

REAL ESTATE AGENTS LICENSING BOARD

No. 2006/591

IN THE MATTER

of the Real Estate Agents
Act 1976

AND

IN THE MATTER

of an application under
Section 27 of the Act by
**ROPER & JONES
LIMITED** - a member of
the First National Group

HEARING: 18 July 2006

DECISION: 18 July 2006

REASONS: 31 August 2006

APPEARANCES: P J McDonald for the applicant
T D Rea for the Real Estate Institute of New Zealand
Incorporated

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

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

1. INTRODUCTION

- 1.1 Roper & Jones Limited, a member of the First National Group ("Roper & Jones") made application for a change of address of its principal place of business from Wainui Road, Silverdale to 379 Great North Road, Henderson and for an additional place of business at 2/704 Swanson Road, Swanson to be under the effective control of Mr Andrew Dick as branch manager. Both these applications were dated 26 June 2006.
- 1.2 The Henderson office had previously been the principal place of business of Bayfield Real Estate Limited trading as Bayfield First National ("Bayfield") while the Swanson office had been a branch office of that company. There was also a further branch office at Glen Eden. An application by Ask First National Limited ("Ask First National") for the Glen Eden office to become an additional place of business was considered by the Board on 6 July 2006. In our decision in respect of that application (No. 2006/590), we canvassed events leading to the eventual withdrawal of the

application to renew Bayfield's licence and the closure of its offices. We repeat what we said in that decision below:

1.2 ... 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.

1.3 As with the application by Ask First National in respect of the Glen Eden office, the Institute gave notice that it wished to be heard on the present applications in order to be satisfied on matters of effective control and as to the proposed structure of the operation.

1.4 Evidence was given in support of the applications by Mr Ian Duxfield, the principal officer of Roper & Jones; Mr Andrew Dick, the proposed branch manager of the Swanson office and Mr Tony Teague. Having heard the evidence and submissions made by Mr McDonald and Mr Rea, the Board was satisfied (by a majority) as to matters of effective control and structure and the application was granted. We record our reasons below.

2. EVIDENCE

2.1 Mr Duxfield is the principal shareholder and sole director of Roper & Jones. At the time that the application was made, the principal place of business for that company was at Mr

Duxfield's home and had been so for the past 15 months. One salesperson was attached to that office. A second salesperson had been employed there but had left four months previously. Mr Duxfield could not recall that salesperson's name. The company has 3 branches at Dargaville, Maungaturoto and Kaiwaka. Much of the administration work was undertaken at branch level. Mr Duxfield told us that he visited each branch at least once a fortnight.

- 2.2 Following the closure of Bayfield, it had been intended that Ask First National would make application for all of the Bayfield offices to become branches of that company. When that proposal did not proceed, Roper & Jones was approached by the franchisor First National enquiring whether it would be interested in purchasing the Henderson and Swanson offices.
- 2.3 Negotiations with Taz Limited then followed and Roper & Jones entered into an agreement with Taz Limited for the purchase of the real estate agency business carried on at the Henderson and Swanson offices. This agreement provided (inter alia) for an option by Taz Limited or its nominee to repurchase the business at any time after 1 July 2007 subject to various conditions being satisfied.
- 2.4 On 1 July 2006, the salespersons previously attached to the Bayfield Henderson and Swanson offices were transferred to the licence of Roper & Jones. They were attached to the principal place of business at Mr Duxfield's house pending the hearing of the company's present applications.
- 2.5 Mr Duxfield told the Board that during the period that the salespersons had been attached to the Roper & Jones licence, those salespersons who were not on holiday had attended an initial meeting at his home at which he had outlined the company's plans for the purchase of the Henderson and Swanson offices. The salespersons had also attended two subsequent sales meetings. One property had been sold and the commission had properly been paid into the trust account of Roper & Jones.
- 2.6 The Board heard evidence that in this period listings had not been properly transferred to Roper & Jones and salespersons had used business cards under the banner of Ask First National. Mr Duxfield was vague in his recollection of the names of the salespeople who had transferred to his licence. He acknowledged that generally there had been some confusion around the transfer but he assured the Board that matters would be rectified on the granting of the present applications.
- 2.7 It was Mr Duxfield's evidence that he would be attending the principal place of business at Henderson on a daily business and expected to be in attendance from at least 9.30am

to 4.30pm every day. As well, he expected to attend open homes and auctions in the weekend. He also intended to undertake some sales work. He provided to the Board a check list of matters which he would be putting in place to ensure that the Henderson and Swanson offices were properly integrated as offices of Roper & Jones.

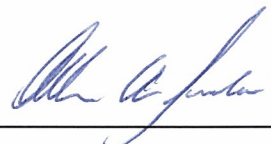
- 2.8 As to the involvement of Mr Teague, Mr Duxfield was insistent that he would not have any role in the management of the real estate agency business at Henderson and Swanson while they were offices owned by Roper & Jones.
- 2.9 The Board also heard from the proposed branch manager, Mr Andrew Dick and from Mr Teague. Mr Dick had been approached by Mr Duxfield to take on the role of branch manager at Swanson. He had previously been a branch manager and fully understood the requirements of that role. In recent times, he had been employed by Bayfield and knew the salespersons who would be attached to the Swanson office. He assured the Board that he would be in effective control of that office.
- 2.10 Mr Tony Teague gave evidence to the effect that he would not be and did not expect to be involved in the management of the business.

3. REASONS

- 3.1 Mr Rea, on behalf of the Institute, objected to the granting of the applications on the grounds that the Institute did not believe that Mr Duxfield would be in effective control. He contended that the manner in which Mr Duxfield had operated his own licence and the events which had already occurred around the transfer of the salespersons to the Roper & Jones licence, meant that the Board could not be satisfied that Mr Duxfield would exercise effective control.
- 3.2 Mr McDonald submitted that the events which occurred on the transfer of the salespersons occurred as a consequence of the general difficulties created by the unplanned closure of Bayfield and the subsequent decision by Ask First National not to pursue its proposed application to take over all Bayfield's offices, and needed to be kept in context.
- 3.3 The Board accepted that the agreement for sale and purchase between Taz Limited and Roper & Jones provided for the transfer of legal and beneficial ownership of the Henderson and Swanson offices to Roper & Jones.
- 3.4 As to matters of effective control, the Board did have concerns that Mr Duxfield had permitted breaches to occur on the transfer of the salespersons to the Roper & Jones licence. Accepting Mr McDonald's submission, the Board (by majority), found that the

breaches which had occurred were principally related to events following the closure of Bayfield and not to any particular failure by Mr Duxfield to be in effective control.

- 3.5 While Mr Duxfield has not recently managed a large sales team, he is properly qualified and the Board was not made aware of any complaints against him. We were satisfied (by majority) that Mr Duxfield fully understood his duties and responsibilities as principal officer and would be in effective control of the principal place of business at Henderson.
- 3.6 The Board was further satisfied on the evidence that Mr Dick would be in effective control of the branch office at Swanson.
- 3.7 Having been so satisfied, the Board made orders granting the following applications:
- (1) the change of address of the principal place of business of Roper & Jones Limited to 379 Great North Road, Henderson;
 - (2) the grant of an additional place of business of Roper & Jones Limited at 2/704 Swanson Road, Swanson under the effective control of Andrew Dick.



A A Sinclair
Chairperson