

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 P**, Registered Valuer.

AND

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

BOARD OF INQUIRY:

H J Puketapu (Inquiry Chairperson)

ME Gamby

PA Curnow

COUNSEL:

J A L Oliver for the Valuer General

Valuer P represented themselves

DATE OF HEARING:

9 June 2009

DATE OF DECISION:

Written: 4 May 2010

COMPLAINT

On 10 March 2006, the complainant wrote to the Valuers Registration Board ("the Board") making a formal complaint against Valuer P in respect of a valuation. The complainant had been approached to sell the property and Valuer P prepared a valuation for an intending purchaser. The complainant had previously engaged Valuer 1 to carry out a valuation on the property and after comparing the respective valuations from Valuer P and Valuer 1, she believed Valuer P was completely out of touch with both the cost of building and the cost of section improvements. The complainant indicated Valuer P had valued the property at \$250,000 less than Valuer 1 and submitted with her complaint a copy of both reports.

The respective assessments are as follows:

Valuer	Land Value	Value of Improvements	Chattels	Capital Value
Valuer P	\$470,000	\$550,000	\$30,000	\$1,050,000
Valuer 1	\$460,000	\$728,000	\$27,000	\$1,300,000

As a result, a sale of the property did not eventuate. The complainant questions the worth of having a Valuer when they employ people such as Valuer P.

The complaint was referred to the Valuer General for investigation.

INVESTIGATION

The Valuer General wrote to Valuer P on 29 March 2006 advising them that the complaint would be investigated. A copy of the complaint was provided to them.

VALUER P RESPONSE

Valuer P responded to the Valuer General on 20 April 2006 indicating that "*they remained confident of (sic) the valuation amount that was submitted*". They also responded that they were not aware the complainant had a copy of their valuation report and that the valuation was for the sole use of the intending purchaser.

Valuer P indicates that the benefit of the improvements is not automatically related to the cost of those improvements. They point out that Capital Value (of the property) is assessed by the analysis of comparable sales and they go on explaining the factors affecting the Capital Value of the property, alluding to:

- Locality
- The impact of Section 27B State Owned Enterprises Act 1986

- No properties in the area having sold over \$1.0m

Valuer P suggests that similar properties with lake and mountain views command premiums of approximately 20% above those in this area with no such views.

They then explain that *“there has been a lack of sales in the area but a recent auction and property listing prices and the market reaction has indicated where buyers expectations and values lie”*.

Valuer P was aware of the valuation report and the total value, but they were not influenced and were content with the valuation conclusions received.

CHECK VALUATION

The initial report of the Valuer General provided a single check valuation. The check valuer was instructed to complete a market valuation having regard to market conditions prevailing as at 9 February 2006, and using such sales and rental evidence as would have been available through normal avenues to a valuer in practice at that time. A summary of the check valuation is as follows:

Valuer	Land Value	Value of Improvements	Chattels	Capital Value
Valuer 2	\$470,000	\$737,000	\$23,000	\$1,230,000

After consideration of the Valuer General's report, the Board ordered an inquiry into the matter. Notice in writing was forwarded to Valuer P on 29 January: 2007 of the intention to hold an inquiry, the time and place of the hearing, and the nature of the charges.

THE CHARGES

The charges notified to Valuer P are 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 in compiling a valuation report dated 20 February 2006 with respect to a property you grossly undervalued 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 20 February 2006 in respect of the above-described property, you stated that you were awaiting the issue of an Annual Practising Certificate as a Valuer for 2006 when you had not paid the fee for such a certificate,

and thereby acted in breach of clause 1.4 of the Code of Ethics prescribed by Rule 133 of the Rules of the New Zealand Institute of Valuers.

Prior to the hearing being held and in a letter dated 9 February 2007, Valuer 1 wrote to Counsel for the Valuer General advising that he was not prepared to appear and give evidence in support of the complaint made against Valuer P. Valuer 1 states that:

1. His valuation was not in question and subject to the proceedings
2. The Valuer General presumably had an independent valuation of the property
3. The valuing profession in the subject area is represented by a relatively small number of valuers who meet on a social and professional basis.
4. He has contracted Valuer P to prepare a valuation report for a family trust

The Board does not have the power to force Valuer 1 to appear.

As a result, the Inquiry was deferred until such time that the Valuer General could provide a further check valuation. The Valuer General wrote to Valuer 3 on 27 March 2007 requesting assistance in preparing a market valuation of the property as at 9 February 2006.

Meanwhile, Valuer P provided an additional response to the charges notified to them by the Valuer General. In respect to the first charge, they outlined that at the time of carrying out their valuation there were no sales in the area over \$1.0m. The subject property sold 13 months after their valuation at \$1.3m, and that the respective check valuers. Valuer P also provided a letter from the local auctioneers in support of the auction process carried out by them and the subsequent withdrawal of the property from the auction by the vendors (the complainants) after an offer of \$1.25m was declined. Valuer P also annexed a letter of support from their client.

In respect to the second charge, Valuer P indicated that 2006 was a difficult year financially and that they had paid their 2006 and 2007 fees.

FURTHER CHECK VALUATION

Valuer 3 advised that he was having difficulty in accessing the property and on 11 July 2007, the Valuer General confirmed a modified instruction and that he carry out an inspection on the basis of an external inspection. The Valuer General provided extracts of the Valuer 1, Valuer 2 and Valuer P reports as related to the details of the site, construction and interior details.

