

**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 F

**BOARD OF INQUIRY:** P.A. Curnow (Inquiry Chairperson)  
V. Murdoch  
N. Sullivan

**COUNSEL:** Ms S. C. Carter for the New Zealand  
Institute of Valuers

Mr David Nagel for Valuer F

**DATE OF ORAL DECISION:** 3 December 2019

**WRITTEN DECISION:** 30 April 2020

**Background:**

1. On 31 October 2018 the complainant made a complaint to the New Zealand Institute of Valuers (NZIV) concerning a valuation report completed by Valuer F.
2. The background and substance of the complaint was as follows:
  - a. On 15 December 2017 the complainant had requested a valuation of their property with the intention of establishing a sale value that would justify the cost of a subdivision. They received a report prepared by Valuer F, which as at 23 January 2018, assessed the “as if complete” Market Value of the property to be \$300,000 inclusive of GST, if any.

- b. As a consequence of the valuation, the complainant engaged consultants to begin the subdivision process and listed the property for sale. After four months of being on the market without a single offer, the complainant had some concerns in respect of the proposed sale price and obtained a further valuation of the property. The further valuation assessed the “as if complete” Market Value to be \$120,000 inclusive of GST (this valuation as at 10 September 2018).
  - c. The complainant asked the author of the second report, Valuer 1, to review the valuation report of Valuer F. The complainant was disturbed to hear that in the opinion of Valuer 1, Valuer F had included sales evidence which was not relevant to the subject site, which was why the valuation was high. As a result, the complainant was concerned that she had committed to a project of subdivision, with the associated costs, which she would never have commenced but for the over inflated valuation.
3. The NZIV commenced an investigation into the complaint.
4. As part of the investigation, the NZIV instructed Valuer 2, to complete a retrospective Market Value of the property as at 23 January 2018. Valuer 2 assessed the “as if complete” Market Value to be \$165,000 including GST.
5. Valuer F valuation of the property was 81.8% above that of Valuer 2’s
6. Valuer F was given an opportunity to respond to the complaint and they provided a letter to the NZIV dated 30 April 2019. In their response, Valuer F accepted that both their selection and interpretation of comparable sales had led them to provide a valuation to the complainant that is in excess of where the valuation should, in fact, have been. Valuer F advised that their employers, had also engaged an independent local valuer, Valuer 3, to complete a retrospective “as if complete” Market Valuation which was \$170,000, as at 23 January 2018.
7. Valuer F valuation of the property was 76% above that of Valuer 3.
8. Valuer F acknowledged that with their focus being on selecting the most recent sales within the locality, rather than relying on older sales which were in fact more comparable, this had resulted in an inflated assessment.
9. In mitigation of their valuation, Valuer F explained there was some complexity to the property coupled with differing interpretations of the plans and costings, engineering challenges and the

paucity of comparable vacant land sales. They explained that they were influenced by an older section sale in the subject area in December 2016. In hindsight this should have set the ceiling for the analysis, given the better building platform and the likeliness that a future building would not have to be engineered to the same standard as on the subject property. Valuer F also explained that they had completed over 500 residential valuations each year for the past three years, but only recently, in November 2017, transferred to the local area.

10. Valuer F advised the NZIV that their employers have been in discussions with the client and had agreed to compensate the complainant for the loss associated with reliance on the valuation advice.
11. The investigation file was provided to the Valuers Registration Board (VRB), who considered there were reasonable grounds for the complaint and ordered an inquiry.

**The Charge:**

12. Valuer F faced a single charge under 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 23 January 2018 with respect of a residential property, you grossly overvalued the said property.*

13. At a procedural teleconference held on the 11 October 2019 with Mr Nagel, Ms Carter and the VRB inquiry panel, it was indicated that Valuer F would plead guilty to this charge. That being the case, the matter was to proceed on the basis of a penalty and costs hearing, although Mr Nagel was advised by the inquiry panel chairperson that the indication of a guilty plea need not be confirmed at this stage.
14. At the hearing, Valuer F pleaded guilty to the single charge.

**NZIV Penalty and Costs Submission:**

15. The aggravating features of Valuer F's actions were outlined as follows;
  - a. There was a significant overvaluation, 81% above the retrospective valuation obtained by the NZIV and 76% above the valuation obtained by their employers; and

- b. As a consequence of the overvaluation, the complainant embarked upon the subdivision of her property and incurred costs and considerable time and anxiety progressing the subdivision before discovering that it was not a financially viable option.

16. The following mitigating factors were put forward by the NZIV including:

- a. Valuer F's guilty plea which was entered at an early stage and Valuer F had accepted their error in the course of the investigation
- b. Valuer F has not appeared before the Board before and to NZIV's knowledge no complaints have previously been made against them; and
- c. The fact that Valuer F, through their employer, had compensated the complainant for losses incurred and that in written correspondence the complainant acknowledged that they had settled the matter to their satisfaction.

