

REAL ESTATE AGENTS LICENSING BOARD

No. 2007/600

IN THE MATTER of an application under s99
of the Real Estate Agents Act
1976

APPLICANT **REAL ESTATE INSTITUTE
OF NEW ZEALAND INC.**

RESPONDENT **SHENG LIU also known as
VICTOR LIU**

HEARING: 14 & 15 February 2007

DECISION: 17 May 2007

APPEARANCES: T D Rea for the applicant
J Waymouth for the respondent

INTERIM DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

A A Sinclair (Chairperson), K Coakley, P Dudding, J F Hartnett-Kindley and R H Kirk

INTRODUCTION

1. The Real Estate Institute of New Zealand Incorporated ("the Institute") has applied under s99(1)(b) of the Real Estate Agents Act 1976 ("the Act"), for the cancellation of the certificate of approval as a real estate salesperson held in the name of Sheng Liu also known as Victor Liu, upon the grounds that having regard to his character, it is in the public interest that the certificate be cancelled.
2. The application came before the Board on 14 and 15 February 2007. The Board heard from the Institute's principal witness Ya Dong Wu also known as Elizabeth Wu. Affidavits were admitted by consent from Suzanne Chamberlain, a mortgage finance executive, Ian McGowan, a registered valuer, David Boot, a senior document examiner for the New Zealand Police and Brigette Holland, a translator specialising in the translation of Chinese into English.

3. Evidence was given on behalf of the respondent by Olga Bogdanovic, branch manager of the Onehunga Branch of Barfoot & Thompson Limited ("Barfoots") and by Mr Liu.

LEGAL ISSUES

4. Section 99(1)(b) of the Act provides:-

"(1) On application made to the Board in that behalf by the Institute, the Disciplinary Committee or by any other person with leave of the Board, the Board may cancel the certificate of approval issued in respect of any person or may suspend that person for such period not exceeding 3 years as the Board thinks fit on the ground -

(a) ...

(b) That the person has been, or has been shown to the satisfaction of the Board to be, of such a character that it is, in the opinion of the Board, in the public interest that the certificate of approval be cancelled or that person be suspended"

5. In *Sime v The Real Estate Institute of New Zealand Incorporated* (High Court, Auckland M73/86, 19 August 1986), Tompkins J considered the matters necessary to establish the grounds set out in s99(1)(b). He said:

"There are two aspects of the paragraph that call for consideration.

The first is that the enquiry is into the person's character. This word has no doubt been chosen deliberately. It appears to be intended to mean something other than whether he is a fit and proper person to be employed as a salesman...

So it is clearly intended that the type of character required to be established under s99(1)(b) is something of a more serious kind than professional misconduct, or breach of the duties imposed under the Act, although conduct that reflected adversely on a person's character might also amount to professional misconduct or a breach of those duties...

So what the Board is required to enquire into is that person's character in the sense of his personal qualities, his individual traits, his reputation and aspects of his behaviour that reflect on his honesty and integrity.

The second aspect is that the type of character the person must be shown to have must be such that it is in the public interest that the certificate be cancelled or the person suspended. The adverse qualities in his character relied on must be measured against the public interest in his continuing or not continuing as a salesman. Traits such as dishonesty or gross incompetence may be within this category. Less culpable characteristics may well not."

6. Since that decision, the Board has consistently followed and applied these criteria in determining whether the certificate of approval of a real estate salesperson should be cancelled or whether he or she should be suspended. First, the Board must be satisfied that the allegations made against the salesperson's character meet the criteria set out in **Sime**. Secondly, the Board must be satisfied that by reason of its findings as to character, it is in the public interest that the penal sanctions set out in s99(1)(b) should be invoked. We apply these criteria in the present case.
7. The Institute carries the burden of proving the allegations made. The standard of proof the Board has applied in considering applications under this provision is the criminal standard of beyond reasonable doubt.

