

**In matter before
The Agents Licensing Board
of the Northern Territory**

Application for Disciplinary Action

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

And **Your Real Estate (NT) Pty Ltd trading as
Your Real Estate (NT) and Manolis
Karpasitis, Business Manager**
Respondents

Date of Hearing: 20 October 2015

Alternate Chairperson: Tom Berkley
Consumer Representative: Lea Aitken
Alternate Industry Member: Carol Need
Departmental Member: Jeff Stewart

Appearances:

Counsel assisting the Deputy Registrar: Cameron Retallick
Respondent assisted by his father: Savvas Karpasitis

Statement of Reasons for Decision

1. On 20 October 2015, the Agents Licensing Board met to hold a Disciplinary Inquiry into an application made by the Deputy Registrar of Land, Business and Conveyancing Agents, pursuant to section 68(2) of the *Agents Licensing Act* for disciplinary action to be taken against licensed real estate agents, Your Real Estate (NT) Pty Ltd trading as Your Real Estate (NT), AL1029 and Manolis Karpasitis, AL1030 (the Respondents).
2. At the conclusion of the Disciplinary Inquiry the Board revoked the licences of Your Real Estate (NT) Pty Ltd trading as Your Real Estate (NT), AL1029 and Manolis Karpasitis, AL1030.
3. These are the reasons for the Board's decision.

Particulars of Allegations Against Respondents

4. Manolis Karpasitis was at all relevant times a Director of Your Real Estate (NT) Pty Ltd. As Business Manager he was concerned in each of the acts or omissions alleged against Your Real Estate (NT), and is responsible accordingly.
5. The Deputy Registrar alleged that between 1 March 2014 and 31 May 2015, the respondents breached s52(4) of the Act by withdrawing a total of \$66,440.00 from the Bond Trust Account No. 19232 2222 held by ANZ Bank, Winnellie for purposes other than those specified in subsections 4(a) to (c) of the Act, namely:

- “(4) A licensed agent shall not withdraw money from a trust account maintained by him or her except for the purpose of:*
- (a) payment of his or her commission under contract; or*
 - (b) payment to, or disbursement according to the directions in writing of, the person for whom, or on whose behalf, the money was received; or*
 - (c) repaying a debt lawfully required to be repaid from trust moneys.”*
6. The Deputy Registrar also alleged that Manolis Karpasitis, as Business Manager of Your Real Estate (NT)’s office for the purposes of section 110A(1) of the Act, failed, contrary to section 110A(5) of the Act, to exercise substantive and effective control of the day-to-day operations of that office.

The Powers of the Board

7. Pursuant to section 67(1)(c) of the Act the Board may take disciplinary action against a licensed agent on the ground that the licensed agent has been guilty of a breach of the rules of conduct for agents.

Pursuant to section 65(1) of the Act – Rules of Conduct:

“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. The sections of the Act alleged in the application for disciplinary action to be breached are:
- section 52(4) – the withdrawal of money from a trust account maintained by the agent; and
 - section 110A(5) – the business manager must ensure that he exercises substantive and effective control of the day-to-day operations of the registered office.
9. The disciplinary powers of the Board are found in section 69(1) of the Act, and provide, in part, that the Board may, upon finding the agent to be guilty of a breach of the rules of conduct for agents:
- (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

