inquiry Book rule 12 is spelt out as a ground for inquiry but that it is labelled as rule 11.

The allegation is that the Respondents breached rule 12 by the way in which Ms Milgate dealt with the request for repairs, her harassment of the Applicants in the course of dealing with the repairs, and the other inappropriate dealings by Ms Milgate with the Applicants and others.

(3) **Rule 5**

Rule 5(a) provides that an agent must have due regard to and comply with the rules of real estate practice published or approved by the Real Estate Institute of the Northern Territory (the REINT rules).

The allegation is that the Respondents, in dealing with the Applicants and others following the alleged break-ins, breached the REINT rules relating to upholding the honour and dignity of the profession by: not disclosing pertinent facts, exaggerating, misrepresenting or concealing relevant facts; not being transparent in their business dealings; not acting in an honest, forthright and transparent manner in real estate dealings; and not resolving disputes in a professional and amicable manner.

(4) **Breach of section 67(1)(k) of the Act**

The allegation is Ms Milgate's conduct in dealing with the Applicants is such that she is no longer a fit and proper person as referred to in section 20(1) of the Act.

(5) **Breach of section 67(1)(m) of the Act**

The allegation is the Respondents breached the following provisions of the *Residential Tenancies Act 1999* (RT Act):

- (a) section 49(1) of the RT Act by failing to take reasonable steps in providing and maintaining locks and other security devices; and
- (b) sections 65-66 of the RT Act by interfering with the right of the Applicants to have quiet enjoyment of the premises, including forcing or attempting to force the tenant to vacate premises other than in accordance with the RT Act.

PART C: EVIDENCE AND MATERIALS CONSIDERED BY THE BOARD

11. The Board considered the following information:

- (1) An Inquiry Book (Exhibit 1) – comprising documents compiled by the Registrar for the purposes of the hearing conducted on 14 December 2023. Copies of the Inquiry Book were provided to the Applicants and the Respondents. The Inquiry Book included an analysis by the Registrar's office of the facts and the issues, the application, police reports on the break-ins, emails between the Applicants and Ms Milgate, emails from various persons contacted by Ms Milgate, notifications and responses concerning the inquiry, an unsigned document in the name of the Landlord, emails and letters between Ms Milgate and the lawyer acting for the Applicants, documents relating to the termination of the tenancy, and a reference dated 5 December 2023 given by Raquel Taylor of Alliance Realty;

- (2) Ms Milgate's documents (Exhibit 2) – comprised some of the documents in Exhibit 1, and screenshots from mobile phones concerning the residential tenancy lease, the application for that lease application, an email dated 9 June 2023 to the Applicant's lawyer in which Ms Milgate apologised for her actions in contacting the employers and the property manager; and
 - (3) Information provided by Ms Milgate during the hearing on 14 December 2023 and soon after the hearing.
12. Ms Milgate attended the hearing along with a friend (Lorraine).
 13. The documents in exhibit 2 were provided as a bundle during the hearing. This made it difficult for them to be assessed for relevance and impossible for follow up within the context of the hearing.
 14. The Applicants did not attend the hearing despite being notified in accordance with the Act about the time and place of the hearing.
 15. No other persons provided any evidence during the hearing,
 16. Mr Abhi Jain, Senior Lawyer, from the Department of Industry, Tourism and Trade presented the materials relevant to the inquiry. The Registrar also attended the hearing.

PART D: GENERAL LEGAL PRINCIPLES

17. In conducting an inquiry, the Board is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.
18. 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 finding.
19. 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 profession.

PART E: THE BOARD'S FINDINGS REGARDING THE APPLICATION

20. The information contained in the exhibits was accepted by the Board as accurate except to the extent that it was challenged by either Ms Milgate or Mr Jain.
21. Having regard to principles of procedural fairness, in dealing with this application the Board is restricted to the issues and grounds of inquiry identified in the Inquiry Book.
22. As part of this inquiry, it was not possible to examine other issues or other potential grounds of inquiry that may have arisen or become more apparent during the hearing or in developing this decision. These other issues may, at this time, only be of potential relevance if the Board decides that one or more of the grounds identified in the Inquiry Book are made out, with the Board then making a decision as to what penalty to impose. Some of these other issues might be:

- (1) Ms Milgate's inappropriate use of information provided in the rental application form. That is, names and details provided for the purposes of only assessing the application.

Alleged breach of section 67(1)(b) of the Act (agents guilty of offence of dishonesty)

23. In the course of the hearing, no evidence was provided concerning the Respondents having been found guilty of an offence of dishonesty.
24. **Finding:** The Board finds that there is no evidence concerning a breach of section 67(1)(b) of the Act.

