



AGENTS LICENSING BOARD OF THE NORTHERN TERRITORY

REASONS FOR DECISIONS FOLLOWING INQUIRY CONCERNING DISCIPLINARY ACTION AGAINST MERCURY REAL ESTATE PTY LTD AND JEFFREY THOMPSON

Note:

The Northern Territory Civil and Administrative Tribunal (NTCAT) reviewed the Board's decisions in this matter (see NTCAT decision: Mercury Real Estate Pty Ltd and Jeffrey Thompson v Agents Licensing Board of the Northern Territory 2035-02930, 13 August 2026).

NTCAT upheld the Board's decisions other than the penalty imposed on Jeffrey Thompson. NTCAT set aside the Board's penalty (\$9000) and imposed penalty of \$6000 – see paragraphs 105-112 of NTCAT's decision. This decision was made having regard to evidence provided to NTCAT but not available to the Board.

Respondents:	Mercury Real Estate Pty Ltd Jeffrey Ian Thompson
Date and time of hearing:	29 April 2025, 9am
Venue:	Arafura Meeting Room Development House Level 1 / 76 The Esplanade, Darwin
Reason for Inquiry:	To hold an inquiry pursuant to section 68(4)(b) of the <i>Agents Licensing Act 1979</i> to determine if there are grounds for disciplinary action to be taken against Mercury Real Estate Pty Ltd and Mr Jeffrey Ian Thompson (branch/business manager).
Agents Licensing Board:	Mr Robert Bradshaw, Chair Ms Lea Aitken, Board Member Ms Carol Need, Board Member Jake Quinlivan, Board Member
Representation:	Nil
In attendance:	Mr Joe De Luca, witness Ms Amanda Nobbs-Carcuro, Registrar, Land, Business and Conveyancing Agents Mr Kevin Kadirgamar, Department of Trade, Business and Asian Relations, Counsel Assisting Ms Laine Cornish, Senior Board Support Officer, Department of Trade, Business and Asian Relations

Introduction

1. On 19 December 2024, the Agents Licensing Board (the Board) considered a report from the Registrar of Land, Business and Conveyancing Agents which noted that audit reports relating to Mercury Real Estate Pty Ltd.'s trust accounting records had not been provided to the department for the following periods:
 - a. 1 July 2020 – 30 June 2021
 - b. 1 July 2021 – 30 June 2022

c. 1 July 2022 – 30 June 2023

d. 1 July 2023 – 30 June 2024

2. The report from the Registrar highlighted that no audit report relating to the trust accounts of Mercury Real Estate Pty Ltd had been received for the duration of the company's licence, and the lack of audit reports indicated a breach of section 59(1) of the *Agents Licensing Act 1979* (AL Act).
3. Based on the information provided, the Board resolved to hold an inquiry under section 68(4)(b) of the AL Act, to determine whether there are grounds under section 67 of the AL Act for disciplinary action to be taken against Mercury Real Estate Pty Ltd.
4. On 12 March 2025, the Board considered a further report from the Registrar recommending that the inquiry be expanded to consider whether there are grounds for taking disciplinary action against Mr Thompson in his capacity as the business manager for Mercury Real Estate Pty Ltd.
5. The conduct of a company is inherently tied to the conduct of its business manager. The business manager is, for all practical purposes, responsible for discharging the company's statutory obligations. This is especially the case where the manager is also the sole director of the agent.
6. On 13 March 2025, the Board resolved to hold an inquiry under section 68(4)(b) of the AL Act regarding Mr Thompson as business manager. The purpose of the inquiry being to determine whether there are grounds under section 67 of the AL Act for disciplinary action to be taken against Mr Jeffrey Ian Thompson.
7. Mercury Real Estate Pty Ltd currently holds a company real estate and business agent licence (RBL1278), valid from 30 November 2023 to 30 November 2027.
8. Mercury Real Estate Pty Ltd has previously held the following company real estate agent licences in the Northern Territory - REL1278 from 31 July 2020 to 30 July 2021 and REL1367 from 12 October 2021 to 11 October 2023.
9. Mr Jeffrey Ian Thompson is the sole Director of Mercury Real Estate Pty Ltd (listed as "Jeff Thompson" in the relevant company extract dated 19 November 2024).
10. Mr Thompson is the business/branch manager for Mercury Real Estate Pty Ltd's company licence. Mr Thompson holds an individual real estate and business agent licence (RBL1238) valid from 20 October 2022 to 19 October 2027.
11. Mr Thompson has previously held the following individual real estate licences in the Northern Territory - REL1268 from 16 June 2020 to 15 June 2021 (licensed under mutual recognition) and REL1345 from 10 August 2021 to 9 August 2022.

