

VALUERS REGISTRATION BOARD

IN THE MATTER OF

an Inquiry under
Section 32(2) of the Valuers Act 1948

AND

IN THE MATTER OF

Charges under Section 31(1)(c) of the
Valuers Act 1948 and in the matter of a
complaint against **Valuer C**

BOARD OF INQUIRY:

PA Curnow (Inquiry Chairperson)
MEL Gamby
H J Puketapu

COUNSEL:

Ms S Carter for the Valuer General
Valuer C represented themselves

DATE OF HEARING:

24 February 2014

DATE OF ORAL DECISION:

24 February 2014

DATE OF WRITTEN DECISION:

9 February 2015

BACKGROUND

1. In June 2008 Valuer C was working as a registered valuer for Company 1, who were instructed by the complainants to provide a valuation report on a residential block of land, the subject property. The report was for the purpose of the complainants considering the land for mortgage security purposes.
2. The report was completed and signed on 16 June 2008 by Valuer C and counter signed by Valuer P, also a registered valuer at Company 1. Valuer P was counter signatory, as the complainants required an ANZIV/SPINZ qualified valuer.
3. The land was valued at \$1,500,000 inclusive of GST, if any. A mortgage recommendation of \$725,000 was provided for. In reliance on the valuation the complainants advanced \$975,000. Their client subsequently defaulted four months later.
4. In anticipation of a mortgagee sale, in October 2008 the complainants obtained a new valuation report from Company 2. The complainants were advised as at 15 October 2008 the value of the property was \$650,000 inclusive of GST, if any. The property was subsequently sold at public auction in 2009 for \$287,000.
5. Due to the disparity between the Company 2 report and the Company 1 report, the complainants instructed Company 2 to peer review the valuation provided by Company 1. Concerns were raised in the peer review and, as a consequence, the complainants instructed Valuer 2 to provide a further retrospective valuation report and peer review of the Company 1 report. Valuer 2 valued the land as at 16 June 2008 at \$692,000 plus GST, if any, and he also confirmed that the Company 1 report had serious deficiencies.
6. A formal complaint was filed with the Valuers Registration Board on the 7 December 2010. The Valuer General instructed two valuers to provide a retrospective valuation as at the 13 June 2008, the date that the authors of the Company 1 report stated that they had inspected the subject property.
7. Valuer 3 valued the property at \$600,000 including GST, if any, whilst Valuer 4 valued the property at \$980,000 including GST, if any.

8. Taking the highest retrospective valuation, that of Valuer 4, the Company 1 valuation of \$1,500,000 is 53% above the nearest retrospective valuation.
9. In response to the complaint, Company 4 on behalf of Valuer C wrote to the Valuer General in January 2011 challenging the Valuers Registration Board's ability to investigate the complaint. The Valuer General was advised that Valuer C had not been a registered valuer since mid-2010. Further, that unless the Board reversed its decision to investigate, "our client will have no choice but to apply for a judicial review of the Board's decision".
10. In March 2011 the Valuer General was advised by Company 4 that they no longer represented Valuer C and was not able to advise on Valuer C's address.
11. The Valuer General wrote to Valuer C on the 12 April 2011 at Valuer C's last known address. This letter arrived back at the Valuer General's office noted "return to sender".
12. The first response from Valuer C since the January 2011 letter and repeated efforts by the Valuer General to contact them, came in a letter dated 11 December 2013.
13. In this letter Valuer C repeated the challenge to the Valuers Registration Board jurisdiction. Further, that full responsibility for the valuation lay with Valuer P. Valuer C said that they have neither been registered nor practiced for close to four years.
14. The position advanced by Valuer C was not accepted by the Board. The Board ordered an inquiry be held and this took place in Wellington on 24 February 2014.

THE CHARGES

15. Two charges were notified to Valuer C. By email dated 29 January 2014 Valuer C advised the Board they intended to plead guilty to the charges.

The two charges that Valuer C faced were:

1. Section 31(1)(c) of the Valuers Act 1948:

That you have been guilty of such incompetent conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 in that in compiling a valuation report dated 16 June 2008 with respect to a property you grossly over-valued the said property.

