

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 against
Valuer Y

BOARD OF INQUIRY:

KR Taylor (Inquiry Chairperson)
HJ Puketapu
PA Curnow

COUNSEL:

Ms S Carter for the Valuer General
Valuer Y represented themselves

DATE OF HEARING:

3 March 2014

DATE OF DECISION:

3 March 2014 (oral)

CONFIRMED AND COSTS:

8 October 2014 (Written)

The Complaint

A complaint was concerning a valuation prepared by Valuer Y dated 17 July 2007. The matter was brought to the attention of the Registrar of the Valuers Registration Board by letter dated 14 December 2010. Valuer Y was instructed to undertake an 'as complete' mortgage value of three beach-front apartments. The valuation relating to Lots 1 and 3 in the development was the subject of the complaint. Valuer Y valued Lot 1 at \$4,130,000 and Lot 3 at \$2,750,000. The complainant provided valuations by Valuer 1 in relation to Lot 1 at \$2,861,000 and Lot 3 at \$1,939,000.

The Valuer General instructed Valuer 2 based in the subject area to provide a retrospective valuation as at the 17 July 2007 taking into account the market conditions prevailing at that date and only using sales and rental evidence that would have been available through normal avenues to a valuer in practice at that time. Valuer 2 assessed the value of Lot 1 at \$2,725,000 and Lot 3 at \$1,700,000.

The Valuers Registration Board considered the investigation file and referred the matter to an inquiry. The inquiry was initially set down for 2 December 2013 however as Valuer Y requested additional preparation time, a new hearing date of 3 March 2014 was subsequently allocated.

The Charges

There were two charges brought against Valuer Y as follows:

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 compiling a valuation report dated 17 July 2007 with respect to a property you grossly overvalued 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 17 July 2007 with respect to a property you grossly overvalued the said property.

The charges relating to a gross over valuation were to be heard based on evidence of the Valuer General's valuer witnesses.

A telephone conference was held between the Board of Inquiry, Ms Carter and Valuer Y on 11 October 2013. Matters of procedure and how Valuer Y would plead in relation to the charges were discussed and the Hearing scheduled for 2 December 2013 was adjourned to a date to be set. Valuer Y was given until 24 January 2014 to advise on whether or not they would be defending the charges. Valuer Y indicated by e-mail dated 31 January 2014 that they would plead guilty to the charges.

The Hearing

Evidence was tabled by the Registrar confirming that Valuer Y was a registered valuer in 2007, at the time the subject valuations were undertaken. Valuer Y was subsequently removed from the Register of Valuers in 2009 as a non-financial member.

The investigation bundle was admitted by agreement. The investigation bundle was admitted by agreement.

Valuer Y pleaded guilty to both charges.

Submissions for the Valuer General

In opening, Ms Carter presented submissions for the Valuer General on penalty and costs setting out firstly the background to the complaint referring also to the Report of Investigation by the Valuer General. Ms Carter advised that the letter of complaint was sent by a Director whose business acts for a company based in Europe, who in turn were instructed to investigate the matter at the request of the purchasers of the subject units, whom reside in Europe.

Counsel advised that in late 2006, a well-known local architectural designer was commissioned by Developer 1, to design the subject beach-front three town houses. Developer 1 set up a company 'Company 1' to deal with the construction. Developer 1 used local valuers, Valuer Y and Valuer 3 to provide a valuation report on the proposed development. This is the report that was prepared by Valuer Y and is the subject matter of the charges. The report was used by Developer 1 to obtain finance, the finance application being supported by the sales contracts of the purchasers of the subject units. Developer 1 had sold one unit to each of the purchasers. There had been a prior history of apparent purchases and sales involving these parties and it was that prior relationship that led the purchasers of the subject units into the sales and purchase agreements without any due diligence, such as obtaining their own pre- purchase valuations.

Purchaser 2's contracted purchase price was \$2.8 million and Purchaser 1's \$4.2 million.

The complainant states that both buyers relied on Valuer Y's report of 17 July 2007 in evaluating their respective purchases. They relied on the report as being the current market value of the properties.

