

CITATION: *Shew v Agents Licensing Board [2003] NTMC 011*

PARTIES: PETER BARRY SHEW
v
AGENTS LICENSING BOARD

TITLE OF COURT: LOCAL COURT AT DARWIN

JURISDICTION: LOCAL COURT

FILE NO(s): 20211797

DELIVERED ON: 20 March 2003

DELIVERED AT: DARWIN

HEARING DATE(s): 16 January 2003, 11 March 2003

DECISION OF: D LOADMAN, SM

CATCHWORDS:

UNRESTRICTED REAL ESTATE AGENTS LICENCE – APPEAL TO LOCAL COURT AGAINST REFUSAL – CLASSIFICATION OF CATEGORY OF APPEAL AS REHEARING – ADMISSIBILITY OF NEW MATERIAL – DENIAL OF NATURAL JUSTICE – EFFECT OF CONCEALING CONTACT WITH FAVOURABLE WITNESSES AND AVAILABILITY OF SUCH PERSONS ON HEARING DATE – DUTY OF BOARD TO APPLICANT TO ASSIST WHEN NOT REPRESENTED BY LEGAL COUNSEL

Agents Licensing Act NT

REPRESENTATION:

Counsel:

Appellant: self
Respondent: Penny Turner

Solicitors:

Appellant: self
Respondent: Solicitor for the NT

Judgment category classification: B
Judgment ID number: NTMC 011
Number of paragraphs: 60

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20211797

BETWEEN:

Peter Barry Shew
Appellant

AND:

Agents Licensing Board
Respondent

DECISION

(Delivered 20 March 2003)

Mr David LOADMAN SM:

History

1. On 12 July 2002 the Agents Licensing Board (“the Board”) determined that in relation to an application for a grant of an unrestricted Real Estate and Business Agents Licence: *“The application is refused”*.
2. On 2 August 2002 the appellant filed a notice of appeal against that decision.
3. The grounds of the appeal were:
 - (1) *Board erred in fact by deciding against the weight of evidence*
 - (2) *Board has acted contrary to principles of natural justice.*
4. There were various procedural matters attended to prior to the matter coming on for hearing of the appeal on 16 January 2003.

5. The ventilation of the matter as an inquiry before Agents Licensing Board occurred on 4 July 2002 (“the hearing”). Subsequent to the hearing the Board delivered a written decision on 12 July 2002 (“the Board’s determination”).
6. For purposes of the determination of the appeal, the decision and all documents before the Agents Licensing Board at the hearing were supplied to the Court in accordance with section 85(3) of the *Agents Licensing Act* NT (“the Act”) by the Solicitor for the Northern Territory (“the appeal book”)
7. There is some confusion as to the numbering of certain documents in the appeal book, but unless otherwise indicated the numbers that appear at the top right hand corner of the page of the appeal book will be the page numbers referred to by this Court in relation to its decision in respect of the appeal.

The Law

8. The Act defines “real estate agent” and “business agent” in the terms set out in the appeal book and set out hereunder. The other relevant sections of the Act are also set out:

- (a) "real estate agent" means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth as commission, reward or remuneration, in respect of –
- (i) the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of; or
 - (ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of, land, whether within or outside the Territory, and includes a corporation manager under the *Unit Titles Act*; and
- (b) "business agent" means a person whose business either alone or as part of or in connection with any other business, is to act as agent for consideration in money or money's worth as commission, reward or remuneration, in respect of –
- (i) the sale, purchase, exchange, leasing or letting or other dealings with, or the disposition of; or
 - (ii) negotiations for the sale, purchase, exchange, leasing, letting or other dealings with, or the disposition of, a business or any share or interest in a business, or the goodwill in, or stock-in-trade of, a business, but does not include the sale, purchase, exchange or other dealings with, or the disposition of a share in the capital of a body corporate carrying on a business;

18. Certain persons ineligible to apply for licence without leave of Board

(1) This section applies to –

(a) a person who, having held a licence or been registered under a law of a State or Territory providing for the licensing or registration of agents, is no longer the holder of such a licence or so registered by reason of the revocation of the licence or registration; or

(b) a person whose application for a licence or registration under such a law has been refused.

