

**VALUERS REGISTRATION BOARD**

**IN THE MATTER OF**

an Inquiry under

Section 32(2) of the Valuers Act 1948

**AND**

**IN THE MATTER OF**

A charge under Section 31(1) (c) of the  
Valuers Act 1948 against **Valuer L**

**BOARD OF INQUIRY:**

H J Puketapu (Inquiry Chairperson)

ME Gamby

PA Curnow

**COUNSEL:**

Ms Sally Carter for the Valuer General

Witness 1 assisted by Mr Steve

McNamara for Valuer L

**DATE OF HEARING:**

5 December 2016

**ORAL DECISION (PARTIAL):**

5 December 2016

**WRITTEN DECISION:**

30 June 2017

**PENALTY AND COSTS DECISION:**

15 January 2018

**Table of Contents**

Preamble ..... 3

Submissions on Penalty ..... 5

Penalty Conclusion ..... 6

Submission on Costs - Valuer General ..... 6

Submission on Costs – Valuer L ..... 8

Summary ..... 10

## Preamble

1. In a written decision of 30 June 2017, the Board of Inquiry ('Board') confirmed its interim oral decision.
2. The Board's interim oral decision is set out at paragraph 86 of the written decision repeated below:

*"Valuer L: faces 4 charges of incompetent conduct in the performance of their duties as a valuer in compiling a valuation report dated 29 May 2015 with respect to a property.*

*With respect to charges 2 and 4, the Board of Inquiry makes the following comments.*

*In connection with Charge 2, the evidence of Valuer 3 is that the written Scope of Work within the report being in breach of IVS101 was incorrectly drawn. This Charge fails and is dismissed.*

*With respect to Charge 4i, the evidence of Valuer 3 and the questions from the Board indicate that this matter was not a significant factor in this particular complaint. With respect to Charge 4ii, Section 4 of NZRPGNZ relates to recommendations that the registered valuer countersigning the report inspect the property, not the accuracy of the valuation. That is not to say the Board condones the reporting as seen as there were clearly uncorrected errors in successive reports. With respect to Charge 4iii, there has been no evidence of any Standards breached; however again all unregistered valuers should be adequately supervised. Accordingly, Charge 4 is dismissed.*

*Therefore that leaves Charges 1 and 3, and the Board invites written submissions on those."*

3. In a submission dated 21 July 2017, the Valuer-General reiterated the two charges proven against Valuer L.
4. For completeness, the charges are repeated below:

### Charge One

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

You have been charged with such incompetent conduct in the performance of your duties as a valuer as to render you liable to a penalty provided by the Valuers Act 1948 **in that**, in compiling a valuation report dated 29 May 2015 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 allowed more than one report (under the same instruction with the same date of inspection) to be in existence, with no explanation as to why the

valuation was different or that there existed another valuation by you under the same instruction.

### **Charge Three**

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

You have been charged with such incompetent conduct in the performance of your duties as a valuer as to render you liable to a penalty provided by the Valuers Act 1948 **in that**, in compiling a valuation report dated 29 May 2015 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 did not explain in the report the basis on which the "as if complete" market value assessment had been made and there was no linking of the comparable sales evidence to the valuation assessment in breach of IVS103.

5. The Board concluded that Charge One was proven and that, in this particular case, no disciplinary sanction was warranted. However, the Board would consider if a costs order is appropriate on Charge One.
6. With respect to Charge Three, the Board determined that the breach was sufficiently serious to warrant both a disciplinary sanction and a consideration of costs.
7. Valuer L presented three reports, successively over a period of time, all with the same effective date and all with the same valuation Identification Number ('ID').
8. With the exception of amendments to the wording within the reports to correct errors and a minor change to the value level between reports two and three, the reports can be considered as virtually identical and indistinguishable. That is the matter relating to Charge One, but also has implications for Charge Three, which relates to the 'as if complete' value.
9. In the first report, the 'as if complete' value was \$1,050,000 including chattels, \$1,040,000 excluding chattels. There was no explanation, other than a recital of sales, as to how that value level had been arrived at.
10. Four sales were included in support of the 'as if complete' assessment ranging from \$970,000 and \$990,000 at the lower level considered inferior, up to \$1,050,000 and \$1,115,000 being properties considered comparable or superior.
11. On a direct comparison basis, the report would have been considered satisfactory, if the sales had been discussed and if, within the body of the report, it was clear as to how the 'as if complete' value had been arrived at.