EVIDENCE

8. We summarise the evidence as follows:
9. In or about December 2003, Ms Wu decided to look for an apartment to buy. At the time she was living in rental accommodation with her son who was 13 years old and paying rent of \$310 per week. She had savings in the bank of around \$136,000 and was working at a language school earning a salary of \$30,000 per year.
10. Mr Liu was employed as a real estate salesperson by Barfoots and worked at the company's Onehunga branch. Ms Wu had previously met Mr Liu through a mutual acquaintance and contacted him to see if he could help her to find a suitable property.
11. During January 2004, Mr Liu showed Ms Wu three or four apartments including Apartment 6G in the Embassy Apartments ("the Apartment"). This apartment block is situated in Wakefield Street in the Auckland CBD. The Apartment had two bedrooms and two bathrooms and included one car parking space. Ms Wu agreed to purchase the Apartment for \$345,000.
12. The agreement for sale and purchase was conditional on finance. The finance date was stated in the agreement as being five working days from the agreement date (13 January 2004). Mr Liu arranged for Ms Wu to go to Wizard Home Loans ("Wizard") and attended the meeting at Wizard's offices where he introduced Ms Wu to Vivienne Wang, an employee of Wizard. Ms Wu provided Ms Wang with information as to her financial circumstances including details of her earnings, savings and rental payments. After consideration of her application, Wizard approved a loan facility for \$276,000. The amount required by Ms Wu to settle the purchase was \$220,000. While her income was limited, Ms Wu was expecting to receive funds from her boyfriend in China and also

received some financial support from her family. She told the Board that she considered that she would be able to manage the mortgage repayments.

13. Ms Wu did not have a solicitor and in the agreement she nominated a solicitor recommended by Mr Liu. When Ms Wu went through the documents with her solicitor, she noted reference to a Body Corporate "special levy fee" and discovered that the development had "leaky building" issues. Ms Wu was unhappy with the legal advice she was receiving and changed solicitors. She told the Board that she did not want to go ahead with the purchase but was concerned about losing the \$20,000 deposit she had paid. While she was advised by her new solicitor that she could have grounds to get out of the contract and recover her deposit, it would be an expensive process. Her solicitor negotiated a reduced price and Ms Wu chose to settle the purchase and move into the Apartment.
14. Ms Wu then made a formal complaint to Barfoots and to the Institute about Mr Liu's conduct in not telling Ms Wu that the Embassy Apartments was a leaky building.
15. A meeting with an Investigation Sub-committee was held in November 2005. In preparation for the meeting, Ms Wu recalled receiving reminder letters from an insurance broker referring to an overdue amount for an insurance premium. At the time she had purchased the Apartment, she had taken out a mortgage redemption insurance policy which Ms Wang had informed her was required only for the first year of the loan. Ms Wu told us that she received statements for the following year and in early 2005, she went to Wizard's offices to query the matter.
16. Ms Wang no longer worked at Wizard and Ms Wu met a Mr Tan. He advised Ms Wu that she needed to pay the insurance because the Apartment was rented. Ms Wu explained to Mr Tan that she lived in the Apartment and that it had never been rented. It was Ms Wu's recollection that Mr Tan made a comment to the effect that "someone probably made that up to help you buy the property". Ms Wu explained that at the time she did not think a great deal about this statement and was more concerned about ensuring that she did not have to pay the insurance premium.
17. Following the Sub-committee meeting, Ms Wu decided to follow up on the matter. She visited Wizard's office and inquired whether there was reference made in any of the documents to the Apartment being rented. Ms Wu was subsequently provided with a copy of a tenancy agreement dated 11 January 2004 ("the Tenancy Agreement"). The Tenancy Agreement had facsimile details on the top of the page showing "Barfoot" and a telephone number which was one number different from the telephone number for the Onehunga branch of Barfoots. The tenant was described as being Belle Liu. The term of

the tenancy was six months while the rental was stated as being \$650 per week. There were three signatures on the document which Ms Wu told the Board were similar to her Chinese signature. Ms Wu denied that any of the signatures was her own or that she had ever previously seen the Tenancy Agreement.