Valuer 3 furnished his report dated 25 June 2008

Valuer	Land Value	Value of Improvements	Chattels	Capital Value
Valuer 3	\$475,000	\$700,000	\$25,000	\$1,200,000

After a lengthy investigation, Counsel for the Valuer General wrote to Valuer P on 24 April 2009 advising them that there were considerable difficulties in obtaining access to the property for the purpose of a further check valuation. Counsel informed Valuer P that the charge of gross undervaluation would not proceed as the check valuations “*do not indicate a sufficient margin*”.

Valuer P wrote to the Board on 6 May 2009 and pleaded guilty to a single charge in that they did not have a practising certificate for the year 2006.

On 8 April 2009, Valuer P was advised by the Registrar of the Board of a new hearing date of June 2009, and of the time and venue.

THE HEARING

At the opening of the hearing, a single charge of practising without an annual practising certificate was read, and Valuer P admitted the charge.

Valuer P’s registration status was tabled and confirmed.

In opening for the prosecution, Mr Oliver set out the background to the complaint, referring predominantly to the reports of the investigation by the Valuer General. Mr Oliver submitted that in carrying out a valuation report Valuer P had not paid the requisite fee to obtain an annual practising certificate for 2006. Mr Oliver noted that Valuer P went so far in their reporting to state that:

“I hold a Valuers Registration Annual Practising Certificate for 2005 (Practising Certificate Number 693) and I am awaiting the issuing of a certificate for 2006.”

Valuer P did not pay the required fee until 22 March 2007. The timelines presented by Mr Oliver were as follows:

21 November 2005	Tax invoice for \$479.25 sent to Valuer P being their 2006 annual registration fee and annual practising certificate
15 June 2006	Payment not received and Valuer P sent a reminder notice by the Registrar.
15 August 2006	Payment still not received and further letter was written noting the period of grace extending to 31 March 2006 has expired and that failure to comply with the requirements constituted an offence under the Valuers Act 1948.
22 March 2007	Payment received

Mr Oliver submits that although Valuer P ultimately obtained an annual practising certificate for 2006, it was not issued until March 2007 that it follows that for the whole of 2006, Valuer P was practising without an annual practising certificate and therefore in clear breach of clause 1.4 of the Code of Ethics.

It is not proposed to address the matter of gross undervaluation as this charge has been withdrawn. However, it is suffice to say that Mr Oliver wrote to Valuer P on 24 April 2009 advising them that while the charge of gross under-valuation would not proceed, it was intended to proceed with the Code of Ethics charge. The letter invited Valuer P to plead guilty to that charge on the understanding that the gross under valuation charge would be withdrawn. On 6 May 2009, Valuer P responded in writing indicating that they would plead guilty to the Code of Ethics charge. Further, in their letter, Valuer P explained that they have had difficulty over recent years in meeting the annual practising certificate fee due to their own business hardship.

At the hearing, Valuer P read from a prepared statement (dated 2 June 2009) alluding to the charge of gross under-valuation. Again, as this charge is withdrawn, no further comment is required. However, in their statement Valuer P refers to no communication between themselves and the Board (between an alleged period of mid-June 2007 to 8 April 2009). It wasn't until, 8 April 2009 that they were informed by the Registrar of the Board that an Inquiry would proceed on 9 June 2009.

This matter was not addressed by the Board.

Valuer P concluded their submission, tabling a facsimile from their legal counsel dated 22 February 2007. The facsimile was addressed to the Registrar of the Board introducing Valuer P's counsel who requested an adjournment to the hearing for six weeks (from the original hearing date of 5 March 2007) to properly prepare Valuer P's defence.

Had it not been for Valuer 1 declining to appear it was obviously contemplated that Valuer P was going to seek an adjournment although it is not clear whether this facsimile was received by the Valuer General as it is not in their report.

There was no plea in mitigation with respect to the non-payment of registration fees, however the Board has at hand earlier correspondence dated 6 May 2009 submitted to Counsel (Mr Oliver) providing an explanation and an apology.

ORAL DECISION

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

Valuer P has pleaded guilty to a single charge of unethical conduct.

The Board acknowledges and appreciates the time Valuer P has committed to attending in person and entering an early guilty plea. The charge arose from a valuation investigation regarding a complaint in compiling a valuation report. At the time of carrying out their assessment Valuer P was practising

without an Annual Practising Certificate. Valuer P did not have an Annual Practising Certificate for 2006 until March 2007, therefore any valuations prepared during 2006, Valuer P is at risk if a complaint is made.

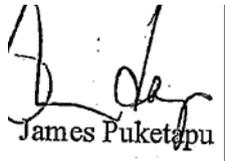
As a registered valuer practises for the public, Valuer P must pay fees for both as a registered valuer and for their Annual Practising Certificate. These fees must be paid before any valuations are prepared.

Under the Act the Board may reprimand the valuer or impose a monetary penalty or both. On the matter of penalty, the Board reprimands Valuer P.

On the matter of costs, the Board orders Valuer P to pay a contribution of \$1,000.

A written decision will follow.

The Board confirms its oral decision.



James Puketapu

Inquiry Chairperson