

**IN THE MATTER OF AN INQUIRY
PURSUANT TO S 30 (1) (b) & 77 OF THE
AGENTS LICENSING ACT 1979
INTO THE GRANT OF A REAL ESTATE
AGENT'S LICENCE**

APPLICANT : KARL SECONDIS

DATE OF HEARINGS: 1 OCTOBER 2021
25 NOVEMBER 2021 &
4 FEBRUARY 2022 (DELIBERATIONS)

Chairperson:	Mark Thomas
Departmental representative	Robert Bradshaw
Industry representative	Carol Need
Consumer representative	Lea Aitken

Appearances:

Counsel for the Applicant: Mr Peter Bellach

STATEMENT OF REASONS FOR DECISION

Background

1. This matter concerns an application for the grant of a Real Estate licence. The Board must, under s 29 (1) of the *Agents Licensing Act 1979* ("the Act"), consider an application for the grant of a licence. On 26 July 2021, Mr Karl Secondis lodged an application, dated 27 July 2021, for a Real Estate Agent's licence. That application was accompanied by a statement from a referee, who was Mr Greg Cavenagh, Local Court Judge. This application was made after Mr Secondis' previous licence had lapsed.¹
2. On 1 October 2021, the Board met to consider this application. Mr Secondis appeared unrepresented. The Board decided to hold an inquiry (pursuant to s77 & 30(1)(b) of the Act) as soon as practicable. It was made clear to the Board that there were presently unresolved charges in the Local Court that concerned Mr Secondis.
3. On 21 October 2021, Mr Secondis notified the Board via email that his next Court date was 10 November 2021 and that he would prefer that his application proceed after this date. The Board agreed with that request.
4. A hearing date was fixed for 25 November 2021. On that date, Mr Secondis appeared before the Board represented by Mr Peter Bellach, barrister. The hearing for the inquiry occurred. At the end of the hearing the matter was adjourned to obtain the transcript

¹ On 17 June 2021

of the Local Court proceedings (of 19 November 2021), including submissions by both parties and her Honour's sentencing remarks. This transcript was subsequently disseminated on 13 January 2022 and tendered. The Board invited the applicant and Mr Bellach to make further submissions, if they wished, to the Board at a further meeting of the Board, which took place on 4 February 2022. Mr Secondis and Mr Bellach declined to make further submissions or to appear before the Board. Through Mr Bellach, Mr Secondis sent a further letter to the Board, which was tendered. The Board met on 4 February 2022 and considered its decision. The following is the decision and the reasons for it.

The Local Court sentencing proceedings on 19 November 2021

5. Mr Secondis appeared before Local Court Judge Opie on 19 November 2021. He pleaded guilty to a charge of possession of a trafficable quantity of a Schedule 1 drug (cocaine). He received a two-month sentence of imprisonment, commencing on 19 November 2021. This was wholly suspended for a period of 12 months, on the condition that he not commit another offence punishable by imprisonment.

The Inquiry on 25 November 2021

6. Mr Secondis filed a fresh application for a Real Estate Licence, which was dated 23 November 2021. Included in this application was a referee statement from a Michael McCarthy, who stated that in his opinion Mr Secondis was a person of good fame and character. This was signed and dated 23 November 2021. This fresh application replaced the previous application.
7. Several character references were tendered on Mr Secondis' behalf. They included the following: Ms Naomi Irvine, Ms Alice Burton, Mr Greg Thompson, Mr Joel Wecker, Ms Lynne Anderson, Mr Michael McCarthy, Mr Savvas Savvas and Mr Damian Butler. In addition, the most recent real estate agent's licence was tendered; as well as the Notice of Suspended Sentence (from the Local Court, dated 19 November 2021). Mr Secondis' present application for a licence was tendered as well as the Inquiry book. After the inquiry hearing, a reference from Mr Quentin Killian (CEO of REINT) was tendered, as well as a personal letter from Mr Secondis to the Board.
8. During the inquiry on 25 November 2021 the facts of the offence to which Mr Secondis had pleaded guilty were obtained and tendered, without objection, in the proceedings.