18. On page 2 of the Tenancy Agreement, was a list of furniture and chattels to be provided by the landlord which included two double beds, a dining table and chairs, television, washing machine and other miscellaneous items. Ms Wu bought the Apartment unfurnished and at the time, she did not own any furniture of her own. Also on page 2 was a property inspection list. The refrigerator had been ticked as being in an acceptable condition by both the landlord and tenant. No refrigerator was in fact included in the chattels listed in the agreement for sale and purchase of the Apartment.
19. The Tenancy Agreement further records that an initial rental payment of \$1,300 and bond payment of a further \$1,300 had been paid. Ms Wu told the Board that she had not received any rental payment and was not aware of any bond payment having been made to Tenancy Services.
20. On discovering the Tenancy Agreement, Ms Wu referred the matter back to the Institute. She gave authority to the Institute to obtain a full copy of her Wizard loan application file which included further documents which, Ms Wu told us she had not previously seen. These documents contained false information as to her personal circumstances. For example, on one document there was a handwritten note that Ms Wu lived rent free with her sister. Ms Wu told us that she did not have a sister and was paying rent. On the loan application form, Ms Wu is shown as having no dependents. She in fact has one son. On the document headed "Security Offer for the Loan", the use of the property is described as being an investment property and the rental per week is recorded as being \$650. At all times, Ms Wu was intending to live in the Apartment with her son. Ms Wu's signature does not appear on any of these pages. Her signature appears on two Wizard documents headed "Personal Financial Statements". Ms Wu had no recollection of signing these documents at Wizard's office and thought that she may have signed them when she visited her solicitor.
21. There was one reference to an investment property in the loan documents signed by Ms Wu. In the housing loan contract, the purpose of the loan is described as being "to purchase investment property". Ms Wu gave evidence that she had not read the full loan contract when she met with her solicitor and had not seen this clause.
22. In her affidavit, Ms Chamberlain who is employed by Australian Mortgage Securities (NZ), the company responsible for the administrative function for Wizard, averred that the

two primary considerations in the approval of a loan application, are the ability of the borrower to service the loan and the value of the security that is offered. The amount of any rental income to be received by a prospective borrower is a matter relevant to that borrower's ability to service the loan. In a handwritten summary document held on Wizard's file, Ms Wu's salary was shown as being \$30,000 per annum while rental income was \$33,800 per annum. The notes on that document referred to the fact that the rental would totally cover the mortgage. Ms Chamberlain confirmed that in the absence of the additional apparent rental income, Ms Wu would not have satisfied the criteria for approval of the loan.

23. Mr McGowan in his affidavit, gave evidence as to the market rental of the Apartment as at January 2004 on a furnished and unfurnished basis. It was his assessment that on a furnished basis, the market rental was \$475 - \$500 per week and on an unfurnished basis, \$400 - \$425 per week.
24. Following receipt of Ms Wu's complaint with regard to the Tenancy Agreement, the Institute sought an explanation from Mr Liu. Mr Liu has enjoyed a successful career in real estate and has been a branch top salesperson with Barfoots many times between 2003 and 2006. Mr Liu set out his position in an undated letter to the Institute ("the letter"), as follows:

"Re: 6G/18 Wakefield St, City

I went to Wizard Mortgage Brokers with Ms Wu only once, as an introduction. I did mention to her that she should choose the Broker or the Bank offering best conditions for her needs. She had a wide circle of friends who all have bought properties and were experienced in that field.

...

Ms Wu called me a couple of days later to say that her broker (Wizard) told her that she would need a Tenancy Agreement to support her mortgage application. At the time, Ms Wu was working as an office administrator at a Language School in New Market.

Since there was no much time left to satisfy the Finance Clause, I've promised to help.

I thought that I was helping the buyer collect all the necessary documents to support her mortgage application and I knew that it would not be a problem at all for Ms Wu to find a tenant if she needed one.

Ms Wu's property is located in desirable location in the City, just opposite to AUT and its always been popular building.

It is a 2 bedroom, 2 bathroom apartment with open plan living area (floor area approx. 98m²), secure car-park and a balcony. Since Ms Wu purchased in this building, several apartments were sold at prices higher then her purchase price.

In 2003 there was a huge demand for rental properties in the city. In the same building at the time of sale of this apartment, one room (with no car parking) was rented at \$280 p.w. I knew quite a lot of students who have lived in lounges, basements and garages due to the short supply of rooms, especially at the beginning of the school year. I was positive that the rent of \$650 was attainable.

I have filled the Tenancy Agreement in my wife's name, with her full understanding. Belle is my wife's English name, and 021 number in the Tenancy agreement was her mobile number at the time, which was supplied by her company. I knew once I've signed this Tenancy Agreement, I needed to pay rent to Ms Wu from the beginning of the Tenancy Agreement because it's a binding agreement. I was very confident that I could find someone else to live in the property before this tenancy agreement starts, if necessary.

I met Mrs Wu in Newmarket, just opposite to her language school, in my car and she signed as landlord. I've put my wife's name as the tenant. Then later I went back to my office and sent it to Wizard by fax. Although in her letter Mrs Wu is claiming that she knew nothing about it I confirm that my report is true.