(2) A person to whom this section applies is ineligible to apply for a licence unless the Board has, on an application made by the person under this section, granted special leave to that person to apply for a licence.

(3) Where, after an application for a licence has been made, the Board is satisfied that the applicant is a person to whom this section applies, the application for a licence shall, unless the Board grants special leave under this section, be deemed to have been withdrawn.

22. Eligibility for licence

(1) A person, not being a company or firm, is eligible for the grant of a licence where the Board is satisfied that –

(a) he has attained the age of 18 years;

(b) he is a fit and proper person;

(c) he holds the prescribed educational qualifications for the class of licence which is the subject of the application or has other prescribed qualifications or experience;

(d) by reason of his qualifications and experience he is competent to carry on business on his own account as a licensed agent; and

(e) he will, when licensed, be carrying on business as a licensed agent within the Territory.

(2) In subsection (1)(c) "other prescribed qualifications or experience" includes, in the case of an applicant for a conveyancing agent's licence, experience gained for the prescribed period in the employ of –

(a) a person (however described) authorised to act as a legal practitioner under the law of a State or Territory of the Commonwealth and who was during the period of that employment engaged from time to time in the sale and transfer of real property;

(b) a conveyancing agent licensed under this Act;

(c) a person authorised under the law of the State of South Australia to act as a land broker;

(d) a person authorised under the law of the State of Western Australia to act as a settlement agent; or

(e) such other person or body as may be prescribed.

(3) Where a person applies for a licence under section 26 on the basis that the person holds other prescribed qualifications or experience referred to in subsection (1)(c), the person's application under section 26 shall be accompanied by a certificate in the prescribed form.

30. Board to hold inquiry before refusal

(1) Where –

(a) subject to subsection (2), a notice of objection is lodged in accordance with section 28; or

(b) the Board considers that there may be grounds for refusing an application for the grant of a licence,

the Board shall hold an inquiry before considering in accordance with section 29 whether to grant the application for a licence.

The Inquiry by the Board

9. At page 107 of the appeal book there are matters set out which could be incorporated by reference, but for perceived ease of comprehension they are quoted in full below:

Eligibility for licence

Pursuant to S.22(1) of the act, an applicant is eligible for the grant of a licence where the Board is satisfied that he has attained the age of 18 years; he is a fit and proper person, he holds the prescribed educational qualifications for the class of licence which is the subject of the application; by reason of his qualifications and experience he is competent to carry on business on his own account as a licensed agent; and he will, when licensed, be carrying on business as a licensed agent with the Territory.

So far as the Applicant is concerned, as already indicated the area on which the Board remained to be satisfied was whether by reason of the Applicant's experience he is competent to carry on business on his own account as a licensed agent. Other relevant matters were accepted as being sufficient. [This Court's underlining]

Grant or refusal of licences

*Section 29(1) requires the Board to consider an application, and further requires that the board shall grant the application and authorise the issue of the licence, or may, subject to Division of Part III of the Act, refuse the application. By virtue of subsection(2) and so far as is relevant to the present application, the Board shall not (emphasis added) refuse an application unless, inter alia., the Applicant fails to establish that he is eligible for the grant of a licence. [This Court's underlining] *The application must be refused if the Board is not satisfied that the applicant will, when licensed, be carrying on business as a licensed agent with the Territory (Subsection (3A)). The material provided by the applicant is sufficient to satisfy the Board in relation to this latter Subsection.**

Section 30 requires the Board, where it considers there may be grounds for refusing an application, to hold an inquiry.

10. As is apparent from page 106 of the appeal book, the current appeal has its genesis in a lodgment on 16 April 2002 by the appellant of an application for the grant of the specified licence. In a finding of the Board at page 106

the appellant is said to have been aged 53 years, as at July 2002, whereas in fact he was 46 years of age. It is also apparent from page 106 of the appeal book that the advertisement by the appellant of his application had not evoked any objection whatsoever, but when seized of the matter on a date that is not apparent to this Court, this Board as then constituted

Because of doubts regarding the true extent of his relevant experience the Agents Licensing Board “the Board”) determined to hold an inquiry pursuant to section 30(1) of the Act to consider Mr Shew’s application.