The relevant Legislation

9. Pursuant to section 29 (1) of the Act the Board must consider an application for the grant of a licence and (a) must grant the application, or (b) subject to Part 111, Div 3 of the Act, may refuse the application.
10. Section 22 refers to the eligibility of a person (not being a company or firm) for a licence. It states, relevantly, as follows:

(1) A person (not being a company or a firm) is eligible for the grant of a licence if the Board is satisfied that:

- (a) *He or she has attained the age of 18 years; and*
- (b) *He or she is a fit and proper person within the meaning of section 20,*

and;

(further portions of the section are irrelevant to the application)

11. The term “*fit and proper person*” in section 22 (1) (b) is vital. The meaning of a *fit and proper person* is stated in the Act, at section 20. The relevant parts of section 20 are as follows;

“20. Meaning of fit and proper person

(1) A natural person is a fit and proper person for the purposes of section 22, 25 or 39 if the person:

- (a) Is not a disqualified person as determined in accordance with this section; and*
- (b) Is a person whose general reputation in the community (which may include a place outside the Territory) is such that the board is satisfied that the person will competently, conscientiously and honestly perform the duties of an agent in relation to the person's employees and clients, and*
- (c) has completed the application for a licence frankly, comprehensively, and honestly.*

(2) A person is a disqualified person for the purposes of subsection (1)(a) if the person:

- (a) has in the 10 years immediately before the person applied for the licence, being found guilty (whether or not in the Territory) of a prescribed offence or an offence that involves dishonesty or violence or is an offence against the Misuse of Drugs Act 1990, the Kava Management Act 1998, or a corresponding law declared under subsection 8.*

(references to (b)-(f) are not referred to- due to irrelevance to this application)

(3) The Board may determine that an offence referred to in subsection (2)(a) is not to be taken into account for the purposes of this section:

- (a) because of the time that has passed since the offence was committed; or*
- (b) because the act or omission constituting the offence was trivial”.*

12. Section 20 essentially requires three things for a person to be considered a fit and proper person under the Act, the first of which is that the person not be a disqualified person under the Act. It is not necessary to consider the other two. The conviction for the possession trafficable quantity of cocaine constituted an offence against the *Misuse of Drugs Act 1990*, and triggered the application of section 20 (1)(a).

13. A key issue arose as to whether the conviction could be taken into account under section 20 (3) of the Act. Counsel for the applicant contended that it could not, for the reason, that it met the definition of “trivial” specified in subsection (3). The word “trivial” is not defined in the Act.

Clarification as to the offence that the applicant pleaded guilty to

14. A preliminary matter is what precisely was the offence to which the applicant pleaded guilty. The formal document specifying the imposition of penalty listed the offence as offence 2- "Poss schd 1 traf qty pub". This is consistent with the offence being charge 2 - Possess schedule 1 trafficable quantity of a dangerous drug in a public place. This particular offence is contained in section 7C (1) of the *Misuse of Drugs Act 1990*. The maximum penalty for this offence is 14 years imprisonment. A copy of the charge sheet to which Mr Secondis pleaded was neither tendered nor specified in the proceedings. The difficulty with a charge carrying 14 years is that this offence cannot be dealt with summarily- that is, to finality in the Local Court². The transcript of the proceedings (which was obtained after the hearing and tendered in these proceedings) contains a statement by the prosecutor that the offence to which Mr Secondis pleaded guilty was charge 2,³ which, he said, carried a maximum penalty of 7 years⁴. Whilst the reference to charge 2 is consistent with it being the same charge as that referred to in the formal court sentencing document (which refers to charge 2) the absence of a copy of the charge document used in Court and the difficulty with the maximum penalty raises a concern as to whether Mr Secondis did plead guilty to the possess trafficable quantity of schedule one charge in a public place. This is the more serious charge compared with possess the drug simpliciter. The Board is prepared to proceed on the basis that the charge to which Mr Secondis pleaded guilty was possession of a trafficable quantity of a schedule one drug simpliciter, as it was only on this basis that the Mr Secondis could properly be dealt with to finality in the Local Court on 19 November 2021. This offence is contained in section 7A of the *Misuse of Drugs Act 1990* and contains a maximum penalty of 7 years imprisonment. It was not in issue that cocaine is a schedule one dangerous drug and that the trafficable quantity for that drug is 2 grams and the commercial quantity 40 grams.