...

I've since realised that I was foolish to help her in this way.

..."

25. In his evidence before the Board, Mr Liu was adamant that the Tenancy Agreement was genuine and proper from the outset and that he would not have entered into the Tenancy Agreement in his wife's name and signed it on his wife's behalf, if it was not genuine. When asked why, if that was the case, he had not made clear in his letter to the Institute that he and his wife would be living in the Apartment, he said that he thought he had put enough in the letter and was now disclosing all the evidence to the Board.
26. Mr Liu told the Board that he had come to know Ms Wu through the later part of 2003 and that by the time he commenced looking for properties for her, he regarded her as a friend. The purchase of the Apartment was concluded late at night on 8 January 2004. However, Mr Liu acknowledged that he dated the sale and purchase agreement the 13th of January 2004 and did not take the agreement into Barfoot's office until that day. He explained that he had inserted this date because law firms did not open until mid to late January and he wished to avoid the possibility that the finance date was missed because of the holiday season. It was his evidence that he now knew from talking to his lawyer that such conduct was not proper but he had done it to assist Ms Wu who was "at that stage was as much a friend as a client".
27. Ms Bogdanovic gave evidence that she had no knowledge that Mr Liu had falsified the date of the agreement in order to extend the finance condition. She told the Board that such conduct was unacceptable. Further, Barfoot's office procedure required that as

soon as an agreement was signed, it was to be handed to the office manager and entered into the system.

28. It was Mr Liu's evidence that Ms Wu had told him that she might not live in the property immediately as her income was not sufficient. Instead she might rent the property for about six months and then move in once her financial position had improved. He explained that it was on this basis that Ms Wu had asked him to help her find a tenant.
29. Mr Liu gave evidence that he discussed the matter with his wife. At that time, Mr & Mrs Liu owned and were living in a terrace house in Kingsland but both worked in the City. Mr Liu explained:

"Thus (it was) more practical to us and financially advantageous to us to rent our home that we had in Kingsland to Chinese students, and to take on the tenancy of this property, and sublet the spacious new apartment property as well to Chinese students as a very good rental per person could be achieved with more than one person per room."

30. Mr Liu told the Board that he had purchased the form from the Post Office and had it in his car. He met Ms Wu opposite the language school where she worked in Newmarket on Sunday, 11 January 2004. He and Ms Wu had sat in his car and discussed the tenancy. Ms Wu signed the Tenancy Agreement as landlord and Mr Liu signed for his wife. Mr Liu told the Board that he arranged to meet Ms Wu at Newmarket as this was a mid point for both parties. Ms Wu denies any such meeting.
31. Mr Liu then went back to his Onehunga office and faxed the Tenancy Agreement to Wizard.
32. With regard to the rental, it was Mr Liu's evidence that he knew the rental was high but as the Apartment was to be fully furnished and he regarded the transaction to be an advantageous one, he was prepared to pay.
33. He acknowledged that the initial rent and bond had not been paid. It was his evidence that this was a "matter between friends" and that Ms Wu had agreed that the bond did not have to be paid until the Apartment was furnished. Mr Liu told the Board that as the settlement date approached, Ms Wu had still not provided the furniture and for that reason, the bond was not paid. After Ms Wu found out the property had water ingress issues, she did not wish to have any further dealings with Mr Liu or to rent the Apartment to him.
34. When asked about the rent, Mr Liu told the Board that Ms Wu had agreed that this need not be paid until he and his wife moved into the Apartment. When asked why he had

falsely recorded the bond and initial rental as having been paid when he knew the Tenancy Agreement was to be relied upon by Wizard, he told the Board that at the time he had just filled it out and didn't think there would be a problem. The inclusion of the refrigerator in the property inspection check list Mr Liu told us, was a mistake.

