

**In a matter before  
The Agents Licensing Board  
Of the Northern Territory**

**Application for Disciplinary Action**

**Between:** Registrar of Land, Business and Conveyancing Agents  
Applicant

**And** Maria Jennifer Kathopoulos  
Respondent

**BOARD:** Mr John Tsoukalis - Chairperson  
Ms Diane Davies - Industry representative  
Ms Jo-Anne Pulsford - Industry representative  
Mr Rob Kendrick - Consumer representative

**DATE OF HEARING:** 6 April 2017

**APPEARANCES**

Ms Gleeson: Counsel for the Respondent

**STATEMENT OF REASONS FOR DECISION**

**Decision**

1. On 6 April 2017, the Agents Licensing Board met to hold a Disciplinary Inquiry into an application made by the Registrar of Land, Business and Conveyancing Agents, pursuant to section 68(2) of the *Agents Licensing Act (the Act)* for disciplinary action to be taken against licensed real estate agent, Maria Jennifer Kathopoulos, (*the Respondent*), Licence No. 942/RBL (formerly AL942) (*Licence*).
2. After hearing the evidence and considering this matter the members of the Board were split in their decision 2 -2 thus the Chairman exercised his casting vote pursuant to section 14(4)(e) of the Act.
3. The Board has decided, with the Chairman exercising his casting vote pursuant to section 14(4)(e) of the Act, that:

- i. The Respondent's Licence is suspended as from today for a period of 6 months; and
  - ii. The Respondent be reprimanded and cautioned not to offend in the future otherwise her licence will be at risk and the Board may no longer be in a position to exercise its discretion in her favour.
4. These are the reasons for the Board's decision. Members Davies and Kendrick have provided their own dissenting decision.

#### **Particulars of Allegations against the Respondent**

5. On or about 17 August 2016 the Respondent pleaded guilty to the following offences in the Local Court of the Northern Territory of Australia at Darwin:
- (a) Unlawfully possessed Methamphetamine, a dangerous drug as specified in Schedule 1 of the *Misuse of Drugs Act* contrary to section 9(1) of *Misuse of Drugs Act*;
  - (b) Unlawfully possessed a glass pipe for use in the administration of a dangerous drug contrary to section 12(1) of the *Misuse of Drugs Act* contrary to section 9(1) of that Act brackets one of that act;
  - (c) Unlawfully possessed cannabis plant material, a dangerous drug as specified in Schedule 2 of the *Misuse of Drugs Act* contrary to sections 9(1), 9(2)(f)(ii) of *Misuse of Drugs Act*.
6. His honour Judge Woodcock, after hearing evidence, ordered that no conviction be recorded but did impose fines totalling \$550 and victim assistance levies of \$400.00.

#### **Relevant Legislation**

7. The Registrar may apply pursuant to section 68(2) of the Act for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.

**'68 Applications for disciplinary action**

- (2) *The Registrar may apply, by notice in writing, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67."*

8. The Applicant relies on the grounds set out in section 67(1)(m) to ground this application for disciplinary action.

**'67 Grounds for disciplinary action**

*(1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:*

*(m) any other reasonable ground which, in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent."*

9. The Board may take disciplinary action against a licensed agent on any other reasonable ground, which in the opinion of the Board, is sufficient to warrant revocation of the licence of the agent.

10. The findings of guilt of offences against the Misuse of Drugs Act, could mean that the Respondent was no longer a "fit and proper person "for the purposes of section 20 of the Act. Sections 20(1), 20(2) and 20(3) are set out hereunder.

***"Division 2            Qualifications for licence as agent***

***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, been 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, the Kava Management Act or a corresponding law declared under subsection (8); or*

*(b) is mentally incapable of performing the duties of an agent; or*

- (c) *is disqualified from holding a licence, certificate of registration or other authority under the Consumer Affairs and Fair Trading Act or a corresponding law declared under subsection (8) or is the holder of such a licence, certificate or authority that is suspended; or*
  - (d) *has, at the time of the application, failed to pay a monetary penalty payable by the person under this Act, the Consumer Affairs and Fair Trading Act or a corresponding law declared under subsection (8) or failed to comply with a direction given by the Board; or*
  - (e) *has failed to provide the Board with an auditor's report that the person is required to provide under this Act on the audit of the records and documents relating to money held in a trust account kept by the person under this Act; or*
  - (f) *is at the time of the application in breach of a provision of this Act or the Regulations that is prescribed by regulation as a disqualifying breach.*
- (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."*
11. Under section 20(3) of the Act, the Board has discretion to determine that an offence referred to in subsection 20(2)(a) of the Act (found guilty of an offence against the *Misuse of Drugs Act*) is not to be taken into account for the purposes of the section because of the time that has elapsed since the offence was committed or because the act or omission constituting the offence was trivial.
12. The disciplinary powers of the Board are found in section 69(1) of the Act, and provide, in part, that the Board may, where the Board is satisfied it is authorised to take disciplinary action against a licenced agent:
- (a) *reprimand or caution the agent; or*
  - (b) *by notice in writing, impose a fine not exceeding 50 penalty units on the agent; or*
  - (c) *by notice in writing, suspend the licence of the agent until the*

*expiration of the period, or the fulfilment of a condition, specified in the notice; or*

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

### **The Conduct of the Disciplinary Inquiry**

13. Respondent was represented by counsel at the Disciplinary Inquiry.
14. The Chairman reminded the parties that the rules of natural justice applied to proceedings before the Board, and that either party was to be allowed comment on all of the material taken into account by the Board. No applications or objections were made to the Board's composition.

