

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

**APPLICATION FOR DISCIPLINARY ACTION**

**BETWEEN:** **DEBBIE HANSON**  
Applicant

**AND** **IRONSTONE REALTY PTY LTD**  
**trading as IRONSTONE REALTY**  
Respondent

Date of hearing: **23<sup>rd</sup> January, 2014**

Chairperson: Suzanne Philip  
Real Estate Member: Diane Davis  
Departmental Member: Gareth James  
Consumer Representative: Lea Aitken

Appearances:

The Applicant appeared in person.  
The Respondent was represented by its Directors, Des Groves and Darren On.

**STATEMENT OF REASONS FOR DECISION**

**Background**

1. On the 20<sup>th</sup> June 2013 the Applicant, Debbie Hanson, made application to the Board under Section 68(3) of the *Agents Licensing Act* (hereinafter called "ALA") for Disciplinary Action against the Respondent, Ironstone Realty Pty Ltd trading as Ironstone Realty, on the ground set out in Section 67(1) (c) of the ALA being a breach of the rules of conduct for agents, such rules being contained in Section 65 of the ALA.
2. The application alleged that the Respondent had breached Section 65(1)(a) of the ALA in that it had employed an unregistered agent's representative in contravention of Section 35 of the ALA.
3. Following receipt of the application, the Registrar of Land, Business and Conveyancing Agents caused an Investigation Report to be prepared. That report, dated 21<sup>st</sup> November 2013, was tabled and considered by the Agents Licensing Board (hereinafter called "the Board") at its meeting held on 9<sup>th</sup> December 2013 and the Board determined that there might be grounds for disciplinary action. As required by Section 68(4) of the ALA, the matter was set down for Inquiry

## **The Issues**

4. The issues in this Inquiry were:
  - a. a consideration by the Board as to whether the Respondent's actions amounted to a breach of the rules of conduct as contemplated by the terms of Section 65(1)(a) of the ALA;
  - b. if so, the appropriate disciplinary sanction.

## **Relevant Legislation**

5. Disciplinary action may be taken against a licensed agent on the grounds provided in Section 67 of the ALA.

### **67. Grounds for disciplinary action**

*(1) Subject to this Part, the Board may take disciplinary action in accordance with this Part against a licensed agent on one or more of the following grounds:  
(c) the licensed agent has been guilty of a breach of the rules of conduct for agents;*

6. Applications for such action are made under Section 68 ALA.

### **68. Applications for disciplinary action**

*(4) Where –*

*(b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent,*

*the Board shall hold an inquiry.*

7. In this case, the Board relied on paragraphs 65(1)(a) of the ALA to ground the application for disciplinary action.

### **65. Rules of conduct**

*(1) A licensed agent who –*

*(a) breaches this Act or the regulations, whether or not the licensed agent is found guilty of an offence in respect of the breach;*

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

8. Where the Board grants an application, the Respondent may be dealt with as provided in Section 69 of the ALA.

**69. Powers of Board after inquiry**

*(1) Where, at the conclusion of an inquiry conducted pursuant to section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may –*

*(a) reprimand or caution the agent;*

*(b) by notice in writing, impose a fine not exceeding 50 penalty units on the agent;*

*(c) by notice in writing, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice; or*

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

**Conduct of the Matter**

9. The central issue to be determined under Section 65(1)(a) of the ALA was whether the Respondent had breached Section 35 of the ALA by employing an unregistered agent's representative. The Investigation Report provided to the Board contained material in which various admissions were made by the Respondent that established a breach of that section. The parties agreed that the Inquiry could proceed on the basis of the admission of breach in order to determine the appropriate penalty.

10. The parties provided the Board with written submissions as to penalty.

**The Facts**

11. The Respondent holds an unrestricted Real Estate and Business Agent's Licence, AL793, and all material times conducted business under that licence. Its two Directors, Des Groves and Darren On, both hold licences under the ALA.

12. In 2010, the Respondent employed Kaye Barber as an agent's representative. Ms Barber held registration as an agent's representative under the ALA (AC1808) until 1<sup>st</sup> May 2012, at which time she failed to pay the annual fee in respect of her registration and it subsequently lapsed. She continued to be employed as an agent's representative by the Respondent following that lapse.

13. The Applicant entered into an agency agreement with the Respondent dated 20<sup>th</sup> February 2013 appointing the Respondent as selling agent for her property situated at 15 Catchlove Street, Rosebery (hereinafter called "the property"). An initial contract for the sale of the property was exchanged on 13<sup>th</sup> March 2013 and after certain issues were resolved by a variation of contract, the property eventually settled on 9<sup>th</sup> May 2013. The Respondent received commission at the completion of the sale.