11. There is no indication as to precisely as to what “*doubts regarding the true extent of his relevant experience*” actually comprised.
12. The then constituted Board apparently determined in terms of section 30(1)(b) of the Act that as there may be grounds to refuse a licence an inquiry should be held.
13. That inquiry was completed on 4 July 2002.
14. A transcript of the proceedings ventilated at the hearing is to be found at pages 80 to 102 of the appeal book.
15. The appellant, as it transpires somewhat unfortunately, was “represented” at the hearing by one Lucio Matarazzo, a person who is described to this Court as a union representative. What must or at least have been manifest to the Board at the hearing was that he was not a qualified lawyer. Furthermore it must have been manifest to even the most naive member of the Board that Mr Matarazzo was lacking in any appropriate or relevant expertise to discharge the function of representing the appellant and if not earlier certainly by the time the application for disqualification of certain Board members had been concluded. Even if that were not so, it was obvious that Mr Matarazzo was not a legal practitioner and to that extent to “*throw the appellant to the wolves*” by saying (pedantically correctly) it was his duty to put to the Board what was necessary for the purposes of a favourable

decision is not fair. Further that his failure to do so (if that was so) is a matter that is entirely the subject of blame to be attributed to him is completely inappropriate. As was obviously the case and which will be highlighted at a later stage, if it is apparent to the members of the Tribunal (even if someone is represented by a qualified legal practitioner) that the representation is inadequate and/or that there is material which is objectively required, but has not been provided, it is incumbent on such a Tribunal to advise the applicant of the shortcomings and invite that person to supplement the material with what is perceived to be wanting.

16. Instead the Chairman of the Board says at page 81 of the transcript:

Well, Mr Matarazzo, you know what the application is about. I think we'll leave it to you to present whatever material you wish

And indeed that is exactly what happened.

17. That statement is unexceptionable from the point of view of an initial statement, but to have maintained that attitude to the bitter end is sorely wanting in propriety.
18. It is also pertinent to set out that pursuant to section 18 of the Act upon a licence application being refused an applicant may only reapply “*with special leave of the board*”. That is a highly unsatisfactory state of affairs in this Court’s perception, particularly when as is this Court’s finding there is unsavoury conduct embarked upon by the Board in the disposition of the application.
19. The Court wishes to highlight a matter in respect of which it is not only concerned, but in relation to which issue it may have discretely, for reason of that issue alone, overturned the Board’s decision.
20. In the appeal book (page 40 – document 2.17) a letter tendered on behalf of the appellant dated 4 October 2001 is from one Craig Huxtable. At the foot of the letter the following appears:

*31/5 phoned CH – he is willing to be contacted by phone on 13/6 re providing any further info re P Shew.
R Stephens 31/5*

3/7- CH avail @ off no on 4/7 R”

21. The letter from one Paul Perovic (at appeal book page 41 document 2.18) bears almost identical endorsements at its foot.
22. The letter dated 15 May 2001 from Gray Wheeldon (at appeal book page 43 document 2.20) is subscribed with notations in relation to telephone contact in like manner.
23. In respect to those documents 40, 41 and 33 in the appeal book referred to, the Court expressed astonishment in relation to the circumstances surrounding these notations to counsel, Penny Turner, who appeared on behalf of the Solicitor for the Northern Territory for the respondent before the Court on 16 January 2003.. The conduct comprising communication by Stephens, apparently the Deputy Registrar, prior to the inquiry commencing is a matter of concern to this Court. The silence of the Board members on the above notations and the contact is beyond disgraceful. At page 30 of the transcript of the proceedings on 16 January 2003, Ms Turner recites her instructions

... the appellant was not told that the referees were, in fact, on – well available. However, the board’s position is that, look when he makes – when the appellant made an application, the onus, clearly, was on him to establish his eligibility. It was not for the board to say, “Well look, you’ve given us your references, these people are on the phone, you can contact them, if you wished” ...

