

**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 K

**BOARD OF INQUIRY:**

K R Taylor (Inquiry Chairperson)  
H J Puketapu  
P A Curnow

**COUNSEL:**

Ms S Carter for the New Zealand Institute of  
Valuers  
Valuer K was not represented but provided a  
written submission.

**DATE OF HEARING:**

6 October 2014

**DATE OF DECISION:**

29 October 2014

**The Complaint**

A complaint was received from a part owner of a Café business concerning the actions of Valuer K in relation to a rent review of the premises in 2011. The matter was brought to the attention of the Registrar of the Valuers Registration Board by letter dated 10 April 2012.

Valuer K, acting for the landlord provided a rental assessment of the premises dated 24 May 2011. Valuer K assessed the annual rental at \$122,750. The rent review went to arbitration and in a submission to the arbitration Valuer K revised the rental to \$144,000.

Although the quantum is not the basis of this inquiry, the Board notes that Valuer 1 and Valuer 2 acting for the lessee assessed the rental at \$87,500 per annum and the award by the umpire of the arbitration, was \$102,500.

The complainant laid his complaint in relation to a number of aspects relating to the New Zealand Institute of Valuers Code of Ethics, in particular that Valuer K had breached the following sections:

*1.4: No member shall prepare or certify any statement which is known to be or ought to be known as false, incorrect, misleading, deceptive or open to misconstruction by reason of a misstatement, omission or suppression of a material fact, any deceptive act or otherwise by not including the rental evidence for a neighbouring business in their initial report dated May 2011.*

*1.5: 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 by producing two separate reports assessing vastly different rentals, their initial report dated May 2011 at \$122,750, their submission dated Jan 2012 at \$144,000.*

*1.7: A member must maintain the strictest independence and impartiality in the performance of the member's professional duties. To this end no members shall*

- a) adopt the role of advocate to the exclusion of that independence and impartiality*
- b) allow the performance of that members professional duties to be improperly influenced by the preferences of the clients or others as to the result of their professional work*
- c) rely improperly upon information supplied by clients or others in the performance of their professional duties or*
- d) act in any way inconsistent with the duties of independence and impartiality*

In the complainant's view Mr Valuer K has violated this section and subsections a, b and d by appearing to act as an advocate for their client.

The complainant also considered Valuer K to have a conflict of interest due to the range of activities undertaken by their employer.

The complaint was investigated by the New Zealand Institute of Valuers, who concluded one aspect of the complaint (that in relation to Clause 1.5) should be subject to an inquiry.

The Valuers Registration Board considered the investigation file and in terms of Section 32(2) of the Valuers Act. They were not satisfied that there were no reasonable grounds for the complaint and referred the matter to an inquiry. The inquiry was set down for 6 October 2014.

### **The Charge**

There was a single charge brought against Valuer K as follows:

1. 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 19 January 2012 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 that report and therefore breached Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics.

**Particulars:** You failed to clearly provide an explanation as to why your valuation had increased from an earlier valuation provided by you in May 2011, in breach of International Valuation Standard 3.

The charge in relation to Clause 1.5 of the Code of Ethics was based on the evidence of Witness 1. Also based on this evidence, charges were not pursued in relation to the other components of the complaint.

A telephone conference was held between the Board of Inquiry, Ms Carter and Valuer K on 4 September 2014. Matters of procedure and how Valuer K would plead in relation to the charge were discussed. Valuer K indicated that they would plead guilty to the charge.

### **The Hearing**

Evidence was tabled by the Registrar confirming that Valuer K was a registered valuer in 2011 and 2012, at the time the subject valuations were undertaken.

The investigation bundle was admitted by agreement.

Valuer K was not present at the hearing or represented, but had previously indicated a guilty plea to the charge.

### **Submissions for the Valuer General**

In opening, Ms Carter presented submissions for the New Zealand Institute of Valuers on penalty and costs setting out firstly the background to the complaint and referring to the evidence of Witness 1 which was attached to her submission.

Ms Carter noted that the complaint related to the valuation prepared for the setting of the annual rent for the property. The letter of complaint was sent by the complainant who at the

time of the rental assessment was the joint owner of the café business in conjunction with the lessee.

