

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

APPLICATION FOR DISCIPLINARY ACTION

BETWEEN: **MANAGEMENT COMMITTEE UNITS
PLAN U2000/083**
Applicant

AND **DOUG PURCELL**
First Respondent

**GRADSHA PTY LTD trading as BODY
CORPORATE SPECIALISTS NT**
Second Respondent

Date of hearing: **19th May 2014**

Chairperson: Suzanne Philip
Industry Member: Diane Davis
Industry Member: Jo-Anne Pulsford
Departmental Member: Gareth James
Consumer Representative: Lea Aitken

Appearances:

Counsel Assisting the Board: Carl O'Conner
Respondents
The First Respondent appeared in person and represented the Second Respondent.

STATEMENT OF REASONS FOR DECISION

Background

1. On the 17th September 2012, the Applicant, Management Committee Units Plan U2000/083, through its members, Michael Marchant and Greg Shaw, made application to the Board under Section 68(3) *Agents Licensing Act* (hereinafter called "ALA") for Disciplinary Action against the First Respondent, Doug Purcell, and the Second Respondent, Gradsha Pty Ltd trading as Body Corporate Specialists NT, on the ground set out in Section 67(1)(c) ALA of breach of the rules of conduct for agents, such rules being contained in Section 65 ALA.

2. The application alleged that the Respondents had breached Sections 65(1)(c) and (d) of the ALA in that they had failed to perform duties on behalf of or carry out instructions of their principal and that they had failed to exercise due skill, care and diligence on behalf of their principal

3. Following receipt of the application, the Registrar of Land, Business and Conveyancing Agents caused an Investigation Report to be prepared. That report, dated 5th March 2014, was tabled and considered by the Agents' Licensing Board (hereinafter called "the Board") at its meeting held on 11th March 2014 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 Respondents' actions amounted to a breach of the rules of conduct as contemplated by the terms of Section 65(1)(c) and (d) 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 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

(3) *Any person may apply, by notice in writing lodged with the Registrar, for disciplinary action to be taken against a licensed agent on one or more of the grounds referred to in section 67.*

(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 Section 65(1)(c) and (d) ALA to ground the application for disciplinary action.

65. Rules of conduct

(1) *A licensed agent who –*

(c) fails to perform his duties to his principal or to carry out the lawful instructions of his principal; or

(d) fails to exercise due skill, care or diligence in carrying out his duties on behalf of his principal;

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)(c) and (d) ALA was whether the Respondents had, through their course of dealings as Body Corporate Manager with the Applicant, failed to perform duties or carry out instructions or exercise due skill, care and diligence as required by the ALA .

10. The Board was assisted by Carl O’Conner throughout the Inquiry who called Mr Greg Shaw to present evidence on behalf of the Applicant. Evidence was also taken from Kate Woite, of Whittles Body Corporate Management (hereinafter called “Whittles”), the current manager appointed by the Management Committee of Units Plan U2000/083. The First Respondent represented himself and the Second Respondent and was able to cross examine witnesses, give evidence under oath and make submissions.

11. The Board was provided with an Inquiry Book which was accepted into evidence with the Agreement of the First Respondent. By reason of the materials in that Book, the Inquiry proceeded on the basis that the matters to be inquired to were limited as follows -

- (i) Whether the licensed agent failed to perform his duties to his principal and/or carry out the lawful instructions of his principal by failing to provide records, documents or information when requested to do so, contrary to Section 65(1)(c) ALA.

Particulars of the Alleged Breach

Whilst the licensed agent was managing property located at 15 Athanasiou Road, Coconut Grove on behalf of the Management Committee of Units Plan U2000/083, documents in relation to cleaning and gardening services were requested from the licensed agent by the Management Committee in July and August and not provided to the Management Committee within a reasonable time.

- (ii) Whether the licensed agent failed to exercise due skill, care and diligence in carrying out his duties on behalf of his principal by failing to provide sufficient quotes for cleaning work, contrary to Section 65(1)(d) ALA

Particulars of the Alleged Breach

Whilst the licensed agent was managing property located at 15 Athanasiou Road, Coconut Grove on behalf of the Management Committee of Units Plan U2000/083, the licensed agent failed to provide sufficient quotes for cleaning work to the Management Committee for the 2011/12 financial year.

The Facts

12. The First Respondent holds an unrestricted Real Estate and Business Agent's Licence, AL512, and, at all material times, was the nominated Business Manager for the Second Respondent, the holder of an unrestricted Real Estate and Business Agent's Licence AL586.

13. At all relevant times, the Applicant was constituted as a Body Corporate under Part V of the Unit Titles Act (hereinafter called "UTA"), the relevant plan having been registered in 2000. A corporation under the UTA acts through its Committee (Section 32 UTA). Section 29 UTA provides that the Body Corporate may appoint a representative who must act in accordance with the Management Module proscribed under Section 58 UTA. At all relevant times the Applicant had entered an agreement with the Second Respondent as Manager.

