

**VALUERS REGISTRATION BOARD**

**IN THE MATTER OF** the Valuers Act  
1948 (the Act)

**AND**

**IN THE MATTER OF** Charges under  
Section 31(1)(c) of the Act

**AND**

**IN THE MATTER OF** complaints against  
Valuer J

**BOARD OF INQUIRY:**

MEL Gamby (Inquiry Chairperson)  
HJ Puketapu  
PA Curnow

**COUNSEL:**

Ms S Carter for the Valuer General  
Mr C Chapman - for Valuer J

**DATE OF HEARING:**

4 November 2013

**DATE OF DECISION:**

31 January 2014

### **The Complaints**

Three complaint letters were received from the complainants. The complaints relate to separate valuations undertaken by Valuer J.

The first letter, dated 8 November 2010, concerned Property 1, a rural beach property. The second two complaint letters were both dated 16 November 2010 and concerned two separate central city apartments, Property 2 and Property 3. All three complaint letters allege a significantly overstated value.

For reasons relating to the difficulty of obtaining retrospective valuations, the later lodged complaints were reported first to the Board on 20 October 2012, in separate reports prepared by the Valuer General. The Board ordered that an inquiry be held on each of the properties.

The Valuer General provided to the Board a report dated 12 June 2013 on Property 1. At a telephone conference on 9 October 2013, Counsel for Valuer J was unsure at that stage whether the matters would be defended, particularly the complaint in respect of Property 1.

In the event, Valuer J elected to plead guilty to charges of separate gross over valuations for each of the three properties and a collective charge of unethical conduct in terms of Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.

Set out below are the details of the values prepared by Valuer J, and, by comparison, the valuation opinions provided in the report of the Valuer General to the Board.

**Property 2 (Apartment)**

<b>Valuer</b>	<b>Date</b>	<b>CMV</b>	<b>Remarks</b>
Valuer J (4.12.06)	4.12.06	\$770,000	Incl GST if any Incl chattels @\$10,000 \$600 pw Estimated market rental <i>Mort Rec 70%</i>
Valuer 1 (18.6.12)	4.12.06	\$530,000  \$348,000	Incl GST if any Incl chattels @ \$8,000 <i>Mort Rec being 2/3 o/\$522,000</i>
Valuer 2 (2.8.12)	4.12.06	\$560,000  \$366,000	Incl GST if any Incl chattels at \$10,000 <i>Mort Rec being 2/3 o/\$550,000</i>
Valuer 3	1.9.06	\$520,000	Capital Value
Valuer 4 (7.5.09)	7.5.09	\$431,000  \$385-\$405k	Incl chattels@ \$7,000 Incl GST if any Not inspected but neighbouring Apartments inspected <i>Mortgagee sale value</i>
Valuer 4 (9.10.09)	8.10.09	\$456,000  \$365-\$390k	Incl chattels @ \$8,000 Incl GST if any Inspected <i>Mort sale value</i>
Valuer 4(12.3.10)	Dec 2006	\$550-\$600,000	Peer Review Concern over comparable sales

**Property 1 (Rural beach property)**

<b>Valuer</b>	<b>Date</b>	<b>CMV</b>	<b>Remarks</b>
<b>Valuer J</b> (6.12.06)	<b>5.12.06</b>	<b>\$800,000</b> \$280,000 \$490,000	Incl GST if any Incl chattels@ \$10,000 Mort Rec \$70% of Mort Security Value of \$790,000 Property description: Single level four bedroom dwelling consisting of east and west wings Improvements Age: 2007 Assumed all structures on site have permits
<b>Valuer 5</b> (24.5.11)	<b>5.12.06</b> <i>Land Value</i>	<b>\$625,000</b> \$200,000	Incl GST & Chattels \$20,000 Mort Rec \$403,300
<b>Valuer 6</b> (17.8.11)	<b>5.12.06</b> <i>Land Value</i>	<b>\$580,000</b> \$200,000	Incl GST & Chattels \$10,000
<b>Valuer 4</b> (23.3.10)	<b>5.12.06</b> <i>No land value</i>	<b>\$540-\$570,000</b>	Code Compliance not issued. Outstanding work noted from LIM. Notes dividing walls between units is non-compliant and date of construction unknown.
<b>Valuer 4</b> (26.2.10)	Dec 2006 <i>No land value</i>	\$560-\$590,000	Peer Review. Providing property complete and code of compliance certificate issued.
<b>Valuer 7</b> (10.7.09)	9.7.09  <i>Land value</i>  <i>Residence 140m<sup>2</sup> plus 2 garages</i>	\$478,000  \$210,000  \$240,000	Incl GST if any Incl chattels at \$8,000  Forced sale \$400,000  Property description: two semi- detached identical two bedroom units. Improvements Age 3-5 years