12. A reader of the first report could not discern from its contents what work was to be undertaken and how the concluded value 'as if complete' could have been concluded on a basis comparable to the sales evidence. No plans were provided, no discussion of the work to be undertaken, no cost or provisional cost estimate and no construction details. The description of the proposed work being totally inadequate, the Board concluded that the report breached IVS 103 and was therefore a breach of Clause 1.5 of the New Zealand Institute of Valuers' ('NZIV') Code of Ethics.
13. The second report, provided some little time later, repeated the 'as if complete' sections without alteration.
14. In the third report, for reasons that were not explained, the value was increased to \$1,100,000 including chattels and \$1,090,000 excluding chattels and there was a change made to the sales evidence relied upon. The lowest and oldest of the sales was removed from the sales selection and replaced with a different later sale, worth over \$150,000 more than the original sale relied upon.
15. Apart from these changes, no further information on the 'as if complete' value was provided in the third report. It was never made clear to the Board how the 'as if complete' value had been arrived at based on the data which Valuer L was assumed to have in their possession at the time.
16. The Board described this approach as a 'site valuation', meaning a valuation as a stated sum by comparison with sales said to be comparable but without any analysis. Without background detail it was simply not possible to determine what work was to be undertaken, how it would comply with plans, how the final property might look on completion and what the costs might be to achieve completion of the work.

### **Submissions on Penalty**

17. In mitigation, Valuer L could rely on the fact that they had not previously appeared, or been found guilty, of charges before the Board.
18. The Valuer-General submitted that this matter is at the lower end of the scale and cannot be regarded as very serious in this case. The submission for the Valuer-General was for a reprimand and a fine in the region of \$2,000.
19. For Valuer L, there were two submission documents on penalty and costs, the first dated 28 July 2017 and the second dated 28 August 2017.
20. The second submission is a part duplicate of the first, extended to include a submission on costs, dealt with late in this decision.
21. The submission on behalf of Valuer L relating to penalty was relatively extensive and not well directed to the charge to which a penalty is to be considered.

22. The Board accepts that, at the time, there was uncertainty in the valuation industry as to how to deal with reissuing reports, both in terms of amendments to the contents and a change to value levels. It was for that reason of uncertainty and the relatively low level of seriousness relating to the facts in this case that the Board did not impose a sanction. The Board considers that its decision on sanction should not be extended to negate a consideration of costs incurred on Charge One as Valuer L's procedure was in error and a breach of the Code of Ethics.
23. With respect to Charge Three, there was an acknowledgment by Valuer L's employer on behalf of Valuer L that the report templates used by them at the time included 'limiting factors' when completing multiple valuations within one report. This apparently had implications for completing the 'as is' and the 'as if complete' valuations in the one document.
24. One of the failings of template style valuation reporting is that the report itself can become a 'paint by numbers' exercise, even where there is provision in the document for the valuer to make alterations. In this case amendments to the report template were required to incorporate sufficient detail to comply with the Standards and Code of Ethics of the NZIV. A registered valuer cannot shield behind a valuation firm's report template as a basis for non-compliance.
25. The report template of Valuer L's employer was not fit for purpose to deal with multiple valuations within one report and the Board records that this was acknowledged on behalf of Valuer L.
26. The mitigating factors submitted were largely explanations on behalf of Valuer L's employer of why the errors occurred rather than mitigating factors on behalf of Valuer L. On penalty, for Valuer L it was submitted that a reprimand and a fine not exceeding \$500 would be appropriate.