12. On 14 March 2025 Mr Thompson was provided with a copy of the draft inquiry book (including the matters to be inquired into) and was asked to provide comment by close of business 31 March 2025
13. On 9 April 2025, having not received a response from Mr Thompson, the department contacted Mr Thompson to advise that any submission for inclusion in the inquiry book should be received by close of business 10 April 2025.
14. Mr Thompson subsequently engaged with the department on 9 and 10 April 2025 (via phone and email) noting his current and past efforts towards compliance, raising concerns about delays in receiving responses from auditors, outlining challenges with compliance (including cost and regulatory burden), and requesting an extension of time to finalise the outstanding audits.
15. On 9 and 10 April 2025, the department responded to Mr Thompson, providing information about applying for an exemption under the AL Act, and seeking confirmation from Mr Thompson as to whether he was intending to make an application for exemption relating to the previous audits and whether he was seeking that the hearing date for the inquiry be rescheduled. Mr Thompson was also encouraged to provide documentation in support of his stated efforts to comply with audit requirements for inclusion in the inquiry book by close of business 14 April 2025.
16. No further response was received from Mr Thompson by close of business 14 April 2025.

However, on 23 April 2025, Mr Thompson sought, under section 5A of the AL Act, an exemption from all of the audit requirements. The Board rejected that application. A separate written decision has been provided to Mr Thompson concerning that application.

Role of Agents Licensing Board

17. The AL Act regulates the licensing and conduct of real estate agents, business agents, and conveyancers. The Act outlines the requirements and obligations for agents operating in these sectors, including provisions for licensing, conduct, trust accounts, and dispute resolution.
18. Section 68(4) of the AL Act provides that the Board shall hold an inquiry where '(a) an application for disciplinary action to be taken against a licensed agent is lodged in accordance with this section or (b) the Board considers that there may be grounds under section 67 for disciplinary action to be taken against a licensed agent'.
19. The inquiry hearing and process is governed by section 77 of the AL Act. The procedure is at the discretion of the Board, parties may be legally represented, and the Board is not bound by the rules of evidence but may inform itself in such manner as it thinks fit.

Details of alleged conduct

Failure to ensure accounts audited

20. Mercury Real Estate Pty Ltd has been licensed under the AL Act from 31 July 2020 to present (except for short periods between licences – resulting from not renewing before licence expiry – during which Mercury Real Estate Pty Ltd continued to operate).
21. Mercury Real Estate Pty Ltd was required to have opened and maintained a trust account for the duration of its licence (under sections 50(1) and (2) of the AL Act).
22. On 26 November 2021, Mr Thompson notified the department that Mercury Real Estate Pty Ltd held the following trust account opened under section 50 of the AL Act: 065903 10971956. In his notification, Mr Thompson advised that the trust account was opened on 1 June 2020. However, bank records provided to the department by the Commonwealth Bank indicated that the account was opened on 9 January 2020.
23. Mercury Real Estate Pty Ltd was required (under section 59(1) of the AL Act) to have ensured that any trust accounts it held were audited annually by a qualified auditor, and the related audit report provided to the Board for each audit.
24. No annual audit report has been received in relation to Mercury Real Estate Pty Ltd for any of the years it has been licensed.

Key background facts

25. Between 25 November 2021 and 29 October 2024, the department reminded Mr Thompson (in his capacity as business manager for Mercury Real Estate Pty Ltd) on three occasions of the need for Mercury Real Estate Pty Ltd to have its accounts audited.
26. In response to two of the reminders (occurring 25 November 2021 and 29 October 2024), Mr Thompson responded to the department advising the relevant audit reports would be arranged.
27. On 7 November 2024, Mr Thompson submitted an application for a new company real estate and business agent licence on behalf of Mercury Real Estate Pty Ltd (the previous company real estate agent licence (REL1367) having expired on 12 October 2024).
28. As part of the application, Mr Thompson answered “no” to the question “are you in breach of a provision of the *Agents Licensing Act 1979*”.
29. On 4 October 2022 and 28 November 2024, Mr Thompson submitted applications to renew the licence of Mercury Real Estate Pty Ltd (REL1367 and RBL1278 respectively).

30. In both applications Mr Thompson answered “no” to the question “has the company failed to provide the Board with an auditor’s report required under the *Agents Licensing Act 1979*”.

