

**REAL ESTATE AGENTS LICENSING BOARD**

No. 2006/ 590

**IN THE MATTER**

of the Real Estate Agents  
Act 1976

**AND**

**IN THE MATTER**

of an application under  
Section 27 of the Act by  
**ASK FIRST NATIONAL  
LIMITED**

**HEARING:** 6 July 2006

**DECISION:** 6 July 2006

**REASONS:** 31 August 2006

**APPEARANCES:** H M Wakerley for the applicant  
T D Rea for the Real Estate Institute of New Zealand  
Incorporated

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**DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD**

A A Sinclair (Chairperson), P Dudding, R H Kirk and R I Stark

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**1. INTRODUCTION**

- 1.1 This is an application by Ask First National Limited ("Ask First National") for the grant of an additional place of business at 208 West Coast Road, Glen Eden, which office is to be under the effective control of Thomas Henry O'Hanlon.
- 1.2 The office had previously been a branch of Bayfield Real Estate Limited trading as Bayfield First National ("Bayfield"). The Real Estate Institute of New Zealand Incorporated ("the Institute") objected to the application for renewal of that licence for the 2006/2007 licensing year. The application came before the Board on 30 May 2006. During the course of the hearing, it became evident that Mr Wilson, the principal officer of Bayfield, was not in effective control of the principal place of business and no longer met the eligibility requirements of the Act to be employed as a principal officer.

1.3 Bayfield carried on business from three offices namely the principal place of business in Henderson and branch offices at Swanson and Glen Eden. It emerged from the evidence that the real estate agency business of Bayfield was in fact being carried on through two unlicensed trading entities, namely Taz Limited and RJMT Limited. The Henderson and Swanson offices were owned by Taz Limited. The shares in this company were held by Mr Tony Teague who was employed as branch manager of the Swanson office. The Glen Eden office was operated by RJMT Limited. The shares in that company were owned by interests associated with salespersons employed at that branch namely, Michael Jones, Linda Taylor and Sarah Hirst. Before the hearing had been completed, the application for renewal was withdrawn and the Board was advised by counsel for the parties, that certain undertakings had been given to the Institute by Taz Limited and RJMT Limited. Those undertakings provided (inter alia) that each company would refrain from carrying out any real estate agency activities until it had applied for and been granted a real estate agent's licence. Following the withdrawal of the renewal application for Bayfield, the Henderson, Swanson and Glen Eden offices were closed.

1.4 The present application was subsequently filed by Ask First National. Originally, the application sought approval for the three offices previously operated under the Bayfield licence to become additional places of business of Ask First National however, prior to the hearing, the Board was advised that the company proposed to proceed with its application in respect of the Glen Eden office only.

1.5 In view of this background, the Institute gave notice that it wished to be heard on the application in order to be satisfied that the branch manager Mr O'Hanlon would be in effective control and that the proposed branch structure otherwise complied with the provisions of the Act. The Board heard evidence from Mr Harold Wakerley, Mr Michael Jones and Mr Thomas O'Hanlon. At the end of the hearing, the Board was satisfied on all matters of concern and the application was granted. We advised that we would record our reasons in writing and these are now set out below.

## **2. EVIDENCE**

2.1 Mr Wakerley explained to the Board that Ask First National had entered into an agreement for the sale and purchase of the Glen Eden office from RJMT Limited. The purchase price was \$320,000 and was secured by way of a deed of acknowledgement of debt. The agreement included the grant of an option to RJMT Limited to purchase the business at any time up to 1 October 2006. Various conditions were attached to the exercise of this option. Mr Jones told the Board that Ms Hirst had recently obtained

licensee status and while it was hoped that RJMT Limited would be in a position to repurchase the business and make application for a licence in its own name, it was not intended that this would happen in the short term. Both Mr Wakerley and Mr Jones emphasised that the immediate focus for all parties needed to be on rebuilding the business which had been seriously damaged as a consequence of the closure of the office. They assured the Board that in the meantime, the Glen Eden office would be owned and operated as a branch of Ask First National.

- 2.2 In relation to the past operation of the Glen Eden office under the Bayfield licence, Mr Jones told the Board that RJMT Limited had entered into an arrangement with Mr Wilson to carry out the role of principal officer and, as similar arrangements had operated in the Glen Eden office in the past, he had been encouraged to believe that the arrangement met the requirements of the Act. However, Mr Jones did not wish to make any excuses for what had subsequently occurred and acknowledged that steps should have been taken earlier to ensure that RJMT Limited obtained its own real estate agent's licence. He assured the Board that the company was now taking proper legal advice and that when it did apply for a licence, its operation would comply with the requirements of the Act.
- 2.3 As well as the legality of the structure, the Institute was also concerned as to matters of effective control. Mr Thomas O'Hanlon had been employed as branch manager under the Bayfield licence. Mr Jones was candid in his acknowledgement to the Board that in retrospect, he probably had more involvement in the management and control of the branch including the hiring and firing of staff, than he should have done in his position as sales manager. Mr O'Hanlon told us that he had been in attendance for 15-20 hours a week including on Saturday mornings. His day to day duties had included reviewing the trading and trust accounts, assisting salespersons, attending sales meetings (although these were conducted by Mr Jones), checking advertising and reviewing some (not all) of the agreements for sale and purchase. He was also selling real estate.
- 2.4 Mr O'Hanlon assured the Board that he intended to be in effective control and would increase his hours as required in order to carry out the duties of branch manager. Mr Wakerley acknowledged that while matters had not been in order in the past, he was determined to ensure that the branch was properly managed and controlled in the future and would be putting in place all necessary arrangements to ensure that Mr O'Hanlon and not Mr Jones, would be in effective control.

### 3. REASONS

- 3.1 The Board was satisfied on the evidence, that the structure of the branch complied with the provisions of the Act and that while the Glen Eden office operated as a branch of Ask First National, it would be owned legally and beneficially by that company. Having heard from Mr Wakerley, Mr Jones and Mr O'Hanlon, we were also satisfied that Mr O'Hanlon fully appreciated his duties as branch manager and would be in effective control of the office.
- 3.2 The closure of the Glen Eden office has clearly been devastating for RJMT Limited and the shareholders of that company. The damage to the reputation of the office and loss of business opportunities will inevitably have serious financial consequences for some considerable time to come. In these circumstances, we were left in no doubt that the parties did not wish to face the same situation again and would make every effort to ensure that the branch carried on business in accordance with the requirements of the Act.
- 3.3 The Board having been so satisfied, the application by Ask First National Limited for the grant of an additional place of business at 208 West Coast Road, Glen Eden, under the effective control of Thomas Henry O'Hanlon, was granted.



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**A A Sinclair**  
Chairperson