14. During the course of the sale of the property, Ms Barber provided a market appraisal of the property, completed and signed the agency agreement on behalf of the Respondent, marketed and promoted the property, including holding of open inspections, and witnessed the Applicant's signature to the contract of sale. Ms Barber was unregistered throughout the course of the dealings between the Respondent and the Applicant.

15. Uncontested statements from Ms Barber and Mr Groves made it clear that the Respondent was unaware that Ms Barber's registration had lapsed. The Respondent had taken positive steps to ensure that Ms Barber was in a position to effect renewal of registration in a timely manner through its Business Manager, Mr Groves, completing and signing, in the presence of a Commissioner of Oaths, the necessary employer declaration on the Renewal of Registration Form dated 20<sup>th</sup> March 2012. The Respondent acted at all times in the belief that Ms Barber had submitted the necessary form and paid the requisite fee to ensure her continued registration. This was not the case. As soon as the Respondent was made aware of Ms Barber's failure, it took immediate action to terminate her employment and remedial steps to rectify the breach including removing all promotional material referring to Ms Barber. A new system has been introduced to ensure such a breach does not occur again. The Applicant, Ms Hanson, expressly indicated to the Inquiry that the Respondent, through its Directors, had dealt fairly with her throughout.

16. As Ms Barber is unregistered, she is not subject to disciplinary action by the Board, the ALA limiting the Board's disciplinary power to those persons holding licences and registrations under its terms. The Board, however, notes that Ms Barber has failed to provide a satisfactory explanation of her failure to renew. Her references to a payment made to the Receiver of Territory Money and a receipt that cannot be found are unsubstantiated. The failure to lodge the registration renewal papers make it highly unlikely that any payment was ever made as no payments are accepted without the accompanying paperwork. Extensive enquiries of the Receiver of Territory Monies, including the Receipt and Tracking System for 2012/13, and Gambling and Licensing Services officers failed to provide any evidence to support Ms Barber's statement. The Board, however, notes that Ms Barber promptly responded to all enquiries and was vigilant in ensuring that no blame for her failure fell upon her employer. She also apologised unreservedly to Ms Hanson and her family in her response dated 22<sup>nd</sup> June 2013.

### **Determination**

17. The Board having considered the Investigation Report and the statements of the Respondent and Ms Barber, made a formal finding that the Respondent had committed a breach of the rules of conduct in Section 65(1)(a) of the ALA, in that, in contravention of Section 35 of the ALA, it had employed as an agent's representative a person who was unregistered and that the Board was authorised to take disciplinary action under Section 67(1)(c) of the ALA.


18. In considering the nature of the disciplinary action to be taken against the Respondent, the Board noted both parties' submissions and, in particular, the Respondent's full and timely cooperation with the Investigation, its lack of knowledge of the unregistered status of its employee, the immediate steps it had taken to rectify the breach and systems put in place to ensure such a breach does not occur again. The Board also noted the unblemished record of both Directors of the Respondent during lengthy careers in real estate and it commended the respondent and its Directors on their prompt and appropriate response to the whole matter, once it came to their attention.

19. The ALA, however, places the obligation firmly on the licensed agent to ensure that persons employed as agent's representatives be registered. This is an important protection for the public who deal with licensed agents and was acknowledged as such in the Respondent's submissions. Failure to ensure that employees are appropriately registered is a serious breach of the ALA.

### **Action**

1. The Board determined at the Inquiry held on 23rd January 2014 that the Respondent, Ironstone Realty Pty Ltd trading as Ironstone Realty, had breached the rules of conduct for agents, in particular Section 65(1)(a) of the ALA by employing as an agent's representative a person who was unregistered.
2. As a result, the Board determined that it was authorised to take disciplinary action against the Respondent under Section 69(1) of the ALA as the ground in Section 67(1)(c) of the ALA was satisfied.
3. In the circumstances, pursuant to Section 69(1)(a) of the ALA the Board determined to caution the Respondent for this breach of the rule of conduct in Section 65(1)(a) of the ALA.
4. Pursuant to its power under Section 69(3) of the ALA the Board further directed that the Respondent, within two weeks of the date of service on it of a copy of this Statement of Reasons for Decision, provide a letter of apology to the Applicant, Ms Debbie Hanson.

For the Board



Suzanne Philip  
Chairman

30<sup>th</sup> January 2014