24. If that is truly the attitude, philosophy and position of the Board, it is an exemplification of the unsuitability of the Board to discharge its function. As the Court remarked, had a prosecutor in a criminal matter for instance indulged in the same action and taken the same attitude, such conduct would have undoubtedly amounted to unprofessional conduct. The Court on 16 January 2003 described this conduct as deceitful. It is at least that.

25. Indeed Ms Turner conceded the position as is apparent from the transcript

...certainly if the board members were aware of it, then Your Worship's views may have some credence.

26. Suffice it to say that Ms Turner did not subsequently either orally or in writing take that matter any further. On resumption of the appeal, she said she could not escape the adverse inferences the endorsements referred to evoked.

27. The fact of the issue not having been taken any further by Ms Turner now results in this Court's concluding unequivocally that the Board members or a number of them must have known of the communications that had been made. They must have actively collaborated in concealing such communications having been made. They must have actively collaborated in failing to advise the appellant or his representative that arrangements had been made for such persons to speak on matters relating to the appellant's experience. Particularly bearing in mind that the reference to the inquiry was solely on the basis of the lack of his experience, it seems inescapable that a pre-determination by some of the Board members at least may have been made that he was lacking in experience.

28. Such conduct is intrinsically in this Court's finding a breach of the rules of procedural fairness (natural justice). If there was no factual basis upon which to overturn the Board's decision this Court would have over-turned it discretely for reason of the conduct referred to above.

“Experience”

29. In the appeal book (page 40 – document 2.17) a letter tendered on behalf of the appellant dated 4 October 2001 is from one Craig Huxtable. That letter asserts a two year period of employment by the appellant at Bayside Real Estate Group between 4 August 1994 and 7 October 1996 “*in the sales and marketing area*”. It deposed to the appellant's experience in “*general*

residential sales project marketing and assisted property management". It invites contact for further assistance.

30. A reference from one Paul Perovic on 4 July *page 41 of the appeal book document 2.18) also contains a copy of the business card which obviously was utilised by the appellant in his employ at Karl Jonsson First National Real Estate, in Patterson Lakes, Victoria. The communication by Mr Perovic asserts the appellant's employment at the time of Perovic's purchase of Karl Jonsson First National Real Estate. It states that at such time the appellant had been working for that latter organisation for 18 months. It sets out that his duties comprised

Organize advertising for his Area Sales Team by way of letter drops, leaflets, local papers, etc. Listing of properties, advertising the sale, conducting open inspections, and showing of properties to prospective buyers. Sale of properties, followup on contracts, solicitors, and local councils. To maintain client support in his area.

31. A letter dated 15 May 2001 from Gray Wheeldon was filed in support of the application (at appeal book page 43 document 2.20). That letter testifies to Mr Shew's performance of "*Property Management Duties on Weekends*". This is in relation to the appellant's duties at Karl Jonsson Real Estate.
32. A reference from Pedro Pikos dated 3 May 2001 deals with the appellant's ability or experience and knowledge in respect of the sale of businesses and seems to have been largely ignored by the Board in coming to its conclusion. Mr Pikos of Pikos Group of Companies, Darwin, testifies in his letter (at appeal book page 44 document 2.21) as to the appellant's possession of necessary experience. He testifies as to his personal involvement with the appellant in respect of the "Chin Arcade" and sets out that the dealings endured over 4 months plus

during which time Mr Shew proved he knew how to list and procure the relevant information pertaining to the sale of a commercial business and building site.

33. Mr Pikos' letter testifies further to the positive attributes possessed by the appellant and the demonstration of his knowledge and expertise. He remarks in closing:-

I have employed Mr Shew on several other occasions to approach potential clients for the sale of their businesses which I may have had an interest in procuring for business purposes.

I have always found him to a trustworthy and honest real estate agent, and would have no hesitation in recommending Mr Shew to any friend or client in the future.