35. Mr Liu strongly disputed that Ms Wu did not know anything about the Tenancy Agreement. He told the Board that Ms Wu had signed the Tenancy Agreement and fully understood its terms. Following Ms Wu's complaint to the Institute, Mr Liu had arranged for an expert in China to compare Ms Wu's signatures on the Tenancy Agreement to the signature on the agreement for sale and purchase and a letter to Barfoots. This comparison was done against a faxed copy of the Tenancy Agreement as the original has never been produced. Mr Liu maintained that the report vindicated his position that the Tenancy Agreement had been signed by Ms Wu.
36. The report had been prepared in Beijing and translated into English. Brigitte Holland gave evidence that she had examined this report headed "Report of Judicial Expertizing" and the English translation. It was her evidence that there was a significant difference between the two translations. The main difference related to a disclaimer at the conclusion of the report which refers to limitations in the opinion as a result of the questioned document being a facsimile copy. This limitation was missing from the English translation which accompanied the Chinese report produced by Mr Liu.
37. It was the evidence of Mr David Boot that given the poor quality of the facsimile document, he did not believe that it was possible to be able to determine whether the three questioned signatures on the Tenancy Agreement were genuine. He observed that the signatures were not identical to each other or to the specimens attributed to Ms Wu. The questioned signatures contained gross pictorial similarities to the specimen however, differences were also noted. From the copies available, it was not possible to determine if those differences were simply variations in the writing of one person or indicative of an attempt to copy Ms Wu's genuine signature style.

CONSIDERATION

38. We have given careful consideration to all the evidence. The Board found Ms Wu to be a very credible witness who answered questions in an open and candid manner. The Board acknowledges that Ms Wu was confused as to where she signed the Wizard loan documents (we accept that this most likely occurred at the offices of Wizard) but in all other matters, Ms Wu had a clear recollection of events. On the other hand, the Board found that Mr Liu's explanation of events lacked any credibility. His answers to questions from Mr Rea and members of the Board were inconsistent and at times evasive. In the

Board's view, Mr Liu was not a reliable witness. In all matters where there was a conflict of evidence, the Board has preferred the evidence of Ms Wu.

39. At the hearing, Mr Liu gave evidence that the tenancy was a genuine arrangement and that he and his wife intended to move into the Apartment and sublet the second bedroom to Chinese students. In his letter to the Institute, Mr Liu makes no reference to this arrangement. His explanation as to why this information was not included was not convincing.
40. Mr Liu finishes his letter by saying *I've since realised that I was foolish to help her in this way*". This comment simply makes no sense if the Tenancy Agreement was genuine.
41. Mr Liu told the Board that the Tenancy Agreement was in Mrs Liu's name as she was the owner of the Kingsland property but he offered no explanation as to why Mrs Liu did not sign the Tenancy Agreement herself.
42. Under the Tenancy Agreement, the bond and two weeks rental are shown as having been paid. It was Mr Liu's explanation that he had agreed with Ms Wu that the bond did not need to be paid until the Apartment had been furnished and that the rent would not be paid until he and his wife moved into the Apartment. In these circumstances, Mr Liu could offer no explanation as to why he had then included a false acknowledgement in the Tenancy Agreement that the rent and bond had been paid when he knew that this statement was untrue and further, that the Tenancy Agreement was to be provided to Wizard as part of Ms Wu's loan application.
43. Mr McGowan gave evidence that a rental of \$650 was well above market value for the Apartment. Mr Liu told the Board that he believed a rental of \$650 was attainable for the Apartment, but that it was not only the economic cost that was important to he and his wife but also the "social convenience factor". The term of the Tenancy Agreement was only for six months. It is questionable in these circumstances, whether there would have been any convenience factor particularly as we were told that Mr and Mrs Liu were intending to rent their own property and also to bring in Chinese students as tenants in the Apartment. Such a short term tenancy would not be attractive to many prospective tenants.
44. Mr Liu admitted that he falsified the date on the agreement for sale and purchase. While this matter was not a ground relied upon by the Institute in respect of the s99 application, it is an issue of real concern. Mr Liu's explanation that there were special reasons being the holiday season is unsatisfactory. In post-dating the agreement, Mr Liu effectively

extended the term of the finance clause and did so without the approval of the vendor and purchaser. As well, he acted in breach of Barfoots' office procedure which required the agreement to be submitted to the branch manager as soon as it was signed. It is simply not acceptable to alter any real estate document as a matter of expediency or for any other reason. Furthermore, in the Board's view, Mr Liu knew at the time that his actions were wrong.

45. After careful consideration, the Board finds that:

45.1 Mr Liu deliberately falsified the Tenancy Agreement which he then submitted to Wizard in support of Ms Wu's loan application. The false Tenancy Agreement was produced in order to deceive Wizard as to Ms Wu's financial position so that Ms Wu would meet Wizard's lending criteria.

