

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 concerning a
complaint against Valuer N

BOARD OF INQUIRY "BOARD":

Evan Gamby - Chairperson

Phillip Curnow

Victoria Murdoch

COUNSEL:

Ms Sally Carter for the Valuer-General

Witness 1 for Valuer N

HEARING:

5 November 2018

ORAL DECISION:

5 November 2018

WRITTEN DECISION:

16 January 2019

Table of Contents

Background3

The Charges.....6

The Valuation Evidence6

Valuer 1 Evidence7

Joint Memorandum of the Parties7

Valuer N Statement8

Submissions for the Valuer-General8

Submissions for Valuer N.....9

Oral Judgement.....10

Decision.....11

Background

1. Valuer N completed a valuation report for a rural property as at 30 December 2015.
2. Two valuations were prepared based on an inspection as at 30 December 2015, one in it's "as is" condition, and the other stated to be "as complete" following proposed alterations to the dwelling.
3. At the time Valuer N was a franchisee of Company 1, having been granted the franchise for the subject area, setting up in business in 2012.
4. The "as is" market value excluding chattels was assessed at \$464,000 and including chattels \$470,000. The valuation was inclusive of GST (if any).
5. The "as complete" valuation appears in the valuation summary, assessed at \$565,000, presumably also inclusive of GST (if any). There is nothing in the valuation report which provides guidance as to how the "as complete" valuation was prepared.
6. The Valuers Registration Board received a complaint dated 4 August 2016 from the complainant. The complainant stated in her complaint: *"This valuation was provided to me as an interested buyer, impacting my decision to enter into a contract to purchase the property and the price I offered"*.
7. With her complaint, the complainant included a subsequent valuation of the property prepared by Company 2 as at 8 July 2016. That valuation completed by Valuer 1, assessed the value at that time at \$395,000. This was a little over six months after the date of Valuer N's assessment.
8. As it transpired, Valuer 1 had also valued the property some six years earlier and noted renovation and refurbishment work undertaken to the property since his earlier report prepared in May 2010.
9. In terms of the property's presentation, Valuer 1 recorded in July 2016 that the exterior of the dwelling was in sound condition and the interior presented in a plain tidy condition. This comment is not dissimilar to the comment of Valuer N some six months prior in their report of 30 December 2015 that:

"All buildings appear in good condition, with the clients working with Council for the new building consent for current proposed works".
10. In his description of the market summary at a regional and local level, Valuer N noted:

"Both the regional and local markets are stable and steady at present. Sales volumes in the relevant localities have increased gradually during the past two years."
11. Based on Valuer 1's valuation and comment on the market, one might have anticipated an increase in values from the date of Valuer N's assessment at \$470,000 "as is" and Valuer 1's assessment approximately six months later. However, that was not the case as Valuer 1's assessment is approximately 16% below that of Valuer N.

12. Valuer N did not complete an "as complete" valuation.
13. The matter was referred to the Valuer-General for an investigation. Correspondence followed, including a letter dated 11 October 2016 from the Valuer-General to the complainant acknowledging the complaint, advising the process and requesting confirmation regarding purchase of the property.
14. On the same date, the Valuer-General wrote to Valuer N, inviting a statement and requesting details of their instructions.
15. A series of responses were received by the Valuer-General from Valuer N, and the franchisor of Company 1, Witness 1, including a statement on behalf of Valuer N dated 26 October 2016 signed by Witness 1.
16. On 3 November 2016, the complainant provided an "updated version" of her original letter also dated 3 November 2016 and not included in the report of the Valuer-General, providing the background to her complaint.
17. The information provided in the updated letter was relatively detailed, the most significant factor being that the complainant was of the opinion the listing price of \$469,000 and, subsequently, Valuer N's valuation of \$470,000 were above the property's value which they considered to be at or about \$400,000.
18. On being provided with the valuation of Valuer N, the complainant apparently increased her offer and ultimately occupied the property on a rent to buy basis, subject to the sale of her own property. Her property sale did not proceed and therefore the purchase of the subject property was avoided.
19. In his response of 26 October 2016 Witness 1, the franchisor of Company 1, stated:

