

**BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL**

[2013] NZREADT 101

READT 23/13

**IN THE MATTER OF**

a charge laid under s.91 of the  
Real Estate Agents Act 2008

**BETWEEN**

**THE REAL ESTATE AGENTS  
AUTHORITY (per COMPLAINTS  
ASSESSMENT COMMITTEE  
(20007))**

Prosecutor

**AND**

**BRENDAN MARSHALL** of  
Timaru (former real estate agent)

Defendant

**MEMBERS OF TRIBUNAL**

Judge P F Barber - Chairperson  
Ms N Dangen - Member  
Ms C Sandelin - Member

**HEARD** at TIMARU on 7 October 2013

**DATE OF DECISION**

18 November 2013

**REPRESENTATION**

Mr L J Clancy, counsel for prosecution  
No appearance by or on behalf of defendant

**DECISION OF THE TRIBUNAL**

***The Charges Against the Defendant***

[1] The original charge laid against the defendant is dated 13 May 2013 and reads as follows:

**“Charge**

*Complaints Assessment Committee 20007 charges Brendan Marshall (defendant) with misconduct, in that his conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

***Particulars:***

*The defendant created false invoices and charged these to his employer Hastings McLeod Ltd (the agency). The defendant used the invoices to cash*

*cheques or withdraw funds from two company accounts, an Imprest account and a BNZ credit card account. Those funds were then applied to his own personal use."*

[2] By application of 23 September 2013 the prosecution sought to amend the charge by adding a para (ii) under "*Particulars*" so that the charge reads:

*Charge*

*Complaints Assessment Committee 2007 charges Brendan Marshall (defendant) with misconduct, in that his conduct would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful.*

***Particulars:***

- (i) *The defendant created false invoices and charged these to his employer Hastings McLeod Ltd (agency). The defendant used the invoices to justify cash withdrawals from two agency bank accounts, an Imprest account and an ANZ credit card account. Funds withdrawn from those accounts were applied by the defendant for his own personal use.*
- (ii) *The defendant created false invoices for advertising costs and charged these to his client Gourmet Tastes Ltd (client). The actual advertising costs incurred were less than the costs set out in the false invoices. The client paid the higher amounts shown in the false invoices and those payments were applied by the defendant for his own personal use"*

[3] It can be seen that the paragraph (ii) under "*Particulars*" has been added to the original charge and no new charge has been added. The amended charge is the same charge as the previous charge of disgraceful conduct in relation to alleged fraudulent conduct but with a further alleged victim, i.e. a further particular has been added.

[4] One of the instances of fraud alleged against the defendant now involves dishonesty against a consumer as well as the defendant's employing agency as under the original form of the charge. Although the new particular reflects the victim as a consumer, as well as an employer, it is part of the same overall alleged conduct of the defendant covered by the original charge. The defendant was given full notice of the amended charge sought by the prosecution.

[5] We allow the charge to be amended as the extra particular is simply another example of the alleged charge of misconduct by way of disgraceful conduct; the amendment referred to the victim being a consumer and s.3 of the Real Estate Agents Act 2008 has a particular purpose of protecting consumers; and either the further particulars can be proved or not.

***Basic Evidence for the Prosecution***

***The Witness Mr H L Niles***

[6] Mr Niles gave evidence that he is a director of Hastings McLeod Ltd trading as Property Brokers in Timaru and elsewhere in South Canterbury. He has been a director of that company since June 2001 and an employee of it since October 1990.

He has held a real estate salesperson's licence since 1990 and a real estate agent's licence since 1999.

[7] Mr Niles stated that in December 2011 the company employed the defendant in Timaru as area manager for Timaru, Geraldine, Waimate and Oamaru. The defendant had authority to draw cheques up to \$2,000 as a sole signatory on the company's imprest account at the ANZ. No one else in the Timaru office was so authorised other than the operations manager and two directors of the company all based in Ashburton. The defendant also had a company credit card with a \$2,000 limit.

[8] Each month the defendant posted to the said people in Ashburton a summary to support reimbursement of expenditure from the imprest account and for the credit card.

[9] The imprest account report was prepared by the Timaru office staff from invoices provided by the defendant and from entries in the imprest account cheque stub, but the report was not signed by the defendant. Mr Niles identified and recognised the handwriting in the imprest account cheque stubs, over all material times, as the defendant's handwriting.

[10] The credit card report was prepared by the defendant and signed by him. We were provided with relevant supporting documentation.

