

**VALUERS REGISTRATION BOARD**

**IN THE MATTER OF** an Inquiry under  
Section 32(2) of the Valuers Act 1948

**AND**

**IN THE MATTER OF** charge under  
Section 31(1)(c) of the Valuers Act 1948  
against **Valuer K**.

**AND**

**A DECISION OF** the Board of Inquiry of  
the Valuers Registration Board

**BOARD OF INQUIRY:**

H J Puketapu (Inquiry Chairperson)  
K Taylor  
E Gamby

**COUNSEL:**

Ms K Muller for the Valuer General  
Valuer K was self-represented  
Witness 1 (in support of Valuer K)

**DATE OF HEARING:**

5 November 2012

**ORAL DECISION:**

5 November 2012

**WRITTEN DECISION:**

3 April 2013

**COMPLAINT**

On 22 November 2010, the complainant wrote to the Valuers Registration Board making a formal complaint

against Valuer T and Valuer K, in respect of a valuation of a property. The Property was inspected and valued from a set of plans (as a dwelling was yet to be built) on 24 November 2007, being the effective date. Whilst the report was prepared by Valuer T, it was signed by Valuer K as the Registered Valuer. Valuer K assessed a Current Market Value at \$543,000, and a Lending Security Value (on completion) of \$531,000. Both assessments are inclusive of GST. Valuer K further recommended a first mortgage advance of up to 70% of the Lending Security Value.

The Complainant submits that *"we sustained a loss of \$60,000 as a result of our reliance on the valuation on sale"*. A copy of the valuation report along with a copy of the settlement statement relating to the sale of the Property as at 20 November 2008 was enclosed with the complaint.

The complaint is supported by a retrospective valuation report from Valuer 1 dated 2 October 2008. Valuer 1's report, which was commissioned by the complainant, provides a current market value of the Property as at November 2007 of:

Improvements	\$260,000
Land	\$180,000
Security Value	<u>\$440,000</u>
Chattels	\$ 10,000
Current market Value	<u><b>\$450,000</b></u>

In a letter dated 26 January 2011 to the Registrar, Valuer K admits the error as being made by Valuer T in that they had the floor area of the wrong house being valued off plans. Valuer T inadvertently adopted a floor area of 174 m<sup>2</sup> (including a double garage) and should have used 140m<sup>2</sup> (including a single garage). As the Registered Valuer, Valuer K admitted responsibility for the valuation in that respect.

The complaint was referred to the Valuers Registration Board ("the Board") for investigation by the Valuer General in terms of Section 32 of the Valuers Act 1948.

## **INVESTIGATION**

The Valuer General wrote to Valuer K on 14 April 2011 advising them that he would be investigating a complaint concerning a valuation report prepared by Valuer T and counter-signed by them (Valuer K) with respect to a residential property. A copy of the complaint and associated documents were earlier forwarded to Valuer K, the Board presumes as a result of earlier communication with the Registrar.

In their letter of response to the Valuer General on 28 April 2011, Valuer K confirms that Valuer T received telephone instructions to value the subject property off plans supplied to them. Valuer T was then instructed to re-address their report to another client.

Since this discrepancy has come to light, Valuer K advises that they have reviewed their office procedures including any plans used in a valuation should be final building consent plans, that the valuer thoroughly check floor areas and calculations, and that a counter-signing valuer also check the calculations. Further, for valuations done off plans, written instructions are required.

## **RETROSPECTIVE VALUATIONS**

The Valuer General sought two retrospective valuations.

Valuer 2 was instructed on 24 June 2011 to complete **two** retrospective market valuation and mortgage recommendation having regard to market conditions prevailing as at 24 November 2007 using such sales and rental evidence as would have been available through normal avenues to a valuer in practice at that time.