### **The Issues**

15. The issues in this Inquiry were:
  - (a) whether as a result of the Respondent being found guilty of offences against the Misuse of Drugs Act the Respondent has ceased to be a fit and proper person for the purpose of holding a licence under the Act;
  - (b) whether the Board should apply section 20(3)(b) and not take into account the offences against the Misuse of Drugs Act because the act constituting the offence was trivial.
  - (c) Subject to (a) and (b), the appropriate disciplinary sanction.

### **The Registrar's Case**

16. The Registrar's case was contained in the Inquiry Brief. The Inquiry Brief was tendered and marked as exhibit "A". In short, the Registrar contended that the Respondent having being found guilty of offences under the Misuse of Drugs Act that Ms Kathopoulis has the status of a disqualified person and was therefore no longer a "fit and proper person" to hold an agents licence (see S.20(1)(a) and 20(2)(a) of the Act)
17. The Registrar's case was, in substance, particularised in the application for disciplinary action.
18. The following documents were tendered in support of the application:
  - (a) A copy of the Respondent's Real Estate and Business Agent's Licence, 942/RBL;
  - (b) A copy of the Certificate of Proceedings dated 22 August 2016 issued by the Clerk of Courts of the Local Court of the Northern

Territory regarding Case No. 21633922 and issued pursuant to the *Evidence (National Uniform Legislation) Act*.

19. The Inquiry brief satisfied the Board that the Respondent was proven guilty of offences contrary to the *Misuse of Drugs Act*.

20. **The Respondent's Case**

21. The Respondent's Counsel submitted:

- (a) That the Board should exercise its power under section 69 of the Act to reprimand or caution the Respondent and not take any further action due to the mitigating factors that were stated at the hearing and which are set out below.
- (b) The Respondent has 17 years of experience in the real estate industry and has a stellar reputation and exemplary work history.
- (c) The respondent at the time of the offences was going through a difficult period and a personal life following the breakup of a long-term relationship.
- (d) A small quantity of drugs (Methamphetamine and cannabis plant material) and the drug pipe were left in the Respondents' house by an acquaintance and she was aware of their presence.
- (e) The Respondent did not use the drugs and simply left them on her premises.
- (f) The drugs and pipe were subsequently discovered by the police who then charged the Respondent with possession of drugs and a pipe under the *Misuse of Drugs Act*.
- (g) Woodcock J, who heard this matter in the Local Court took into account the Respondent's impressive character, the lack of a criminal history, the fact that she worked her whole life and the early plea of guilty and was satisfied that general deterrence was adequately achieved by the fact that the Respondent had attended court and publicly admitting to offending. Although the Respondent pleaded guilty, no conviction was recorded however fines and levies were imposed.
- (h) 3 character references were also provided.
- (i) The Board heard the Respondent's evidence and was also able to question the Respondent under oath. The Board accepted the Respondent's evidence that she was genuinely remorseful and that

this sorry matter was out of character for her, during what was a difficult period in her life.

### **The Reasons for the Decision**

22. The guilty findings of offences under the Misuse of Drugs disqualifies the Respondent, as the Respondent is no longer a "fit and proper person" for the purposes of section 20 of the Act.
23. The issue then became sub-section 20(3)(b) of the Act:
 

*"20(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:*

*(b) because the act or omission constituting the offence was trivial."*
24. Under section 20(3)(b) of the Act, the Board has discretion to determine that an offence referred to in subsection 20(2)(a) is not to be taken into account for the purposes of the section because the act or omission constituting the offence was trivial.
25. The question was therefore whether the Board was satisfied from the evidence before that the act constituting the offence was trivial and whether section 20(3)(b) applied.
26. The Board members gave weight to the following facts:
  - (a) That the Applicant had a long history in the real estate industry and an exemplary record during that time.
  - (b) The finding by Woodcock J not to record conviction and to simply impose fines and levies.
  - (c) The Board's concern as to the reputation of real estate agents in the general community and in particular the issue of drug taking within the industry.
27. After considering all the evidence, the members of the Board were split 2 - 2 as follows:
  - (a) Mr Tsoukalis and Ms Pulsford voted that the act constituting the offence was trivial and therefore pursuant to section 20(3)(b) the Respondent was not a disqualified person.
  - (b) Ms Davis and Mr Kendrick voted that the act constituting the offence was not trivial and therefore the Respondent was a

disqualified person for the purposes of subsection 20(1)(a) and that the respondent's licence should be revoked. Members Davies and Kendrick have published their own reasons for their decision, which are attached to these reasons.

28. As a result of the Board's split decision, the Chairman exercised his casting vote pursuant to section 14(4)(e) of the Act and the Board has determined, as follows:

- (a) The disqualifying offence by the Respondent under the Misuse of Drugs Act was trivial;
- (b) The Board it would exercise its discretion under section 20(3)(b) and not take this disqualifying offence into account; as the act constituting the offences was trivial;
- (c) The Respondent's Licence be suspended as from today for a period of 6 months; and
- (d) The Respondent be reprimanded and cautioned not to offend in the future otherwise her licence will be at risk and the Board may no longer be in a position to exercise its discretion in her favour.



For the Board

John Tsoukalis  
Chairman

18 July 2017