34. At page 97 of the appeal book, in an exchange with the appellant, the Chairman makes it clear that any acrimony between the appellant and Richardson and Wrench is an irrelevancy. He does however say:

But some of the things suggested there do indicate perhaps a limited experience in area such as – with that firm at least – commercial leases, property management, selling and buying experience or businesses. I note Mr Pikos, in his reference, seems to deal with at least the business side of it.

35. It is clear particularly from that exchange that at least the Chairman, as he ought to have, was persuaded that in relation to sale of business and matters referred to otherwise by Mr Pikos the appellant possessed the necessary expertise. Indeed the Chairman thereafter focused only on the appellant's ability to run as a business a real estate agency operation. From the Chairman's response at page 98 of the appeal book it seems that at least he was satisfied as to the adequacy and competence of the appellant to so conduct an estate agents business.

The Court hearing

36. At the outset of the hearing of the appeal, the Court was required to determine the categorisation or nature of the appeal process.
37. Whilst the decision was made and pronounced on an extempore basis as is apparent from the transcript of this Court's proceedings on 16 January 2003,

for the purposes of clarity, in summary, it was the decision of this Court to reject the contention made by the respondent that the appeal was an appeal *stricto sensu*. The Court decided that the appeal was to proceed by way of a re-hearing. The function it was therefore to discharge in the circumstances was

To correct errors of law, facts in the court below, the court will try the case again on the evidence at first instance together with any additional evidence it thinks fit to receive.

38. The Court decreed that the power to receive new evidence was implied, as a consequence of the fact that in law the appeal was to be decided on the basis of such factual additional additions or changes as were permitted together with any changes in the law.
39. Pursuant to this decision, the Court admitted into evidence to be taken into account on the appeal:-
 - Exhibit A1, being an affidavit by the appellant sworn 6 August 2002;
 - Exhibit A2, a contract between Richardson and Wrench and the appellant dated 4 October 1999;
 - Exhibit A3, Agents Licensing Board Reasons for Decision in *Maclean*, an inquiry conducted on 3 May 2000 in respect of a restricted licence – the licence covered in section 25(A) of the Act.
40. The contents of those documents constitute the totality of new factual evidence admitted for consideration by the Court. The nature of that additional evidence will in due course be addressed by the Court in its decision.
41. Before returning to the issue of “experience” upon which it is necessary to focus, the Court records that upon the conclusion of the proceedings on 16 January 2003, Ms Turner for the respondent had not resolved on the

course of action to be taken by the legal advisers of the respondent. On 29 January 2003 Ms Turner wrote to the Court, which letter was received by the Registrar on the Local Court on 31 January 2003. In summary she recorded

- (a) the respondent submitted to such order as the Court may make;
- (b) the respondent offered to provide the Court with any assistance in relation to appropriate matters;
- (c) the hearing date of 6 March 2003 was to be vacated, subject to any assistance required by the Court from the respondent.

42. Subsequently the matter was mentioned on 11 March 2003, at which mention the appellant advised the Court he had nothing further of substance to add and the matter was reserved for decision.

Findings

43. The Court highlights that there is only one issue which it is necessary to address. It is the question of the appellant's experience or negatively as expressed in the decision of the Board "*his lack of experience*".
44. This is so because there is no other criteria in which in the decision of the Board the applicant did not adequately meet.
45. As is apparent from the Board determination (appeal book 108) the appellant had all material times been a licensed auctioneer.
46. At page 4 of the decision (appeal book 109) the Board held that by virtue of the provisions of section 22(1)(d) of the Act in respect to "experience", it should, in the Board's view,

relate to experience which has relevance to the licence for which he has applied. As such, lengthy experience and expertise as a plumber is of little or no assistance.