2. Section 31(1)(c) of the Valuers Act 1948:

That you have been guilty of such unethical conduct in the performance of your duties as a valuer as renders you liable to a penalty provided by the Valuers Act 1948 in that in compiling a valuation report dated 16 June 2008 with respect to a property you failed to exercise the utmost care and good faith to ensure the maintenance of the highest standards in the preparation of the report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.

Particulars: you failed to provide sufficient information to permit those who read and rely on the report to fully understand its data, reasoning, analysis and conclusions in breach of International Valuation Standard 1 Clause 5 Statement of Standards.

SUBMISSIONS ON PENALTY AND COSTS

Valuer General

16. The Valuer General submitted that there were three factors that aggravate the seriousness of Valuer C's conduct and justify both a reprimand and a fine at the lower to middle range of the available level for a fine, this being up to \$10,000;
- 16.1 The extent of the over valuation. Valuer C's valuation is 53% higher than the highest retrospective valuation.
- 16.2 The wholesale non-compliance with IVS 1 Clause 5.1.4 and ANZVGN 1 Clause 4.5 in that:
- 16.2.1 The report fails to articulate in any detail the legal interest which the property was subject to and which would impact upon the valuation. Significantly, the report fails to mention that separate titles could not be issued until such time as the local authority was satisfied that each of the Lots were stable and suitable for building on, that there was a requirement for a certain housing construction and design for the benefit of the overall subdivision and that the shared access way for Lot 16 had a maintenance and repair requirement the cost of which were to be borne equally by each of the Lots owners.

- 16.2.2 The value of the gross realisation stipulated, namely \$1,670,000 has no bearing on the individual sales that are said to constitute that amount.
- 16.2.3 There is no explanation as to how the individual Lots have been valued and there is no comparative analysis between the subject Lots and the supplied sales evidence.
- 16.2.4 There are no costs and allowances provided within the report which are required for a sale in one line or single transaction value pursuant to ANZGN1.
- 16.3 The loss occasioned to the complainant. Even if they had loaned the amount recommended, the losses would have been substantial because of the over valuation.
- 17 The Valuer General submitted that there are only three matters that mitigate the seriousness of what occurred.
- 17.1 The first of these was the guilty plea. It must be noted however that this guilty plea was entered late in the proceedings and until the 29 January 2014 Valuer C had failed to cooperate with the investigation.
- 17.2 The second aspect in mitigation is that this is the first time Valuer C has appeared before the Valuers Registration Board.
- 17.3 The final matter in mitigation are the personal matters which may be relevant to any penalty imposed.
- 18 The Valuer General did not accept that the counter signing by Valuer P lessened Valuer C's culpability. As a registered valuer, Valuer C had a duty to adhere to the Rules and Standards in force at the time.
- 19 Nor is the borrowers fraudulent conduct a matter that mitigates Valuer C's actions. If the valuation had been done appropriately and even if the borrower had no intention of honoring the loan, with a prompt mortgagee sale by the bank the losses may have been recoverable.
- 20 The Valuer General submitted that the purpose of professional disciplinary regimes is to ensure that appropriate standards of professional conduct are maintained in the occupation concerned. It is not to punish the professional, although that may be an inevitable result.

21 The Valuer General recognised that the report was written at a time when the market had undergone/was undergoing a change due to the global financial crisis and therefore not the easiest market to value in. However, the valuation provided is significantly inflated and the difficult market can be no excuse for the poor structure of the report and the serious deficiencies of the information contained therein.

22 The Valuer General submitted that due to the extent of the over valuation, combined with the breach of Clause 1.5 of the Code of Ethics, a reprimand would not be a sufficient penalty. It was submitted a fine at the lower to middle of the range should be imposed, that is between \$1,000 - \$5,000. The Valuer General accepts that the penalty should be lower than that imposed on Valuer P of \$6,500.

23 Valuer C had been registered since 2000, so had been registered for some time prior to the valuation complained of.

24 The Valuer General stated that the costs totalled \$31,123.01 based on the following;

Legal Fees	\$10,998.21
Valuer Generals Costs	\$14,576.25
Board Costs	\$ 5,548.55

25 That whatever costs are not imposed on Valuer C then others registered under the Valuers Act 1948 will carry the burden. Based on numerous decisions of disciplinary tribunal hearings 50% of costs is regarded as a starting point, increasing if there are aggravating factors to justify an increase or, decreasing where mitigating factors exist that would justify that course of action. The late guilty plea meant that greater expert witness and legal expenses were incurred for this Inquiry in comparison to Valuer P's hearing.