Chronology

31. The following is a chronology of events relating to the licensing of Mercury Real Estate Pty Ltd and the department’s engagement with Mr Thompson relating to trust accounting obligations:

Date	Event	Reference to the document in the inquiry book
31 July 2020	Mercury Real Estate Pty Ltd was first licensed as company real estate agent in the Northern Territory under licence REL1278, valid to 30 July 2021.	N/A
13 September 2021	The department received an application from Mr Thompson for a new company real estate licence for Mercury Real Estate Pty Ltd. The previous company licence had expired.	Document 17
12 October 2021	The licence was granted valid to 11 October 2022 (REL1367).	Document 3
25 November 2021	Mr Thomson was notified by the department that Mercury Real Estate Pty Ltd was one of a number of licensees who had not provided trust account audit reports to the Board for the period ending 30 June 2021. The correspondence set out penalties related to failure to provide a trust account audit report and advised to immediately provide a copy of an audit with an explanation for why it was late.	Document 18
25 November 2021	Mr Thompson responded to the correspondence via email, stating: <i>Thank you for your email. I apologise for an omission on our behalf. Our company has been impacted by COVID. I have today actioned this and have contacted BDO to undertake an Audit as soon as possible. I had thought we had a nil return but a check of our records indicates that we had a couple</i>	Document 18

	<i>of payments in the latter part of June 2021</i>	
26 November 2021	Mr Thompson sent an email to the department advising that he wished to make a notification of an account opened under section 50 of the AL Act and providing some details of the account.	Document 19
29 November 2021	The department requested Mr Thompson complete a 'notification of opening a statutory trust account' form and return it to the department.	Document 19
13 December 2021	The department contacted Mr Thompson again to follow-up the request for the completion of the form.	Document 19
14 December 2021	Mr Thompson responded, providing a signed notification form: <i>BSB: 065903</i> <i>Account number: 10971956 Account</i> <i>name and purpose: Rental</i> <i>Date account was opened: 01/06/2020</i>	Documents 19 and 20
4 October 2022	The department received an application for renewal of Mercury Real Estate Pty Ltd's licence. As part of the application (signed by Mr Thompson), Mr Thompson answered "no" to the question "has the company failed to provide the Board with an auditor's report required under the <i>Agents Licensing Act 1979</i> "	Document 21
4 October 2022	The renewal was approved, valid to 11 October 2023.	Document 4

15 September 2023	Correspondence was sent by the department to individual agents and company agents, including Mr Thompson (on behalf of Mercury Real Estate Pty Ltd), to remind agents of their requirement to provide trust account audits by 30 September 2023. No response was received relating to Mercury Real Estate Pty Ltd.	Document 22
7 November 2023	Mr Thompson applied for a new company real estate and business licence for Mercury Real Estate Pty Ltd. The previous company licence had expired. As part of the application (signed by Mr Thompson), Mr Thompson answered “no” to the question “are you in breach of a provision of the <i>Agents Licensing Act 1979</i> ”.	Document 23
30 November 2023	Mercury Real Estate licence was granted a licence valid to 29 November 2024 (RBL1278).	Document 1
29 October 2024	The Senior Board Support Officer emailed Mr Thompson to advise that the audit report for Mercury Real Estate Pty Ltd was outstanding for 2023/24.	Document 24
29 October 2024	Mr Thompson contacted the Board Support Officer by telephone and advised that he would have the audit report completed by 30 November 2024.	N/A
28 November 2024	Mr Thompson submitted an application for renewal of Mercury Real Estate Pty Ltd's licence. As part of the application (which is signed by Mr Thompson on 19 November 2024), Mr Thompson answered “no” to the question “has the company failed to provide the Board with an auditor's report required under the <i>Agents Licensing Act 1979</i> ”.	Document 25
4 December 2024	The renewal was approved, valid to 29 November 2027.	Document 2
8 March 2025	Mr Thompson contacted the department (in response to correspondence sent by the department on 7 March 2025 regarding arrangements for the inquiry) advising he was experiencing delays in auditing his trust accounts due to personal issues and the unavailability of registered company auditors in Darwin. Mr Thompson advised he had	Document 26

	engaged Mr Joe De Luca, an experienced accountant and approved auditor for the Law Society and sought confirmation of whether Mr De Luca could undertake the relevant trust audits under the AL Act, despite the requirement to engage a Registered Company Auditor (RCA).	
11 March 2025	The department responded to Mr Thompson to advise that the AL Act mandated audits be conducted by a registered company auditor. The department further provided advice about the exemption provisions in the AL Act.	Document 26

Materials before the Board at the hearing

32. The following materials were placed before the Board:

- a. The Inquiry Book
- b. Appendix 1 to the Inquiry Book containing the following documents referenced in the Inquiry Book:
 - i. Copies of licence certificates and related matters
 - ii. Copies of licensing for applications
 - iii. Correspondence between the department and Mr Thompson and Mr De Luca.
 - iv. reports from the Commonwealth Bank of Australia provided to the department showing that transactions occurred in Mercury Real Estate Pty Ltd's trust account, in each of the auditing periods - Reporting month May 2021, Reporting month May 2022, Reporting month May 2023 and Reporting month May 2024.
- c. Oral testimony by Mr De Luca