47. Section 22 of the Act has been previously set out in this decision,

48. This Court rejects this finding made by the Board. Firstly it is in this Court's finding quite inappropriate solely to focus on the word "experience". The criterion expressed in section 22(1) is "*by reason of his qualifications and experience* [the Court notes the conjunctive phrase] *he is competent to carry on business on his own account as a licensed agent*".
49. This Court finds that the successful carrying on of a plumbing business over a number of years is a highly relevant piece of evidence for the purposes of satisfying the relevant criterion. Section 22(1) decrees the eligibility of an applicant for a licence entails the Board being satisfied of 5 criteria and not part of one.
50. This Court also notes, at page 4 of the Board's determination (at page 109 of the appeal book), the absence of any judicial precedent in the Northern Territory. The Board recites extracts from the case referred to although making some guarded comment about not being bound by the decision. Whilst that of course is so, it is to be accorded the highest respect. The differences in the legislation in this Court's finding do not warrant disregarding anything said by Joske J. This Court accepts as valid His Honour's comments.
51. It is not an appropriate exercise in this Court's finding to be aware of an insufficiency of material which would justify the grant of a licence and not say so to the applicant. Having concluded as apparently the majority of the Board did that there was an absence of adequate material, it was incumbent upon the Board to say so and give the appellant the opportunity to amplify his material. The omission of having failed to request the appellant to supplement his material is of course exacerbated by the conduct of the Board in having contacted the authors of letters written in regard to the appellant's experience and having obtained information from them which is not recorded, ignored it. Then in addition having arranged for them to be available on the day of hearing for whatever reason, failing to make known

to the appellant either that contact had been made, the comments that had been elicited, or the availability on the day of each of the authors in question to amplify matters either the subject of curiosity by the Board or necessary to supplement the material supplied by the appellant.

52. It is trite to observe that section 29 of the Act compels the granting of a licence applied for, unless the appellant (applicant) does not meet the criteria expressed in section 3 and or 3A of the Act. The only criterion to be addressed is that set out in section 22(1)(d) of the Act, because that is the only issue for resolution.
53. With the material that has now been filed with leave, the exercise to be embarked upon by this Court is to decide succinctly whether “by reason of his qualifications and experience he is competent to carry on business on his account as a licensed agent”. In this regard, the Court refers to matters set out in the affidavit filed with leave and marked Exhibit A1 in the appeal. For the purposes of comprehending this decision the contents of that affidavit are set out in full:

My name is Peter Barry Shew I am 46 years old. In 1994 I completed a Sub-Agents Course in Victoria which provided. me, with the basic theory to commence my career in the Real Estate Industry.. I commenced in the Real Estate Industry in 1994 as a Real Estate Sub-Agent, with Karl Jonsson First National Real Estate.

From 1994 to 1996 over a period of 2 years my duties encompassed: Listing Properties, Property Appraisals, Estimating the current property value taking into consideration the current market factors; Establishing whether highest possible price that can be achieved is by private treaty, Tender or by Auction. Building trust and a working rapport with the clients, and giving educated advice on the sale of their property, presentation of property, and what to expect during the sale of their property.

Also as part of our duties I was Duty Officer one weekend per month. This entailed being in charge of the office for the weekend, which was our busiest trading days.

I was responsible at those times for Rent Collection, Trust Accounting, Signing of Rental Leases, Showing Rental Properties, Dealing with Commercial inquiries, Repairs/Maintenance of properties and the organization of tradesmen when appropriate, the general running of a busy suburban real estate office with a large number of rental properties. As best I remember I collected the rents of between 20 and 30 properties on any given weekend and dealt with a similar amount of inquiries.

During the week I would assist the Rental Manager in the eviction of bad tenants and would then do a condition report for the Landlord. I did this on approximately 20 occasions. My assistance was also given in obtaining tradespeople for various repairs and maintenance as I had a large network of contacts (from my years in the building industry) in all areas ranging from plumbing, carpentry, cleaning, electrical and so on.

I gained listings through personally delivery pamphlets in letter box drops, cold call door knocking and phone canvassing, talking to prospective purchases at auctions and open inspections, from general office inquiries.