"In December 2015, we conducted a valuation of the property in the presence of the vendor. The property was very well-presented, showing the property to its full potential. We assessed the Market Value at \$470,000, including chattels."
20. In his letter, Witness 1 also records that

"... the property went under contract with the complainant at \$455,000 including chattels. Included within the agreement was the right for the complainant to rent the property until she had sold her own property."
21. According to Witness 1, the valuation by Valuer 1 of Company 2 saw the property

" in its worst presentation, and were not privy to the work the vendor had undertaken, having never spoken with him."
22. Witness 1 included in his response that the vendor had stated that he has recently (presumably around 20 October 2016) signed a Sale and Purchase Agreement to sell at \$439,000. By the date of the hearing there was no record of this transaction. Subsequently, it appears, the property sold in April 2017 at \$402,500.

23. The Board notes that the recorded sale is well after the date of the original valuation as is the statement of a sale at \$439,000 by Witness 1. It would appear that the property at no stage had a value much greater than around \$400,000, that being around the higher of the valuations prepared as retrospective "kerbside inspection" assessments on behalf of the Valuer-General.
24. Set out below is a comparison of the "as is" values, in each case "exclusive of chattels" to provide a consistent comparison between the valuers' assessments. Valuer 1's first valuation was completed approximately six months after the date of Valuer N's valuation and is included for completeness. The valuations of Valuer 2, Valuer 3 and Valuer 1 for the Valuer-General, each prepared as a retrospective "kerbside inspection", are based on the reported data of Valuer N.

AS IS

Valuer	Effective Valuation Date	Market Value excl. Chattels	% Value Valuer N above	% Value Valuer N below	Inspection
Valuer N	30-12-15	\$464,000	N/A	N/A	Full
Valuer 2	30-12-15	\$370,000	25.4%	-20.3%	Kerbside
Valuer 3	30-12-15	\$405,000	14.6%	-12.7%	Kerbside
Valuer 1	08-07-16	\$375,000	23.7%	-19.2%	Full
Valuer 1	30-12-15	\$350,000	32.6%	-24.6%	Kerbside

25. Valuer 1 made his kerbside inspection on 3 November 2017. He referred to his inspections made in June 2008, May 2010 and 8 July 2016. At no stage was Valuer 1 made aware of the value of the property assessed by Valuer N. The Board notes that the value retrospectively assessed by Valuer 1 shows that there should have been an upward movement, based on Valuer 1's examination of the market, between December 2015 as a retrospective assessment, and his July 2016 report based on a full inspection.
26. The "as complete" value, which the Board notes should have read "as if complete", did not comply with standards. Given the paucity of information contained in Valuer N's report, it is difficult to understand why the figure would be relied upon by a prospective purchaser or owner of the property without obtaining a great deal more information. Nevertheless, the figure is so much greater than the comparative retrospective valuers' assessments, it raises serious questions as to how the figure could have been arrived at. Witness 1 did not undertake the assessment at all as the work was apparently not undertaken by the time he saw the property in July 2016.
27. The values outlined in the table below are not consistent as to chattels. Valuer N does not refer to chattels. Valuer 2 makes no allowance. Valuer 3's figures includes \$10,000 for chattels.

AS COMPLETE

Valuer	Effective Valuation Date	Market Value excl. Chattels	% Value Valuer N above	% Value. Valuer N below	Inspection
Valuer N	30-12-15	\$565,000	N/A	N/A	Full
Valuer 2	30-12-15	\$410,000	37.8%	-27.4%	Kerbside
Valuer 3	30-12-15	\$470,000	20.2%	-16.8%	Kerbside

28. The Valuers Registration Board, having considered the complaint, the quality of Valuer N's report and the valuer's reports in the Investigation Report of the Valuer- General referred the matter to an inquiry.

