

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

APPLICANTS **SAM SALIMI (the Applicant)**

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 8 December 2022, Sam Salimi (the Applicant) 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 14 June 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) and resolved to conduct an inquiry into the matters raised in the application as well as other matters that arose in the course of the investigation (the application).
4. The grounds arose from a dispute that took place between the Respondents and the Applicant in the course of negotiating the rental of residential premises. 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

5. Section 67(1) of the Act sets out the grounds on which the Board may take disciplinary action against a licensed agent.
6. Relevant to the matters set out in the Inquiry Book:
 - (1) section 67(1)(c) of the Act provides that disciplinary action may be taken if the licensed agent has been found guilty of a breach of the rules of conduct for agents;
 - (2) section 67(1)(k) of the Act provides that 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
 - (3) 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.
7. 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 of the Regulations provides that the rules of conduct for all agents are the rules set out in Schedule 4, Part 1 of the Regulations.

Alleged breaches of the Rules and the Act

8. The provisions alleged to have been breached are:
 - (1) **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 is labelled as rule 11.

The allegation is that the respondents breached rule 12 by the way in which Ms Milgate handled the negotiation of the rental application.
 - (2) **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 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.

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

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

(4) **Rule 4**

Rule 4 provides that *"an agent must, in the investigation of a matter that may be grounds for revocation of a licence under section 68 of the Act or that may be the subject of an inquiry to be held by the Board, co-operate with the Board, the Registrar, an inspector and the Commissioner of Police"*.

The allegation is that Ms Milgate did not co-operate with the Registrar in conducting the investigation into the Application.

(5) **Rule 8**

Rule 8 provides that an agent must not breach any provision of the Act or the Regulations.

The allegation is that the Respondents breached sections 49-52 of the Act by not dealing with trust monies as required by those provisions.

(6) **Rule 19**

Rule 19 prohibits advertising that is false, misleading or likely to deceive a person.

The allegation is that the advertising was inaccurate.

(7) **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 24(1)-(2) and 39(1)-(2) of the RT Act by accepting in respect of the proposed rental an amount greater than that permitted by the RT Act; and
- (b) Section 31(2)-(3) of the RT Act by not providing a receipt for the security deposit.

PART C: EVIDENCE AND MATERIALS CONSIDERED BY THE BOARD

9. 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 Applicant and the Respondents. The Inquiry Book included an analysis by the Registrar's office of the facts and the issues, the application, investigators' file notes, emails between the Applicant and Office of Occupational Licensing and Associations (OLA), screenshots of discussions between the Applicant and Ms Milgate, emails between Ms Milgate and the investigators, and email from OLA regarding trust account details.

- (2) Information provided by Ms Milgate during the hearing on 14 December 2023.
10. Ms Milgate attended the hearing along with a friend (Lorraine).
 11. The Applicant did not attend the hearing despite being notified in accordance with the Act about the time and place of the hearing.
 12. No other persons provided any evidence during the hearing.
 13. 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.
 14. The information contained in the exhibits was accepted by the Board as accurate except to the extent that it was challenged by Ms Milgate or by Mr Jain.

PART D: THE BOARD'S FINDINGS REGARDING THE APPLICATION

15. 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.
16. 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.

Alleged breaches of rules 11 and 12

17. 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.*
18. These rules are a broad summary of the general obligations of an agent to exercise due skill, care and diligence when dealing with any person in the course of conducting business as an agent.
19. Rule 12 is alleged to have been breached by the Respondents because of the way in which Ms Milgate conducted the negotiations.
20. The evidence provided by the Applicant about the rental negotiations appears to be as follows:
 - (1) The Applicant was interested in a rental unit which was advertised by Ms Milgate as the real estate agent for a weekly rental of \$350.
 - (2) On 5 December 2022, the Applicant contacted Ms Milgate to express his interest. He informed Ms Milgate that he was new to Darwin and was in between jobs. He informed her he had a job offer 'in the pipeline' that had an

estimated start date in January [2023]. Consequently, the Applicant offered to pay some amount of rent in advance as a token of good faith.