26 It was submitted that costs should be assessed at 60%, in the sum of \$18,673.81.

Valuer C's Submission

27 Valuer C had both a written submission and spoke extensively in their defence. The key points that Valuer C highlighted were:

- Their guilty plea;
- That this is their first offence;
- The lack of a robust peer review from Valuer P and that Valuer P was the senior valuer;
- Valuer C's poor mental and physical health at the time of the valuation;
- That they deeply regret the valuation and as a result lost their job and income.

28 Valuer C elaborated on the timing of their guilty plea. They said they were confused on some points of law and drew attention to an article by Mr Gordon, the Chair of the Professional Practices Committee for the Property Institute. This article had stated that for valuation reports from valuers that are non-registered or not yet with associate status, that full responsibility lies with the counter signing registered valuer. Valuer C did later speak with Mr Gordon and accepts that Mr Gordon's comments were specifically aimed at non-registered valuers.

29 Valuer C accepted that they missed something in the land consent, "a bad miss", and that they shouldn't have been valuing in the subject area.

30 With respect to their health issues, Valuer C produced some documentation that verified they were struggling with their physical and mental health during the 2008 period.

31 In part answer to the Valuer General's contention of not cooperating with the complaint process, Valuer C did acknowledge they were difficult to contact for a period. This was due to moving five times, their anxiety in dealing with the matter, their health and the Christchurch earthquakes.

- 32 Upon questions from the Board, Valuer C acknowledged that their employer, Company 1, was not aware of their health issues. They were a contractor to Company 1 and as such had no protection. Further, after they lost their job they had to obtain legal assistance to collect unpaid valuation commissions.
- 33 That Valuer P only said they had concerns about Valuer C's work after the complainants, through their solicitors, raised the matter of the over valuation with Company 1.
- 34 Valuer C apologised to the Board and said they were very sorry for their actions. They were embarrassed to appear at the hearing as Mr Gamby had been on the panel that examined them for their registration.
- 35 Valuer C submitted that they would like the Board to err at the lower end of the scale of fines. Also, Valuer P was able to split their costs as two Valuer Registration Board hearings were held the day that Valuer P appeared.
- 36 Valuer C also requested that the Board consider some form of name suppression. That they are the fourth person of their name from a proud family and that publication of the Board decision could have wider implications for the family.

BOARD OF INQUIRY DECISION

- 37 Valuer C pleaded guilty to the two charges but this occurred only at a very late stage. Only the costs of the witnesses appearing at the hearing was able to be avoided.
- 38 The Board views as serious the extent of the gross over valuation, this valuation being 53% higher than the closest retrospective valuation.
- 39 Likewise, the deficiencies in the report are a departure from the requirement to "exercise the utmost care and good faith to ensure the maintenance of the highest standards in the preparation" of that report. Thereby, breaching Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.
- 40 The report was however counter signed by Valuer P, a director of Company 1 and a more senior valuer, having the required status by the complainants of being ANZIV/SPINZ.

- 41 The Board accepts the submission by the Valuer General that the penalty should be lower than that imposed on Valuer P of \$6,500. The reason for this being the relative culpability for the gross over valuation and deficient report between Valuer C and Valuer P.
- 42 In attending the hearing, Valuer C was able to articulate their work and health circumstances more eloquently than a written submission could have achieved, and the Board appreciates this forthright approach. Valuer C has acknowledged their valuation mistake.
- 43 The Board confirms its verbal decision at the hearing to reprimand Valuer C and impose a fine of \$1,000.
- 44 Further, the Board does not accept the naming suppression on the grounds as put forward.
- 45 The Board, in the verbal decision, awarded costs against Valuer C at 40% of the costs that the Board deems appropriate.
- 46 A review of the costs put forward by the Valuer General has seen the Board costs reduced from \$5,548.55 to \$4,399.05, as a result of other Board matters being able to be completed on the 24 February.
- 47 The revised costs total \$29,973.51, of which 40% is \$11,989.40. The Board has rounded the costs awarded against Valuer C to \$11,900.00.
- 48 Summary of the findings against Valuer C;
- ▶ Reprimand and fine of \$1,000
 - ▶ Costs of \$11,900
 - ▶ Naming suppression rejected

PA Curnow
Chairperson
9 February 2015