### **Penalty Conclusion**

27. The Board of Inquiry has determined that the breach is at the lower end of the scale, reprimands Valuer L and imposes a penalty of \$1,000.

### **Submission on Costs - Valuer General**

28. The submission for the Valuer-General dated 21 July 2017 included reference to Case Law with a start point of 50% of total reasonable costs. The explanation why the general standard starting point of 50% should be amended to 40% was comprised in a comment that two of the four charges were proven and the two charges not proven would have, to some extent, contributed to the length of the hearing and the time spent on investigation.
29. The memorandum for the Valuer-General in relation to costs was submitted seven days after the submissions and dated 28 July 2017. Total costs of legal, investigation/prosecution and Board expenses total \$27,816.30.
30. Based on 40%, the Valuer-General submitted that costs should be awarded of \$11,126.52.
31. The full costs as submitted for the Valuer-General are set out below, both in summary and details form:

## Summary of Costs

(a)	Legal fees and disbursements	\$12,384.05
(b)	Investigation/prosecution costs associated with witnesses, Valuer-General and his staff	\$8,801.15
(c)	Board expenses	\$6,631.10
	<b>Total</b>	<b>\$27,816.30</b>

## Detailed Costs

### Valuer General's Costs

#### A     Investigation

Valuer General's staff costs:	1,709.27	
Check Valuers Fees:	2,300.00	
		<hr/>
		\$4,009.27

#### B     Prosecution

Valuer General's staff costs:	1,290.87	
Witness fees & expenses:	3,501.01	
Check Valuer		
Legal Fees	TBC*	
		<hr/>
		\$4,791.88

TOTAL		<hr/>	\$8,801.15
-------	--	-------	------------

All figures Include GST.

## Memorandum of Costs

### Hearing of Charges against Valuer L - 5 December 2016

Sitting	H J Puketapu (Chair) ME Gamby PA Curnow	
Registrar:	M Doyer	
Board Members Fees:	H J Puketapu    1 day at \$540.00 (Hearing)	\$540.00

	3 days at \$540.00 (Decision)	\$1620.00
	ME Gamby 1 day at \$390.00	\$390.00
	PA Curnow 1 day at \$390.00	\$390.00
Accommodation:	3 members at \$269.00 per night	\$807.00
Travel Expenses - GST inc	H J Puketapu Airfares	\$598.00
	M E Gamby Airfares	\$453.00
	P A Curnow Airfares	\$478.00
	Registrar (9 hours at 75.00 per hour)	\$675.00
	SUB TOTAL:	\$5,951.00
Plus Allowances (Not liable for GST)	3 members at \$62.80 per day for day	\$188.40
	Incidentals allowance (3 x \$7.90 for 1 day)	\$23.70
Car Expenses:	Taxi/Mileage for HJ Puketapu	\$158.00
	Taxi/Mileage for M E Gamby	\$178.00
	Taxi/Mileage for PA Curnow	\$132.00
	<b>TOTAL:</b>	<b>\$6,631.10</b>