I was responsible for organizing the marketing schedule for the client, and explaining the advertising costs for the marketing program, and how the property is to be marketed. Working with the client on the advertising detail, photos, newspaper, script and flyers. Explaining to the client the advantages and dis-advantages of holding open house inspections. Discussing the cost of the campaign keeping in perspective of the properties attributes i.e.: a high demand property may not require a high budget campaign versus a property with unrecognized potential may need a stronger marketing boost:

Working daily in a set area this being Patterson Lakes, Victoria. I quickly developed an appreciation of market, values for various styles of properties. These ranged from single bedroom units, villa units, flats, single story homes on small blocks, to double story and even triple story homes on waterfront with private beaches. The diversity of property available on the market at any one time was a challenge, but using CMA (comparative market analysis) I was able to be very accurate in judging a properties market value.

Once our discussions were complete and the vendor made a decision to enlist my services. I was then required by law to have the owner/s of the property sign a listing form stating clearly the duration of time of the agency, the gross asking price, the type of sale (i.e. auction,

private treaty or tender), advertising costs/marketing program, agents commission. To wit there exists a standard form.

With a listed property my aim was to now sell the property to do so I need a purchaser. I find through my marketing campaign as well as prior contacts and general inquires. These potential purchasers are then screened for financial suitability by asking a series of questions including whether they are seeking investment or residential property, if the client has their own financial advisers or whether they require financial assistance. I had relationships established with several financial consultants, which our clients could consult to establish their purchasing power.

If the property were for an investment, I would also explain to the client the likely rental return on investment. Discuss the advantages of property rental in the area and what our agency could offer them as property managers. We have a wealth of experience in rent collection and property maintenance.

Because Karl Jonsson real estate was the founder of Patterson Lakes and at the time of my employment we were the only agents in the area encompassing Patterson Lakes, Carrum and Seaford. We had an exclusive sales area, which incorporated the major property developers, commercial lessors, within that area of operation.

I was required under an office agreement under the Jenman system to achieve the following targets:

Maintain a minimum of 6 properties in my portfolio. (My average was 10)

Sell 2 properties per month. (My average was 3)

I also found my other work experiences in plumbing and the building industry over a 20-year period to be of great benefit to me when appraising a home for sale or purchase. My knowledge of building industry enabled me to advise the client e.g.: where minimal expense on repairs/maintenance may assist them in maximizing the return on the property through preparation and presentation of their property.

I found that my years in the building industry gave me credibility with my clients when talking about their home. This played a part in their decision to use my services in preference to the many other market competitors.

Although my experience in running a small business, that being a plumbing business is not directly correlated to the real estate industry, it is still an important part of my life that I believe gave me

an excellent grounding in the running of a business. The fact that the rules governing employment is still covered by statutory bodies remains the same. If for any reason that I was unclear of an industrial ruling concerning any of my employees, I would immediately contact the relevant government authority for advice or ruling. This is now so much easier with the use of the Internet.

Any business regardless of the type be it real estate or plumbing is governed by the ATO (Australian Taxation Office) and again I asked the ATO the necessary questions about payroll tax, income tax and employee superannuation. This was done in-conjunction with a CPA (certified practicing accountant) whom I consulted on a regular basis.

I have had regular liaison and contact with regulatory statutory bodies such as: Melbourne Metropolitan Board of Works, Health Department, Local Shire Councils, Building Board, Taxation Department, Industrial Relations Commission, Plumbers and Gasfitters Employees Union, Builders Laborers Union, CEFMEU, Gasfitters Regulation Board and Victorian Government. This represents a sample of bodies, which I have had to interact with when running businesses in Victoria. To show that I am not unfamiliar with the need to interact with governing bodies and to comply with standard within industry. I had to deal with accounts and employed the services of an accountant and sought the services of my bank manager.

I continued my Real Estate career in the NT with Richardson and Wrench in Cullen Bay. Prior to commencement I was required by the Agent Licensing Board to complete 3 modules pertaining to NT law and cyclone coding. I did this and was granted an Agents Representatives Licence. .

During the 20 months of working as a Real Estate Representative with Richardson and Wrench my role was relatively autonomous. The company provided no support for farming areas. We were required to find our own listings as Company listing were not given to the Sales staff, nor were properties which came up for Sale through the Property Management Department. Therefore my personal expertise in listing and selling became my primary tool for success and I believe was highly valued by the business.