- Scenario 1 - an assessment based upon plans of the actual property to be built (140 m<sup>2</sup>) and,
- Scenario 2- based on a descriptive extract forwarded from Valuer K's valuation report (based on a main building of 174 m<sup>2</sup> including a double garage of 34 m<sup>2</sup> and improvements including decking of approximately 15 m<sup>2</sup>

Valuer 2 assessed the following:

<b>Scenario 1</b>	Land Value	\$130,000
	Value of Improvements	\$296,000
	Mortgage Value (as if complete)	\$426,000
	Chattels	\$14,000
	<b>Current market Value (as if complete)</b>	<b>\$440,000</b>
	<b>Mortgage Recommendation</b>	<b>\$284,000</b>
<b>Scenario 2</b>	Land Value	\$130,000
	Value of Improvements	\$353,000
	Mortgage Value (as if complete)	\$483,000
	Chattels	\$11,000
	<b>Current market Value (as if complete)</b>	<b>\$500,000</b>
	<b>Mortgage Recommendation</b>	<b>\$322,000</b>

On 19 September 2011, Valuer 3 was instructed to assess a current market value for the land only, together with a mortgage recommendation. A similar descriptive extract from Valuer K's report was provided.

Valuer 3 assessed a Land Value of \$130,000 (including GST) with a mortgage recommendation of \$86,666 (representing 2/3rds of the Land Value).

It was against this background that three charges were made out.

Notice in writing was forwarded to Valuer K on 17 July 2011 of the intention of the Board to hold an inquiry, and of the time and place of the hearing, and the nature of the charges.

## **THE CHARGES**

Valuer K faces three charges under s 31(1)(c) of the Valuers Act:

- (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 preparing and rendering a valuation report (the Report) dated 24 November 2007 with respect to a property, you grossly over-valued that 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 preparing the Report you failed to supervise or properly supervise the work of an unregistered valuer and thereby breached clause 1.5 of the Code of Ethics prescribed by Rule 133 of the Rules of the New Zealand Institute of Valuers.

- (3) 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 preparing and rendering the Report you failed to properly ascertain or weigh the facts and thereby breached the requirements of clause 1.6 of the Code of Ethics.

The hearing was set down for Monday 5 November 2012.

A pre-hearing telephone conference was held on 19 October 2012 between the Board of Inquiry, Counsel for the Valuer General (Ms Kristina Muller) and Counsel for Valuer K (Mr Paul Chisnall) to confirm hearing day procedures. Mr Chisnall indicated that Valuer K would enter a guilty plea in respect to two of the charges; however the third charge would be defended. Ms Muller advised that the Valuer General had agreed to dismiss the third charge.

The Board of Inquiry were advised that Valuer K would appear with a support person and present a plea in mitigation.

## **THE HEARING AND FINDINGS**

Counsel for Valuer K did not attend. However Valuer K was present with Witness 1 as a support person.

At the opening of the hearing, only two of the charges were read. The third charge referring to a breach of the requirements of clause 1.6 of the Code of Ethics was earlier dismissed upon agreement between Counsel.

Valuer K admitted Charges 1 and 2.

Valuer K's registration status was tabled and confirmed.

At the point of clarifying procedure Valuer K made an application for name suppression. Through Counsel (although they were not present), Valuer K requested the Board:

- Sit in Private
- Issue a suppression order stopping the publication of their name, and
- If permanent name suppression is not possible, that the Board refer to them in a non-identifying way and that any decision or reasons given by the Board do not identify them

The grounds provided by Valuer K were that they preferred not to have a black mark against their name and for their name not to be published in the press for this one oversight.

In reconsidering this request however, Valuer K withdrew the application for name suppression and simultaneously asked that the reference to this in any record before the Board be removed.

The Boards so orders.

This does raise an issue of procedure and more specifically matters that might arise in pre-hearing conference. The Board had no knowledge prior to the hearing that an application would be made by Valuer K or their Counsel and had no advice that the matter would be treated in a legal submission by Crown Law. Had an application for name suppression proceeded, the Board would have insisted having its own legal representation and would have likely deferred the hearing if that could not be arranged at short notice. As the application was withdrawn there was no need for the Board to address the matter further.

## **PROSECUTION**

In opening, Ms Muller presented an agreed statement of facts (between Counsel for the Valuer General and Valuer K) that set out the background to the complaint, referring also to the report of the investigation by the Valuer General.

Ms Muller submitted that incorrect floor plans were used in assessing a current market value of the Property showing a double garage instead of a single garage.

Approximately 34m<sup>2</sup> of double garage was added to the 140m<sup>2</sup> (total building area) effectively resulting in an incorrect floor area of 174m<sup>2</sup>, which was adopted in the report.