Alleged breaches of rules 11 and 12

25. As noted above, Rules 11 and 12 require an agent to exercise "*due skill, care and diligence*" when dealing with any person in the course of conducting business as an agent. The Board has previously determined that the word "due" means "reasonable" in this context"¹.
26. The terms "skill", "care" and "diligence" are not defined in the Act. In determining the meaning of these words, the Board has adopted dictionary meanings and the following judicial statement that real estate agents are bound to:
*"exercise such skill, care and diligence in the performance of his undertaking as [was] usual and for the ordinary or proper conduct of the business of the profession in which he was employed or was reasonably necessary or the proper performance of the duties undertaken by him"*².
27. Rule 12 is alleged to have been breached by the Respondents because of the way in which Ms Milgate handled the reports concerning the break-ins.
28. The evidence provided by the Applicants relating to the reports about the break-ins and consequential events appears to be as follows:
 - (1) The Applicants were tenants of a property in Bakewell. It appears that they are employed by government agencies. The tenancy was for a 12 month period commencing on 2 May 2023. The Respondents handled the tenancy on behalf of the Landlord.
 - (2) On 8 May 2023, a friend of the Applicants (the house-sitter) was house-sitting the property whilst the Applicants were interstate.
 - (3) On 9 May 2023, the house-sitter reported a break-in to the Northern Territory Police and the police summary of it as case 10343467 (PROMIS number P23129866) is part of the Inquiry Book. The police summary of the report notes the rear fly screen door was damaged by being bent and scratched.
 - (4) There was a telephone discussion between Ms Milgate and Mr Fiddaman about the incident. Mr Fiddaman says Ms Milgate suggested the break-in did not occur and that the Applicants should move out if they did not feel safe.

¹ *Ordogh and others v Whittles Body Corporate Management Pty Ltd* (5 May 2021)

² *Georgieff v Athans (1981) 26 SASR 412*

There is email correspondence concerning the reporting of this incident to Ms Milgate by Mr Fiddaman on 11 May 2023.

- (5) On 25 May 2023, Ms Rolph reported a second incident to the NT Police and the police summary of it is case 10355395 (PROMIS number P23144205). This occurred after Ms Rolph and Mr Fiddaman had resumed living in the property. The police summary notes that the screen door had been taken out but entry was not made due to there being a second door. The tenants have advised that they spoke with both their neighbours to ascertain if they had heard anything (they had not).
- (6) The Applicants advise that they then reported the incident to Ms Milgate. There is email correspondence dated 25 May 2023 in which this second incident was reported by Mr Fiddaman to Ms Milgate.
- (7) By email also dated 25 May 2023, Ms Milgate advised the tenants as follows:
“After we had some lengthy discussions with the owner, she has decided that she wishes due to the attempted break ins that have occurred, for everyone’s safety and concerns, it will be best to end the lease with no penalties for you to find another property that you will feel more safe and secure in.”
- (8) On 26 May 2023, Mr Fiddaman replied by email to Ms Milgate. In this email, Mr Fiddaman noted:
 - (a) he also has several investment properties and would be horrified if he learned his property manager replied to an email the way Ms Milgate had;
 - (b) that Ms Milgate’s response had absolutely no regard to the welfare of the tenants;
 - (c) that he was concerned Ms Milgate was not properly communicating the wishes of the tenants to the owner;
 - (d) that at no point had the tenants hinted at a desire to vacate;
 - (e) that the tenants wish the property to be adequately secured to ensure their safety and the safety of the owner’s property; and
 - (f) sought that Ms Milgate stop suggesting the tenants vacate and speak with the owner to discuss an option that includes the tenants remaining in the property.
- (9) On the same day at 8.30 am, Ms Rolph advises that Ms Milgate contacted her and was extremely hostile and aggressive. Ms Rolph has provided a file note of her conversation with Ms Milgate. It is summarised as follows:
 - (a) conversation started with Ms Milgate asking the tenants to vacate the property due to ongoing vexatious claims but with Ms Milgate not being able to specify what those claims were;
 - (b) Ms Milgate accused the tenants of breaching the lease agreement by having a dog inside the house, despite the dog being on the initial rental application and being registered with the Palmerston City Council;