The Charges

29. Initially, three charges were drawn and notice of the intention to hold an inquiry was forwarded by the Registrar dated 20 April 2018. Charge 2 was withdrawn. The remaining two charges are:

1. 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 renders you liable to a penalty provided by the Valuers Act 1948 **in that** in compiling a valuation report dated 30 December 2015 with respect to a property, you significantly over-valued the said property in its "As Is" state.

3. 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 renders you liable to a penalty provided by the Valuers Act 1948 **in that** in compiling a valuation report dated 30 December 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 failed to provide sufficient information necessary for a proper understanding of the "As Complete" valuation conclusion in breach of IVS 2013 (103) Reporting.

The Valuation Evidence

30. In addition to the reports prepared by each of the three valuers in the Investigation Report of the Valuer-General briefs of evidence were prepared, each in significant detail, providing a detailed analysis of the evidence for consideration by the Board.
31. The evidence was provided to the Board but not admitted as Valuer N entered a guilty plea. The valuers did not give evidence and were not cross-examined.
32. The Board had, however, by the time of the Penalty Inquiry because of the late guilty plea read the evidence and was fully conversant with the information that would assist it to understand how valuers in the region would undertake valuations of this nature within this particular market.

Valuer 1 Evidence

33. In the Board's opinion the reports of Valuer 1 are the most relevant as he had inspected the property on a number of occasions including six months after Valuer N's 30 December 2015 report.
34. For his retrospective assessment as at 30 December 2015 Valuer 1 was not provided with the report prepared by Valuer N. However, to enable him to prepare a Brief of Evidence for consideration by the Board he was made aware that the condition of the property as at 30 December 2015 may have been a little better than when he saw it in July 2016.
35. On the basis of the property essentially being let rather than owner-occupied and with some difference in the interior quality, Valuer 1 revised his valuation from an effective net value (excluding chattels) of \$350,000, upwards to \$365,000, the percentages thereby changing to Valuer N being 27.2% above, or Valuer 1 being 21.3% below Valuer N.
36. In the Board's opinion this made little difference when combined with the opinions of Valuer 2 and Valuer 3.

Joint Memorandum of the Parties

37. In a Joint Memorandum dated 25 October 2018, Charge 2 was withdrawn. Valuer N confirmed that they intended to plead guilty to Charges One and Three.
38. The evidence had been exchanged and the hearing on 5 November was altered to be a penalty hearing only.
39. In the Joint Memorandum, Valuer N accepted that the property was over-valued somewhere in the region of 14% to 28%. On the Board's figures, when chattels are excluded and Valuer 1's reassessment is taken into account, the percentages are marginally different at between 14.6% to 27.1%.
40. For completeness, paragraphs 11-14 of the memorandum are repeated below:

"11. Valuer N's report also provided a market valuation "as if complete". Their report however provided insufficient information for a reader of the report to have a proper understanding of how they reached their conclusion. This is in breach of IVS 2013(103) Reporting which was the relevant standard at the time of the report.

12. As noted in Valuer 2's brief of evidence at paragraph 47:

In respect of the 'as if complete' valuation the report gives next to no detail of what the proposed works to be completed are. Usually where a valuation of this type is undertaken you would expect the following details within the report including:

- *consented plans approved by the local authority;*
- *specifications detailing the work to be undertaken;*
- *full quotes and/or contracts covering all the work to be completed;*
- *any work forming part of the contract and to be completed by the property owner*

13. A similar sentiment is noted in the brief of evidence of Valuer 3 at paragraph 65 in which she states:

I further consider the "As if complete" basis to lack adequate details in terms of assumptions made (as per IVS 103-Reporting Section 5(i) Assumptions and Special Assumptions), such as quality of work and compliance with appropriate requirements. I would also expect some detail around costings of the work, and a copy of plans of proposed additions/extension to be appended or included in the report to provide such details. Furthermore there is no comment on the upgrading or rectification of the ensuite and sleepout/office compliance issues, or whether this is included or not. In my opinion this does not adequately describe the property. The report lacks sales analysis to support this "as if complete" assessed value, with the sales provided, analysed and compared to the subject on a 'as is' basis, but very little commentary in regards to the 'as complete' value. I note in the sales analysis reference is made to providing a "similar level of accommodation on a net rate basis"; however no further comment or reference is made to any analysis or what the net rates are for this sale, the subject or any other sales. For this reason I do not consider the report meets the requirements under IVS 2013 103- Reporting-'Section 5(1) Valuation approach and reasoning', which requires reference to approaches adopted, key inputs and principal reasons for conclusions.