- (3) Ms Milgate informed the Applicant that the landlord of the unit could not wait till January [2023] and that the unit had to be occupied at the earliest date possible as it was already available.
- (4) The Applicant reiterated his position, offered to pay the rent in advance and stated that he was 'looking to move in next week'. Ms Milgate then replied to the Applicant that she now understood, accepted the offer and inquired how much the Applicant was willing to pay. The Applicant then offered to pay two to three months of rental which Ms Milgate agreed to and asked when the Applicant could deposit the money.
- (5) The Applicant reminded Ms Milgate that he needed to inspect the unit first. Ms Milgate hesitated about this at first and was not happy about it. The Applicant then assured Ms Milgate that he was not wasting her time and that he was in temporary accommodation and needed to find a rental property by 17 December [2022] when he was scheduled to check out of his current accommodation. Ms Milgate eventually agreed.
- (6) On 6 December 2022, Ms Milgate provided the Applicant a brief viewing of the unit after which the Applicant confirmed he would rent it. Ms Milgate asked for three months of rental plus a bond referring to the Applicant's offer which the Applicant agreed to. A move-in date of 14 December 2022 was agreed to between them.
- (7) The Applicant inquired about the next steps and when the papers could be signed. Ms Milgate replied once the Applicant had paid and 'secured the unit'. The Applicant repeated to Ms Milgate that he needed to sign the papers as soon as possible. Ms Milgate replied that it would be fine and that she would text him the bank details and once the money was transferred they could then sign the papers.
- (8) Ms Milgate informed the Applicant that the unit had been cleaned but (in the view of the Applicant) it did not look it with there being an old shower curtain in the bathroom and the bedroom smelling stale.
- (9) The Applicant inquired with Ms Milgate for her office address where the papers were to be signed and was informed 'Cullen Bay' by her.
- (10) The Applicant provided a screenshot of a text message from Ms Milgate to the Applicant (dated 6 December 2022) in which Ms Milgate requested the Applicant send 4 weeks of bond calculated at \$1400 and 3 months in advance rent calculated at \$4550 totalling \$5950 'to secure property at 3/100 Gardens Rd'. Ms Milgate provided details of an ANZ bank account in the name of Milgate Real Estate in which to make the payment and requested the Applicant to send through a screenshot or remittance email when paid.
- (11) Later that same day, the Applicant received a text message from Ms Milgate with the bank details for the transfer. The Applicant requested Ms Milgate's email address which she provided.

- (12) The Applicant emailed Ms Milgate on 6 December 2022 with the transaction receipt and confirmed he had transferred a total sum of \$5600 comprising of 4 weeks of bond plus 12 weeks of rent. In his email to Ms Milgate, he states *'When I said three months, I actually meant 3x4 week periods. I hope you don't mind. Apologies for the misunderstanding. I have found out over the years that going by the actual weekly periods rather than calendar months makes it easier down the road.'* The Applicant's email also questions when he can come in to sign the paperwork.
- (13) The Applicant also texted Ms Milgate that he had done the transfer. There was no reply received from Ms Milgate.
- (14) On 7 December 2022, the Applicant searched on Google for Ms Milgate's office address and visited it around midday. He found the office locked and dark with no trading hours noted on the door. He tried calling Ms Milgate but there was no answer. He left Ms Milgate a message on her phone informing her that he was outside her office and that it was closed. He reminded her that he needed to sign the papers to lock in a moving date and that he was hoping to hear from her soon.
- (15) Later on 7 December 2022, as he had not heard from Ms Milgate, the Applicant then contacted Ms Smith of OLA about the matter. Ms Smith contacted Ms Milgate.
- (16) After these contacts, Ms Milgate informed the Applicant that she was unhappy with him for having lodged a complaint against her and according to her this made the Applicant an unsuitable tenant.
- (17) Ms Milgate asked for the Applicant's bank account details to make a refund.
- (18) Ms Milgate kept repeating *'property owner does not want you as their tenant anymore'*.
- (19) The Applicant tried to clarify with Ms Milgate that he had not lodged a complaint against her but had asked for Ms Smith's assistance due to handing over a large sum of money to Ms Milgate and then not receiving any communication from her. He also explained that he had visited her office to sign the papers but found it empty and dark.
- (20) Ms Milgate:
- (a) Replied stating *'What's it to you? We work from home and are very busy, we have so many clients that we don't have time to get back to every single call or text. There are so many applicants for that unit, and we don't need you. The landlord doesn't want you either. I don't have to explain to you why there is no one in the office'*.
 - (b) Expressed her displeasure of the Applicant for his *'reporting of her'* and kept repeating that she would report the Applicant in return and that he should expect complaints lodged against him. She then said *'you don't know how far I can go to let everyone know what you have done. I am*