- (c) Ms Milgate continued accusing Ms Rolph of lying about the break-ins and claiming no one would have tried to break in;
 - (d) Ms Rolph explained to Ms Milgate that the dog was outside when the second break-in took place and the neighbours could verify this but Ms Milgate dismissed this and stated the neighbours should have contacted her instead;
 - (e) Ms Milgate being extremely rude and combative throughout the conversation and threatened to take the tenants to the tribunal, but seemed defensive when questioned about what the tenants had breached; and
 - (f) Ms Rolph eventually informing Ms Milgate that the conversation was no longer productive for either of them and ending the call.
- (10) On the same day at 9.21 am, Ms Milgate sent an email to the tenants stating:
“We will be seeking legal advice from our lawyer regarding all your bullying, harassment and defamation allegations.”
- (11) Later on that day Ms Milgate, by telephone, contacted Ms Rolph’s employer (“the Employer”). The Employer sent an email to Ms Rolph which outlined the details of that telephone discussion. They are:
- (a) Ms Milgate informed the Employer that she was having ‘concerning issues’ and ‘great problems’ with Ms Rolph, without specifying what they were, and inquiring if the Employer had the same issues.
 - (b) The Employer provided a good reference for Ms Rolph stating she was a ‘fantastic employee’.
 - (c) The Employer expressed that she was aware that Ms Rolph had been broken into twice and police reports were done and was worried about the incidents and Ms Rolph’s safety.
 - (d) Ms Milgate informed the Employer that there were holes in Ms Rolph’s story and that she had talked to the neighbours and the whole community who have said that what Ms Rolph is saying is all lies and there have been no break-ins.
 - (e) The Employer questioned why Ms Rolph would make this up as the tenants were both up-standing citizens and referred to their employment history. The Employer reiterated that the tenants have no reason to make this up and questioned why Ms Milgate would think that they had been making things up.
 - (f) Ms Milgate repeated there being holes in the story and referred to the first incident being reported by a friend because the tenants were not home. The Employer questioned why that was an issue. Ms Milgate then informed that the tenants are requesting a change in locks. The Employer responded that this seemed reasonable. Ms Milgate again repeated that it is all lies.
 - (g) The Employer informed Ms Milgate that she thought it was inappropriate for her to be calling her to accuse Ms Rolph of this, and

that it was harassment. Ms Milgate denied being harassing. The Employer replied saying that is how she felt about it.

- (h) The Employer reiterated that she did not see what the issue was if the tenants have reported to her what had happened. Ms Milgate repeated that the tenants were making it up.
 - (i) Ms Milgate then sought to inquire from the Employer what level of government she worked for. The Employer replied stating she did not think that the question was relevant. Ms Milgate then informed the Employer that she would be reporting this to the Employer's higher up as well.
 - (j) The Employer then stated she was going to go as she did not think "this" was appropriate at all.
- (12) In this email, the Employer stated to Ms Rolph that she was sorry that Ms Rolph was experiencing this. The Employer also expressed that she was concerned about the tenants and offered support. The Employer informed Ms Rolph that she was keeping notes of the phone conversation with Ms Milgate along with sending Ms Rolph the email about it as the Employer was extremely uncomfortable with the phone call made by Ms Milgate.
- (13) Later the same day, the Employer sent Ms Rolph an email advising that the incident (that is, the earlier conversation with Ms Milgate) had been reported to the NT Police with a reference P23145060. The Employer also informed that if further issues arose with the agent contacting Ms Rolph's workplace, she would meet with her manager about it and keep Ms Rolph informed. The Employer also expressed that she hoped the situation would cease and was sorry that it had been brought into Ms Rolph's workplace.
- (14) On 27 May 2023, the Landlord sent an email to the Applicants and to Ms Milgate stating that she believed the security door was fixed and was now locked securely. In this email the Landlord:
- (a) appears to accept that there were break-ins;
 - (b) spelt out to the Applicants that she expected all communications to go through Ms Milgate; and
 - (c) expressed the hope that the problems can be overcome and "*we can move forward with no more issues*".
- (15) This email was provided as part of the bundle of documents comprised in Exhibit 2. It might be an indication that, at that time, the Landlord was willing to permit the lease to continue.
- (16) On 31 May 2023, the Employer advised Ms Rolph that Ms Milgate had, on 26 May 2023, contacted the Adelaide head office of their workplace to speak to the Employer's manager. In this call, the Employer advised that the Manager had advised that Ms Milgate had raised a complaint against both Ms Rolph and the Employer. Ms Milgate complained that Ms Rolph had been lying about the attempted break-ins and had been a problem for Ms Milgate. Ms Milgate also complained that the Employer was rude to her when

Ms Milgate contacted her about this matter. The Manager informed Ms Milgate that this was not a work related matter.

- (17) On 27 May 2023, the previous property manager sent an email to Mr Fiddaman setting out the following:
- (a) Ms Milgate called four times before the previous property manager answered the phone call.
 - (b) Ms Milgate sought a rental reference for the tenants as their previous property manager.
 - (c) The previous property manager gave information about the tenants' rental payments and condition of the property they previously leased.
 - (d) Ms Milgate seemed very disappointed with answers and proceeded to explain that Mr Fiddaman had caused so much trouble for her and the community and that it would be better if Mr Fiddaman moved back to Gove. The previous property manager found this very inappropriate and bordering on bullying.
 - (e) The previous property manager recommended Mr Fiddaman contact Consumer Affairs to get information about his rights and obligations as Ms Milgate was extremely unprofessional and seemed to have a personal issue with the tenants.
- (18) On 30 May 2023, Mr Fiddaman's employer emailed him advising that Ms Milgate had made contact to inquire about Mr Fiddaman's role in her business and if her business was a government agency, before abruptly hanging up. This took place after three previous calls from Ms Milgate attempting to make contact.
- (19) On letter dated 5 June 2023 (but attached to an email dated 6 June 2023), Ms Milgate wrote to the Applicants' lawyers stating:
- "It appears that our comments or discussions have been taken out of context and definitely we didn't mean to offend any parties, however we would like to apologize for the misunderstanding caused by our discussions and comments with your clients and others."*
- (20) In an email dated 9 June 2023 to the Applicants' lawyers, Ms Milgate stated:
- "... regarding your request of the apology to the tenant's employers and previous property manager, it was not the right approach from our end to contact them and we would like to sincerely apologise about that, and we are happy for you to provide. Please provide to her employer and her previous property manager with my sincere apology"*.
- (21) Another document provided by Ms Milgate to a Compliance Officer is an email from the Landlord sent to Ms Milgate on 5 June 2023 (time stamped 7.36 pm). In this email, the Landlord accepts to release the tenants from their tenancy without any penalty or compliance with their obligations of a lease break. Another document provided by Ms Milgate to the departmental investigator is an email Ms McAuley (the Applicants' lawyer) sent in response

