

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 concerning a
complaint against Valuer W

BOARD OF INQUIRY: Evan Gamby - Chairperson
Phillip Curnow
Victoria Murdoch

COUNSEL: Mr Andrew Britton for the New Zealand
Institute of Valuers
Mr Jon Parker for Valuer W

HEARING: 17 December 2019

ORAL DECISION: 17 December 2019

WRITTEN DECISION: 30 June 2020

Background

1. A formal complaint was lodged by the complainant on 12 July 2018 against Valuer W. It concerned a valuation prepared by Valuer W for a rural lot. The report was dated 14 March 2018, being the valuation

date. The complainant alleged that Valuer W had provided a 'fake valuation' and that she was worried the price paid did not reflect the value of the property.

2. The complainant instructed Valuer W to prepare a valuation, following a conversation with them on 7 March 2018. Valuer W advised her that the valuation provided by the owner was two years old and could not be relied on.
3. Valuer W's email instruction acceptance to the complainant included a note of the fee and a standard Scope of Work document. The email stated that the valuation would be provided for the bank by 19 March at the latest.
4. The Scope of Work is a standard document set out in numbered paragraphs. When read together with the email dated 7 March 2018, they confirmed the date for providing the report, what valuation work was to be done and the fee that would be charged. The Scope of Work was not subsequently amended.
5. Sections within the Standard Scope of Work document relevant to the complaint are:
 1. The registered valuer will complete the valuation
 6. Unless otherwise stated in the report the date of valuation will be the date of inspection of the property.
 10. The valuation will be undertaken in conformity with International Valuation Standards (IVS)
 12. In the event that unforeseen complications arise, necessitating our additional time and resources to complete the instruction we will immediately contact you to discuss the additional charges and to obtain your further authorisation."
6. The valuation report, which became the first report, was provided on the 20th of March 2018. It correctly described the property but, inadvertently, included an outline and photo of an adjoining site. The error was drawn to Valuer W's attention by the complainant. They re-issued the report later that day with the correct site identified. The photo was removed. This became the second report. Both reports were signed.
7. The Board noted that both reports in the investigation bundle included a record of title identifier searched on 12 October 2016. There was no indication that the title was searched for the purpose of the current valuation.
8. The Board also noted that the re-issued second report did not refer to the changes made from the first report, both reports being issued on 20 March 2018 and both dated 14 March 2018. The Board has, on previous occasions, confirmed that re-issuing of reports is acceptable, but version control is required. The purpose of version control is to ensure that two reports prepared as at the same date with different

details are distinguishable. The earlier report should be withdrawn and all known parties who might seek to rely on the earlier report advised.

9. The Board is aware that withdrawing a signed report which may have been forwarded to another party, such as a lender, is not always easily achieved, but all efforts must be made to prevent its use, even to the extent of obtaining advice from the party to whom the report has been addressed that it will not be relied upon. The Board reinforces its advice in previous decisions that where a signed report is retracted or replaced, it must be clear to a reader of the replacement report that an earlier report exists and has been withdrawn. Changes that have been made in the replacement report are to be recorded in the later document and the report noted as a subsequent version.
10. In this case errors were immediately picked up by the complainant, a replacement report was provided but the first report was not withdrawn.
11. In her complaint, the complainant advised that she challenged Valuer W by email following their conversations, that she did not believe they had inspected the property and had merely copied and pasted from an earlier valuation. There was further correspondence between them.
12. On 6th December 2018, Valuer W wrote an apology to the complainant, the relevant section being repeated below:

Apology

5. *In our telephone discussion of 22 March 2018, I had understood the thrust of your concern at that time was that my valuation was a 'cut and paste' job, and therefore a fake and a rip off. I tried to explain to you that this was not correct - that I was very familiar with the property and that my valuation was properly undertaken by reference to recent sales evidence.*
6. *However, I do accept, and apologise unreservedly for:*
7. *Not undertaking an inspection of the property prior to completing my valuation (and using photos that were not current), and*
8. *Giving you the impression that I had undertaken such an inspection in our discussion. Indeed, our invoice also refers to an inspection and should have not done so - this was an error.*
13. Other sections of the apology letter provided detail as to how the matter occurred, that Valuer W had intended to inspect on the 16th of March but their other inspection in the area took longer than anticipated. As a result of other work commitments, they were unable to return prior to the finance

condition date so they elected to release the valuation and in hindsight recognised this was the wrong decision. They were confident that they were very familiar with the site having inspected it less than 18 months earlier and driven past the property on multiple occasions since. The apology letter reinforced their position that there was no intention to mislead by Valuer W.