## **Submission on Costs – Valuer L**

32. For Valuer L it was submitted that a large proportion of the costs were incurred unnecessarily and should not be awarded.
33. There is merit in the submission that there was no complaint regarding quantum and that the retrospective valuation undertaken by the Valuer-General supported Valuer L's assessment.
34. For Valuer L, issue was also taken as to the quantum of costs relating to the retrospective assessment of \$2,300 compared with a fee for Valuer L's report of \$700.
35. The Board is mindful that investigations of this nature requiring a retrospective assessment inevitably cost far more than the original valuation. A valuer preparing a retrospective assessment has to research an historic market of past transactions and is to disregard any events that may have occurred after the valuation date. The valuer is also put on notice that they may be required to defend the valuation before the Board. The Board therefore does not take issue with the cost of \$2,300.
36. It is noted that the assessment supported Valuer L's valuation and no charge was laid with respect to quantum. The valuation cost has therefore been removed from consideration. Valuer-General staff costs for the investigation totaled \$1,709.27 which included investigation on the Standards and Ethics components. Although these would have likely been for the greater amount of work, it would be difficult to apportion the costs in a precise manner. The Board has taken 50% relating to the retrospective assessment and 50% to the part of the investigation that gave rise to Valuer 3's instructions.
37. For Valuer L, it was submitted that the peer review provided by Valuer 3 costing \$3,501.01 was deficient and unnecessarily added to the overall costs.
38. The Board of Inquiry does not accept that submission on behalf of Valuer L, criticizing Valuer 3's peer review or evidence, not the least because a substantial part of the hearing related to the Scope of Work which ultimately was found unproven yet the Scope of Work process was not satisfactory, was provided on a piecemeal basis and required the reader to interpret what the Scope of Work was from different documents or parts of documents.
39. With respect to Charge One, the Board found Valuer 3's evidence helpful relating to the lack of version control in Valuer L's employer's reports and production of three successive reports, all of the same date, with variations in content including a change to the 'as is' and 'as if complete' values in the third report. Any one of the reports could have been used by the client.
40. On the proven Charge Three, there was little cross examination of Valuer 3 and his opinion that this was a moderate to serious breach. Valuer 3's evidence was not successfully challenged. Valuer L did not comply with IVS 103(L) requiring an explanation of the reasoning and explanation of the 'as if complete' valuation. Accordingly, there was a moderate to serious breach of Clause

1.5 of the Code of Ethics.

- 41. Valuer 3 was a reliable witness. His evidence, cross examination and answers to questions from the Board were of considerable assistance, including the decision of the Board not to issue a sanction with respect to Charge One.
- 42. For Valuer L, various percentages for different parts of the hearing were advanced ranging between 20% and 45%. There was no sound basis advanced as to how the percentages had been calculated other than to note in the submission that it had been prepared from an *"analysis of the transcript of the hearing, together with the content of numerous prosecution and defence submissions for this hearing,..."*
- 43. It was submitted for Valuer L that their employer had also incurred significant costs and, cumulatively, the costs were said to be in the order of \$66,000 for what amounted to a relatively minor outcome.
- 44. The Board of Inquiry does not accept the submission for Valuer L that the matters gave rise to a 'minor outcome'. The matters for consideration were in the moderate to serious range as outlined by the peer reviewer, Valuer 3 and, despite the Board concluding after hearing all the evidence that the matters were at the lower end of the scale, they should not be trivialized.
- 45. The Board has determined that all of the costs submitted by the Valuer-General were reasonable costs incurred with the exception of the valuer's fee for the retrospective assessments and 50% of the associated Valuer-General's staff costs, totaling \$3,154.64.

46. The reasonable costs incurred can therefore be summarized as follows:

(a)	Legal fees and disbursements	\$12,384.05
(b)	Investigation/prosecution costs associated with witnesses, Valuer-General and his staff	\$5,646.52
	Investigation A 50% \$854.64 and Prosecution B 100% \$4,791.88	
(c)	Board expenses	\$6,631.10
	<b>Total</b>	<b>\$24,661.67</b>

- 47. The Board sees no justification for departing from the 50% starting point for the costs other than those which it has removed. The remaining sum at 50% is \$12,330.84. Following the Valuer General's percentage submission of 40% in this case, which the Board considers is appropriate, the Board has calculated the reduced sum at \$9,864.67.
- 48. In making this determination the Board has also considered the submission for Valuer L and does not accept that the total costs awarded should not exceed \$1,500. There is simply no basis for that submission either on the facts of this case or Board precedent which would indicate a range of 40% - 60% for a guilty finding of a comparable nature. The percentages calculated on an individual

hearing analysis of time as submitted for Valuer L, to which the Board cannot ascribe much weight, would have indicated costs in the range of 20%-45%.

## **Summary**

49. The Board reprimands Valuer L and imposes a fine of **\$1,000**.
50. The Board orders costs against Valuer L of **\$9,864.67**.



**Evan Gamby**

For the Inquiry Board

15 January 2018