

REAL ESTATE AGENTS LICENSING BOARD

No. 2008/625

IN THE MATTER

of the Real Estate Agents
Act 1976

AND

IN THE MATTER

of an application under
Section 18 of the Act for
the grant of a real estate
licence to Impact Real
Estate Waitaki Limited

HEARING: 11 February 2008

DECISION: 11 March 2008

APPEARANCES: T D Rea for the Real Estate Institute of NZ Inc.
J Waymouth for the applicant

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

Hon W P Jeffries (Chairperson), P Dudding, M Giera, J Harnett-Kindley and D Russell

INTRODUCTION

Impact Real Estate Waitaki Limited applies for a real estate license with Maree Diane Thorpe as Principal Officer/Director.

The application has attracted a Notice of Objection by the Real Estate Institute of New Zealand Incorporated ["the Institute"], pursuant to S.19(2)(a) of the Real Estate Agents Act 1976 ["the Act"].

The grounds of the Institute's challenge are set out in a letter addressed to the Registrar dated 19 December, 2007 with a copy to the applicant company.

The factual base of the Institute's objection is that Ms Thorpe held the position of designated branch manager of Edge Real Estate Limited, a licensee based in Christchurch with an approved branch office in Dunedin. According to the Institute's original objection, Ms Thorpe is alleged to have occupied a statutory position requiring "effective control", defined in the

statute as ".....personally supervise, manage and control the conduct of the real estate agency business at that place and to work actively or substantially at or from that place": S.54 of the Act, when, from December 2006 to December 2007, she did not do so.

The applicant firm instructed Mr John Waymouth, an Auckland barrister, to represent the firm at the contested hearing of the application held on 11 February, 2008.

With the assistance of Mr Waymouth, documentary evidence of travel to and from Christchurch and accommodation expenses of Ms Thorpe in Dunedin was assembled and made available to Mr T D Rea, Counsel for the Institute.

At the opening of the Institute's case, Mr Rea properly conceded that the documentary evidence demonstrated sufficient involvement in the Dunedin branch office as to meet the test of "effective control" for the first half of 2007. However, the Institute maintained its challenge in relation to the second half of the year.

The Institute possessed information which it could not transform into admissible evidence due to the unavailability of the power to subpoena witnesses under the relevant part of the Act. Whilst the Board may receive hearsay evidence, it chooses not to do so in this case. An examination of the briefs submitted suggest controversy best resolved in cross examination. It is clear that the licensee business for which Ms Thorpe held employment was itself in a state of deterioration with disgruntled former staff.

The Institute itself, on February 2008, wrote to Mitch Goodall, the Principal Officer of Edge Real Estate Limited giving him notice that his conduct of the licensee business would be the subject of criticism at the hearing of the application of Impact Real Estate Waitaki Limited. In particular, on the face of the known documentary record, Ms Thorpe's brief of evidence contradicted advice given to the Institute by Mr Goodall in a letter dated 16 August, 2007.

Mr Goodall refused to accept the Institute's invitation to either provide a written explanation for the inconsistency or to appear at the Board hearing on 11 February, 2008.

The Institute relied upon the admissions of Ms Thorpe contained in her sworn evidence that she was ordered by Mr Goodall to direct her attention away from the Dunedin branch and to concentrate time at the Papanui, Christchurch branch of Mr Goodall's business. This event occurred in July, 2007.

Ms Thorpe provided detailed evidence of her time in Dunedin: August 2007 – five days, September 2007 – five days, October 2007 – one day, November 2007 – five days.

During this particular period, Ms Thorpe intended to purchase the Dunedin branch with Greg Webber who possessed a contract to acquire shares from Mr Goodall over a three year period.

The Goodall/Webber contract was cancelled and unbeknown to Ms Thorpe, Mr Goodall sold the Dunedin branch business to "Simes". Ms Thorpe learned of the fact of the alternative sale on 5 November, 2007 and in December 2007, resigned.

Ms Thorpe evidenced that her sole employment in real estate has been with Mr Goodall.

The question for the Board is whether the admitted facts provide a sufficient warrant to refuse to grant the application for a licence with Ms Thorpe as Principal Officer and Director?

Mr Waymouth reminds the Board of the Simes High Court test in relation to penalties in the real estate jurisdiction.

The Board observed Ms Thorpe provide evidence and explain herself under cross examination. Ms Thorpe was a direct and truthful witness.

The Board accepts her evidence of honest belief in relation to her conduct in the increasingly unstable work environment of Gillman Real Estate. Ms Thorpe believed that in the relevant period, she was going to acquire the Dunedin branch business but was compelled to spend time at the Papanui branch. Such conflict could not continue indefinitely and her resignation was inevitable.

Whilst, Ms Thorpe ought to have conscientiously refused Mr Goodall's instruction to work at Papanui whilst simultaneously occupying a position of responsibility at the Dunedin branch, she endured an unsatisfactory situation for a period of five months but resolved the conflict by resigning.

The Board accepts her explanation.

There is an issue regarding the name of the applicant which is capable of resolution with the Registrar. As for the substance of the application, the Board grants the application subject to the naming issue of the applicant company being resolved.



Hon W P Jeffries
Chairperson