

REAL ESTATE AGENTS LICENSING BOARD

No. 2008/628

IN THE MATTER

of an application under
S.94 and applications
under S.98 and S.33 of
the Real Estate Agents
Act 1976

BETWEEN

**REAL ESTATE
INSTITUTE
OF NEW ZEALAND
INCORPORATED**

Applicant

AND

**PAUL RONALD JOHN
ROMANOS t/a PAUL
ROMANOS REAL
ESTATE**

Respondent

HEARING: 23 June 2008 (in Wellington)

DECISION: 27th June 2008

APPEARANCES: Mr S N Haszard for the Real Estate Institute of NZ Inc.

DECISION OF THE REAL ESTATE AGENTS LICENSING BOARD

Hon W P Jeffries (Chairperson), P Dudding and D Russell

INTRODUCTION

The Real Estate Institute of NZ Inc ["the Institute"] has made three applications to the Real Estate Agents Licensing Board ["the Board"] One application is under S.94 of the Real Estate Agent's Act 1976 ["the Act"] seeking the licence issued to Paul Ronald John Romanos t/a Paul Romanos Real Estate to be cancelled. This application is accompanied by a S.98 application seeking interim suspension pending determination of the S.94 application.

The Board makes reference to subsection (1) of S.98. The question for the Board is whether there is evidence demonstrating that having regard to the interest of the public, it is necessary or desirable to grant the application for an interim suspension. Is the Board convinced that loss has occurred and there is possibility of further loss or damage occurring if it does not make such an order?. In the event that the S.98 application is granted, the Institute also seeks an order under S.33 of the Act vesting control and administration of the trust account of the licensee with two nominated members of the Institute

As this is an application for an interim suspension order which is being heard on an ex-parte basis, the Board repeats its practice that it is astute to the fact that such an order has an impact on the means of earning a living for a licensee. Accordingly an opportunity will be extended as soon as practicable for the affected licensee to make an application for the revocation of the interim suspension pending the substantive hearing of the S.94 matter, should there be an evidential issue that needs to be addressed.

EVIDENCE

In 1999 the MacRitchie Family Trust, as owner/developer was nearing the completion of a new apartment block in Allen Street, Wellington City, consisting of 16 separate apartments together with support facilities. On the 22 July 1999, the owner/developer MacRitchie Family Trust appointed Mr PRJ Romanos who at that time was the Principal Officer/Director of Ray White Real Estate (Wellington) Limited, as Manager of the proposed Body Corporate for this new development located at 26-32 Allen Street, Wellington.

In 2000 Mr Romanos made an offer to the Solicitors acting on behalf of the Body Corporate, a Mr Richard Perry, Solicitor, Wellington, by way of a letter dated 17 January 2000. Mr Romanos offered to occupy the position of Manager of the proposed Body Corporate and in due course become the secretary once the Body Corporate had been formed and registered with Land Information New Zealand. In this particular letter under the letterhead of Paul Romanos Real Estate, the licensee in this particular application, Mr Romanos proposed that he would manage the Body Corporate and provide secretarial services and that he would ensure that financial statements were made available to the owners. The offer was accepted.

In the course of the next six months or year the building was completed and the 16 apartments were acquired and the Body Corporate was duly registered.

Mr Romanos did become the secretary of the Body Corporate.

At this hearing, Dr Ken Kirkpatrick who was one of the original owners and who at all times has been chairman of the Body Corporate, gave evidence. Dr Kirkpatrick outlined the arrangements with Mr Romanos. The Body Corporate met at least once a year. Levies were imposed on the various apartment owners to fund the Body Corporate and to pay a stipend to Mr Romanos

Evidence from a Ms Lissaman, an apartment owner, reveals that the gross revenue administered by Mr Romanos averaged around \$100,000.00 per year. Out of these funds Mr Romanos paid for the services associated with the general building, as distinct from the particular apartments. These expenses included insurance, lift maintenance and rubbish removal.