45.2 Mr Liu took this action without the knowledge or approval of Ms Wu.

45.3 Mr Liu deliberately included a false acknowledgement to the effect that the bond and two weeks rental had been paid and faxed the Tenancy Agreement from Barfoot's office in order to make the transaction appear genuine.

45.4 Mr Liu was primarily motivated by his own greed and determination to achieve a sale and obtain a commission rather than by any altruistic desire to assist Ms Wu.

45.5 Mr Liu's elaborate explanation of events was carefully contrived by Mr Liu in an effort to deceive the Board as to the true status of the Tenancy Agreement.

46. We have no doubt that Mr Liu's dishonest and deceitful conduct reflects adversely on his honesty and integrity. We are further satisfied that his conduct is of such a serious nature that pursuant to s99(1)(b) of the Act, it is in the public interest that the certificate of approval held by Mr Liu be cancelled or that Mr Liu be suspended.

INTERIM DECISION

47. For the reasons set out above, the Board is satisfied that the two tiers of the **Sime** test have been met and the grounds set out in s99(1)(b) of the Act have been established. We direct that the application now be set down for a hearing as to penalty during the June sitting of the Board.



A A Sinclair
Chairperson

REAL ESTATE AGENTS LICENSING BOARD

No. 2007/604

IN THE MATTER of an application under s99
of the Real Estate Agents Act
1976

APPLICANT **REAL ESTATE INSTITUTE
OF NEW ZEALAND INC.**

RESPONDENT **SHENG LIU also known as
VICTOR LIU**

HEARING: 7 June 2007

DECISION: 30 July 2007

APPEARANCES: T D Rea for the applicant
J Waymouth for the respondent

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

A A Sinclair (Chairperson), K Coakley, P Dudding, J F Hartnett-Kindley and R H Kirk

INTRODUCTION

1. This is an application under s99(1)(b) of the Real Estate Agents Act 1976 ("the Act"). The Board delivered an interim decision on 17 May 2007. Its findings are summarised in that decision. The Board was satisfied on the evidence that Mr Liu's conduct was sufficiently serious that it was in the interests of the public that the penal provisions of s99(1)(b) of the Act should be invoked and the application was set down for a further hearing as to penalty and costs on 7 June 2007.

SUBMISSIONS

2. The Board was grateful to receive the helpful submissions of Mr Rea and Mr Waymouth which we have taken into consideration in reaching our decision.

3. Mr Rea submitted that there were a number of aggravating features which he urged the Board to take into account when determining penalty. We summarise these features (as we consider them to be relevant), as follows:
 - (a) The document falsified by Mr Liu was a tenancy agreement which is a fundamental document in real estate practice;
 - (b) The falsification was elaborate and calculated. It involved the forgery of Ms Wu's signature in three places; fictitious details of chattels; false acknowledgement of payment of rental and bond; and rental of \$650 which, in addition to being false, was also inflated;
 - (c) Mr Liu provided the false tenancy agreement to Wizard knowing that it would be relied upon by Wizard in determining whether Ms Wu met Wizard's lending criteria;
 - (d) In reliance upon the tenancy agreement, Wizard advanced funds to Ms Wu in a situation where Ms Wu would not otherwise have met Wizard's lending criteria, thereby exposing Wizard to the risk of loss if Ms Wu had defaulted on the loan;
 - (e) Mr Liu's dishonest conduct was in the course of his employment as a real estate salesperson. In order to create the appearance of legitimacy, Mr Liu had also faxed the tenancy agreement from the offices of his employer, Barfoot & Thompson;
 - (f) Mr Liu was motivated by greed and a desire to obtain a commission which he knew he would not achieve if Ms Wu had not been able to raise finance;
 - (g) Mr Liu denied liability and maintained his innocence to the allegations, giving false evidence to the Board and accusing the Institute's principal witness, Ms Wu, of dishonesty.
4. Mr Rea submitted that there were no mitigating features.
5. In reply, Mr Waymouth submitted that Mr Liu still strenuously denied that he had completed the tenancy agreement without the knowledge and approval of Ms Wu.
6. As to mitigating factors, Mr Waymouth told the Board that Mr Liu's wife was expecting a child in August which meant that Mr Liu would be the sole income earner for some time. The loss of Mr Liu's employment as a real estate salesperson for too long a period of time, would put further stress on the family.

