

**REAL ESTATE AGENTS LICENSING BOARD**

No. 2008/651

**IN THE MATTER**

of an application under  
s99 of the Real Estate  
Agents Act 1976

**APPLICANT**

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

**RESPONDENT**

**NING KUN YUAN (aka  
AKEN YUAN)**

**HEARING:** 10 December 2008

**DECISION:** 19 December 2008

**APPEARANCES:** S Haszard for the Institute  
F Godinet for the Respondent

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

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

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**INTRODUCTION**

The Real Estate Agents Licensing Board ["the Board"] refers to its decision of 23 October 2008 when on the application of the Real Estate Institute of New Zealand, Inc. ["the Institute"] the Board granted the Institute's application under S.98 of the Real Estate Agents Act 1976 ["the Act"] for interim suspension of the certificate of approval to act as a salesperson held by Ning Kun Yuan (aka Aken Yuan) employed by the Auckland real estate firm Barfoot and Thompson Limited ["Barfoot & Thompson"].

The next step was to set the substantive matter down for a scheduled hearing before the full Board to consider the S.99 application for permanent orders against the suspended salesperson.

Accordingly, the matter came before the Board on 8 December 2008. However, prior to the scheduled hearing, Counsel for the Institute, Mr S Haszard and Counsel for Mr. Yuan, Mr.

Godinet, entered into dialogue resulting in Mr. Yuan's Counsel advising the Board on 28 November 2008 that Mr. Yuan accepted liability but sought to be heard in relation to penalty.

## EVIDENCE

The direct evidence of misconduct consisted of two false documents, a listing agreement and a valuation document.

Regarding the listing agreement there is no dispute as to the central fact that the vendor had authorised Mr. Yuan to sign the agreement. The fault was that Mr. Yuan signed the vendor's name without the necessary explanation of "pro persona", "pp", literally "for the person".

The facts of this mistake became evident as a result of proper supervision by a Barfoot & Thompson branch manager who reprimanded Mr. Yuan and kept a record of the reprimand.

The second piece of direct evidence involved a valuation. Again, the central fact which relieves Mr. Yuan from the full burden of penalty for falsity, is that the actual valuation figure was objectively below a subsequent expert opinion assessment of current rental value of the rental property in question. The fault is that Mr. Yuan artificially created this document in order to facilitate a transaction.

The indirect evidence against Mr. Yuan is based on his frank admission to his manager that he had, on other occasions, prepared false rental valuations to the extent that the documents purported to be genuine, but were not, but, the key point, unproven though it is that the actual valuation figures did not mislead. There has been no adverse reaction from the purchasers of the properties who relied upon these rental valuations to make offers to acquire real estate.

The employers, Barfoot and Thompson, provided two affidavits from Mr. Thompson, a part-owner of the company, and Mr. Workman, the manager of the New Lynn branch. This evidence explains the internal audit of professional performance measures of the firm. This evidence both exposes the misconduct of Mr. Yuan but also explains the extraordinary high work rate of Mr. Yuan. A clear profile of a highly motivated and skilled salesperson emerges with the proven tendency to adopt expediciencies in order to complete a sale transaction.

Mr. Godinet submitted that an analysis of the facts did not establish losses flowing from the admitted irregularities. Mr. Godinet adduced some fifteen commendations of Mr. Yuan written by clients and colleagues. Mr. Godinet submitted that this high performing 31 year old had suffered financial loss out of the suspension and that he was not a risk to the public.

**PENALTY**

The Board is obliged to consider the public interest factor which requires penalisation of real estate participants who do not strictly abide the duties of their statutory position. There is a wealth of examples of people who begin to commit non-loss expedencies resulting in a dulling of their internal standards of integrity. When an opportunity presents to avoid an inconvenient fact, such persons tend to descend into serious criminality causing loss to innocent victims. The answer is for authorities to respond early and forcefully in order to divert such serious misconduct. This has occurred in this case.

Barfoot and Thompson and the Institute have acted in the public interest by confronting this matter now.

The Board concludes that Mr. Yuan is worthy of a chance to redeem his real estate career having regard to the strong and diverse evidence of support of his normal conduct, but interference with documents must be penalised by suspension of twelve months.

Therefore, Mr. Yuan's certificate of approval will remain suspended until 23 October 2009.



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**Hon W P Jeffries**  
Chairperson