[11] The reports were reviewed in Ashburton by Mr Niles and Ms S Booth, the operations manager. In March 2013 Mr Niles's suspicions were triggered when one of the supporting invoices did not appear genuine.

[12] A number of the parties whose names appear on the invoices and the cheque stubs were contacted by him or Ms Booth.

[13] In particular, the South Canterbury Rugby Union, Kowhai Kindergarten, and Oamaru Cricket Club advised they had no knowledge of the transaction, no money had been received by them and Property Brokers was not recorded as a sponsor by any of them.

[14] Cloake Creative were also contacted in regards to an invoice for Graphic Work & Design and advised that Property Brokers was not a client. A request was made for a sample of a genuine invoice which was provided. This confirmed the invoice provided with the monthly summary was not genuine.

[15] An unsuccessful attempt was made to track down Wow Stuff Supplies in Timaru in regards to invoices for an HP multi-function unit, whiteboard and cartridges. Staff in Timaru advised they were unaware of the existence of this business. The purchase involved was found not to be in the Geraldine office as advised by the defendant.

[16] Enquiries were made with Timaru offices in regards to purchases of other office furniture which was funded by cash withdrawals from the credit card. The transactions were reflected as purchases of office furniture in the monthly summary. Those enquiries revealed, in particular, lights were never put in at the Timaru office.

[17] Mr Niles reviewed the expenditure records for the imprest account for a number of periods and compiled a list of suspected transactions. He approached the ANZ

bank in Ashburton with the list of suspected transactions and requested they provide a copy of the paid cheques made out on the company imprest account. The bank provided copies of the paid cheques. They were made out to cash and not in the name of the payee as appears on the invoices or in the imprest account cheque stub. The bank also wrote the name of the person who cashed the cheque. In all cases they had been cashed by the defendant.

[18] On 21 March 2013 Hasting McLeod received legal advice with regard to the defendant's employment.

[19] On 22 March 2013 a letter was sent to the defendant requesting his attendance at a disciplinary meeting on Tuesday 26 March 2013. It was suggested he bring support. He was advised of anomalies in the operation of the Timaru imprest account and his ANZ credit card. Both facilities were stopped.

[20] On 26 March 2013 Mr I Walsh (the CEO of Property Brokers), the defendant, and Mr Niles met in Orari away from any of the office staff. The defendant was queried on some of the suspected transactions and, during the conversation, confessed to a gambling problem and admitted he had funded his gambling with company money.

[21] Later on 26 March 2013 the defendant made a written admission by email of using company money to fuel his gambling addiction. Inter alia, the admission email from the defendant was adduced to us.

[22] On 27 March 2013 the company terminated the defendant's employment.

[23] On 28 March 2013 the defendant met Mr Niles at the Timaru office and returned the keys for the company car and for the four Property Brokers offices under his care. He asked how much money Mr Niles thought was involved and was advised that, at that point, enquiries indicated the defendant owed the company between \$5,000 and \$6,000. It remains to be seen if the company is insured for the loss. The defendant also owes the company around \$25,000 comprised of a retainer of \$19,000 and a personal loan of \$6,000.

[24] On 5 April 2013 a report of serious misconduct was made to the Real Estate Agents Authority in regards to the defendant's employment with the company.

[25] On 9 April 2013 the company's auditor, Mr D Fisher of Brophy Knight, was engaged to quantify the extent of the loss through a review of imprest account and ANZ company credit card payments made by the defendant from the date he started with Property Brokers.

[26] On 29 April 2013 Mr Fisher provided a report in which he concluded there were \$6,708 of suspected expenses and \$5,258 very likely not genuine. That would be a total loss to the company of \$11,966.

### ***Affidavits Filed for Prosecution***

[27] A number of affidavits have been filed detailing the offending referred to in the above charge against the defendant. It is only necessary to refer to the detail contained in the affidavit of Mr Fisher who completed the said audit report on the defendant's alleged conduct.

### ***The Evidence of Mr D P Fisher***

[28] Mr Fisher deposes that on 9 April 2013 he was engaged by Mr Niles of Property Brokers to conduct a special audit. His instructions were to review all payments made by the defendant since his employment in December 2011 as Property Brokers Area Manager in Timaru.

[29] Property Brokers had required the defendant to provide a monthly summary from Timaru supported by invoices of all expenditure from the ANZ National bank imprest account operated in Timaru and for the use of the company ANZ credit card. These monthly summaries were sent to Mr Niles in Ashburton for review.