14. At this point, the Board noted the following:

- (i) There was a completed Scope of Work which clearly set out the obligations of Valuer W to the complainant.
- (ii) The report was completed based on recent market evidence for which there was no issue in terms of market value.
- (iii) The reports appear to rely on documents obtained from an earlier report such as the title which, if it was searched again, was not included in either the first or the second report.
- (iv) The report is dated 14 March 2018 and was prepared prior to the date Valuer W was to undertake the inspection.
- (v) No inspection was undertaken on 14 March 2018 or 16th March 2018.
- (vi) The first report contained an outline of the wrong site and a photo which did not pertain to the correct site.
- (vii) The revised second report did not note that it was a replacement for the first report.
- (viii) No changes made relative to the first report were noted in the second report, and
- (ix) The first report was not withdrawn.

Categorisation of Complaint

15. The Board was satisfied that this matter related to a breach of the Code of Ethics.

The Charges

The charges prepared are:

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 14 March 2018 with respect to a property you certified a statement which was known by you to have been false, namely you certified that you had inspected the valued property on 14 March 2018 when you had not inspected the valued property on that date, and therefore breached clause 1.4 of the New Zealand Institute of Valuers' Code of Ethics.

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 14 March 2018 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 the valuation report and therefore breached clause 1.5 of the New Zealand Institute of Valuers' Code of Ethics.

Particulars

- a) You failed to communicate in the scope of work to your client prior to completion of the assignment any limitations or restrictions of your inspection of the valued property, namely that you were not inspecting the valued property, in breach of IVS101 Scope of Work clause 20.3 and/or 30.2; and/or
- b) You failed to provide sufficient information necessary for a proper understanding of the valuation in that you failed to disclose a limiting condition that was relevant to the valuation, namely that you had not inspected the valued property, in breach of IVS103 Reporting.

Withdrawal of Charge 2

16. The Board received an application on behalf of Valuer W seeking withdrawal of Charge 2.
17. The application outlined the history of the matter. The complainant entered into an agreement which included a finance condition to be satisfied by 22 March 2019. As a result of that finance condition, the valuation was to be prepared by the 19th of March to ensure there was enough time for finance to be obtained.
18. Valuer W prepared a draft report on or prior to 14 March 2018, intending to inspect the property on 16 March 2018. They made investigations of local real estate agents regarding the state of the market and investigated recent sales. As a result of an earlier inspection taking longer than anticipated, they were not able to get to the property on the 16th of March. For various reasons, notably working very long hours, they were struggling to meet deadlines and were under significant pressure.

19. To meet the complainant's time frame, they made the decision to release the report which, although in hindsight they acknowledged was the wrong decision, their thinking was said to be as follows:

- (i) The subject property was a vacant section.
- (ii) They had previously inspected the subject property and had more recently driven past the subject property.
- (iii) They knew the contour and its relative location in the subdivision.
- (iv) They knew that the site had been prepared for building by removing the topsoil, laying of base course, extension of service connections and installation of perimeter fencing and two gates.
- (v) They knew its current use and no improvements had been erected on site.
- (vi) They had spoken to a local agent who was aware that this land was being sold privately.
- (vii) The Sale and Purchase Agreement confirmed the purchase was for 'bare land' and there was no reference to any temporary structures. There was no inclusion of any buildings or other conditions regarding any lease in the agreement.

20. The application before the Board referred to the duplication of charges and that Charge 1, adequately covered the matter. A previous decision of the Board was cited as an example of charges that were duplicated and leave was subsequently sought and granted to withdraw charges in that matter because of duplication. A further citation in support referred to the matter of *Faris v Medical Practitioners Disciplinary Committee* [1993] 1 NZLR60 5 where it was stated in the judgment:

'Duplication of charges is undesirable, indeed unacceptable and while I can accept that there is a distinction between the first and second paragraphs, there is also a similarity which gives rise at least to a suggestion of duplication ...'

21. There are matters in the report of Valuer W that could have been dealt with better under Charge 2, which was an alleged breach of 1.5 of the New Zealand Institute of Valuers' Code of Ethics relating to the maintenance of the highest standards in the preparation of a valuation report. Re-issuing a report without referencing the distinction between the first and second report and, it would appear, not undertaking a full file preparation such as a current search of the title would also have been relevant for Board consideration.

22. Notwithstanding the above, the Board noted that these additional matters identified by the Board were not set out in the Particulars of Charge 2, the pertinent matter being a reference to the inspection of the property which was encapsulated in Charge 1.