At some undefined period, Dr Kirkpatrick decided that it was preferable that more than one signature authorised expenditure payments from the corporate funds. He duly instructed Mr Romanos as secretary to implement these instructions. Mr Romanos secured the requisite banking authorities from the Bank of New Zealand and arrangements were made for both Dr Kirkpatrick and another apartment owner to become co-signatories. Dr Kirkpatrick understood from that period on, that for cheques paid out of funds of the Body Corporate, either he or another owner and Mr Romanos also signed such cheques. In fact, occasionally other co-signatories were involved in signing cheques.

In March 2008, Otis Elevator Company Limited, a major lift maintenance provider, contacted Dr Kirkpatrick to advise that some five quarters of invoices amounting to \$7,000 had not been paid from the corporate funds. This event triggered an investigation started by Dr Kirkpatrick and ably assisted by the apartment owner Ms Helen Joyce Lissaman who as previously stated gave evidence. Miss Lissaman is presently an independent project manager contractor. She is also a chartered accountant maintaining her qualifications with the Institute and in addition to that she has had some years of professional experience in Audit New Zealand. Both these owners began a preliminary investigation and established on their assessment about \$40,000.00 of funds had been deducted by Mr Romanos from the Body Corporate without legitimate justification.

On this basis in early April, 2008, Dr Kirkpatrick and Ms Lissaman met Mr Romanos in Wellington and confronted him with the facts that there had been a shortfall. According to Dr Kirkpatrick, Mr Romanos said to him "Do you want me to come clean on this matter" and

when he was told "yes", Mr Romanos admitted that he had been making payments for his own purposes and that he believed the short fall would amount to a few thousand dollars.

Ms Lissaman gave separate evidence on the same conversation and corroborated the statements that had been made by Mr Romanos to both Dr Kirkpatrick and herself at this meeting. Therefore, on the admission evidence of Mr Romanos alone, there is sufficient proof before this Board to justify the application that has been made.

In addition Ms Lissaman due to her professional expertise has provided valuable preliminary investigative evidence in a documentary form to the Board. This evidence has been explained by her and is also summarised in a document titled "Misappropriated Funds". Ms Lissaman has provided documentary evidence to show there is a short fall of \$45,690.38 partly traceable to internet withdrawals from the corporate bank account directly into accounts under the control of Mr Romanos. Mr Romanos was able to achieve internet bank account transfers on the basis of a single signatory on the Body Corporate account. It is the policy of the Bank of New Zealand that internet transfer payments can only occur where there is authorisation for one person to make such payments. This is clear evidence that the instructions that the owners had given Mr Romanos to implement arrangements for co-signatories on the Bank of New Zealand accounts never occurred. This fact is also confirmed by Dr Kirkpatrick when he first discovered the short falls in the management of these accounts. Dr Kirkpatrick approached the bank requesting bank statements. The Bank in the first instance refused to provide the statements on the bank's understanding that only Mr Romanos had access to these statements. In addition to the internet withdrawals which amount to some \$28,000.00, there are cash withdrawals from the 31 May 2006 being thirty in all amounting to about \$8,600.00. There are other categories of unauthorised payments made to vendors of which there is not a known relationship between the owners and these particular vendors.

This documentary evidence is sufficient to convince the Board that loss has occurred in respect of the administration by this real estate agent who has performed corporate secretarial duties in his capacity as a real estate agent. If the Board does not make an interim suspension order, the Board holds that there is the possibility of further loss or damage occurring in relation to the management of the real estate business of this particular licensee.

The application is granted.

This means the Board turns to the application under S.33 relating to the administration of the trust accounts of Paul Romanos Real Estate. Such an order will be made for Euon Murrell and Graham Snell as the nominated members of the Institute to have immediate responsibility for the administration of the trust account of Paul Romanos Real Estate.



Hon W P Jeffries

Chairperson