10. The Deputy Registrar was represented by counsel at the Disciplinary Inquiry. The first and second respondents appeared through Manolis Karpasitis, who was assisted by his father Savvas Karpasitis.
11. No witnesses were called to give evidence. Manolis Karpasitis admitted the alleged breaches of the rules of conduct for agents on behalf of the first and second respondents. A Document List was tendered by the Deputy Registrar and marked as Exhibit 1. A Statement of Agreed Facts was also tendered by the Deputy Registrar and marked as Exhibit 2.
12. The Statement of Agreed Facts is reproduced below:
 1. *On 27 December 2013, Manolis Karpasitis was granted a licence (AL1030) by the Agents Licensing Board of the Northern Territory to carry on business as a Real Estate Agent. The licence is due to expire on 30 November 2015.*
 2. *On 8 January 2014, Your Real Estate (NT) Pty Ltd t/a Your Real Estate (NT) was granted a licence (AL1029) by the Agents Licensing Board of the Northern Territory to carry on business as a Real Estate Agent under the supervision and control of Manolis Karpasitis. The licence is due to expire on 30 November 2015.*
 3. *Since July 2014, Manolis Karpasitis has been the sole Director of Your Real Estate (NT).*
 4. *Your Real Estate (NT) maintains a registered office at 23/82 Nightcliff Road, Rapid Creek.*
 5. *Manolis Karpasitis is and was at all relevant times the appointed Business Manager of the Your Real Estate (NT) office.*
 6. *The ANZ "Bond Trust" Account (Account No. 19232 2222) is the account maintained by Your Real Estate (NT) for bond monies held in trust.*
 7. *As at 31 October 2014, the Bond Authority Ledger for Your Real Estate (NT) recorded that \$83,960 was held in trust by the business.*
 8. *As at 31 October 2014, the ANZ "Bond Trust" Account (Account No. 19232 2222) recorded a balance of \$83,960.*
 9. *As at 1 July 2015, the Bond Authority Ledger for Your Real Estate (NT) recorded that \$66,440 was held in trust by the business.*
 10. *As at 13 May 2015, the ANZ "Bond Trust" Account (Account No. 19232 2222) recorded a balance of \$0.00.*
 11. *Between the period of 31 October 2014 and 13 May 2015, Manolis Karpasitis withdrew a total of \$83,960 from the ANZ "Bonds Trust" Account (Account No. 19232 2222) in various transactions.*

12. *Of that total, \$66,440 of the monies withdrawn from that account were not withdrawn for the purposes of:*
 - a. *Payment of a commission;*
 - b. *Payment to, or disbursement according to the directions in writing of, the person for whom, or on whose behalf, the money was received; or*
 - c. *Repaying a debt lawfully required to be repaid from trust monies.*
13. *On 3 July 2015 the Agents Licensing Board suspended the licences of Mr Karpasitis and Your Real Estate (NT).*
14. *Mr Karpasitis, with the support of his family, took immediate action to repay all monies removed from the ANZ "Bonds Trust" Account (Account No. 19232 2222) without authorisation.*
15. *The Rental Security Bonds were refunded in full to Landlords, both those who wished to self-manage and others who transferred their properties to new agents.*
16. *The Karpasitis family provided financial support to facilitate a smooth handover transition of the properties to their owners without causing any financial liabilities to the Agents Licensing Fidelity Fund. The Registrar notes there have been no claims to the Fidelity Fund.*
17. *All keys and remotes of the rental properties were handed back to the owners and agents to minimise interruption & costs.*
18. *Mr Savvas Karpasitis has been fully co-operative with the Registrar of Land, Business and Conveyancing Agents during the investigation and have provided all necessary documents and data.*
13. In his submissions to the Board as to what it should do about the breaches of the rules of conduct Mr Karpasitis acknowledged that he had made mistakes. He said that he had undergone rough times when he had to pay out his initial business partner, so he started "grabbing money from the bond account.." to meet his business and personal expenses.
14. Mr Karpasitis obtained his real estate licence via the 2 week course run in Brisbane, Queensland. He then obtained a Northern Territory licence under the mutual recognition scheme. He conceded that he knew the provisions of the Act well.
15. Mr Karpasitis submitted that he has acknowledged his mistakes and would like to return to the industry as soon as possible as an agent's representative. A character reference from Nick Mousellis was tendered on his behalf and marked as Exhibit 3. The character reference spoke highly of Manolis Karpasitis and of his abilities as an agent. Mr Mousellis knew what Mr Karpasitis had done but was sure it was out of character and isolated one off offending. Mr Karpasitis submitted that he would "..do anything.." to get his licence back. The Board accepted that Mr Karpasitis was indicating that he would comply with any restrictions that the Board might impose

upon him holding a licence or an agents' representative registration in the future.