Ms Muller further submitted that an area of decking of some 15m<sup>2</sup> was also assessed; however there is no decking shown on any plans provided by Valuer K or any other valuation reports before the Board.

A current market value of the Property, as set out in the Report from Valuer K, follows:

Land (400m <sup>2</sup> )	\$260,000
Main building (approximately 174m <sup>2</sup> including Double garage of 34m <sup>2</sup> )	\$246,000
Other improvements (including decking of approximately 15m <sup>2</sup> )	<u>\$ 25,000</u>

Lending Security Value	\$531,000
Chattels (estimated value)	<u>\$12,000</u>
<b>Current Market Value (inclusive of GST)</b>	<b><u>\$543,000</u></b>

Valuer K admitted the error in the valuation of the Property, resulting in it being too high. They attributed this to the incorrect floor plans being used. Ms Muller highlighted that Valuer K did not address other factors such as the allowance for decking or value attributed to the land.

Ms Muller considered that the main cause of gross over-valuation in this case resulted from the assessment of land value. A breakdown of the respective valuers' assessments is helpful.

Valuer	Valuer K	Valuer 1	Valuer 2	Valuer 3
Effective date	24-Nov-11	Nov-07	24-Nov-11	24-Nov-11
Basis of valuation	Dwelling of 174 m2, double garage	Dwelling of 141m2, single garage	Dwelling of 140m2, single garage	Land Value
Land Value	260,000	180,000	130,000	127,000
Main dwelling	246,000	<b>252,000</b>	<b>280,000</b>	
Other improvements	25,000	8,000	15,000	3,000
<b>Lending Security Value</b>	<b>531,000</b>	<b>440,000</b>	<b>425,000</b>	<b>130,000</b>
Chattels	12,000	10,000	14,000	
Current Market Value	<b>543,000</b>	<b>450,000</b>	<b>439,000</b>	<b>130,000</b>

## CODE OF ETHICS

As to the charge of unethical conduct, it is relevant to restate clause 1.5 of the New Zealand Institute of Valuers Code of Ethics:

*"A member shall exercise the utmost care and good faith to ensure the maintenance of the highest standards in the preparation of statements, reports and certificates, as these constitute one of the most valuable assets of the profession, being relied upon by clients, employers, shareholders, investors, creditors and the public ".*

Further, New Zealand Real Property Guidance Note 2, Countersigning of Valuation reports Prepared by Unregistered Valuers provides guidance for members of the Property Institute of New Zealand and the New Zealand Institute of Valuers. While this guidance note does not have a mandatory status, the Board concurs with Ms Muller that the Guidance Note provides an authorities statement of good practice, in particular:

"3.0 Counter-signing of Non-Registered Valuer Reports

3.1 A registered valuer counter-signing a report prepared by a non-registered valuer, unequivocally accepts full responsibility for the valuation and contents of the report. Responsibility cannot be limited by the use of conditional clauses

and

4.0 Recommendation

4.1 It is recommended that the registered valuer counter-signing the report, inspect the property being valued and be familiar with all physical and valuation aspects pertinent to the property.

4.2 It is recommended that the counter-signer liaise with the other parties responsible for preparing the report to ensure accuracy and competency."

It is not clear to the Board whether Valuer K personally inspected the Property.

With respect to 4.2 above, the Board heard that Valuer K and Valuer T were working out of two different home offices and Valuer K did not see the plans or Valuer T's floor area calculation before counter-signing the valuation.

## **PENALTY AND COSTS**

Ms Muller submitted that the circumstances of this case are sufficiently serious for the Board to conclude that a reprimand would not be a sufficient sanction. Neither is the offending at the upper end of the scale so as to warrant removal or suspension. Ms Muller accepts that this is a one-off action, and not a course of deliberate conduct.

The Board notes Valuer K has admitted to the two charges. They have been registered for 17 years and have not previously appeared before the Board.

Ms Muller appended to her submission the Valuer Generals costs and expenses of \$21,271.02. Including the Board costs of \$4,706.65, the total cost (estimate) of the hearing is \$25,977.67.

## **VALUER K**

Valuer K read a statement in mitigation outlining their valuation and community service background.