[30] In March 2013, Mr Niles had queried the authenticity of certain supporting invoices and receipts. Instructions from Mr Niles to Mr Fisher were for a review of all payments made by the defendant through the imprest account. Mr Fisher was also asked to review the defendant's use of the said credit card. Mr Fisher states that he was looking for records of any transaction which appeared suspicious or did not appear genuine. He reviewed the cheques stubs, cash book and invoices for the imprest account expenditure transactions; and the invoices and statements for the ANZ credit card.

[31] On 29 April 2013 Mr Fisher reported a Summary of Findings to Hastings McLeod. Suspect expenditure of \$11,966.59 was reported under two categories - \$6,708.09 as "*Suspected expenses*" and \$5,258.50 as the more compelling "*Very likely not genuine*".

[32] Suspected expenditure was \$6,708.09 identified through the two tested accounts as follows: \$2,338.69 through the credit card and \$4,369.40 through the imprest account.

[33] Of the \$2,338.69 suspected expenditure which went through the ANZ credit card, all transactions were supported by receipts. However, there was no way to confirm if these were legitimate business expenses.

[34] Of the \$4,369.40 suspected expenditure which went through the imprest account, a number of the transactions were not supported by invoices or receipts. Where there is an invoice or receipt the legitimacy as a business expense has not been confirmed.

[35] Expenses identified under the more compelling "*Very likely not genuine*" category involved \$5,258.50 identified through the two tested accounts as follows: \$1,370 through the ANZ credit card and \$3,888.50 through the imprest account.

[36] Six items make up the \$1,370 identified as very likely not genuine which went through the ANZ credit card. These are all round amount cash withdrawals. They were accounted for as the purchases of furniture, stationery, printer supplies and paint for the office. There were either no receipts in support, or what receipts existed were suspected as false. Two invoices were confirmed as false in discussions with Property Brokers staff.

[37] Twelve items make up the \$3,888.50 identified as very likely not genuine which went through the imprest account. These involved mostly sponsorship. Third party

verification from three of the organisations indicates there is no record of receiving sponsorship from Property Brokers by the affected organisation.

### ***Further Background***

[38] In a decision of 21 August 2013 [2013] NZREADT 72, we ordered that as from and including 22 August 2013 the defendant's real estate agent's licence be suspended for a period of nine months or until the hearing of the substantive charge (which took place on 6 October 2013 at Timaru) whichever date is the earlier. Of course, we set out our reasoning for that and we referred to our previous decision herein of 16 July 2013 [2013] NZREADT 61 in relation to the prosecution's application for suspension of the defendant's real estate agent's licence number 10013750 pending the outcome of a hearing for a substantive charge of misconduct. The point of that 16 July 2013 decision was to comply with s.115 of the Act.

[39] The defendant filed a response to the charge but refused to take part in the hearing. Although he has engaged in email correspondence with our registry from time to time he has refused to engage with our processes in a meaningful way. In particular, he declined to take part in a telephone conference of July 2013 for the purpose of clarifying issues and making timetable orders to progress the proceedings in the usual way. Subsequently he emailed us to the effect that he did not wish to take part in the proceedings in any way further and indeed he has not. It was that attitude of the defendant which necessitated the prosecution proceeding by way of formal proof. The defendant was fully advised of all steps and procedures.

[40] Much further detail of the offending is covered by seven further affidavits i.e. other than that of Mr Fisher and the oral evidence of Mr Niles.

### ***The Stance Put to Us by the Defendant***

[41] Although the defendant has declined to engage properly with these proceedings he did forward a series of emails particularly over the period 27 May 2013 to 24 September 2013. He is concerned that, apparently, the Authority's investigation of the above issues did not include an interview with him. The defendant seems to deny guilt and assert that he could have "*provided the clarity required*". He says that he was coaxed and pressured into making an admission "*under the false pretence that any issued statement with full and clarified guilt and acknowledgement of this matter would lead to serious consideration given to the Board of Directors maintaining my employment with the company*".