to Ms Milgate on 8 June 2023. A summary of the contents of this email is as follows:

- (a) The investigator confirmed the tenants wished to terminate the lease and vacate the property on 22 June 2023, and sought the Landlord's agreement of this by close of business 9 June 2023.
 - (b) The investigator outlined reasons as to why Ms Milgate's apology was insufficient and that the Applicants requested a full and unequivocal written apology to be made and provided within 7 days of the date of the correspondence (being by 15 June 2023).
- (22) Eventually the Applicants through a lawyer sought that the tenancy be terminated. As part of the lawyer's letter regarding termination, the lawyer noted that the Applicants felt intimidated and that they were considering taking out a Personal Violence Restraining Order against Ms Milgate under the *Personal Violence Restraining Orders Act 2016*.
- (23) Another document provided by Ms Milgate to the investigator is email correspondence between Ms Milgate and the tenants on 10 and 13 June 2023 confirming the vacate date of 22 June 2023 and arranging the final inspection.
- (24) On 4 September 2023, Ms Rolph informed OLA that a further written apology from Ms Milgate was not received.
- (25) On 6 December 2023, the Applicants provided OLA with a reference letter dated 5 December 2023 from Ms Raquel Taylor of Alliance Realty.
29. During the hearing, Ms Milgate was questioned about the allegations regarding the various actions she took following the reported break-ins. She appeared to accept that all of these conversations or contacts (including those to the Adelaide manager and the previous property manager) had taken place.
30. Ms Milgate did not accept that the various emails were an accurate representation of the conversations. Ms Milgate stated that the conversations only related to social media content created by the Applicants regarding break-ins around Palmerston. She stated that she contacted the employers in the context of finding out if it was appropriate for "public servants" to put negative content on social media (Facebook) relating to the Landlord's premises.
31. The Board does not accept Ms Milgate's version of events. The stories told by the four persons contacted by Ms Milgate are consistent with one another. Either those four persons have grossly misrepresented what occurred or Ms Milgate lied to the Board. Ms Milgate asserted that many of these persons were friends of the Applicants and thus implied that they were not being truthful. The Board notes that Ms Milgate contacted all of these persons presumably on the basis that each of them was in a position to provide useful information. Some of the names had been provided to the Respondents as part of the rental application.
32. Additionally, aspects of Ms Milgate's evidence are inconsistent. She continued to "investigate" after the Landlord's intervention and after the repairs had been made. There is no obvious reason for doing this other than harassment of the Applicants.

33. The Board considers that during the hearing Ms Milgate lied about the events with the intention of misleading the Board.
34. The Board considers that the aggressive questioning of these four persons by Ms Milgate following the Applicants' request for repairs was unjustified. It was inappropriate to involve the employers, managers and others in the investigation of the request for repairs.
35. It was particularly wrong for Ms Milgate to belittle the Applicants' claims regarding the break-ins and to make unfounded allegations about the Applicants. For example, allegations that they were lying and that were troublemakers. Ms Milgate appeared to have no real basis for considering that the break-ins had not occurred. The only apparent fact mentioned by Ms Milgate was that the outside fence was 6 feet high. The Board does not consider that the height of the fence was of any particular reason for objectively questioning either the reports about the break-ins or the request for repairs. If, as suspected by Ms Milgate, the house sitter and then the Applicants had been responsible for the damage, the question Ms Milgate could have asked herself was "how did they get into the premises without damaging the backdoor"? The logical answer would be "they had the keys".
36. In any event, the issue is not of whether there were break-ins. Rather the issue is that of how Ms Milgate dealt with the request for repairs.
37. Rules 11 and 12 provide in full as follows:
 11. *An agent must exercise due skill, care and diligence in carrying out the agent's duties on behalf of a client.*
 12. *An agent must exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.*
38. An agent, in terms of complying with rules 11 and 12, must balance the obligations to their client and the obligations to third parties.³
39. Arguably, the Respondents breached rule 11 because the way the request for repairs was handled eventually led to the very early termination of the tenancy. However, no evidence was provided as to any dissatisfaction by the Landlord with the work of the Respondents. To the extent that the unsigned statement by the Landlord can be taken into consideration, it does not support any dissatisfaction by the Landlord.
40. Rule 12 relates to the dealings between agents and other persons who are not clients. The rule was, in its original form, enacted by the *Land and Business Amendment Act 1992* (section 15). The intention of the amendment was to spell out that agents have duties in respect of all the parties to a real estate transaction. For most, if not all, real estate transactions, all of the parties rely on the agent as being a trustworthy and competent intermediary.
41. In this case, Ms Milgate had a duty to take seriously the request by the Applicants that the repairs be made. Whilst the repairs were actually made, the process