17. The NZIV outlined the penalty options available under sections 31 and 33 of the Act, to the Board, these being:

- 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

18. Any of the first three penalties can be imposed either individually or in combination.

19. In the submission on penalty, the NZIV outlined that the purpose of a professional disciplinary regime is to ensure that the 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. Central to this is a requirement to protect the public from a professional who does not meet the relevant standards of conduct or competence. In this case, the NZIV considered the extent of the overvaluation to be relatively significant. Notwithstanding that, the complainant had been compensated, but for the conduct of Valuer F the complainant would never have been put in the position that they were in.

20. In determining the appropriate penalty, the NZIV submitted the following cases:

- a. *Valuer General v Valuer N decision 16 January 2019*: In this case Valuer N pleaded guilty to one charge of significantly overvaluing a property and a second charge of breaching clause 1.5 of the New Zealand Institute of Valuers Code of Ethics, in that, they failed to provide sufficient information necessary for a proper understanding of the valuation. The “as if complete” overvaluation was in the region of 14%-27% of the retrospective valuations and Valuer N had included no details in their report of the proposed work that was to be completed in order to understand what the “as if complete” valuation was based upon. Valuer N was reprimanded and the Board imposed a fine of \$2,000.
- b. *Valuer General v Valuer C decision 27 July 2018*: Valuer C pleaded guilty to one charge of grossly overvaluing a property and a second charge of breaching clause 1.5 of the New Zealand Institute of Valuers Code of Ethics by failing to include an explanation of how they reached the land value component of the valuation, failing to provide sufficient information so that a reader could understand the report, failing to prepare and confirm an agreed Scope of Works and failing to identify and confirm the applicable International Valuation Standards. In respect of the overall valuation, Valuer C’s valuation was in the region of 27.78%-31.06% above the retrospective valuations. The Board recognised that comparable sales were difficult to obtain. The Board reprimanded Valuer C and imposed a fine of \$1,500.
- c. *Valuer General v Valuer Y decision 8 October 2014*: Valuer Y pleaded guilty to two charges of grossly overvaluing a property. The properties were two units in the same complex. Valuer Y overvalued a unit in the region of 44.36%- 51.5% above that of the retrospective valuers and in respect of the second unit their valuation was between 41.83%-61.77% above the retrospective valuers. The Board reprimanded Valuer Y and imposed a fine of \$4,000.

21. The NZIV considered the appropriate penalty for Valuer F to be a reprimand and a fine in the region of \$1,500.

22. In respect of costs, Section 33A of the Act provides the power to order the valuers subject to a disciplinary finding to pay costs, it 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.*

23. These costs total \$14,689.70 (including GST) and have been incurred as follows:

Legal fees	\$4,700.00
NZIV investigation/prosecution	\$5,894.00
Board expenses	\$4,095.70

24. Should the Board not impose a costs order on Valuer F then other registered valuers under the Act will carry the full burden of funding the investigation and disciplinary functions of the Board.

25. The NZIV quoted two authorities in respect of costs:

In *Gurusinghe v Medical Council of New Zealand*<sup>1</sup>, the High Court said:

*The ordering of payment of costs is not in the nature of a penalty. The penalty is removal from the Register. The order for costs is to enable recovery to a greater or lesser extent of the costs and expenses of and incidental to the hearing. There is no requirement that the Council should necessarily reduce an award of costs because of the fundamental consequences of removal of name from the Register.*<sup>2</sup>

In *Cooray v Preliminary Proceedings Committee*<sup>3</sup>, the High Court reviewed costs awards in various disciplinary cases before the Medical Council and said:

*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*

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<sup>1</sup> *Gurusinghe v Medical Council of New Zealand* [1989] 1 NZLR 139.

<sup>2</sup> [1989] 1 NZLR 139, 195.

<sup>3</sup> *Cooray v Preliminary Proceedings Committee* HC Wellington AP 23/94, 14 September 1995

*order for costs and has in individual cases where it has considered it is justified gone beyond that figure.<sup>4</sup>*

Accordingly, the NZIV sought an imposition of costs of \$7,345.00 which represents approximately 50% of the total costs.

**Valuer F's Defence:**

26. Valuer F appeared in person, spoke to and presented a formal statement. They outlined how they gained registration in February 2016. Then returned to the subject area, in November 2017.
27. The valuation for the complainant was undertaken in January 2018. Valuer F stated that the subject area was a complex market taking into account value factors such as aspect, outlook, contour and particularly engineering difficulties for construction. It was these engineering complexities that Valuer F said were not adequately reflected in their valuation.
28. Valuer F was forthright in their opinion of the lack of support from their employer when transitioning to the local market. However, they fully accepted that the failure of the valuation lay solely with them, as the Registered Valuer. They apologised to both their clients and the Board, for their error of judgment.
29. The complaint hanging over them for such a long period has been stressful and has caused them from time to time to consider their desire to remain in valuation. Further, that they have learnt a great deal about being a valuer and the importance of supportive colleagues and workplace.
30. Mr Nagel, represented Valuer F at the hearing. He outlined much of the background to the valuation and also pointed out the professional advice received by the complainant with the Resource Consent application in December 2017.
31. Mr Nagel also advised that some physical works had taken place on the site and that significant costs had been incurred prior to Valuer F's involvement. Based on the complaint itself, the instruction was made on the 15 December 2017 for the valuation, whilst the valuation inspection by Valuer F was not until 23 January 2018.
32. Valuer F accepts that the correct valuation lies within the range of \$165,000-\$170,000, as assessed by Valuer 2, and Valuer 3, respectively.