**Property 3 (Apartment)**

<b>Valuer</b>	<b>Date</b>	<b>CMV</b>	<b>Remarks</b>
Valuer J (11.1.07)	10.1.07	\$910,000	Incl GST if any Incl chattels @ \$5,000 <i>Mort Rec 70%</i>
Valuer 1 (14.6.12)	10.1.07	\$440,000  \$286,000	Incl GST if any Incl chattels @ \$10,000 <i>Mort Rec, being 2/3rds</i>
Valuer 2 (2.8.12)	10.1.07	\$515,000  \$330,000	Incl GST if any Incl chattels at \$10,000 <i>Mort Rec</i>
Valuer 7 (7.5.09)	7.5.09	\$461,000  \$380k	Incl GST if any Incl chattels @ \$6,000 Not inspected <i>Mortgagee sale value</i>
Valuer 4 (9.10.09)	7.10.09	\$300,000  \$240-\$270k	Incl GST if any Incl chattels @ \$Nil Inspection revealed water leakage and poor condition. Outstanding body corp. levies approx. \$40k+ <i>Mort sale value</i>
Valuer 4 (5.3.10)	Dec 2006	\$570-\$600,000	Peer Review Concern over comparable sales

**The Charges**

**Valuer J**, who attended the hearing, elected to plead guilty to the following charges:

I. 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 4 December 2006 with respect to **Property 2**, you grossly over-valued the said property.

2. 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 11 January 2007 with respect to **Property 3** you grossly over-valued the said property.

3. 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 6 December 2006 with respect to **Property 1** you grossly over-valued the said property.

4. 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 valuation reports dated 4 December 2006, 6 December 2006 and 11 January 2007 with respect to properties you failed to exercise the utmost care and good faith to ensure the maintenance of the high standards in the preparation of those reports and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.

**Particulars:** use of outdated standards (namely the use of Practice Valuers Standard No.1 and No.2 for Residential Properties instead of API/NZPI Professional Practice 2004 Fourth Edition and in particular International Valuation Standard 1 Market Value Basis for Valuation).

**The Valuation**

The Board when deciding whether the complaints should be referred to an inquiry noted that, with respect to Property 2, Valuer J's valuation at \$770,000 was 45.28% above Valuer 1's valuation of \$530,000 and 37.5% above Valuer 2's valuation of \$560,000. The Board also noted that, despite the owner appearing to co-operate, an internal inspection was not possible to obtain retrospective valuations until May/June 2012. Matters of concern to the Board with respect to that valuation were that the value of Valuer J was far higher than the other valuers figures, Valuer J relied on sales that were either conditional or did not take place and Valuer J relied on outdated standards.

For Property 1, the Board noted that Valuer J's valuation of 5 December 2006 at \$800,000 was 28% above Valuer 5's valuation of \$625,000 and 37.93% above Valuer 6's valuation of \$580,000. The Board observed when referring the matter to a hearing that the effective building value adopted by Valuer J of \$2,550/m<sup>2</sup> appeared high relative to building costs at the time. There was no indication in the report as to how the property was valued, no land sales were provided, there were errors in the report such as recording an incorrect zoning for the property and Valuer J relied on outdated standards.

With respect to Property 3, the Board observed that Valuer J's valuation at \$910,000 was 106.82% above Value 1's valuation of \$440,000 and 76.7% above Valuer 2's valuation of \$515,000. In making its recommendation for a case to answer, the Board was particularly concerned that a valuation of Airspace Potential (Development Rights) was included in that valuation total value figure of \$910,000 without regard to market evidence and without an allocation of values into individual parts. The valuation of the Apartment including air rights was described as: "A current market value (as inspected)" of \$910,000. A reader of the report could not be aware how the valuation was arrived at. The valuation report referred to outdated standards. None of the evidence quoted by Valuer J supported their value assessment. The two valuers who undertook retrospective assessments considered the air rights to be of little value.