[42] Inter alia the defendant maintains that "*the Authority's findings*" against him are "*riddled with inaccurate claims of alleged fraud and theft against me*". Indeed, he dealt with many items quite specifically as follows:

- “• 7 January \$400.00  
*This chair sits in the Timaru office* LEGITIMATE EXPENSE
- 24 January \$330.00  
*This phone was reported to the police as Lost or Stolen. The \$330.00 covered the Insurance excess (Which I claimed against MY own household contents as I was the original purchaser and registered owner) and an upgrade cost. This phone was surrendered to the organisation upon my termination.* LEGITIMATE EXPENSE

- 15 December \$320.00  
*I concur with the explanation given on the statement. ... Therefore it cannot be Viewed as a "Suspected Expense" if you go by the description given?*
- 3 December \$28.96  
*Used as claimed as "office drinks" -This could certainly be verified by several staff Who attended several "Friday afternoon office drinks"*  
LEGITIMATE EXPENSE
- 7 December \$18.10  
*On several occasions I went off site for a coffee or afternoon/morning tea with either A current or prospective staff member*  
LEGITIMATE EXPENSE
- 10 December \$24.99  
*This picture sits in the Timaru office* LEGITIMATE EXPENSE
- 10 December \$125.91  
*Used as claimed as "office drinks" -This could certainly be verified by several staff Who attended several "Friday afternoon office drinks"*  
LEGITIMATE EXPENSE
- 13 December \$112.98  
*Hastings McLeod have had a long standing arrangement with a Waimate based farmer whereby each Christmas the Farmer is given 1-2 bottles of alcohol in lieu of a monetary payment for the company to continue to display a company billboard on his property. As he had NOT received a payment in the previous year, I purchased and supplied him with x2 bottles & personally delivered them. This can be verified by either the farmer himself, or the staff in our Waimate office.*  
LEGITIMATE EXPENSE
- 24 December \$44.99  
*This was a bottle of alcohol purchased and given to our "South Canterbury" contracted Signman as a Christmas gift from the staff and company. This can be verified by any Timaru member of staff and the Signman himself.*  
LEGITIMATE EXPENSE
- 18 November \$289.00  
*This small fridge was purchased for the "Rural office" positioned within the Timaru Team. It still sits in that office. Can be verified by any Timaru staff member.*  
LEGITIMATE EXPENSE
- 15 November \$191.16  
*Generic "Rural office" stationery, kitchenette and "fit out" supplies. Positioned within the "Rural Office" Can be verified by any Timaru staff member"*  
LEGITIMATE EXPENSE
- 15 November \$114.60  
*Generic "Rural office" stationery, kitchenette and "fit out" supplies. Positioned within the "Rural Office" Can be verified by any Timaru staff member"*  
LEGITIMATE EXPENSE

- 9 November \$338.00  
New desk for Chrissy Shaw (New Agent) Sits in the Waimate office. Can be verified by Chrissy  
LEGITIMATE EXPENSE

**TOTAL SUSPECTED = \$2,338.69 (ALL LEGITIMATE BUSINESS EXPENSES)**

*In relation to the ANZ Business card "Expenses very likely NOT genuine" some items listed are absolutely legitimate, others cannot be clarified or confirmed one way or the other by me personally; as described below:*

- 23 October \$330.00  
These tables sit in the Geraldine office and can be verified by any member of that office. They were purchased from a Timaru garage sale (Paid in cash)  
LEGITIMATE EXPENSE
- 23 October \$30.00  
I cannot recall this expense as there was from memory the above purchased.  
CANNOT BE CLARIFIED
- 21 January \$230.00  
I personally painted the Geraldine office. This paint was purchased as the previously purchased supply had run out. LEGITIMATE EXPENSE
- 25 January \$160.00  
I cannot clarify this expense as there was from memory the above purchased.  
CANNOT BE CLARIFIED
- 26 January \$260.00  
I cannot clarify this expense as there was from memory the above purchased.  
CANNOT BE CLARIFIED
- 21 January \$360.00  
I cannot clarify this expense as there was from memory the above purchased.  
CANNOT BE CLARIFIED

**TOTAL SUSPECTED = \$1,370.00**  
**\$560.00 (CANNOT BE CLARIFIED)**  
**\$810.00 (ALL LEGITIMATE BUSINESS EXPENSES)**

*In relation to the ANZ Imprest Account "Suspected expenses" some items listed are absolutely legitimate, others cannot be clarified or confirmed one way or the other by me personally; as described below:*

- 15 February \$130.00  
The summary report states "confirmed" then in the explanation states "No receipts Found" -Legitimate petrol/business expense  
LEGITIMATE EXPENSE
- 22 February \$138.10  
Petrol purchased and used in "private vehicle" for transportation and