However, at the completion of the project in 2009, Company 1 was placed into liquidation. In the process a bank took control of the development under a Deed of Transfer signed by Purchaser's 1 and 2. In April 2010 Purchaser 2's \$2.8 million town house sold at mortgagee sale for \$1 million and the complainant advised that Purchaser 2 was now being pursued by his own lender for the balance.

Counsel advised that the key points of concern raised by the complainant were:

- Valuer Y failed to recognise the downturn in the market effective from 2005 to 2007
- The limitations associated with the location of the property relative to the sales
- The lack of directly comparable sales indicating that the proposed development was largely untested
- The large discrepancy between the valuations and the market
- Consideration of potential market changes during the course of the development.

Valuer Y valued Unit 1 at \$4,130,000 whereas Valuer 1 (on behalf of the complainant) valued this unit at \$2,861,000. Valuer 2 carried out a retrospective valuation on behalf of the Valuer General, and valued the unit at \$2,725,000.

Valuer Y valued Unit 3 at \$2,750,000 whereas Valuer 1 valued this unit at \$1,939,000 and Valuer 2 at \$1,700,000.

In relation to the beach front unit, Valuer Y's valuation is 44.36% above that of Valuer 1's and 51.5% above that of Valuer 2. In relation to Unit 3, Valuer Y's valuation is 41.83% above Valuer 1's valuation and 61.77% above that of Valuer 2.

Counsel considered a number of aggravating factors in relation to this over valuation.

- Two properties have been overvalued, albeit they form part of the same complex
- The extent of the overvaluations as outlined above
- The loss occasioned by the complainant
- The complainants were potential foreign investors thereby the overvaluations impact on the reputation of the professional and credibility of the New Zealand property market.

Counsel also noted the following mitigating factors:

- Valuer Y's guilty plea
- Valuer Y has not appeared before the Board previously

Counsel did not accept that it was a mitigating factor that the complainant in some way may have brought about their own losses because they engaged in a speculative venture without due diligence. The onus is on a Registered Valuer to ensure that a report is prepared in accordance with the rules and standards enforced at the relevant time.

Counsel noted the powers of the Board set out in section 31 and 33 of the Valuers Act. Counsel indicated that penalty was a matter for the Board having come to a view about the seriousness of the conduct in question. It was submitted that the purpose of professional

discipline regimes is to ensure that appropriate standards of professional conduct are maintained in the occupation concerned. This was not to punish the professional although that may be an inevitable result. Central to this is a requirement to protect the public from professionals who do not meet relevant standards of conduct or competence. It was noted that in this case the extent of overvaluation is significant particularly when one looks at the dollars involved. Moreover there are two charges, one relating to each property. Counsel submitted that even though this was Valuer Y's first appearance before the Board, in light of the above factors, a fine in the region of \$4,000 to \$6,000 combined with a reprimand would be the appropriate penalty. Counsel did not consider a reprimand alone would be a sufficient penalty.

As to costs, Counsel advised that the costs in relation to this matter were \$18,729.08. If the Board decided not to impose a costs order on Valuer Y, Counsel submitted that the others registered under the Act would carry the full burden of 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 Y

Valuer Y provided a written submission to the Board which they spoke to at the hearing.

By way of introduction Valuer Y advised that they had completed agriculture, farm management, valuation and property management qualifications in the 1980's, and that they had been registered as a valuer for over 20 years. Valuer Y went on to outline their valuation career noting a wide range of experience in the subject area. They noted they had retired from the valuation profession in 2008.

In relation to the facts of the valuations prepared, Valuer Y noted that they prepared an 'as complete' valuation for mortgage finance dated 17 July 2007. They further noted in the valuations that the values were subject to 'a Completion Certificate' which was never requested or prepared. They described the units as being of the highest specifications with major fixtures imported from overseas and went on to outline the specific specifications of the units. Valuer Y noted the comparable sales that they had used in assessing the value of the subject properties. In their view the assessed valuations were well within the analysed market rates at the time.

Valuer Y advised that their valuation business was sold to another practice in 2008 and that their original records in relation to the valuations had not been retained.