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<sup>4</sup> HC Wellington AP 23/94, 14 September 1995 at [9]

33. In respect of mitigating circumstances, Mr Nagel stated that the complainant's actual monetary loss resulting from the overvaluation was minimal, as evidenced in the detail of the documents presented in the claim for costs.
34. Mr Nagel also said that the complainants did not intend to make a complaint personally against Valuer F and that the complainant had settled the matter satisfactorily.
35. Mr Nagel said that the subject area is a "notoriously difficult location to value property" and this was borne out with the range the various valuers had.
36. Mr Nagel said that Valuer F had sought the opinion of two experienced valuers in their office and further that Valuer F had been let down by those charged with supporting their transition into the local market.
37. In further mitigation, Mr Nagel said Valuer F has not appeared before the Board before, has expressed remorse and attended the disciplinary hearing.
38. Mr Nagel stated that Valuer F's firm have altered their quality assurance process for relocating registered valuers and shared their experience with the banking sector. Mr Nagel added, apparently, one major bank has implemented a stand down period of three months for a relocating valuer, before allowing completion of work for that particular bank.

**Submission on Penalty:**

39. Mr Nagel put forward two particular Board decisions regarding the level of fine, one of which was separate to that put forward by the NZIV. The two cases and their respective fines were the *Valuer General v Valuer C*, where a \$1,500 fine was imposed after a guilty plea to two charges for an overvaluation and a lack of valuation reporting compliance. The second case was the *Valuer General v Valuer Y* where a \$1,000 fine was imposed after a guilty plea to three charges, including overvaluation and unethical conduct.
40. Mr Nagel considered that as there is just a single charge against Valuer F, the early guilty plea, the fact that the complainant has been fully compensated for their loss and also had wished to withdraw their complaint, it is submitted that an appropriate penalty is a \$1,000 fine.



### Submissions on Costs:

41. Mr Nagel accepted that the total costs associated with the investigation and hearing total approximately \$14,689.70. Further, that the starting point of 50% of reasonable costs is appropriate, increasing the amount if there are aggravating factors, or decreasing the amount where there are mitigating factors. Mr Nagel further accepts that if costs are not awarded against Valuer F then they will fall upon the other members of NZIV.
42. Mr Nagel submitted that there are cases where the award for costs is less than 50% and three were put forward to support his argument. These were the *Valuer General v Valuer W [2010]* the *Valuer General v Valuer V (penalty) [2012]* and the *Valuer General v Valuer R [2014]* where costs of 40% were awarded.
43. Mr Nagel submitted, that in this case costs of 40% would be appropriate, with this being a total of \$5,875.

### Board of Inquiry Decision:

44. At the conclusion of the hearing, the Board provided an oral judgement on penalty and costs. This oral decision is repeated in full as follows:

*Valuer F has pleaded guilty to the one charge being; Under 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 23 January 2018 with respect to a residential property, you grossly overvalued the said property.*

*The Board has heard submissions on penalty and costs on behalf of the New Zealand Institute of Valuers and Valuer F.*

*In this case, the extent of the overvaluation is relatively significant. Whilst the complainant has now been compensated for the consequential costs incurred, accepting preliminary costs had already been incurred by the complainant, but for the conduct of Valuer F, the complainant may not have incurred further costs.*

Penalty

*Within the range of penalties to which the Board may have regard, the NZIV have submitted the appropriate penalty is a reprimand and a fine in the region of \$1,500. This would place the matter at the lower end of the scale of penalties available.*

*Valuer F submits the appropriate penalty is a fine of \$1,000.*

*The Board is mindful of the circumstances of the valuation and Valuer F's response.*

*Valuer F's attendance at this tribunal is a recognition of their professional responsibilities.*

*The Board reprimands Valuer F and imposes a fine of \$1,000.*

Costs

*Costs total \$14,689.70 in the NZIV submission. This has not been contested by Valuer F.*

*The decisions of disciplinary tribunals have a starting point of 50%, diminishing this amount if there are mitigating factors or increasing the amount if there are aggravating factors to do so.*

*The Board is satisfied on the evidence presented that 50% of properly incurred costs is appropriate.*

*The Board awards that Valuer F pay costs of \$7,345. A full written decision will follow.*

The Board confirms the oral judgment on penalty and costs.



Phillip Curnow  
Inquiry Chairperson  
30 April 2020