- usage to and From Geraldine office (Painting & decorating)  
LEGITIMATE EXPENSE
- 24 February \$300.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 27 April \$100.00  
As described -Trailer hire to clear general rubbish from Timaru & Geraldine office. Timaru Landfill does NOT take credit card or cheques as payment. The \$3.00 difference was placed back into office petty cash. Can be verified by the Timaru office administrator.  
LEGITIMATE EXPENSE
  - 23 May \$349.00  
Filing cabinet sits in the Timaru office. Can be verified by any member of the Timaru Team.  
LEGITIMATE EXPENSE
  - 29 June 2012 \$200.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 12 July 2012 \$200.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 31 August 2012 \$50.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 13 September 2012 \$300.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 5 October 2012 \$500.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 12 October 2012 \$750.00  
Expense cannot be clarified CANNOT BE CLARIFIED
  - 19 October 2012 \$525.00  
Second hand near new Reception desk purchased from "Just Jude Gym Timaru" Delivered to our Geraldine office. Can be verified by any Geraldine office member.  
LEGITIMATE EXPENSE
  - 29 October 2012 \$200.00  
As described -Artwork purchased for the newly refurbished Geraldine office. Can be verified by any Geraldine office member. Artwork sits in the Gerald office.  
LEGITIMATE EXPENSE
  - 19 November 2012  
\$170.00 As described -Artwork purchased for the newly refurbished Geraldine office. It was purchased by me personally at the Geraldine Street fair & reimbursed. Can be verified by any Geraldine office member.  
LEGITIMATE EXPENSE
  - 23 November 2012 \$157.30  
Timaru Landfill charges incurred. As previously mentioned, the landfill

does not take Cheques or credit card for payment. This was a big cleanout of all offices and can be verified by members of ALL regional offices

LEGITIMATE EXPENSE

- 24 January 2013 \$200.00  
Side tables purchased for and remain in the Timaru office  
LEGITIMATE EXPENSE
- 29 January 2013 \$100.00  
First aid kit purchased by way of a cash donation to Red Cross Timaru, left in the Timaru office.  
LEGITIMATE EXPENSE

**TOTAL SUSPECTED = \$4,369.40**  
**\$2,300.00 (CANNOT BE CLARIFIED)**  
**\$2,069.40 (ALL LEGITIMATE BUSINESS EXPENSES)**

*In relation to the ANZ Imprest Account "Expenses very likely not genuine" some items listed are absolutely legitimate, others cannot be clarified or confirmed one way or the other by me personally; as described below:*

- 10 December 2012 \$1,000.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 17 December 2012 \$200.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 18 January 2013 \$350.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 21 January 2013 \$285.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 7 February 2013 \$250.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 8 February 2013 \$258.75  
Expense cannot be clarified CANNOT BE CLARIFIED
- 8 February 2013 \$419.75  
Expense cannot be clarified CANNOT BE CLARIFIED
- 21 February 2013 \$200.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 22 February 2013 \$230.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 28 February 2013 \$100.00  
Expense cannot be clarified CANNOT BE CLARIFIED
- 15 March 2013 \$250.00  
Expense cannot be clarified CANNOT BE CLARIFIED

- 21 March 2013 \$345.00 CANNOT BE CLARIFIED  
Expense cannot be clarified

**TOTAL SUSPECTED = \$3,888.50**  
**\$3,888.50 (CANNOT BE CLARIFIED)**

**OVERALL PERSONAL SUMMARY OF ACCOUNTS:**

Claims made that are Legitimate claimed business expenses	\$5,218.09
Claims made that cannot be clarified	\$6,748.50"

[43] The defendant also put it in an email memo to us of 27 May 2013 that the imprest account was used to provide petty cash for the four offices under his care. He says that in some cases these cheques were issued by him but in other cases they were issued by the administrator of the Timaru office. He seems to be saying that a number of the cheques in issue were not written or issued by him.

[44] The defendant also put it that he has a fine selling record over the past 13 years or so without any blemish or complaint. He then stated: *"I am in no way a threat to any member of the public, and firmly believe that those who understand "Problem Gambling" will fully understand the mind and thinking of a gambler"*. He continued *"I am 100% committed to kicking what has been a life long addiction, and as of the time of writing this letter I have refrained from gambling for exactly NINE STRAIGHT WEEKS. An effort I am also very proud of, but understand only too well that the process has only just commenced and will take a long time to change a life time habit and terrible disease"*. The defendant then referred to being a family person and to the lack of income for him from losing his real estate licence. He sought to be given an opportunity to continue holding such a licence.