The Board noted the difficulty of obtaining access to undertake the retrospective valuations. This delayed consideration of the complaint.

For all three valuations by Valuer J the reports were undertaken in accordance with New Zealand Institute of Valuers (NZIV) "Practice Valuation Standards No. 1 and No. 2 for residential properties. These standards had long since ceased to be applicable to valuations undertaken for mortgage security purposes. The New Zealand Property Institute, (NZPI) now Property Institute New Zealand, (PINZ) Standards of 2004 and International Valuation Standards, notable IVS 1, were the applicable standards at the time.

None of the matters concerning the gross over valuation of each property or issues relating to the standards identified in the reports to the Valuer General could be tested by the Board as the matter did not proceed to a defended hearing. With the exception of submissions in mitigation on behalf of Valuer J, a statement by Valuer J and a statement by a registered valuer, Valuer 8, the Board could refer only to the reports and submissions for the Valuer General in determining the degree of Valuer J's culpability.

Valuer 8 is a valuer of long experience with senior credentials as a Fellow of both the New Zealand Institute of Valuers and Property Institute New Zealand. Valuer 8, was of the opinion that the reports were "fair and reasonable at the time" stressing that the collapse of the subject area's apartment market and changes made to Property 1 affected values. The events, he said, may have influenced the "hindsight" valuations undertaken for the Valuer General as they were prepared well after the collapse of the "sub-prime mortgage" market in 2007. The Board notes that the sub- prime mortgage crisis actually occurred in September 2008, not 2007. Nevertheless the successive collapse of New Zealand finance institutions in 2006 and 2007 undoubtedly negatively impacted the apartment market.

With respect to Property 1, the Board has some sympathy with Valuer 8's views and has considered the difficulty of assessing a value for that property at the time in December 2006. There is less justification for Valuer 8's supporting opinion with respect to the valuation of Property 3. The main



reason that Valuer J's valuation on Property 3 was grossly overstated is that it included a speculative air rights value. Valuer 8 did not comment on that aspect of Valuer J's report. Similarly, Valuer 8 made no comment on the adoption by Valuer J of conditional sales for the Property 2 valuation.

As far as the Board is aware Valuer 8 did not value the properties, which diminishes the weight that can be attached to his opinions.

It is worthwhile recording, as noted by Valuer J in their statement, that the complainants were not the party to whom any of the reports were addressed. No information was provided to the Board, or explanation provided, as to why the complainants lent on any of the properties without obtaining independently prepared reports. Although that is not a matter of direct concern for the Board with respect to Valuer J's responsibilities, including non-compliance with current valuation standards, it does indicate the attitude of some lenders who do not carefully read reports or necessarily comply with their own lending requirements. For example, Valuer J drew to the Board's attention at the hearing and in their response to the Valuer General that they had never received any instructions or communication from the complainants. To the contrary, they were instructed by a 3<sup>rd</sup> party client on whose instructions they readdressed their reports to Company 1, which was not the company that lent on properties. The complainants would appear to be a Nominee company with their own requirements as to lending based on an independent valuer's report.

Submissions for the Valuer General stressed that, with respect to the breach of Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics, the standards to which Valuer J referred were 19 months out of date having been replaced on 1 May 2004 by the Australian Property Institute/New Zealand Property Institute Professional Practice 2004 and International Valuation Standards. The Board observed, and Counsel amended submissions to note, that the standards were actually 31 months out of date having come into force on 1 May 2004, approximately two and a half years before the December 2006 valuations. With respect to their reports, and the standards to which Valuer J should have complied, Valuer J failed to include any commentary to enable a

reader to understand how they had reached their conclusions and was therefore in breach of International Valuation Standard (IVS 1). All three reports were deficient in that respect.