14. The above comments are not materially disputed by Valuer N."

Valuer N Statement

41. To their credit, Valuer N attended the hearing and read out a statement in support of their achievements in first qualifying with a property valuation degree from Massey University and, in due course, achieving registration as a valuer.
42. Valuer N explained the difficulty they experienced in reaching their goal, the difficulty of valuing in the subject market and the impact the complaint has had on them, to the extent that they have chosen to leave the industry and not renew their annual practicing certificate.
43. The Board has noted Valuer N's disappointment at the lack of support they originally received from the industry, their compliments of Witness 1 and the impact the complaint has had on their decision not to continue to practice as a public registered valuer.

Submissions for the Valuer-General

44. The Valuer-General made reference to aggravating and mitigating factors, the key aggravating feature being the significant over-valuation of the property and the lack of information contained within the report with regard to the "as complete" assessment.
45. In the opinion of the Valuer-General the reporting was sub-standard and the over-valuation gave rise to a sale which failed' causing distress and financial loss to the complainant.
46. In mitigation, the submissions for the Valuer-General note that this is the first occasion on which Valuer N has appeared before the Board and, although at a late stage, Valuer N acknowledged that there would be no requirement for a defended hearing. Full evidence was prepared for the Valuer-General to proceed and some discreet discounts from a starting point of penalty is warranted.

47. As stated for the Valuer-General, 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.¹
48. The concern of the Valuer-General was that the sort of behavior exhibited by Valuer N, particularly around the over-valuation and poor reporting, can lead to a loss of public confidence in the profession and reliance on a defective valuation which could give rise to financial loss.
49. The Valuer-General sought that the Board order a reprimand and a fine in the region of \$2,500-\$3,000.
50. With respect to costs, the Valuer-General submitted that costs should be awarded against Valuer N in accordance with Section 33(a) of the Act which states:

"In any case to which Section 31 or Section 33(1) applies, the Board may order the valuer concerned to pay such sum as the Board thinks fit in respect of either or both of the following:

- a. The costs and expenses of and incidental to the inquiry by the Board;*
- b. The costs and expenses of and incidental to the investigation conducted under Section 32 in relation to the complaint to which the inquiry relates"*

51. A schedule of costs was provided to the Board in a memorandum provided at the hearing.
52. Costs submitted for the Valuer-General are as follows:

Investigation and Prosecution costs including Valuer-General's staff costs, valuers fees, and prosecution costs of Valuer-General's staff costs and witness fees	\$ 22,452.06
Legal fees incurred	\$ 12,277.99
Board fees and expenses	\$ 4,370.05
Total (including GST)	\$ 39,100.10

53. For the Valuer-General, it was submitted that there are numerous decisions of disciplinary tribunals that have adopted directions of a High Court decision in Cooray² that states:

"It would appear from the cases before the Court that the Council in other decisions made by it has in a general way taken 50% of total reasonable costs as a guide to a reasonable order for costs and has in individual cases where it has considered it is justified gone beyond that figure."

Submissions for Valuer N

54. For Valuer N it was submitted that, as the complainant was never the client of Company 1 and Valuer N suffered extreme anxiety, costs assessed and ordered should be less than that proposed for the Valuer-General. There was no written submission for Valuer N on penalty.
55. On Valuer N's behalf, Witness 1 also made a submission under the heading "Mitigating Factors".