going to contact your bosses, employers, and let them know who you are. I am also going to let all other estate agents know what you have done'.

- (c) When the Applicant asked what he *'had done'*, Ms Milgate kept repeating that he had no right to complain about her since *'we have done you a favour'* and that *'they'* did not even have to consider his application.
 - (d) When the Applicant reminded Ms Milgate that he had deposited a large sum of money, including 16 weeks' worth of rent, Ms Milgate replied that it had been the *'agreement'*.
 - (e) When the Applicant asked Ms Milgate why she had not returned his attempts to call her and why they had not signed the contract yet, she kept repeating that she was too busy with too many clients needing her attention and that the Applicant should have waited.
 - (f) When the Applicant asked Ms Milgate why the office was empty if there were so many clients, she replied that it was not his concern.
 - (g) The Applicant kept reminding Ms Milgate that it was unethical to take clients' money and then not respond to their communication attempts.
 - (h) The Applicant also informed Ms Milgate that the advertised pictures of the unit did not correspond to the unit itself and were from a different unit.
- (21) Upon realising that the conversation was not going anywhere, the Applicant informed Ms Milgate that he would forward her his bank details and asked whether the refund would be swift. Ms Milgate replied *'yes, immediately, we don't need your money, we were doing you a favour...'*
- (22) Later on that day, the Applicant found that he had received multiple emails from Ms Milgate.
- (23) One of these emails (time stamped at 4.21 pm) seeks the Applicant's bank account details for refund and another one, sent shortly afterwards (at 4.29 pm), forwards this email to Ms Smith and copies the Applicant. In the latter email, Ms Milgate states that it was the Applicant's request to pay three months in advance rent. Ms Milgate also states that they were going to be signing the Applicant up on a lease as he only paid the money in the afternoon of 6 December 2022. Ms Milgate states that the owners now did not want the Applicant as a tenant and that *'we've sent an email and text to Sam to send through his bank details for refund but to no avail'*.
- (24) Another email, sent by Ms Milgate at 4.31 pm, forwards the 4.21 pm email to Ms Smith again (and copies the Applicant). In the latter email, Ms Milgate makes reference to having sought the Applicant's bank details.
- (25) An additional email, sent by Ms Milgate at 4.33 pm to Ms Smith and copied to the Applicant, provides a screenshot of text messages between the Applicant and Ms Milgate. The message from Ms Milgate (sent shortly beforehand at 3.50 pm) seeks the Applicant's bank account details and states *'our owners don't want you as a tenant'*.

- (26) The Applicant also informs that he received an email from Ms Smith advising him that Ms Milgate claims it was the Applicant's idea to give her the money and that she had not requested it. Ms Smith also wished to know why the Applicant had deposited money before signing the lease and whether he had any emails from Ms Milgate demanding this.
- (27) The Applicant said it was never agreed that he would have to wait for Ms Milgate to get back to him after depositing such a large sum. He informed that paperwork was discussed during the inspection and he was informed by Ms Milgate that it would be done as soon as the funds were received.
- (28) The Applicant advises that despite transferring the funds, Ms Milgate did not subsequently contact him in relation to the lease. The Applicant also states that Ms Milgate should have exercised her own professional judgment and practice experience as to whether or not to accept this sum.
- (29) On 26 January 2023, Ms Milgate responded to the matters raised by Ms Smith in her email of 14 December 2022.
- (30) The main issues put by Ms Smith to Ms Milgate in her email of 14 December 2022 are summarised below with Ms Milgate's corresponding response on 26 January 2023 to them quoted below it:

- (a) Funds being accepted from the Applicant in advance to secure a rental property without a residential tenancy agreement in place noting this is not accepted practice by the Real Estate Institute of the Northern Territory (REINT) or the Office of Consumer Affairs who administer the *Residential Tenancies Act 1999* (RTA).