³ The operation of these two rules is discussed in a previous decision of the Board (*Philip Butler v Whittles Body Corporate Management Pty Ltd*, paragraphs 25-28).

followed by Ms Milgate led to the Applicants terminating the tenancy and to them being bad-mouthed and, potentially, defamed and undermined with their employers and others. They were so concerned that they consulted a lawyer about taking out a personal violence restraining order against Ms Milgate and they gave the preliminary notice necessary for the commencement of defamation proceedings.

42. In conducting what looks like a witch hunt, Ms Milgate exercised, in relation to the Applicants, little skill and almost no care. Additionally, her “diligence” in investigating was unreasonable and misguided.
43. The Board notes that the Respondents may have had some partial excuse for what took place if they could provide evidence that the Landlord had instructed them to do what they did. Little evidence was provided to justify any view that the Landlord was closely involved in the problematic activities that occurred between Ms Milgate and the employers and the former property manager. The timelines for the various interactions also suggest that Ms Milgate was making the key decisions. In any event, it would be the role of the agent to moderate any inappropriate instructions from the Landlord.
44. **Finding:** The Board finds that the Respondents breached rule 12.

Breaches of rule 5

45. Rule 5(a) provides that an agent must have due regard to and comply with the REINT rules.
46. The Board notes that the REINT Rules are couched in very general language. This makes it difficult to make findings that any particular REINT rule was breached.
47. The most likely breach relates to a failure to resolve a dispute in a professional and amicable manner. The problem is that the dispute appears to have been really a dispute between the Applicants and the Respondents, rather than a dispute between the Applicants and the Landlord.
48. In general terms, any alleged breaches of the REINT rules are covered by specific breaches of the rules contained in the Regulations.
49. **Finding:** The Board makes no finding concerning a breach of rule 5.

Breach of section 67(1)(k) of the Act

50. Section 67(1)(k) of the Act provides that disciplinary action can be taken if an agent (who is a natural person) does not meet the conditions for eligibility to be an agent. The relevant eligibility issue identified in the Inquiry Book was that Ms Milgate no longer complies with section 22(1)(b) of the Act as being a fit and proper person within the meaning of section 20 of the Act. Section 20(1)(b) of the Act provides that a person must, for eligibility, be a person whose general reputation in the community is such that the Board can be satisfied that the person will competently, conscientiously and honestly perform the duties of an agent.
51. Section 20(1)(b) of the Act is usually of relevance where an agent has been charged

with or convicted of an offence or done an act which has resulted in some public notoriety.

52. In this case, none of the activities of Ms Milgate being considered as part of this inquiry have been the subject of any significant publicity. Rather, the issue of whether Ms Milgate should continue to hold a licence depends on findings about the breaches of the rules of conduct or of the Act.
53. **Finding:** The Board finds that Ms Milgate is not, in terms of the matters under consideration as part of this inquiry, a person who fails to meet the conditions of eligibility for a licence.

Breach of section 67(1)(m) of the Act

54. Section 67(1)(m) of the Act provides that the Board may take disciplinary action on *“any other reasonable ground which, in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent”*.
55. The allegation is the Respondents failed to comply with the RT Act.
56. When an agent is conducting a business that deals with the rental of properties, it is crucial that they comply with the RT Act. Under the RT Act, most of the duties and responsibilities of landlords are also the duties and responsibilities of the landlord’s agents. In practice, the RT Act can only function as intended if agents involved in residential tenancies both know the requirements of the RT Act and comply with them.
57. This means that breaches of the RT Act are potentially of such significance as to warrant revocation of an agent’s licence.
58. The Inquiry Book identifies the following failures to comply with the RT Act:

- (1) **Breach of section 49(1) of the RT Act by failing to take reasonable steps in providing and maintaining locks and other security devices.**

The material before the Board in respect of this issue was relatively limited.

Firstly, there appears to have been a dispute about whether the Applicants had kept a side gate padlocked. The answer to that factual issue was considered to be relevant in determining who was responsible for making the repairs.

Secondly, it appears, from the unsigned document in the name of the Landlord, that the repairs were made “promptly”.

- (2) **Breach of section 65 of the RT Act - relating to the quiet enjoyment of rented premises.**

The Board, in its previous decision concerning similar behaviour by Ms Milgate, found that deliberate and persistent attempts to drive a tenant out of premises by way of persecution and intimation was a serious interference with the tenant’s right to possession and as such constituted a breach of section 65 of the RT Act. The Board considers that Ms Milgate’s behaviour in this matter concerning the unreasonable contacts with the

employers and other persons as well as the accusations made without any factual basis are of a similar ilk. In general terms, making life miserable for the Applicants is a breach of section 65 of the RT Act.