The Board expresses its concern that, in their valuation report on Property 2, Valuer J appears to have placed almost total reliance on two sales, one noted as conditional and the other noted as sold, the details of which were supplied to Valuer J by their client. No other sales evidence quoted by Valuer J supported their valuation assessment. It appears from a consideration of the retrospective valuations undertaken for the Valuer General, the conditional and sale agreement for the subject property either never occurred or did not settle. The Board records here that valuers who place reliance on conditional sale and purchase agreements from such sources as their client should take care that those transactions are independently verified or confirmed as actual transactions or, where any doubt exists as to a sales provenance, those sales do not form the basis for their valuation. Although in no way criticising valuers for searching out conditional sale and purchase agreements, such transactions should not be used in isolation, or as the basis for a value, without evidence of confirmed sales obtained from a reliable data source. If there is a discrepancy between the two levels of sales, confirmed and unconfirmed, then a valuer must value to the confirmed market and not to the conditional sale and purchase or unconfirmed sale market.

Submissions were made with respect to aggravating and mitigating features of Valuer J's reports.

The Board is particularly concerned that, with respect to the valuation of Property 3, there appears to have been no basis for that market assessment. This was aggravated by Valuer J's adoption of the wrong standards, with no apparent awareness of current standards. Valuer J did not, over a period of two and a half or more years know what standards they were required to comply with.

The Board notes that there were mitigating factors, in that:

- a. All three valuations were undertaken within approximately one month with no opportunity for Valuer J to address their shortcomings,

- b. This is the first occasion on which Valuer J has appeared before the Board;  
and
- c. Valuer J submitted guilty pleas and attended the hearing.

### **Penalty Considerations**

The Board has observed in the past that valuers who prepare gross over or under-valuations frequently do not know the current standards, and/or fail to address the requirements of those standards. There has been a requirement in valuation standards, since 2004 for valuers to "... *provide sufficient information to permit those who read and rely on the report to fully understand its data, reasoning, analysis, and conclusions ...*" (IVS I 2004 5.1.4). Valuer J failed in this respect.

Submissions for the Valuer General included the comment that, had the complaints been considered individually, then there would have been sequential previous findings at least by the time the Property 1 complaint came before the Board. The Board's view is that it should consider penalties relating to complaints in the order of the dates of the valuations not the date of complaint or the dates of hearings. Accordingly, the Property 1 complaint if heard later could not have been considered on a basis of greater culpability than either of the other two valuations. In any event the valuations followed closely one behind the other. The Property 1 valuation was the second valuation prepared by Valuer J that was complained against.

Noting that The Board can impose a fine of \$10,000 for each and every guilty finding, or a total of \$30,000 for the three valuations, this total sum appears out of proportion to the charges, given the guilty pleas and mitigating circumstances. The Board agrees with submissions for the Valuer General that these are not matters that would attract a penalty at the higher end of the Board's powers to impose. Accordingly, the submission for the Valuer General that a financial penalty of \$15,000 to \$20,000 coupled with a reprimand would appear to be excessive.

Valuer J provided a statement to the Board acknowledging their negligence in accepting and relying on two sale and purchase agreements given to them by their client. Valuer J, naively, and somewhat

curiously, relied on the bona fide of the person instructing them, because they were in business with a well-known property developer.

With respect to Property 3, Valuer J accepted that they did not undertake the appropriate valuation of the air rights, but still failed to appreciate that a residual value method assessment is not a market valuation. Merely deducting, as they suggested they should have done, an additional allowance for profit and risk would not necessarily indicate that the residual figure is achievable in the market. No one reading Valuer J's report could know how the valuation was prepared. Neither of the retrospective valuers' assessments for the Valuer General adopted Valuer J's approach.

The Board does not accept Valuer J's statement that the Property 2 and 3 reports were not intended for lending purposes. That much is clear from the preamble in each of their reports which state: *"The purpose of this valuation report is for current market and/or mortgage valuation purposes"*. Furthermore, Valuer J made a recommendation for mortgage security purposes for each of the properties in each report. It is therefore difficult to understand why they consider as they stated at 2.2.6 of their statement in support of submissions on their behalf: *"It did not occur to me at the time that these two reports would be used to support applications for finance of the apartments in isolation from each other. If I had realized that I would have attributed a much-reduced value to the development potential"*.

The Board does have sympathy with Valuer J with respect to one aspect of their report for Property 1, in which Valuer J stated that their value assumes that *"all structures on the site had permits"*. Further, they recorded that they had not obtained a LIM report and that a LIM report should be obtained by the recipient. The complainants either did not obtain a LIM report or did not have regard to it. Had they done so, they would have noted the absence of a Code Compliance Certificate and, at the very least, referred the report back to Valuer J to reconsider their valuation.