Response from Ms Milgate: *"We acted on letting only basis on behalf of the owner of the property, and when we received the information provided by the potential tenant and passed it to the landlord he approved it initially and requested us to collect bond and the rent suggested by the tenant to our trust account and request the tenant to meet with the landlord to sign the contract which is prepared by his lawyer in compliance with the tenancy act and when the landlord investigated further the application by the Applicant he had some concern and doubt and requested some clearance from the Applicant he wouldn't be able to provide it. All the parties agreed to cancel the application and return the money to the Applicant."*

- (b) It appears that the property was withdrawn from being leased to the Applicant only due to him contacting OLA.

Response from Ms Milgate: *"Refer to our reply point 1."*

- (c) the Applicant claiming the advertised photos of the rental property were not the same as the property he viewed giving rise to the possibility of it being deemed as false and misleading advertising by the Australian Competition and Consumer Commission (ACCC).

Response from Ms Milgate: *"We confirm the images used are for this property."*

(d) the Applicant claiming that Ms Milgate stated to him '*you don't know how far I can go to let everyone know what you have done. I am going to contact your bosses, employers, and let them know who you are. I am also going to let all other estate agents know what you have done*'.

Response from Ms Milgate: "This is not a true statement and I deny it."

21. At the hearing, Ms Milgate's stated position in respect of this chronology of events was that she did not accept any of the story and rather that:
- "the parties agreed that the proposed applicant transfer on or shortly after signing the contract but for some reason he transferred it and failed to turn up on the time we agreed upon. Then he changed his mind and requested his money back without signing the contract to prevent any damages or possibility of losing any part if he completed the signing of the contract, and we immediately released the funds since we can't accept any bond or rent without having a signed contract."*
22. In respect of this statement, Ms Milgate was questioned by Mr Jain and members of the Board:
- (1) Regarding the omission of any reference to the material supplied by Ms Smith concerning the Applicant being a trouble maker and Milgate's text saying that the landlord did not want him as a tenant. In response, Ms Milgate supplied no information other than repeatedly saying that the Applicant had simply changed his mind. She could not recall sending the text about the landlord.
 - (2) Regarding the appointment, Ms Milgate stated later in the hearing that no appointment had been made. She appeared to consider that it was the responsibility of the Applicant to make the appointment.
23. Ms Milgate had no real explanation of why the Applicant had changed his mind other than he became disgruntled because there was no one at the office to sign the documents and that he'd made what she considered was a complaint to OLA.
24. In respect of the Applicant's claim that Ms Milgate had used threatening language, Ms Milgate said that it was all lies and that she does not speak in that way. She denied this despite the outcome of an earlier 2023 disciplinary hearing and the material under consideration in the other inquiry that was taking place contemporaneously with this matter.
25. 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.
26. In this case, the Respondents had a duty to deal with the application for tenancy in accordance with the provisions and general principles of the RT Act.
27. Ms Milgate ignored one of the general principles regarding the amount of rent that should be paid in advance. She negotiated an agreement by which the Applicant paid an amount much greater than the amount permitted by the RT Act. It does not

particularly matter that the Applicant may have, in some way, been the main instigator of the agreement.