Counsel advised that while the complainant had raised a number of concerns in his complaint, Valuer K had only been charged with, and pleaded guilty to one offence. That charge related to the lack of transparency of the information that was contained in the report submitted for arbitration.

Counsel then set out the basis for rent review of the premises and the rental assessments set out above. Counsel noted that while the umpire did not comment on the increased rental submitted to the arbitration, this was not his role. She however noted that there is an expectation of the valuer to be consistent in their approach and to explain, if there has been a variation from a previous report, how that variation has come about.

Counsel drew the Board's attention to paragraph 1.1 of International Valuation Standard 3 which states:

*The critical importance of a valuation report, the final step in the valuation process, lies in communicating the value conclusion and confirming the basis of the valuation, the purpose of the valuation, and any assumptions or limiting conditions underlying the valuation. The analytical process and empirical data used to arrive at the value conclusion may also be included in the valuation report to guide the reader through the procedures and evidence that the valuer used to develop the valuation.*

Counsel noted that Valuer K did not provide a clear understanding of how they assessed the revised rental of \$144,000 in their submission to the umpire, in particular what the "new information" was that they alluded to.

Counsel considered a number of aggravating factors in relation to this breach of Clause 1.5 of the New Zealand Institute of Valuers Code of Ethics:

- *Having two differing rental assessments by the same Valuer for the same property as at the same effective date without an adequate explanation as to why they are different has the potential to bring the profession into disrepute. The public will lose confidence in the ability of the profession;*
- *The extent of the increase in the valuation is not inconsequential, reflecting a 17.3% increase on the initial valuation;*
- *The increase in the valuation without adequate explanation gives an impression of bias which again has the potential of bringing the profession into disrepute.*

Counsel also noted the following mitigating factors:

- Valuer K's guilty plea; and
- Valuer K has not appeared before the Board previously.

Counsel noted the powers of the Board where a valuer had been found guilty of an offence as set out in sections 31 and 33 of the Valuers Act in increasing seriousness:

- a) A reprimand;
- b) A fine not exceeding \$10,000;
- c) Suspension from the register for up to 12 months; and
- d) Removal from the register.

Counsel indicated that this was not the most serious of offending appearing before the Board however as the offence has the real risk of generating a general mistrust by the public, a simple reprimand was not sufficient.

Counsel submitted that the appropriate penalty was a reprimand accompanied by a fine. Due to the facts of the offending and Valuer K's previous good character it was submitted that an appropriate fine would be in the region of \$1,500.

As to costs, Counsel reminded the Board of its power to order the valuer subject to a disciplinary finding to pay costs and advised the Board of relevant cases relating to the award of costs. Counsel advised that the costs in relation to this matter were \$14,900.01.

If the Board decided not to impose a costs order on Valuer K, Counsel submitted that the members registered under the Act would carry the full burden of funding the investigation and the disciplinary functions of the Board. Counsel provided a summary in relation to penalty noting that costs generally had a starting point of 50%, increasing the amount if there were aggravating factors to justify an increase or, decreasing it where mitigating factors were present that would justify that course of action.

Counsel submitted that costs of 50% be awarded.

#### **Submissions for Valuer K**

Valuer K did not appear before the Board but provided a written submission to the inquiry.

In their submission Valuer K observed that Mr K Parker of the New Zealand Institute of Valuers found that there were no grounds for the complaint to proceed any further. They further noted

that Witness 1 subsequently undertook a review and that his findings were similar to K Parker, with the exception of one departure being failure to clearly provide an explanation as to why there was an increase in assessed rental value from an earlier valuation.

Valuer K observed that Witness 1's findings appeared to identify a lack of disclosure with specific reference to why the assessed rental as per their submission to arbitration was higher than an earlier rental assessment prepared for the same review date. They then provided commentary as to how they felt they had provided disclosure in their presentation to the arbitration as follows:

*The increase was referenced during the arbitration process as follows;*

- *I referenced in my Submission to Arbitration that I had increased my assessment due to new market evidence.*
- *A detailed analysis table Appendix D titles 'Adjusted Rental Evidence'*
- *My submission to arbitration assessment is fully supported by the information contained within Appendix D.*
- *My original rental report was tabled at the arbitration.*
- *I explained to the Arbitrator why I had reviewed my original rental report and had increased my assessment.*
- *The Arbitrator listened to my explanation and appeared comfortable with it, and there was no reference within his award to any lack of disclosure.*

Valuer K referred to the dynamics of the rental market in the subject area and indicated that they believed that the rental was low and significantly below market at the time of the review. Their view was that the low level of the passing rental had an influence on the rental determined at arbitration.