23. Initially, the New Zealand Institute of Valuers (NZIV) objected to the application on behalf of Valuer W.

24. On 29 November 2019 a Memorandum of Understanding was agreed between the NZIV and Valuer W for consideration of the Board. The notable points are:

- (i) Valuer W will plead guilty to Charge 1 in the Notice to Valuer.
- (ii) The NZIV will then seek leave of the Board to withdraw Charge 2 in the Notice to Valuer.
- (iii) Valuer W acknowledges that the withdrawal of Charge 2 by the NZIV, if allowed by leave of the Board, does not reflect an inability to prove Charge 2.
- (iv) Rather, the parties agree that the withdrawal of Charge 2 is in the interests of resolving the prosecution short of a defended hearing, which confers time and cost benefits to the profession, the NZIV and the Board.
- (v) Following the entry of a guilty plea to Charge 1 by Valuer W, the parties will proceed to a penalty hearing before the Board on a date to be confirmed.'

25. The Board accepted the guilty plea of Valuer W to Charge 1 and gave leave for the withdrawal of Charge 2. Charge 2 was withdrawn.

Penalty and Cost Hearing

26. The matter then proceeded to a Penalty and Cost Hearing on the same day, 2 December 2019.

Submissions on Penalty for the NZIV

27. The factual basis for imposing a penalty were outlined in the investigation report of 31 January 2019 and the supplementary peer review of Valuer 1, filed with the Board on 29 November 2019.

28. The NZIV set out background information, much of which has been encapsulated in the background information above.

29. From the perspective of penalty, it is relevant to consider, the original investigation bundle, the later peer review by Valuer 1 for the NZIV and the events that unfolded up to Valuer W entering a guilty plea on Charge 1.

30. The Board noted that Valuer 1 confirmed there were breaches of Clause 1.4 and 1.5 of the Code of Ethics by certifying a date of inspection of 14 March 2018 which the valuer knew to be false. Valuer 1 stated in his review:

“By certifying a date of inspection of 14 March 2018 (Page 6 of the Valuation Report) the valuer has made a statement knowing such to be false. By their own admission therefore Valuer W has been in breach of Clause 1.4 and in my opinion has further breached Clause 1.5 through behaviour which brings into disrepute the valuation profession as a whole.”

31. Valuer 1 also made reference to the potential for a breach of Clause 2.2 for a conflict of interest, but that matter was not pursued and is not a matter that the Board considered.

32. The aggravating features were outlined for the NZIV said to be:

(i) The complainant's initial suspicion that Valuer W had not inspected the property which Valuer W did not acknowledge in their original discussions or in correspondence.

(ii) Valuer W acknowledging that there was a significant error.

(iii) An attempt of deception to cover up the fact of the non-inspection which was inconsistent with what they had agreed to in the Scope of Works, and

(iv) Not explaining to the complainant their inability to inspect the property and their slow acknowledgement of the non-inspection when confronted by her.

33. The submission for the NZIV was that these were serious errors of judgment and practice. Citing a Board decision where a penalty of reprimand and a fine of \$4,000 was imposed, the NZIV submitted that this matter was more serious as the valuer in question was said to be characterised by mere gross negligence whereas, in Valuer W's case, the misconduct was deliberate.

34. In mitigation, the NZIV accepted that:

(i) Valuer W has had no previous charges against them as a registered valuer and has been an associate of the New Zealand Institute of Valuers for 32 years and

(ii) Valuer W has resolved the prosecution matter short of a defended hearing.

Submissions on Penalty for Valuer W

35. The factual matters were outlined and were not in dispute. Valuer W acknowledged the error of judgment as a result of high work pressures and their commitment to provide the best service to clients.

36. In mitigation, for Valuer W it was submitted that:

“(a) The complainant has not suffered any financial loss as a consequence of the valuation;

(b) They have an exemplary record as a registered valuer, is respected by their peers and has not had any sanctions for misconduct from the governing bodies prior to this charge;

(c) They are very remorseful over this matter;

(d) There is no dispute over the valuation of the property. Subsequent sales support the value assessed in the report.’

37. With respect to previous decisions by the Valuers Registration Board in relation to penalties imposed on ethical matters, Counsel for Valuer W referred to previous decisions of the Board, which were argued to be comparative.
38. A further Board reference was cited in which the valuer in question was found guilty of a gross over valuation and unethical conduct, there was a sanction and a fine of \$7,000.
39. The Board noted that two reports under the same instruction and with different dates were in the hands of the client, containing different valuation figures with no explanation as to how the difference occurred.
40. The submission for Valuer W was that a reprimand and a fine of between \$1,000 and \$2,000 was appropriate.

Costs

41. For the NZIV, it was submitted that costs had been properly incurred and that a sum of \$12,858.26 was sought, representing 50% of the total costs incurred on both charges. Full details of the Schedule of Costs were provided to the Board. Valuer W accepted that 50% of costs were appropriate.