14. Members of the Body Corporate raised various concerns about the cleaning of and the state of the garden at 15 Athanasiou Road, Coconut Grove and those matters were considered at the Annual General Meeting of the Body Corporate held on 27th June 2012. That meeting was attended by an employee of the Second Respondent, Sanjiv Sharan. Specifically, the members were concerned that the expenditure for cleaning by Platinum Cleaning Services was in excess of \$4300 as against a budget figure of \$1000 and that the "cleaning company rarely turned up". The Committee of the Body Corporate requested access to the cleaning and gardening invoices. Despite assurances by Sanjiv Sharan that the invoices would be provided, they were not.

15. Further email requests were made by the Applicant to the Respondents for information, receipts and invoices in relation to payments made to the cleaner and gardener in 2011 and 2012, the first of such requests being made on 13th July 2012 and thereafter on 13th, 15th and 16th August 2012.

16. A degree of acrimony had arisen between the parties following the Annual General Meeting and, on 20th July 2012, the Respondents resigned as Manager, giving thirty days notice. The Applicant, by emails dated 16th and 17th August 2012, requested a broad range of documents in relation to the management of the unit complex. The Respondents replied to those emails on 17th August 2012, by advising that all requested documents would be forwarded to Whittles as new Body Corporate Manager upon completion of the bank reconciliation and that the Respondents would "enforce the Trespass Act" following a request from the Chairman of the Applicant to collect the body corporate documentation.

17. On 15th August 2012, the Applicant requested a copy of the body corporate management agreement from the Respondents. A further request was made on 16th August 2012. The Respondent did not provide the management committee with a copy of the agreement. Nor could a copy of the agreement be provided at the Inquiry.

18. At the Annual General Meeting of the Applicant held on 25th July 2011, attended by Sanjiv Sharan on behalf of the Respondents, the Applicant specifically requested two quotes for cleaning services. There was some ambiguous evidence of correspondence between Sanjiv Sharan and Abbott Cleaning Service dated 30th September 2011, which may or may not have been a request for a cleaning quote. Additionally, the Respondents relied upon the arrangement with Platinum Property Services, the company which provided the disputed cleaning services in 20011/12. Evidence from Kate Woite, of Whittles, the current manager, indicated that cleaning services presently provided at 15 Athanasiou Road, Coconut Grove are charged at a rate commensurate with the amounts invoiced by Platinum Property Services.

Determination

19. The Board having considered the Investigation Report, the Inquiry Book, further materials tendered during the Inquiry, the evidence of the witnesses, including admissions by the First Respondent, and the submissions of Counsel Assisting, found that the Respondents had committed breaches of the rules of conduct in Section 65(1)(c) of the ALA, in that, they failed to perform their duties to their principal and/or carry out the lawful instructions of their principal by failing to provide records, documents or information when requested to do so, contrary to Section 65(1)(c) of the ALA.

20. The Board, however, accepted submissions of Counsel Assisting that a breach of the rules of conduct in Section 65(1)(d) of the ALA, constituted by a failure to exercise due skill, care and diligence in carrying out the Respondents' duties on behalf of their principal by failing to provide sufficient quotes for cleaning work, was not established.

21. In considering the nature of the disciplinary action to be taken against the Respondents, the Board accepted the unblemished record of both the Respondents but also noted the importance of the obligations placed upon the Respondents to provide access to records and other materials impacting on the management of the body corporate, such access being vital to enable the Committee to properly perform its role under the UTA. Failure to provide records, documents or information following reasonable requests by the principal is a substantial breach of the ALA.

Action

1. The Board determined at the Inquiry held on 19th May 2014, that the Respondents, Doug Purcell and Gradsha Pty Ltd trading as Body Corporate Specialists NT, had breached the rules of conduct for agents, in particular Section 65(1)(c) ALA by failing to perform their duties to their principal and/or carry out the lawful instructions of their principal by failing to provide records, documents or information when requested to do so.

2. As a result, the Board determined that it was authorised to take disciplinary action against the Respondents under Section 69(l) of the ALA as the ground in Section 67(l)(c) of the ALA was satisfied.
3. In the circumstances, pursuant to Section 69(l)(b) of the ALA, the Board determined to fine the Respondent for these breaches of the rule of conduct in Section 65(l)(c) of the ALA, in the amount of \$750.
4. Pursuant to its power under Section 69(3) 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 and a copy thereof to the Board.
5. The Board urged the Respondents to take steps to put in place systems to ensure that this type of breach does not occur again.

For the Board

Suzanne Philip
Chairperson

/ / 2014