28. Another general principle of the RT Act is that arrangements be documented by way of there being a written tenancy agreement, an incoming inspection report and a receipt for monies paid. None of these documents were provided.
29. Additionally, agents should be accessible for dealings with both clients and persons such as the Applicant. In this case, Ms Milgate was not accessible.
30. Persons in the position of the Applicant should also be treated with a reasonable degree of civility. In this case, Ms Milgate engaged in a punitive and revengeful course of action as a response to the fact that the Applicant had made what she thought was a complaint against her.
31. Arguably the Applicant was a little too quick to contact OLA but a reasonable response from Ms Milgate would have been to explain why she had not been contactable and provide some information about the completion of the documentation of the lease. Ms Milgate's response to the reasonable concerns of the Applicant was quite unreasonable.
32. 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. No evidence was provided to justify any view that the landlord was closely involved in what occurred between Ms Milgate and the Applicant. The timelines for the flurry of telephone calls and emails also suggest that Ms Milgate was making the key decisions and that she was acting because of what she saw as a slur against her rather than what might have been the best interests of the landlord. In any event, it would be the role of the Agent to moderate any inappropriate instructions from the Landlord.
33. **Finding:** The Board finds that the Respondents breached rule 12.

Alleged breaches of rule 5

34. Rule 5(a) provides that an agent must have due regard to and comply with the REINT rules.
35. 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.
36. In general terms, any alleged breaches of the REINT rules are covered by specific breaches of the rules contained in the Regulations.
37. **Finding:** The Board makes no finding concerning a breach of rule 5.

Alleged breach of section 67(1)(k) of the Act

38. 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.

39. Section 20(1)(b) of the Act is usually of relevance where a person has been charged with or convicted of an offence or done other act which has resulted in some public notoriety.
40. 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.
41. **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.

Alleged breach of Rule 4

42. Rule 4 provides that *“an agent must, in the investigation of a matter that may be grounds for revocation of a licence under section 68 of the Act or that may be subject of an inquiry to be held by the Board, co-operate with the Board, the Registrar an inspector and the Commissioner of Police”*.
43. The allegation is that Ms Milgate did not co-operate with the Registrar when OLA officers under the direction of the Registrar conducted the investigation into the Application.
44. On 7 December 2022, the Applicant contacted OLA. The Applicant was concerned about his position having regard to not being able to make contact with Ms Milgate.
45. On the same day, Ms Smith of OLA, acting under the general supervision of the Registrar, commenced preliminary inquiries with Ms Milgate by leaving her a telephone message and sending her an email. Ms Milgate contacted Ms Smith. A summary of the conversation and the subsequent events is as follows:
 - (1) Ms Smith informed Ms Milgate of her role and that she was calling on behalf of the Applicant regarding funds he had deposited with her and the manner of this arrangement. Ms Smith informed Ms Milgate that the Applicant was not in a lease so funds should not be required until a tenancy agreement is entered into.
 - (2) Ms Milgate responded stating *“You have no right asking me these things there are privacy issues”*.
 - (3) Ms Smith informed Ms Milgate that OLA was the Northern Territory Government regulator of her licence under the Act;
 - (4) Ms Milgate responded stating *“He is a trouble maker and we don't like trouble makers here. I am going to tell him he cannot have the unit and we will just give it to the other person, he can't have it”*.