7. Mr Waymouth also produced a large number of references in support of Mr Liu. The testimonials were from lawyers, work colleagues and others in the community who have had dealings with Mr Liu. In summary, the references spoke favourably of Mr Liu's professionalism, honesty and integrity.
8. Counsel referred the Board to a number of prior decisions under s99(1)(b) of the Act. The cases of particular relevance are **Lolahea** (No. 96/420); **Singh** (No. 96/426) and **Ganesh** (No. 97/450) known as the "mortgage scam cases" and also the recent decision of **Zhu** (No. 2006/587).
9. Mr Lolahea had been involved in a number of fraudulent transactions involving (inter alia) the alteration of sale and purchase agreements to obtain mortgage finance. The Board accepted that Mr Lolahea had been motivated by his desire to assist members of the Tongan community to get into their own homes rather than by personal gain. No loss was suffered by the trading banks involved. In that case, Mr Lolahea was suspended for a period of 12 months and fined the maximum fine of \$750.
10. Mr Singh was also involved in a number of similar transactions. Again, no loss was suffered by the trading banks involved. The Board found that Mr Singh had been motivated by his desire to make sales and obtain commissions and not by any altruistic motive. He had also been deceitful in his explanation of his activities to his employer. Mr Singh was suspended for 18 months and fined \$750.
11. Mr Ganesh had altered sale and purchase agreements in order to obtain mortgage finance for his own property purchases. Prior to the hearing before the Board, Mr Ganesh was convicted of seven offences of dishonesty. By majority, the Board suspended Mr Ganesh for 20 months and fined him \$750.
12. Ms Zhu's dishonest conduct was of a different nature. Ms Zhu, following an auction, drafted an agreement for sale and purchase containing an inflated purchase price and by a separate document provided for a refund of \$100,000 to be paid to the purchaser. She did this in order to assist the purchaser with whom she had a personal relationship, to obtain finance.
13. Ms Zhu provided funds to pay the deposit and made an application to the ASB in her own name for finance following unsuccessful attempts by the purchaser to obtain funds. Ms Zhu did not disclose to the vendors that she had paid the deposit or that she had a personal relationship with the purchaser. No loss was suffered as the fraud was discovered before the transaction proceeded. This conduct took place in the course of Ms Zhu's activities as a real estate salesperson. Ms Zhu admitted her conduct when

questioned by an ASB investigator and her employer and she did not oppose the s99 application. In that case, Ms Zhu's certificate of approval was cancelled and she was fined \$750.

14. Mr Rea submitted that the appropriate penalty in this case was cancellation of Mr Liu's certificate. Mr Waymouth submitted that a period of suspension was acknowledged by Mr Liu as being inevitable however, he contended that the period of suspension should not be based on the length of suspension imposed for **Lolahea, Singh** and **Ganesh** as those cases all involved a series of transactions as opposed to a one-off event. He submitted that a period of suspension of six months was appropriate.

CONSIDERATION

15. While the Board takes into account the penalties imposed in prior cases, the penalty in each case has to be assessed having regard to the facts and circumstances of the particular case.
16. In the present case, Mr Liu has been found to have falsified a tenancy agreement. Mr Liu drafted the agreement for the specific purpose of presenting it to Wizard to obtain a loan in a situation where he knew that Ms Wu otherwise did not meet the lending criteria. As well as including false information, Mr Liu also forged Ms Wu's signature on the agreement. He then, without Ms Wu's knowledge or authority, presented the agreement to Wizard knowing that the company would rely upon it in considering Ms Wu's application for finance. By doing so, Mr Liu put Wizard at risk by inducing that company to advance moneys contrary to its lending criteria.
17. Throughout, Mr Liu was motivated by his own desire to make a commission. He did not give any consideration to the possible consequences of his actions for Wizard or Ms Wu if and when Wizard discovered that false information had been given in support of the loan.
18. Unlike the salespersons involved in the mortgage scam cases, Mr Liu denied any wrongdoing in his explanation to the Institute and continued to deny his wrongdoing before the Board. Indeed, at no stage has he acknowledged any wrongful conduct of any nature whatsoever or shown any remorse.
19. In the Board's view, Mr Liu's dishonest conduct is of a very serious nature. We have considered cancellation of Mr Liu's certificate of approval but after careful deliberation and taking into account all balancing factors, we are of the view that the appropriate penalty is a period of lengthy suspension and a fine.