(3) **Section 66(1) of the RT Act makes it an offence to interfere with the reasonable peace or privacy of a tenant.**

Ms Milgate's actions in contacting various persons arguably constituted breaches of privacy. She unnecessarily involved various other persons in the private landlord/tenancy relationship between the Applicants and the Landlord. Even if the contacts were only for the purpose of dealing with inappropriate social media comment, it would still have been inappropriate to use information from the tenancy application for that purpose. In passing, the Board notes from the limited materials provided to it, that the social media commentary was relatively limited and was not specific to the rented premises.

(4) **Section 66(2) of the RT Act makes it an offence for a landlord to force or attempt to force a tenant to vacate the rental premises "in circumstances that amount to harassment". Pursuant to section 4 of the RT Act, this reference to "landlord" is read as including a reference to agents of the landlord.**

After the first break-in, on or about 11 May 2023, Ms Milgate suggested that the Applicants move out if they did not feel safe. The same suggestion was made by email on 25 May 2023 following the second break-in (which occurred on that day). In this email, Ms Milgate said that it was the Landlord's decision that *"for everyone's safety and concerns, it will be best to end the lease with no penalties ..."*.

On 26 May 2023 at 6.37 am, Mr Fiddaman informed Ms Milgate that the Applicants has not indicated any desire to vacate and that they did not want to vacate – what they wanted was the premises be secured.

A few hours later, Ms Milgate spoke to Ms Rolph. Ms Milgate was making accusations about the break-in and was rude and combative asking the Applicants to vacate as they are making ongoing vexatious claims and also on the basis that the Applicants were in breach of the lease because there was a dog on the premises. Ms Rolph also says that Ms Milgate was rude and combative with threats to take the Applicants to NTCAT.

An hour later, Ms Milgate emailed the tenants saying that *"we will be seeking legal advice ... regarding all your bullying, harassment and defamation allegations"*.

Subsequently, on that day, Ms Milgate commenced making the telephone calls (as described earlier in these reasons) to the employers and other persons associated with the Applicants.

59. Ms Milgate has provided an unsigned document in the name of the Landlord. This document appears to be between Ms Milgate and the Landlord. In the document, the landlord sets out that:

- (1) on the morning of 26 May 2023, the Landlord received a phone call from Ms Milgate who was extremely upset and distraught after a phone call with one of the tenants, and that Ms Milgate informed the Landlord that the tenant had spoken to her rudely, called her unprofessional, questioned her validity in the industry and made [defamatory] remarks about Ms Milgate and her business. Ms Milgate further informed that she had felt threatened, bullied and harassed. She also felt that the tenants' emails and text messages were condescending and intimidating.
 - (2) the Landlord believes it is extremely out of character for Ms Milgate to be associated with aggressive, bullying, harassing and intimidating behaviour claims and that Ms Milgate has been professional, courteous and fair in all business matters from day one of the Landlord knowing her. The Landlord states this situation has caused Ms Milgate extreme distress and angst.
60. Regarding the operation of section 66(2) of the RT Act, giving tenants the option of ending a lease is not, of itself, problematic. However, in this case, Ms Milgate engaged in a course of conduct with the intention of pressurising the Applicants to vacate the premises. In terms of the agent's responsibilities, it does not particularly matter that the Landlord may have wanted her to do that.
61. This pressuring included the disbelief about the break-ins, the abusive language, the threats of legal action and the inappropriate contacting of other persons. There was also the inappropriate claim about the dog and the claim during the hearing that the dog was not permitted to be inside the unit. The keeping of the dog was part of the application for the lease and was specifically permitted by the lease. The lease contains no restriction regarding the dog not being inside the unit.
62. The Board considers that Ms Milgate intentionally engaged in a course of conduct for the purposes of pressuring the Applicants to vacate the premises and that that constitutes harassment for the purposes of section 66(2) of the RT Act.
63. **Findings:** The Board finds that the Respondents breached sections 65, 66(1) and 66(2) of the RT Act.

Position of corporate licensee

64. Section 65(4) of the Act provides that:
- 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.*
65. Section 65(4) of the Act can be read as providing that a company is automatically guilty of a breach of the rules if a director or employee is guilty of a breach.
66. Regardless of section 65 of the Act, in this matter, Milgate Real Estate operates

solely through Ms Milgate. She owns, operates and carries on the business of Milgate Real Estate. This is the reason behind finding that Milgate Real Estate is responsible for all of the actions of Ms Milgate and accordingly is guilty of all of the same breaches as found in respect of Ms Milgate.

PART F: SUMMARY OF BOARD'S FINDINGS

67. The summary of the Board's findings is as follows:

(1) Has Ms Milgate been found guilty of an offence of dishonesty?

No.