Two further aspects of the *Misuse of Drugs Act 1990*

15. There are two further aspects of the *Misuse of Drugs Act 1990* that are important, both of which were discussed in Court. The first is that section 37 (6) contains a presumption that in respect to certain offences, (which include the offence to which Mr Secondis pleaded guilty), the offender is presumed to supply the dangerous drug. Counsel for Mr Secondis in the sentencing proceedings (Mr Peter Maley) conceded that the presumption was not rebutted⁵, but submitted that the supply was to share with friends and, as such, did not contain any "commercial overtones".⁶
16. The second matter was section 37 (2) the *Misuse of Drugs Act 1990*, which applied to an offence including the one to which Mr Secondis pleaded guilty. This stated that the Court shall impose a sentence of actual imprisonment unless having regard to the circumstances of the offender or the offence, such a penalty should not be imposed. If a term of actual imprisonment was imposed, section 37 (3) required it to be no less than 28 days.

² Section 121A of the Local Court (Criminal Procedure) Act

³ Page 2 of the Local Court transcript

⁴ Ibid, p 4

⁵ Page 4.5 of the transcript

⁶ ibid

Analysis of the Facts re the Question of Triviality

17. The Agreed Facts for the criminal proceedings are of central relevance to the contention that the offending conduct was trivial. They disclosed that the offence was constituted by repeated offending conduct over a period that encompassed a little over 4 months (13 March 2021- to 22 July 2021), resulting in Mr Secondis purchasing cocaine in quantities that added up to not less than 38 grams. This was just under the commercial quantity for cocaine (40 grams). Text messages obtained from the person from whom those drugs were obtained (Owens) indicated that Mr Secondis had sourced cocaine on behalf of others and supplied cocaine to others. The precise numbers of persons supplied was not stated. Mr Secondis was not found at the time of arrest in possession of cocaine. The total amount was extrapolated from Owens's mobile phone which contained references to the amounts supplied and dates. The Court heard from Mr Secondis' counsel that it is not unusual for, on a plea of guilty, for the individual amounts to be part of a single charge.⁷
18. Arguably, possible matters relevant to the submission as to triviality included the nature of the dangerous drug, the quantity, whether there was any repetition of the offending conduct, the period of the offending conduct, the nature of the offender's involvement, whether there was any further supply from the offender, any commercial gain, or any sourcing of the drug on behalf of others, and finally, the result in court – in particular whether any non-conviction order was imposed, or alternatively, whether any term of imprisonment was imposed and if so on what basis.
19. Cocaine, as a schedule one, is treated by the NT Supreme Court as the same as other schedule one drugs⁸, that is, in general terms, more seriously than schedule two drugs, and generally speaking, requiring punishment that reflects, *inter alia*, the principle of general deterrence. The difference in maximum penalties between the two categories of drugs is indicative of the greater seriousness of offending involving schedule one as opposed to schedule two drugs.
20. The offending conduct was not one-off but repeated over a period of months. It is noted that Mr Secondis was not supplying for commercial gain. However, he not only sourced the drug, at times, on behalf of others but also supplied it to others, albeit to friends in a social setting. Mr Secondis did not receive the benefit of a non-conviction order; he received a (suspended) sentence of imprisonment– even though he had no prior convictions. This reflected the nature of the seriousness of the offending. Mr Maley referred to **Rigby v Kotis**,⁹ a Crown appeal to the Supreme Court from a judgment of the Local Court. The case is instructive. The quantity of cocaine in that case was 33.7 grams, which was slightly less than in Mr Secondis' matter. A fine was imposed by the Local Court judge in **Kotis**; the appeal was upheld in favour of the Crown and a suspended sentence imposed. Like Mr Secondis, Mr Kotis had no criminal history and had devoted a lot of time to performing community work and assisting others.¹⁰ Also, like Mr Secondis, Mr Kotis was found to be supplying to family and friends and not for the purposes of commercial gain.¹¹ Hiley J, at [35], disagreed with the Crown's contention that supply to family and friends merited a greater need for

⁷ P 5

⁸ See *Rigby v Kotis* [2018] NTSC 48 at [50]

⁹ *Ibid*

¹⁰ *Rigby v Kotis*, op cit, at [24]

¹¹ *Ibid*, para[34]

general deterrence (than supply as part of a commercial enterprise), but stated, at [36] that the offending conduct demonstrated a continuing attitude of disobedience to the law. His Honour also stated, at [45] that :

“The fact that the present offending involved quantities of cocaine significantly higher than the minimum trafficable quantity, and multiple users of the drugs supplied by the respondent, makes more relevant the concerns expressed by authorities such as Roe and the need for greater focus upon denunciation and general deterrence.”