- (5) Ms Smith informed Ms Milgate that anyone had the right to contact OLA and that the Applicant had only contacted OLA as Ms Milgate would not return any of his calls and her office was shut with the lights out. Accordingly, the Applicant was worried about the money that he had paid, without having a lease in place.
 - (6) Ms Milgate advised that she would just refund him the money and he was not getting the property and then terminated the phone call.
46. On 8 December 2022, the Applicant lodged his application for disciplinary action.
 47. On 14 December 2022, Ms Smith provided Ms Milgate with a copy of the application for disciplinary action that had been made by the Applicant. Ms Smith outlined the role of OLA, provided information flyers and outlined the process that was required to be followed to deal with the matter. Ms Smith also outlined the main issues of the complaint and sought from Ms Milgate a response by 21 December 2022.
 48. No response came from Ms Milgate and follow up emails with extended deadlines were sent by Ms Smith on 3 and 17 January 2023 in addition to various phone calls to Ms Milgate's office.
 49. Senior Compliance Officer Mr Wayne Cottle of OLA spoke with Ms Milgate and followed up his conversation with an email to Ms Milgate on 25 January 2023. Mr Cottle sought from Ms Milgate a response to Ms Smith's email of 14 December 2022. He also sought details from Ms Milgate about her mentioning to Mr Cottle that the complaint was to be dropped and no longer pursued.
 50. Ms Milgate replied to Mr Cottle's email on the same day attaching the Applicant's email to her of 7 December 2022 as grounds upon which Ms Milgate claimed the Applicant no longer wished to carry on with the complaint once payment was made. Ms Milgate also stated that she had left a couple of messages on Ms Smith's phone returning her calls but Ms Smith had not responded.
 51. On the same day, Ms Smith emailed Ms Milgate to respond to her, informing her that the email from the Applicant she had provided was by no means a withdrawal of the complaint by the Applicant and was not accepted as such, noting that only the Applicant can withdraw his complaint by contacting OLA. Ms Smith outlined past requests made for the information sought and two email read receipts she had received. Ms Smith provided a final deadline of 27 January 2023 to Ms Milgate to respond and stated that a failure to respond will result in the matter proceeding to the Board without Ms Milgate's input.
 52. When Ms Smith first raised some concerns on behalf of the applicant, instead of responding in a reasonable manner (e.g. by saying that a receipt would be issued or that the lease was in the course of preparation), Ms Milgate was aggressive and seemingly decided to terminate the tenancy arrangement.
 53. Considering the timeframe between the message from OLA to Ms Milgate and the telephone conversation between Ms Milgate and Ms Smith, the Board does not accept that the Respondents had received instructions from the landlord about the termination of the processes concerning the lease.

54. In light of that finding, the Board finds that Ms Milgate terminated the lease process because the Applicant had contacted OLA. The taking of punitive action against the Applicant amounted to a failure to co-operate.
55. Additionally, it took about six weeks, and only after many requests and reminders, for the Respondents to respond to the various matters raised by OLA. This delay in responding is also a failure to co-operate as required by rule 4.
56. The responses received on 26 January 2023 were also somewhat problematic. For example:
- (1) The claim that the landlord further investigated the application and that the parties agreed to cancel after the Applicant was not able to provide “*some clearance*”. This does not fit the facts. Ms Milgate indicated that the tenancy process was over in her conversation with Ms Smith on 7 December 2023. The facts are such that Ms Smith knew about the termination decision before the Applicant.
 - (2) The denial that Ms Milgate made threats to the Applicant stating ‘*you don't know how far I can go to let everyone know what you have done. I am going to contact your bosses, employers, and let them know who you are. I am also going to let all other estate agents know what you have done*’.
- There is not much external evidence that might help to resolve this difference between Ms Milgate and the Applicant. It is limited to Ms Milgate referring to the Applicant as a trouble maker (in her conversation with Ms Smith) and the fact that the Board has found, in 2 other inquiries, that Ms Milgate has done, in respect of other persons, exactly what the Applicant says she threatened to do.
57. **Finding:** The Board finds that the Respondents did not co-operate with the Registrar regarding her response to Ms Smith’s telephone call, the delay in responding and the unhelpful content of the responses.

Alleged breach of Rule 8

58. Rule 8 provides that an agent must not breach a provision of the Act or the Regulations.
59. Section 49 of the Act provides that all monies received by a licensed agent in the agent’s capacity as an agent and in the course of the business that the agent is licensed to carry on “*shall, for all purposes, be held in trust by the agent*”.
60. Section 50 of the Act provides that an agent must open and maintain trust accounts in accordance with the requirements set out in section 50 of the Act.
61. Section 51 of the Act provides that the agent must notify the Registrar of details of accounts opened under section 50 of the Act.
62. Section 52 of the Act provides that where an agent receives trust monies, the monies must be paid into a trust account maintained by the agent.
63. The monies received by the Respondents were, at the request of Ms Milgate in a text message to the Applicant, paid into an account described by Ms Milgate as being “Milgate Real Estate Bank ANZ account 286196845.”