(2) Has Ms Milgate or Milgate Real estate been in breach of rule 12 – exercise of due skill, care and diligence?

Yes.

(3) Has Ms Milgate ceased to meet the conditions of eligibility for the holding of a licence?

No (in the sense of the application of section 20 of the Act).

(4) Has Ms Milgate or Milgate Real Estate breached the REINT Code of conduct?

No finding.

(5) Have Ms Milgate and Milgate Real Estate been in breach of the *Residential Tenancies Act 1999*?

Yes.

PART G: - DISCIPLINARY ACTION

68. The Board is satisfied, pursuant to section 69(1) of the Act, that it is authorised to take disciplinary action against Ms Milgate in relation to both her personal licence and the corporate licence.

69. On the making of such a finding, the Board is then obliged to determine what action to take. Under section 69(1) of the Act, the options are to do one or more of the following:

- (a) reprimand or caution;
- (b) impose a fine not exceeding 50 penalty units (\$8800);
- (c) suspend the licence; or
- (d) revoke the licence.

70. The main objective of a sanction under occupational legislation is that of ensuring that appropriate standards of conduct are maintained with the protection of the public being the central focus for achieving those standards. That is, the main objective is not that of punishment of the offending person albeit the nature of the action taken may well have a significant impact on that person.

71. This means, that in applying section 69(1) of the Act, the Board must take an action that is appropriate to the circumstances of the case. Section 69(1) of the Act is not applied in the same way that penalties might be determined under criminal law.

Under criminal law, there is usually a maximum penalty for an offence with the actual penalty being determined in accordance with various sentencing principles. An underlying notion is that the maximum penalty is set having regard to the worst case breach of the relevant offence. Under section 69(1) of the Act, there is no equivalent “maximum penalty”. Rather the action to be taken must be designed in relation to maintaining standards into the future rather than trying to fit the breach into a scheme covering the various kinds of breaches of the rules that might occur.

72. The Western Australian State Administrative Tribunal has enunciated 12 principles in determining penalties for breaches of occupational codes of practice and laws⁴. These principles, along with an assessment of the application of them to the Board’s findings in this matter are:

(1) any need to protect the public against further misconduct by the agent.

Yes. Tenants should be able to rely on being dealt with fairly by property managers.

(2) the need to protect the public through general deterrence of other agents from similar conduct.

Yes. All agents should be aware of their obligations regarding tenants.

(3) the need to protect the public and maintain public confidence in the profession by reinforcing a high professional standard and denouncing transgressions and thereby articulating the high standards expected of the profession such that, even where there may be no need to deter an agent from repeating the conduct, the conduct is of such a nature that the Tribunal should give an emphatic indication of its disapproval.

Yes.

(4) in the case of conduct involving misleading conduct, including dishonesty, whether the public and fellow agents can place reliance on the word of the agent.

This applies given the Board’s findings about the truth of the evidence provided Ms Milgate.

(5) whether the agent has breached any legislation or industry codes of practice or guidelines and whether or not such a breach was intentional.

There have been clear breaches of legislation.

(6) whether the agent’s conduct demonstrated incompetence, and if so, to what level.

The breaches of the RT Act (and the explanation regarding them) is evidence of incompetence.

(7) whether or not the incident was isolated such that the Tribunal can be satisfied of the agent’s worthiness or reliability for the future.

⁴ *Commissioner for Consumer Protection v Murray [2017] WASAT 137*

Ms Milgate has been the subject of three inquiries that have common elements concerning her treatment of tenants or potential clients.

- (8) the agent's disciplinary history.

This is limited to the information set out in paragraph 72(7).

- (9) whether or not the agent understands the error of his or her ways, including an assessment of any remorse and insight (or a lack thereof) shown by the agent, since an agent who fails to understand the significance and consequences of misconduct is a risk to the community.

The Board does not consider that Ms Milgate has much understanding of the general nature of the breaches found to have been committed.

- (10) the desirability of making available to the public any special skills possessed by the agent

Not applicable.

- (11) the agent's circumstances at the time of the conduct and at the time of imposing the sanction. However, the weight given to personal circumstances cannot override the fundamental obligation of the Tribunal to provide appropriate protection of the public interest in the honesty and integrity of real estate sales representatives and in the maintenance of proper standards of real estate sales representative practice.

The Board is unaware of any personal circumstances that might suggest that the behaviour was aberrational.

- (12) the Tribunal may consider any other matters relevant to the agent's fitness to practise and other matters which may be regarded as aggravating the conduct or mitigating its seriousness. In general, mitigating factors such as no previous misconduct or service to the profession are of considerably less significance than in the criminal process because the jurisdiction is protective not punitive.

The Board notes that the Respondents have not paid the fines imposed by the Board in its decision dated 14 November 2023.