16. Mr Karpasitis submitted that he has a good work history, including in the NT public service, which he left 7 years ago to pursue a career in real estate. He spoke of his love of the industry. When asked by the Board why he did not approach his family for help in times of financial hardship, Mr Karpasitis said that he was strong willed and wanted to work it [*the problems*] out himself. He added that at all times the properties in which he was involved were well looked after, and that he made sure that there was no detrimental Loretta impact to owners in that regard.
17. Mr Retallick, counsel for the Deputy Registrar, by reference to authorities, submitted that the principal aims of disciplinary action by bodies such as the Board are the protection of the public and the maintenance of public confidence in the real estate industry. The Board accepted these aims as appropriate and binding on the Board.

Reasons for Decision

18. The Board reasoned that the protection of the public and the maintenance of public confidence in the real estate industry, could be achieved by the impositions of sanctions designed to deter real estate agents from breaching the fundamental trust that members of the community are entitled to when dealing with real estate agents.
19. The Board noted that the sale, purchase, investment and trading in real estate is vital to the Darwin community's economy. Parliament has determined to regulate that industry for the protection of the public and the promotion of confidence in the industry by the introduction of the Act, and in particular by establishing the Board with powers, amongst other things, to discipline real estate agents.
20. The Board was aware that a decision likely to deny a person of their income or livelihood should only be made where there was no other lesser but appropriate sanction available.
21. In this case Mr Karpasitis had withdrawn, over numerous transactions, a total of \$66,440.00 from moneys held in trust. Any one of those transactions was capable of disentitling him to hold a real estate agent's licence. Some of the withdrawals were for his personal entertainments. In committing to such a course of conduct, the Board considered that he had behaved in a manner that amounted to a most serious defalcation of his obligation of trust that did disentitle him to hold a real estate licence in his own right or as the director of a company under his supervision and control.
22. In arriving at its decision the Board took into account all of the matters raised by Mr Karpasitis in his submissions. In particular, the Board noted that Mr Karpasitis had admitted to his wrongdoing and the consequent saving of expense in running a longer inquiry. The Board thought that his admission was evidence of some prospects of his rehabilitation sufficient for him to be able to work in the industry at some future unspecified time. The Board noted that no claims had been made on the Fidelity Fund, nor is it alleged that any person dealing with Your Real Estate (NT) has been left out of pocket. His family had effectively made good his defalcations. The Board also noted that revocation of his licence would cause Mr Karpasitis' own family some hardship until he found new employment.
23. The Board had the power, pursuant to section 69(5) of the Act to specify a period that shall elapse or impose a condition that shall be fulfilled before the person formerly licensed may apply again for a licence.

24. The Board decided to not specify such a period or impose any such condition. Instead, the Board determined that the provisions of section 69(7) of the Act should apply. That subsection provides:

“(7) Where the Board revokes a licence under subsection (1)(d) and does not specify a period that shall elapse or impose a condition that shall be fulfilled under subsection (5), the person formerly licensed is not, without the approval of the Board, eligible to apply for a licence.”

25. The Board was concerned not to set an arbitrary period after which Mr Karpasitis could apply for another real estate licence. Instead, the Board was of the view that Mr Karpasitis' failures were so fundamentally inconsistent with the trust obligations of a real estate agent that he should bear the onus of re-establishing his fitness to hold a licence at some future time and to seek the Board's approval to apply for such a licence.
26. In coming to its decision the Board considered the seriousness of Mr Karpasitis' actions and the need to deter other agents from acting in the same or similar manner, as the most weighty matters in formulating a sanction that would further the aims of community protection and maintaining confidence in the real estate industry.

Dated at Darwin 26 October 2015.

TOM BERKLEY
Alternate Chairman
Agents Licensing Board