With respect to their understanding of NZPI and International Standards, Valuer J stated that they relied on a presentation by the Property Institute New Zealand on 26 October 2005 that both the old NZIV Practice Standards 1 & 2 and the Operative API/NZPI PP2204 Fourth Edition Standards were operative. There may have been confusion at the time of the seminar but, if so, their reports in 2005 and presumably later, should have referred to both sets of standards. It was not excusable by December 2006 or January 2007 to adopt the old standards. It is the responsibility of valuers to keep abreast of the status of the appropriate standards at the date of valuation.

Submissions on behalf of Valuer J were that the culpability is at the low end of the scale in each case and that errors can occur. In support of this proposition the submissions on behalf of Valuer J referred to how easy it is to refer to the wrong standards. The Valuer General's instructions to his valuers were to comply with standards current in 2009. The instructions should have been to comply with the standards applicable from 2004. Only one of the two valuers instructed noted the mistake.

The Board has not, to date, imposed a collective financial penalty beyond \$10,000 for multiple valuations for a first offender. There may well be a circumstance where penalties may be accumulated, but this is not one of them. All three valuations were prepared within a short space of time of one another. There was no opportunity for Valuer J to address their shortcomings. The lender, by not correctly observing the assumptions in Valuer J's report for Property 1, prevented that report being referred back to Valuer J for reconsideration.

The Board has determined that Valuer J be reprimanded and imposes a fine of \$7500 against them. By imposing a fine at 75% of the maximum fine that the Board can impose (on a single event), the Board is in no way indicating that the complaints against Valuer J are other than serious. However, there are, in the Board's opinion, significant mitigating factors, not the least of which was Valuer J's willingness to attend the hearing and confirm that they erred in their valuation approach and in their compliance with ethical standards. That is to their credit.

**Costs**

Total costs involved are \$44,092.91 in accordance with schedules of cost attached to this submission of the Valuer General. These costs are made up as follows:

Legal fees	\$15,246.54
Investigations/prosecution costs associated with witnesses, Valuer General and staff	\$23,643.72
Board expenses	\$5,202.65
<b>Total</b>	<b>\$44,092.91</b> GST inclusive

Counsel for Valuer J submitted that the valuation fees charged by Valuers 1 and 2 were excessive when compared to those of Valuers 5 and 6 and were not supported by invoices or further detail. The Board requested that the detail be supplied.

In a supplementary memorandum filed on behalf of the Valuer General, invoices were enclosed supporting the amounts noted as part of the Valuer General's cost. One of the invoices from Valuer 1 for a sum of \$503.13 had been excluded which, in the Board's opinion, was proper as the air rights matter should have been explained by Valuer 1 in his original report. On balance, the Board can find no criticism of the Valuer General's costs totaling \$44,092.91 inclusive of GST. The Board does not accept that the valuation fees charged by Valuers 1 and 2 are excessive relative to the work required.

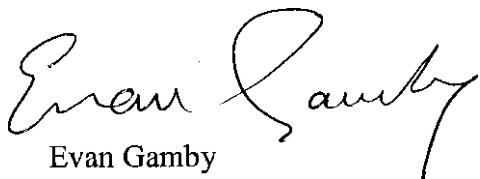
The Board accepts and agrees that 50% is the starting point for an apportionment of costs against a valuer found guilty of charges.

As noted, both for the Valuer General and Valuer J, the Board is mindful that other registered valuers are required to carry the burden of funding investigations and other disciplinary functions of the Board to the extent that costs are not awarded against the valuer. However, Valuer J too has been contributing to disciplinary costs for many

years having been registered since 2001 and awaiting this hearing since the complaints were made in 2010. Noting that this matter did not proceed to a fully defended hearing, and Valuer J having recognised their deficiencies, a 50% allocation is appropriate.

The Board awards costs against Valuer J of **\$22,046.46 inclusive of GST.**

The fine of \$7,500 and the costs of \$22,046.46 are immediately payable to the Board on release of this decision.

A handwritten signature in black ink, appearing to read "Evan Gamby". The signature is written in a cursive, flowing style with a large initial 'E' and a long, sweeping tail.

Evan Gamby  
Inquiry Chairperson  
31 January 2014