Valuer K then advised that they understood and fully concurred with the importance to disclose all relevant information to any client and parties placing reliance upon a valuation report. They conceded that in terms of reporting that they did not make a clear and detailed disclosure within their submission document to the effect that they had obtained further information, and evidence that supported the assessed rental, which was higher than a previous assessment.

They did however maintain that their assessment was market based and well justified, and the later agreed rental confirmed that their assessment was not unreasonable and that they acted ethically at all times.

In their submission Valuer K respectfully requested that the charge against them be dismissed with due consideration given to the following:

- *They had been a registered valuer for over ten years and had never previously appeared before the Valuers Registration Board*
- *No loss has been suffered by the complainant or anyone else*
- *The charge is at the lowest end of offending*
- *Their inability to refute the misleading information within the submission to arbitration as they were not presented with it.*
- *The apparent lack of understanding by both the umpire and Witness 1 of the previous rental assessment*
- *Lack of consistency between the evidence of Mr Parker and Witness 1 – Mr Parker considered that there was no case to be answered. Witness 1 dismissed all but one minor indiscretion*
- *The lease indicates that previous representations are not binding and the relevant document is the submission for arbitration indicating the irrelevance of the previous assessment*
- *Imposing a penalty will have a detrimental effect on their career as a Registered Valuer.*
- *The proposed review of regulations that, if adopted, in future will result in similar disputes to this being resolved prior to a hearing.*

In concluding they noted that the recommended penalty could have a considerable impact on their future career as a Registered Valuer, could potentially reduce their future earnings and was out of context given the minor nature of the offence.

Valuer K also provided references from two colleagues noting their good character and experience as a valuer.

As Valuer K had pleaded guilty to the charge the Board of Inquiry accepted the above submissions as matters of mitigation.

### **Sanction**

The sanctions, which the Board is prepared to entertain, range from a reprimand to a fine in accordance with the legislative constraints. The Board regards the offending to be at the low end therefore not requiring consideration of suspension or removal from the Register. The New Zealand Institute of Valuers sought a reprimand and a fine in the region of \$1,500. Valuer K only noted the potential effect of the proposed penalty on their future career.

The Board notes that this matter relates to the reporting standards required of a professional valuer rather than the technical ability of the valuer. The Board therefore accepts the representations by Counsel for the New Zealand Institute of Valuers that an appropriate sanction is a reprimand and a fine at the low end of the scale. The Board is however conscious that the valuers report is one of the most valuable assets of the profession and the maintenance of high standards is important.

Mitigating factors for Valuer K can be briefly identified as:

- Valuer K's previously unblemished record; and
- Valuer K's guilty plea prior to the hearing.

### **Costs**

Under section 33A of the Valuers Act 1948, the Board may order the valuer concerned to pay such a sum as the Board considers is appropriate in respect of either or both of the following:

(a) the costs and expenses of and incidental to the inquiry by the Board; and

(b) costs and expenses of and incidental to the investigation conducted under Section 32 of this Act in relation to the complaint to which the inquiry relates.

Counsel advised that the New Zealand Institute of Valuers and the Board had incurred costs of \$14,900.01 in relation to this case and sought a contribution of 50% of these costs, i.e. about \$7,450.00.

Valuer K did not make a specific submission on this matter of costs.

The Board reserved its decision at the conclusion of the hearing.

### **Decision**

The Board imposes on Valuer K a reprimand and a fine of \$1,500.00.

Following consideration of the costs of the inquiry, the Board of Inquiry notes that the hearing was set down for half a day, and that the costs of the Board were able to be shared between the hearing and other matters. To this extent the Board is prepared to reduce the costs applicable to the hearing by \$1,200 to \$13,700.01.

The Board has therefore determined that Valuer K pay costs of \$6,850.00 of the total costs properly incurred of \$13,700.01.

A handwritten signature in blue ink that reads "Kenneth R Taylor". The signature is written in a cursive style with a large initial 'K'.

Kenneth R Taylor  
Inquiry Chairperson  
17 November 2014