¹ *Z v Dental Complaints Assessments Committee 2009 1 NZLR1 [at 77] (SC)*

² *Cooray v Preliminary Proceedings Committee*

³ *HC Wellington AP 23194, 14 September 1995 at [9] dot*

56. With due respect to Witness 1, his submissions are submissions in defence of Valuer N's valuation do not assist the Board to determine the extent of mitigating factors for a determination of penalty or costs.

Oral Judgement

57. At the conclusion of the hearing, the Board issued the following oral decision.

"Valuer N has pleaded guilty to two charges relating to a valuation report they prepared.

Charge One is that Valuer N significantly over-valued the said property in its "as is" state at \$464,000, including GST. This excludes chattels and compares to valuations by three other valuers (in evidence) of \$405,000, \$365,000 and \$370,000 prepared on the same basis. Valuer N's assessment is therefore in the region of 14% to 27% above the other valuers which they accept is an over-valuation of the property.

Charge 2 was withdrawn.

Charge Three is that Valuer N failed to provide sufficient information necessary for a proper understanding of the "as if complete" valuation conclusion in breach of IVS 2013 (103) Reporting and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.

The evidence before the Board is that there was next to no detail in Valuer N's report of what the proposed works to be completed were, which in the evidence of Valuer 3 was stated to be "...lack of adequate details in terms of assumptions made" and that "...the report lacks sales analysis to support this "as if complete" assessed value.

The level of "as if complete" value was not tested in the evidence before the Board and, indeed, based on the information in Valuer N's report it could not be tested in any meaningful way as there were no plans provided, relatively little detail, no costings and no valuation calculations.

Penalty

Aggravating and mitigating features were outlined in the submissions for the Valuer-General. The Board is of the opinion there are no significant aggravating features other than insufficient information contained within the report on the "as if complete" assessment.

This is the first appearance before the Board by Valuer N and it is to their credit that they have appeared in person, provided a written statement and explained the difficulty of valuing in the local market.

The purpose of professional disciplinary processes is to ensure that appropriate standards of professional conduct are maintained, and, in this case, standards are adhered to. As is often quoted: "It is not to punish the professional (although that may be an inevitable result)".⁴

⁴ **Z v Dental Complaints Assessments Committee 2009 1 NZLR1 [at 77] (SC)**

The Board's purpose is to protect the Public against improper behavior which otherwise would cause a loss of public confidence in the valuation profession. Accordingly, a penalty is appropriate in this case.

The Board has determined that Valuer N's over-valuation and lack of adequate reporting standards is serious enough to impose a penalty within the range of penalties available to it.

The Board reprimands Valuer N and imposes a fine of \$2,000.

Costs

As has often been stated by authorities, the start point for costs is 50% of properly incurred costs, varied by general principles which are common across various Disciplinary Tribunal Authorities.

There appear to be no reasons in principle to depart from this approach of 50% either upwards for aggravating factors or downwards for mitigatory factors.

The guilty plea and personal appearance of Valuer N is, in the Board's opinion, a matter that would normally only go to the matter of penalty.

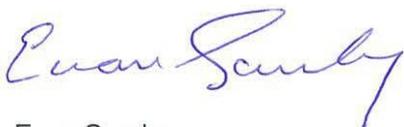
The Board heard from the Valuer-General that relatively little costs were involved with Charge 2, which was withdrawn, and no evidence was prepared. Of the total investigation costs, the Board will allow a deduction of \$1,000 before calculating the percentage of costs payable by Valuer N. Further deductions have been made of 50% of the Board's incidental costs, taxi/mileage and air fares. The balance of costs is \$37,280.72 made up as follows:

Valuer-General costs	\$	22,452.06
Legal fees (adjusted)	\$	11,277.99
Board costs (adjusted)	\$	3,550.67
Total	\$	37,280.72
50% payable by Valuer N	\$	18,640.36
=Rounded to	\$	18,600.00

A written decision will follow."

Decision

58. The Board confirms its Oral Decision.



Evan Gamby

Inquiry Chairperson

16 January 2019