[45] In another email of that date the defendant maintained that the auditor's report *"is riddled with inaccuracies"* and that there has been inadequate investigation of the frauds alleged against him.

[46] In a 21 September 2013 email to this registry, the defendant emphasised the stress and anxiety which these proceedings have placed on him and his family and said he could no longer tolerate these proceedings but, as he put it, *"regrettably I do not have the financial means required to employ the services of a solicitor to fight the claims levelled at me"*. Then again in general terms he put it that the detail of the charges against him is ridiculous and he seemed to be saying that he was meeting legitimate expenses. He went on to state that his current inability to secure employment and the stress of these proceedings was affecting his mental outlook and he felt there was no point in contesting this matter further. He said he does not accept the processes followed and considers they are flawed. He advises that he will never again work in the real estate industry in New Zealand.

[47] In his final email to us, received on 24 September 2013, the defendant criticised various procedural matters and emphasised that he is not a solicitor and had represented himself *"under duress and without sound knowledge and understanding of the due process. I have contributed where I deem it necessary and relevant"*.

**Our Views**

[48] We emphasise that our above outline of the stance of the defendant comes from emails sent to the staff of this registry. Although we have power to admit the

evidence contained in those emails as referred to by us above, generally speaking, it is not appropriate for us to attach much weight to that information in terms of credibility. It is unsworn and untested evidence. The defendant could have adduced it to us at the hearing in Timaru on 6 October 2013 which was arranged to fit in with the defendant's convenience.

[49] The evidence led before us by the prosecution has simply been unchallenged; and we find it credible and honestly given. It follows that the charge has been proved against the defendant by the prosecution on the balance of probability.

[50] The evidence is compelling that a substantial number of concerning frauds have been committed by the defendant. We agree with the submission of Mr Clancy that even one of the instances of said frauds amounts to disgraceful conduct; so that there is misconduct on the part of the defendant. However, we find that the evidence proves, on the balance of probabilities, that there has been much more than simply a one-off instance of fraud but, rather, a pattern of conduct seemingly triggered by what the defendant has referred to as his gambling addiction.

[51] Our finding of misconduct means that we need to deal with the issue of penalty. There can be no doubt that the misconduct committed by the defendant and outlined above is of such a serious nature that there must be cancellation of his real estate agent's licence. As it happens, at the end of the hearing at Timaru on 7 October 2013 we found misconduct proven and ordered that the defendant's licence be cancelled with immediate effect. We made that Order clearly and orally at about 10.10 am on 6 October 2013 so that we now simply confirm it.

[52] Although we have had little input from the defendant and no meaningful disclosure of his means, we have the impression that he is not financially sound and that it may be futile to impose a fine. In the usual way a substantial fine would be imposed for such conduct. In particular, we focus on orders to facilitate reimbursement of the victims of the defendant's frauds.

[53] We did not feel that we had sufficient information on the issue of compensation under s.110(2)(g) of the Real Estate Agents Act 2008 and asked for further submissions/information on that issue only; and Mr Clancy has helpfully responded.

[54] A copy of the Brophy Knight auditor's invoice referred to by Mr Niles in evidence on 7 October has been adduced. The invoice confirms that the defendant's employer, Hastings McLeod Ltd, incurred direct costs of \$4,097.45 in investigating his fraud.

[55] Also confirmed in the evidence is that Ms C Collingwood, a client of the defendant's, paid him \$1,197.50 for advertising when those costs were not in fact incurred.

[56] The Brophy Knight report from Mr Fisher (referred to above) identified suspected expenditure against his employer by the defendant of \$11,966.59, divided into two categories: \$6,708.09 "*suspected expenses*" and \$5,258.50 "*very likely not genuine*".

[57] Accordingly, under s.110(2)(g) of the Act we Order that the defendant make compensation as follows:

- [a] \$1,197.50 to Christine Collingwood payable to her within 15 working days of this decision.
- [b] \$9,355.95 to Hasting McLeod Ltd (also payable within the said 15 working days); being the total of the \$4,097.45 auditor's fee and the \$5,258.50 expenses identified by the auditor as very likely not genuine. This gives Mr Marshall the benefit of the doubt regarding the remaining \$6,708.09 of suspected expenses.

[58] Pursuant to s.113 of the Act, we record that any person affected by this decision may appeal against it to the High Court by virtue of s.116 of the Act.

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Judge P F Barber  
Chairperson

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Ms N Dangen  
Member

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Ms C Sandelin  
Member