Valuer Y then noted the following mitigating circumstances that they wished the Board to take into account:

- *It is very easy to look back to the period of early 2007 and judge these times and the prevailing circumstances - and with the benefit of hindsight - say the GFC could have been foreseen.*
- *But the fact that these were extremely buoyant economic times the likes of which we will never see again. I and many others I have spoken to during and since have never witnessed anything like it. In the real estate market it was commonplace for new benchmark sale prices to be established on an ongoing basis - higher prices for land, record sale prices for houses, increasing commercial rents and lower cap rates for commercial property - all against the background of unabated market demand for everything property related.*
- *In fact it was not unusual for residential property to be listed (at a fixed price) in the morning and by the afternoon multi offers being tabled over and above the asking price.*
- *It was and is now accepted as public knowledge there were continuing dramatic increases in property values through the early to mid 2000's and a variety of statistics are available to support this - even comments in the 'check' valuations allude to it.*
- *Whilst there may have been some uncertainty about a correction on the market leading up to the second half of 2008 it is fair to say very few people foresaw the catastrophic affects the GFC would bring.*
- *The GFC really was a calamitous once in a lifetime event -that even today some 6 years later we are still feeling the effects of and will likely to do for some time to come.*
- *To my mind and now based on personal experience the so called benefit of hindsight completely removes one from the day to day excitement of the times and more especially the positive and optimistic mindset that prevailed back then. It was an entirely different universe to the times that are now upon us.*

Valuer Y also responded to the submissions by Counsel for the Valuer General and those raised by the members of the Board. These comments largely related to the previously submissions. Points raised were:

- Valuer Y did not agree that the market had flattened.
- That the subject area was creeping towards nearby suburbs as a natural extension.

- That Developer 1 was flamboyant and charismatic and their judgement may have been clouded by this.
- The police matter did not proceed.

Valuer Y then made a number of points in closing:

- *I don't wish to get into a dispute as to what the actual valuation of the units may have been at the time.*
- *Although I do not entirely agree with the evidence and analysis of the two check valuations, I consider it pointless to argue over the relevance or inclusion/omission of one comparable sale over another.*
- *The passage of time is enough to convince me I was wrong in the assessments I prepared and in that context, I acknowledge the magnitude of the error is beyond an acceptable margin for a professional registered valuer.*
- *Although it might appear to paint a picture of being a victim of the times - I readily acknowledge I should have had the professional skill and expertise to see through the hype to a more conservative approach.*
- *I place myself in the Board's hands for resolution of this matter. But in passing judgement I ask you to reflect on your own personal experiences of the property market prior to the GFC.*
- *I don't doubt that the aftermath has borne witness to a number of cases you have had to consider which in its own way reinforces the very essence of these times.*

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 does not regard the offending to be at the top end requiring consideration of suspension or removal from the Register. The Valuer General sought a reprimand and a fine in the range of \$4,000 to \$6,000. Valuer Y placed themselves in the hands of the Board.

The Board has considered recent sanction decisions on other matters, noting that fines in the range of \$5,000 to \$10,000 have been imposed. The Board has also previously considered a reprimand as appropriate in relevant circumstances.

Mitigating factors for Valuer Y can be briefly identified as:

- This was the first complaint against Valuer Y in a valuation career that had spanned 18 years at the time of the valuation
- A guilty plea prior to the hearing, albeit only after all the papers were served
- Valuer Y has now semi-retired from the valuation industry

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; (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.'

The Board and Valuer General have incurred costs of \$18,729.08 (inclusive of GST) in relation to this case. The Valuer General sought a contribution of 50% of these costs, i.e. about \$9,364.54.

Again Valuer Y placed themselves in the hands of the Board.

Oral Decision

The Board issued an oral decision at the Hearing:

Valuer Y has pleaded guilty to two charges of gross overvaluation in relation to the subject properties

Submissions received from Ms Carter for the Valuer General and Valuer Y on their own behalf have been considered.

The Board reprimands Valuer Y and fines them \$4,000 (inclusive of GST). Costs equal to 50% of the actual costs of prosecution are awarded against Valuer Y.

A written decision containing reasons for the penalty and costs will follow.

Summary of Penalty and Costs

The Board confirms the sanction imposed on Valuer Y of a reprimand and a fine of \$4,000.00.

Following consideration of the costs of the inquiry, the Board has determined that Valuer Y pay costs of \$9,350.00 of the total costs properly incurred of \$18,729.08.



Kenneth Taylor Inquiry
Chairperson 8 October
2014