64. Evidence provided by OLA states that this account is not an account opened and maintained in accordance with section 50 of the Act.
65. The allegation is that the Respondents breached sections 49-52 of the Act by not dealing with trust monies as required by those provisions.
66. The monies received by the Respondents should have been paid into a trust account created for the purposes of the Act. This is especially the case for the period in which the monies were held prior to the creation of the formal tenancy agreement.
67. Ms Milgate explained the fact that the monies were paid into a business account rather than a trust account by saying that the Respondents were only acting as a “letting agent”. The Board understands that this term is used when an agent finds the tenant and the landlord then manages the tenancy. In this case, Ms Milgate said that the landlord was responsible for the drawing up of the lease.
68. Ms Milgate stated that she was unaware of the requirement that the monies received as rent and the bond should, if they are received by the agent, pass through the trust account. In questioning from a Board member, Ms Milgate appeared to have no understanding of why it was wrong to have paid the monies into a business account.
69. **Finding:** the Respondents breached rule 8 by way of a breach of section 52 of the Act.

Alleged breach of rule 19

70. Rule 19 prohibits advertising that is false, misleading or likely to deceive.
71. The allegation is that the advertising related to a unit (in the same complex) that was not the unit offered for rent.
72. Ms Milgate denied that this could be the case.
73. The Board noted in the hearing that despite any problems with the advertising the Applicant had accepted the tenancy.
74. **Finding:** there is not enough evidence to determine that there was a breach of rule 19.

Alleged breach of section 67(1)(m) of the Act

75. 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*”.
76. The allegation is that the Respondents failed to comply with the RT Act.
77. 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.

78. This means that breaches of the RT Act are potentially of such significance as to warrant revocation of an agent's licence.

Sections 24(1)-(2) and 39(1)-(2) of the RT Act

79. The Inquiry Book identifies a breach of section 24(1)-(2) and section 39(1)-(2) of the RT Act by accepting in respect of the proposed rental an amount greater than that permitted by the RT Act.
80. In general terms, section 24 of the RT Act prohibits payments other than payments permitted under the Act (such as rent and security deposit).
81. Section 39 of the RT Act prohibits the payment of rent for more than one rental period. Section 29 of the RT Act prohibits any requirement to pay a security deposit greater than 4 weeks.
82. From the evidence provided by Ms Milgate, the rental period is 4 weeks with the rent being \$350 per week. It is plain that requiring rent in advance of 3 months is a breach of section 39 of the RT Act.
83. It is also plain that the maximum security deposit that could have been required was \$1400. Out of the monies paid, \$1400 was identified as being for the security deposit.
84. The Applicant paid \$5600. This is \$3850 greater than that permitted by the RT Act.
85. Ms Milgate's only explanation was that the payment was what the Applicant wanted in order to secure the tenancy.
86. As mentioned above, it does not matter, in terms of whether or not Ms Milgate breached the RT Act, that the payment of this amount may have been instigated by the Applicant.
87. **Finding:** The Board finds that the Respondents breached section 39 of the RT Act and that this breach is a ground for revocation for the purposes of section 67(1)(m) of the Act.

Section 31(2)-(3) of the RT Act

88. Section 31(1) of the RT Act provides that if a security deposit is paid by cash, cheque or credit card, the agent must immediately issue a receipt. If a payment is made in some other way, section 31(2) of the RT Act provides that the receipt must be provided within 2 business days.
89. The Applicant made the payment by way of bank transfer on 6 December 2022. This means section 31(2) of the RT Act probably applies so that the Respondents had at least 2 business days from 6 December 2022 to provide the receipt. The earliest relevant date would have been 8 December 2022.
90. However, by 8 December 2022, the Respondents had already decided not to proceed with the tenancy and had returned the rent and the security deposit.
91. Leaving aside the issue of the appropriateness of the termination of the tenancy process, it would have been a somewhat academic process to issue a receipt after

the money had been repaid.

92. **Finding:** The Board finds that the receipt was not issued but that, in the context of the case, this does not amount to a ground for revocation for the purposes of section 67(1)(m) of the Act.

Position of corporate licensee

93. 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.”