Statement of Valuer W

42. Valuer W appeared and read out their statement to the Board. None of the matters outlined were disputed. Valuer W accepted a poor error of judgement and stated that they had no intent to deceive the complainant and their overriding motivation was to meet the client's deadline. This was the sole reason for their actions.
43. Valuer W stated that they had no premeditation or intent and that they were simply overwhelmed with the pressure of work and struggling to keep faith with their clients. They accepted that their decision was wrong, and they were disappointed in their subsequent actions, given the trust bestowed on them by their standing and as a mentor to younger valuers. They confirmed a formal apology was made to the complainant and they sincerely apologised to the Board and the profession. They stated that they were particularly concerned about the impact on the graduate valuer who currently works closely with them. They acknowledged that this would also have an impact on their appointment to industry bodies.
44. In summary, Valuer W considered that they had let themselves down, the profession and their client. They accepted that they were over committed and needed to effectively manage through delegation their work and learning to say no to unrealistic expectations.

45. The Board having considered the submissions for the NZIV and for Valuer W, particularly noting the statement by Valuer W, their appearance before the Board to acknowledge their error of judgment and the genuineness of their remorse, issued the following oral judgement at the conclusion of the hearing:

Valuers Registration Board - Oral Decision

1. *Valuer W prepared a valuation report dated 14 March 2018 of a property. The report was prepared for the complainant, who queried whether they had inspected the property, as they had circled the wrong lot in their report. In later correspondence Valuer W admitted that they had not inspected the property on the date stated in the report. The property was a vacant site that they had inspected in the past and more recently driven past based on other enquiries they had made, they knew the land was still vacant though prepared for building by removal of topsoil, laying of base course, extension of service connections and installation of perimeter fencing. Valuer W made a written apology to the complainant on 6 December 2018. A complaint had already been made on 12 July 2018.*
2. *The matter was investigated, and the Board referred the matter to an inquiry. Two charges were drawn.*
3. *Valuer W has pleaded guilty to Charge 1, that they breached Clause 1.4 of the New Zealand Institute of Valuers Code of Ethics by certifying a statement which was known to be incorrect.*
4. *On 23 October 2019 Valuer W made an application seeking dismissal of Charge 2 on the basis that it was a duplication of Charge 1. This was opposed by the New Zealand Institute of Valuers. Had the guilty plea not been entered on Charge 1, the matter would have proceeded on both charges.*
5. *In a Memorandum of Understanding between the New Zealand Institute of Valuers and Valuer W, dated 29 November 2019, it was recorded that Valuer W would plead guilty to Charge 1 and then the New Zealand Institute of Valuers would seek leave to withdraw Charge 2. This has occurred and the Board approved withdrawal of Charge 2.*
6. *The matter has proceeded on the basis of a Penalty and Cost hearing at which the Board has heard submissions for the New Zealand Institute of Valuers and for Valuer W.*
7. *The Board accepts that this was an uncharacteristic lack of judgement on the part of Valuer W, made under pressure and for which they are remorseful and regrets.*
8. *To their credit they have appeared today and made an apology to the Board and to the profession which on behalf of the Board is accepted.*

9. *Having heard from the New Zealand Institute of Valuers and Counsel for Valuer W, The Board has determined that this matter is considered serious. It goes to the heart of a registered valuer's obligations. Where a valuer has certified that an inspection has been made of a property for valuation purposes on a specific date, there can be no excuse for this not having been undertaken.*

Penalty

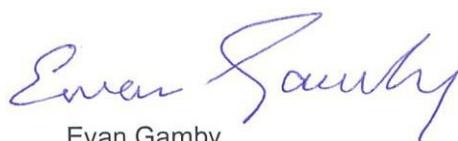
10. *Within the range of penalties available to the Board a reprimand is considered appropriate and a fine of \$4,000. The Board awards accordingly.*

Costs

11. *Valuer W accepts that 50% of 'properly incurred' costs are payable.*
12. *In a submission for the New Zealand Institute of Valuers dated 10 December 2019 these are said to be \$12,858.26 being 50% of \$25,716.52. Although for Valuer W the witness costs of Valuer 1 were considered to relate to Charge 2, the Board accepts the submission of the New Zealand Institute of Valuers that the evidence of Valuer 1 also relates to Charge 1. The costs of \$12,858.26 are awarded against Valuer W.*
13. *The Board, while not being able to excuse the actions of Valuer W and has sanctioned them accordingly, commends them for their submissions and appearance before the Board, fully accepting that their actions were unacceptable. They were both apologetic and remorseful. A written decision will follow.*

Decision

The Board confirms its oral decision, reprimands Valuer W, imposes a penalty of \$4,000 and awards costs against them of \$12,858.26.



Evan Gamby
Inquiry Chairperson

30 June 2020