73. For the purpose of determining the penalty, the Board also had regard to the fact that the complaints and findings of the Board are similar to those in another recent matter before the Board concerning the Respondents⁵. In that decision, dated 14 November 2023, the Board noted:

[89] "The Board finds on the balance of probabilities that Ms Milgate attempted to evict the Complainant in circumstances of harassment and intimidation. Further, Ms Milgate did intimidate and threaten the Complainant by sending the three texts and making the phone call to her after sending the texts, causing interference with the Complainant's reasonable peace or privacy in her use of the Premises.

[90] However unpalatable the Complainant's conduct was to Ms Milgate, there

⁵ *Jane Smith v Suzanne Milgate and Milgate Real Estate*

were no grounds for her to make a report to the Police, family affairs or NRAS.

- [91] *The Complainant had a right to "quiet enjoyment of the Premises without interruption by the landlord" (s.65 of the RT Act) and secondly, a landlord must not cause interference with the reasonable peace or privacy of a tenant in the tenant's use of the Premises, except in accordance with the Act (s.66(1) of the RT Act) or force, or attempt to force, a tenant to vacate the Premises, except in accordance with this Act; or in circumstances that amount to harassment of a tenant (s.66(2) of the RT Act).*
- [92] *This 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 agents*
- [93] *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 enjoyment.*
- [94] *Depriving a tenant of their home is a serious and important matter which has psychological, social and legal consequences.*
74. The events in that matter occurred over the period June-August 2021. The investigation of that matter commenced on 9 August 2021 with the hearing taking place on 4 July 2023. By the time that the events in the matters that are the subject of this inquiry occurred, Ms Milgate should have been well aware that the Board and the Registrar considered that these kinds of behaviour were problematic.
75. In determining the penalty, the Board took into account the outcome of its inquiry into the application made by Salimi. In that inquiry, the Board also found that the Respondents had breached rules relating to the exercise of due skill, care and diligence when dealing with tenants and breaches of the RT Act.
76. The findings by the Board in this earlier matter suggest that Ms Milgate has a pattern of unacceptable behaviour in dealing with a tenant she considers should be evicted.
77. In determining the penalty, the Board also took into account Ms Milgate's approach during the hearing on 14 December 2023. As noted above, the Board considers that Ms Milgate lied to the Board. Aside from saying that she would not engage in the same course of conduct in the future, Ms Milgate showed no apparent awareness of the problems with her behaviour. It is a serious matter to breach the rules, but this is compounded if there is no real appreciation of the problem.
78. The Board also notes that Ms Milgate had a somewhat lackadaisical approach to the hearing. She did not bring a copy of the Inquiry Book to the proceedings. She had intended to rely on the version accessible by her phone. This turned out not to be practical and instead she relied on the Registrar's copy of the Inquiry Book in order to deal with the issues raised. In answer to a question from Mr Jain about whether she'd read the inquiry Book she responded that she had "skimmed" it.
79. Ms Milgate did provide evidence of written apologies but it is unclear from the

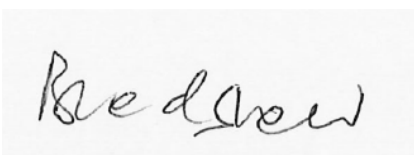
evidence as to whether they were accepted by the Applicants. It might also be the case that the apologies were given in the context of threatened defamation proceedings rather than as an acknowledgement of inappropriate behaviour as an agent.

80. The Board considers that Ms Milgate's breaches are such that she should not be operating as an agent. The Board considered whether suspension or cancellation would be an appropriate disciplinary action. The Board decided against the suspension option as it does not consider that Ms Milgate's approach would be likely to improve during any period of suspension.
81. The Board considers that it is appropriate in all the circumstances of this case to:
 - (1) revoke the licence of Ms Milgate with effect from 31 January 2024;
 - (2) impose a fine of \$5000 on Ms Milgate; and
 - (3) impose a fine of \$5000 on Milgate Real Estate.
82. In coming to these decisions, the Board has considered the seriousness of the breaches. They are such that Ms Milgate in her personal capacity should not be in charge of a real estate agency. Her actions in respect of the Applicants were inexcusable.
83. The short period between the date of this decision and both the commencement of the revocation and the actual expiry of the current licences is given in order to enable the Respondents to make appropriate arrangements regarding their clients.

PART H: RIGHT OF APPEAL

84. Section 85(3) of the Act provides that an affected person can apply to the Northern Territory Civil and Administrative Tribunal for a review of the decisions of the Board.
85. For the purposes of section 85(3), "affected persons" include the licensed agents affected by this decision and the Applicants.
86. Section 44(1) of the *Northern Territory Civil and Administrative Tribunal Act 2014* provides that the commencement of a review does not affect the operation of the Board's decision unless an order is made by NTCAT under section 44(2) staying the operation of that decision until NTCAT makes its decision on the proceeding or until such other date as is determined by NTCAT.
87. An appeal application must be made within 28 days of the day of notification to an affected person of the decision in this matter.

DATED: 23 January 2024 AT DARWIN



ROBERT BRADSHAW
CHAIRPERSON

For AGENTS LICENSING BOARD OF THE NORTHERN TERRITORY