Valuer K readily admits their report was a one-off mistake of judgement. In their four years of working alongside Valuer T, they put a certain amount of trust in their valuing skills and getting things right. Unfortunately, the Board comments that this does not excuse the error that has been made and the subsequent loss incurred by the Complainant.

The Board acknowledges Valuer K's apology to the complainants and others caused loss. The Board further accepts Valuer K's apology to the valuation profession in bringing the profession into disrepute.

Valuer K has held retired status since 2012.

## SUMMARY

Valuer K has admitted two charges before the Board.

Since this complaint coming before the Board Valuer K took immediate steps to improve procedures in their office, including

- Written instructions must be given for valuations to be done off plans.
- Any plans used in a valuation must be final building consent plans.
- The valuer must check all floor area and net rate analysis at least twice.
- The registered valuer counter-signing the report must also check those calculations.

The Board commends these actions. However, while it is not for the Board to comment on the particulars of office procedures, the Board is mindful that any management steps to mitigate errors in reporting (such as peer reviews) must improve the quality and accuracy of presentation.

Notwithstanding the measures taken above, the Board also raises another area of concern relating to standards.

### Standards

The valuation report (as countersigned by Valuer K) certified that "*...the valuation complies with the New Zealand Institute of Valuers Code of Ethics and Practice Valuation Standards No. 1 and No. 2 for Residential Properties*".

The relevant Valuation Standard in place at the time of carrying out this assessment was Professional Practice Standard Fifth Edition (published November 2006) effective as at 1 March 2007. Professional Practice Standards 1 and 2 were deleted or superseded as at 1 May 2004.

Further, the Compliance Statement contained in the Report confirms that the valuation was performed in accordance with an ethical code and performance standard.

It is incumbent upon any valuer to be acting in accordance with the most recent and/or relevant code and standard.

Not only are valuation reports required to be presented to a high standard (Code of Ethics - clause 1.5), the Board is mindful of the requirement for NZIV members to successfully complete every four years, the Ethics and Professional Standards modules provided by the Property Institute of New Zealand (PINZ).

These modules are part of PINZ's Continuing Education Programme, and in that respect finds PINZ CPD Policy relevant in this case.

*"All members have a responsibility to themselves and their fellow members to ensure they stay professionally relevant, thus protecting the reputation of their qualification. By doing this, they will continue to offer quality services to their clients, employers and the property industry as a whole. "*

#### Incorrect Land Value

Valuer K entered an early guilty plea. This prevented the Board from further investigation of the variation in land values between the respective valuers and their reports before the Board. Valuer K's assessment of land value of the Property is some 30% - 50% above the other respective valuers' assessments. This has contributed significantly to Valuer K's assessment of overall current market value.

#### Lack of Supervision

Without laboring too much on this (as it falls, in part, into office procedures and compliance standards above), carrying out any valuation assignment from separate offices requires a higher level of scrutiny and supervision.

## ORAL DECISION

At the conclusion of the hearing the Board issued its oral decision, confirmed as follows:

Valuer K - you have been charged with incompetent conduct in that in preparing and rendering a valuation report (the Report) dated 24 November 2007 with respect to a property. you grossly over-valued that property.

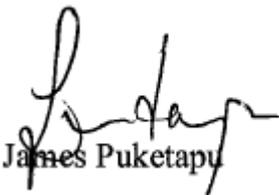
Secondly, you face a charge of unethical conduct in that in preparing the Report you failed to supervise or properly supervise the work of an unregistered valuer and thereby breached clause 1.5 of the Code of Ethics prescribed by Rule 133 of the Rules of the New Zealand Institute of Valuers.

The Board has considered the case made and evidence presented by the prosecution and by Valuer K. The Board has concerns with:

- Incorrect land values
- Lack of supervision, and
- Non-compliance with 2006 standards

Having regard to these factors, the Board imposes a penalty of \$5,000.

As to costs, Valuer K has pleaded guilty to the charges, which has saved the Board from further costs above those which have already been incurred. Those costs that are not met by Valuer K, fall to the profession. The total costs incurred equate to nearly \$26,000. This is not insignificant. Valuer K is ordered to make a contribution to these costs of \$10,000.



James Puketapu

Inquiry Chairperson