94. 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. It is, however, awkwardly worded so that it might only apply to directors or employees who are not themselves licensed agents.
95. Regardless of section 65 of the Act, in this matter Milgate Real Estate operates solely through Ms Milgate. Ms Milgate 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 E: SUMMARY OF BOARD’S FINDINGS

96. Summarised, the Board’s findings are:

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

Yes.

- (2) **Have Ms Milgate or Milgate Real Estate breached the REINT Code of conduct (rule 5)?**

No finding.

- (3) **Has Ms Milgate ceased to be eligible for a licence (section 67(1)(k) of the Act)?**

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

- (4) **Did Ms Milgate or Milgate Real Estate fail to co-operate with the Registrar (rule 4)?**

Yes.

(5) **Have Ms Milgate or Milgate Real Estate breached other provisions of the Act (sections 49-52 of the Act) (rule 8)?**

Yes.

(6) **Is there any ground that may justify revocation of the licence (breaches of the RT Act) (section 67(1)(m) of the Act)?**

Yes .

(7) **Did the respondents breach rule 19 (advertising)?**

Not sufficient evidence to support the finding of breach.

PART G: - DISCIPLINARY ACTION

97. 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.

98. 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.

99. 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.

100. 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.

101. The Western Australian State Administrative Tribunal has enunciated 12 principles in determining actions to be taken for breaches of occupational codes of practice and laws¹. These principles, along with an assessment of the application of them to the Board's findings in this matter, are:

¹ *Commissioner for Consumer Protection v Murray [2017] WASAT 137*

- (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 lack of apparent knowledge of the legislative options concerning what should happen to monies paid does suggest 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.
Ms Milgate has been the subject of three inquiries that have common elements concerning her treatment of tenants or potential clients.
- (8) the real agent's disciplinary history.
This is limited to the information set out in paragraph 101(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 (and that no appeal has been commenced in relation to that decision).

102. 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 Respondents². In that decision, dated 14 November 2023, the Board found that on the balance of probabilities Ms Milgate attempted to evict tenants in circumstances of harassment and intimidation; intimidated and threatened the tenant by sending three texts and making a phone call to her after sending the texts, causing interference with the Complainant's reasonable peace or privacy in her use of the Premises; and made deliberate and persistent attempts to drive the tenant out of the premises by persecution and intimidation, including threats of physical eviction.
103. 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 of the events in the matters that are the subject of this inquiry, Ms Milgate should have been well aware that the Board and the Registrar considered that these kinds of behaviour were problematic.
104. In determining the penalty, the Board also took into account the outcome of its inquiry into the application made by Rolph and Fiddaman. In that inquiry, the Board has 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.
105. The findings by the Board in these other matters suggest that Ms Milgate has a pattern of unacceptable behaviour in dealing with a tenant she considers to be problematic.
106. The Board also took into account Ms Milgate's approach during the hearings on 14 December 2023. The Board considers that Ms Milgate lied to the Board. Ms

² *Jane Smith v Suzanne Milgate and Milgate Real Estate*

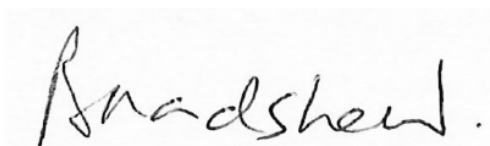
Milgate showed no apparent awareness of the problems with her behaviour. It is a serious matter to breach the rules, but this is compounded if there is no real appreciation of the problem.

107. 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.
108. The Board considers that it is appropriate in all the circumstances of this case to:
 - (1) impose a fine of \$2500 on Ms Milgate; and
 - (2) impose a fine of \$2500 on Milgate Real Estate.

PART H: RIGHT OF APPEAL

109. 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 decision of the Board.
110. For the purposes of section 85(3) of the Act, "affected persons" include the licensed agents affected by this decision and the Applicants.
111. Section 44(1) of the *Northern Territory Civil and Administrative Tribunal Act 2014* (the NTCAT Act) 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) of the NTCAT Act staying the operation of that decision until NTCAT makes its decision on the proceeding or until such other date as is determined by NTCAT.
112. 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