I was given the Palmerston area, because I lived here and preferred to work within my community and developed an expertise in the local area. I did however take listings from other areas when opportunity

presented itself, these being in Larrakeyha, Karrama, Tipperary Waters, Humpty Doo.

I have auctioned properties in Larrakeyha, Marlow's Lagoon, and Bakewell and assisted the team on many others. The only Auctioneers at Richardson and Wrench were the Principal Ms. Anne Owen and myself.

Over the period I brought to the business 45 Listings and completed 14 Sales. The value of my listings ranged from residential properties of \$150,000 to a commercial development in the city of \$4.2million.

During this time I also worked with the Property Management Department wherever I found an opportunity to bring in some business. The company also provided bonuses on providing leads to the Rental Department.

I brought in approximately 10 rental properties to the business and may have been able to provide more had there been a more co-operative attitude between the Rental Department and the Sales team. I did however handle contracts and monies on behalf of my clients.

I am a strong people person and believe in developing bonds and an infrastructure of co-operation between my workers. This environment was not present for me at Richardson and Wrench as an employee and one, which I would nurture as a priority in my own business. I would do this through staff assessment and training and through consultative employee relations and where applicable use in-house and external training options. I will not elaborate here as the area of Human Resource Management is extensive and is a management tool. I cannot personally work in an environment that I do not consider to be fair and equitable and that meets my needs as well as that of the business and consequently would want to ensure that my employees never face the de-motivation that I have endured in various organizations.

Sometime ago I had an altercation with Mr. David Booth, when he was an instructor at the REINT. At the time it was clear that Mr. Booth was quite upset and in fact became visibly upset in front of the class: I had refused to comply with what I perceived to be unreasonable demands from Mr. Booth and, the situation was finally diffused some days later by Mr. Byron Warchope who was the Chairman for Education at the REINT.

I believe it to be true that Mr. Denis Power (President of the REINT) and Mr. David Booth is in the same business that being Territory First National Real Estate. Mr. Booth is a director of the Company and Mr. Power a property consultant.

54. In Exhibit A3, on 10 May 2000 the Chairman in the *Maclean* proceeding records:

In this case the Applicant has some 40 years of general commercial and selling experience, some of which appears to have involved reasonably substantial undertakings, and 2 years of specific real estate experience. In this case the Board is not troubled by the experience issue. The Board's conservative approach in the past exercise of its description in relation to similar applications gives no foundation to the concerns of the objectors.

55. In the matter before this Court, real estate experience of the appellant was 3 years and 8 months in Victoria and 20 months in the Northern Territory; 5 years and 2 months in all.
56. It must follow that a conservative properly constituted Board finding there was no concern about “the experience issue” in the *Maclean* matter, is a serious matter omitted from decision or comment in the decision from which this appeal is noted. It is no wonder to this Court that the appellant is bewildered. To have failed to take into account a determination as to sufficiency of experience in a somewhat analogous matter involving less real estate experience must demonstrate with great force the shortcomings of the Board's decision in the appellant's matter.
57. This Court, as was the Board with the Chairmanship of Mr Buckley on 10 May 2000, “*is not troubled by the experience issue*”. This Court concludes that every single criterion which the appellant is required by the Act to have met is met, and specifically that a finding that he did not meet the criteria in section 22(1)(d) is unjustified and without foundation.

58. This Court finds that the qualifications and experience evince overall more than ample evidence which would justify complete satisfaction with section 22(1)(d) of the Act.
59. In the circumstances, the appeal is upheld and the grounds of appeal set out in the notice of appeal referred to are established.

Decision

60. It is the decision then of this Court that an application for a licence be granted pursuant to section 31(1)(b) of the Act as a consequence of which the Registrar shall issue to the applicant the licence in the prescribed form without conditions.

Dated 20th March 2003

DAVID LOADMAN
STIPENDIARY MAGISTRATE