ORDER AS TO PENALTY

20. The Board makes an order pursuant to s99(1)(b) of the Act suspending Mr Liu as a real estate salesperson for a period of 24 months. The period of suspension shall commence seven days after service of this decision on Mr Liu. Further, the Board orders that Mr Liu pay the maximum fine which the Board is able to impose under s99(4) of the Act of \$750. This fine is to be paid to the Board within 30 days following the date of service of this decision.

COSTS

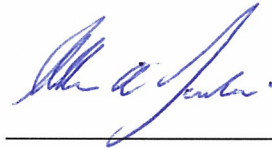
21. The Institute has been successful in its application and the Board finds that it is entitled to an award of costs. Mr Rea advised the Board that the Institute had incurred costs in relation to the liability hearing of \$44,898.97 (inclusive of GST and disbursements). These costs included Glaister Ennor's legal fees of \$42,489.67 and witness/expert fees for David Boot (handwriting evidence) \$180; Seagar & Partners (valuation evidence) \$2,025; and Pacific International Translations \$204.30. Copies of the various invoices were produced.
22. Further legal costs were also incurred in preparation for and attendance at the penalty hearing which have not been quantified. By way of a contribution to its costs, the Institute seeks an order in the global sum of \$30,000.
23. The Board has a wide discretion under s105 of the Act to award costs. In ***Peninsula Real Estate Services Limited and Leslie James Day*** (92/123), the Board observed (inter alia):

"Costs awarded to a successful party against an unsuccessful party should not be fixed as a penalty on the latter, but as a contribution towards the costs properly incurred by the former. They are intended to have a cushioning effect rather than achieve total reimbursement."

24. Mr Waymouth acknowledged the Board's discretion but submitted that the costs awarded should not be disparate from those awarded by the High Court and District Court. He submitted that if this matter had been before the High Court, the matter would have been given a 2B categorisation. The solicitors daily rate would have been \$1,600 and having regard to the work which was carried out, costs pursuant to the High Court Schedule would have been \$10,880. He further submitted that the present jurisdiction was more akin to the District Court and under the District Court Schedule, the daily rate was \$1,280 and the total costs award would therefore have been \$7,104.

25. Mr Rea submitted that the High Court and District Court cost schedules were not relevant to considering costs in this matter and further, Mr Waymouth's assessment of the costs, which would have been recoverable under either schedule, did not include for example, discovery, preparation of bundles of documents or briefs of evidence.
26. Mr Waymouth was critical of the presentation of the Glaister Ennor accounts. He referred in particular to the firm's invoice dated 26 February in which reference is made to a "two day hearing" before this Board. Mr Waymouth submitted that the description was misleading. The hearing on the first day had taken no more than one hour and on the second day, it had taken approximately four hours. Furthermore, no time records had been produced. Mr Rea acknowledged that the description of the two day hearing was not correct but assured the Board that the time recorded in respect of his attendances at the hearing on 14 and 15 February 2007, was accurate. As any order for costs was not going to be on an indemnity basis, we were satisfied with the description of the work undertaken by Glaister Ennor contained in the firm's invoices and did not require time records to be produced.
27. With regard to the witness/expert fees, Mr Waymouth accepted the amounts of \$180 for Mr Boot and \$204.30 for Pacific International Translation but submitted that Seagar & Partners' costs were unreasonable. In reply, Mr Rea explained that the Seagar's valuation was a historical one and required more time to be spent on preparation. He submitted that the fee in these circumstances, was fair and reasonable.
28. The costs incurred by the Institute on this application were very considerable. Some of these costs related to interviewing potential witnesses who were not subsequently called to give evidence and these costs are not recoverable. In large measure however, the Institute costs have been incurred because of the position adopted by Mr Liu in his defence of the Institute's application. This necessitated extensive enquiries by the Institute's solicitors as well as obtaining expert advice which inevitably, will now be reflected in the costs award.
29. We find that the witness/expert fees are all reasonable and are recoverable in full. After careful consideration of the Institute's invoices and taking into account Glaister Ennor's further costs incurred in relation to this hearing, we fix costs (including witness/expert fees) in the total sum of \$22,500.

30. We hereby order that Mr Liu pay costs to the Institute in the sum of \$22,500.



A A Sinclair
Chairperson