The meaning of “trivial”

21. Regarding the meaning of the word “trivial”, in the absence of any defined meaning of the word contained in the Act, the Board is content to deal with it in accordance with its ordinary meaning. Relevantly, the Macquarie Dictionary,¹² defines it as “1. of little importance; trifling; insignificant; 2. Commonplace, ordinary.”
22. The subjective features or background of the applicant are not the subject of section 20 (3)(b), which refers to the act (or omission) constituting the offence. In other words, it focuses upon the objective nature of the offending conduct.

Non-application of temporal factor

23. Section 20 (3) states that the Board may determine that an offence referred to in subsection (2)(a) is not to be taken account for the purposes of this section for two reasons, one of which is because of the time that has passed since the offence was committed. Given that it is less than a year since the offending occurred, there is no basis for finding that sufficient time has passed to permit the Board to discard the offence due to section 20 (3)(a). Further, Mr Secondis is still bound by the Court's decision.

The findings that the conduct was not trivial

24. In respect of any argument that the offending was “trivial” the following features of the acts constituting the offence indicate that the offending conduct was not trivial:
 - a. The quantity involved was many times the trafficable quantity for the drug;
 - b. Multiple users of the drug were supplied by Mr Secondis, (albeit not for commercial gain);
 - c. Outsourcing of the drug (by Mr Secondis) occurred on behalf of others;
 - d. The drug was a schedule one drug;
 - e. The offending was not an isolated event or one-off offending, but rather repeat offending over a sustained period (approx. 4 months);
 - f. Mr Secondis was convicted of the offence in the Local Court and a suspended sentence of imprisonment imposed, (albeit fully suspended), which indicated the Court's denunciation, inter alia, of his conduct.

¹² Macquarie Dictionary, Macquarie Dictionary Publishers, 6th ed., 2013, p 1572

25. As the act (s) constituting the offence was/were not trivial, section 20 (3) (b) of the Act is not engaged. Accordingly, Mr Secondis is, under s 20 (2), a disqualified person for the purposes of section 20 (1)(a) of the Act. It follows that under that under section 20 (1) Mr Secondis is not a fit and proper person for the purposes, relevantly, of section 22 of the Act. Section 22 is the section that refers to Eligibility for a Licence. Therefore, Mr Secondis is not eligible for a licence.

The question of an exemption under s 5A of the Act

26. Section 5A of the Act states:

The Board may, subject to any regulations made in that behalf, exempt any person of class of persons from compliance with all or any of the provisions of this Act and, if it thinks fit, make an exemption subject to the imposition of conditions.

27. Section 5A is couched in broad terms. The criteria “if it thinks fit” does not specify any criteria to be employed in this regard. The Board takes into account all subjective matters put by Mr Bellach and Mr Secondis. That includes the following:

- (a) The many references that speak, in a positive fashion, to Mr Secondis’ character and also to his work on behalf of charities,
- (b) His age and that fact that he has no prior offences (prior to the present offence),
- (c) His previous work for many years in a productive and successful capacity in the industry,
- (d) His successful application, prior to the conviction and sentence in the Local Court, for an Auctioneer’s licence,
- (e) the effect of the loss of his real estate licence upon him,
- (f) his difficulties in obtaining alternative work outside the industry, with consequent financial hardship,
- (g) the embarrassment caused to him by the publicity attendant upon his case, in the mass media,
- (h) his expression of remorse for his conduct.

28. Against this, are the objective factors referred to above and the Board’s concern with regard to the maintenance of confidence in the real estate industry and those that practice in it. The issue of community protection is of vital importance. It is axiomatic that a real estate agent has reposed in him or her a great deal of trust. The financial assets involved are frequently large. In this context, the nature of the offending, involving as it does, protracted flouting of the law for many months, is particularly concerning as is the overall quantity which was just below the commercial quantity. The concerns expressed by Hiley J above in Kotis at [45] (see para 20) are particularly relevant to the question of exemption. The matter is serious. The Board does see that there is a proper basis to exempt Mr Secondis from the requirements of the Act and, in particular, section 20 & 22 and so finds.

The decision of the Board

29. Pursuant to s 29 (1)(b) of the Act the Board refuses the application for the licence.

Right of Appeal

30. Section 85 of the Act provides that a person aggrieved by a decision of the Board can appeal to the Local Court.

31. An appeal application must be made within 21 days of the date of this decision.

Dated 10 February 2022 at Darwin

A handwritten signature in black ink, appearing to read 'Mark Thomas', with a long, sweeping flourish extending to the left.

Mark Thomas
Chairperson
Agents Licensing Board of the Northern Territory