Hearing

33. On 29 April 2025 the Board conducted a hearing.

34. The matters before the Board were:

- Whether Mercury Real Estate Pty Ltd breached section 59(1) of the AL Act (and therefore contravened Rule 8 of the rules of conduct) by failing to ensure its accounts were audited by a qualified auditor within three months of the end of the prescribed period, for each of the following periods:
 - 1 July 2020 – 30 June 2021
 - 1 July 2021 – 30 June 2022
 - 1 July 2022 – 30 June 2023
 - 1 July 2023 – 30 June 2024
- Whether there is any other reasonable ground which is sufficient to warrant revocation of the licence of Mr Jeffrey Ian Thompson based on his conduct as business manager for Mercury Real Estate Pty Ltd, particularly with respect to his responsiveness, diligence, and truthfulness in dealing with the department, and his actions or omissions that may have led to any breach by Mercury Real Estate Pty Ltd.

35. Mercury Real Estate and Mr Thompson did not attend the hearing. The reason for nonattendance provided by Mr Thompson being his responsibility as an election official. The Board had previously rejected an application to defer the timing of the hearing.
36. Mr Joe De Luca attended the hearing. As far as the Board could tell, neither Mercury Real Estate and/or Mr Thompson had authorised Mr De Luca to represent them. The Board took the view that Mr De Luca was attending the proceedings as a witness regarding the current state of the outstanding audits. Mr De Luca accepted that that was his role.
37. At the hearing Mr Joe De Luca provided evidence as to the current state of the audits. He was first contacted by Mr Thompson in March 2025 about the audits. He is constructing the ledgers so that they are ready to be referred to a company auditor. As at the date of the hearing he has completed ledgers for 21/22 and 23/24. He also outlined practical problems in appointing auditors – for example, they tried to contact one of them but received no response and other practical problems regarding obtaining records from the agent's bank. He also mentioned some personal problems and operational issues facing Mr Thompson.
38. Mr De Luca stated that he is satisfied that Mr Thompson is committed to fixing the issues. He advised that the records should be with the auditor within 10 business days of the hearing day (29 April 2025) if there is no intervening problem.

Relevant legislative provisions

39. Part V, Division 1 of the AL Act sets out the requirements relating to trust moneys and the maintenance and operation of trust accounts, including an agent's requirement to:
- a. hold all money received by a licensed agent in their capacity as an agent and in the course of their licensed business, as well as any money received by the agent as a stakeholder, in trust.
 - b. open a trust account (that accords with the requirements of section 50) within 7 days of a licence being granted (s50(1)) and maintain a trust account (that accords with the requirements of section 50) while licensed (s50(2)).
40. Part V, Division 3 of the AL Act sets out requirements relating to audit and inspection of trust accounts.
41. Section 59(1) of the AL Act provides that 'a licensed agent shall ensure that the agent's accounting records relating to trust moneys received and paid by the agent during the prescribed period are audited within 3 months after the expiration of each prescribed period.' There is a maximum penalty of 20 penalty units or imprisonment for 3 months for contravention of this section.
42. Section 59(1A) of the AL Act then provides that 'it is a defence to a prosecution for an offence against subsection (1) if the licensed agent charged with the offence proves that:
- (a) the licensed agent engaged an auditor to carry out the audit at a time when the auditor would reasonably be expected to complete the audit within the period specified in that subsection, but the auditor had failed to do so; and
 - (b) a written statement was forwarded to the Registrar by the auditor or the licensed agent before the expiration of the period specified in that subsection setting out the reasons for the auditor's failure to complete the audit and specifying the period within which the audit will be completed'.
43. "Prescribed period" for the purposes of Division 3 (audit and inspection of trust accounts) is defined at section 58 of the AL Act and means:
- (a) the period of 12 months ending on 30 June in each year; or
 - (b) the period of 12 months ending on such other dates as the licensed agent specifies, by notice in writing lodged with the Registrar, to be the date in each year for the purpose of this Part.
44. Section 61 requires an agent, for the purposes of an audit, to (a) produce to the auditor records relating in any way to trust monies received during the relevant period and (b) to provide information and answers to the auditor in relation to the auditor's questions about the records. There is a maximum penalty of 50 penalty units or imprisonment for 6 months (for a natural person) or 500 penalty units (for a body corporate) for contravention of this section.

45. Section 62 requires the auditor to, as soon as is as reasonably practicable, after the completion of an audit pursuant to section 59, prepare a report of the result of the audit, and deliver the report to the licensed agent and the Board. There is a maximum penalty of 20 penalty units for contravention of this section.
46. Regulation 16 provides for an exemption from audit requirements where trust monies were not received or held during the period. In such a circumstance, an agent is required to make a statutory declaration to the Board within 2 months of the end of the prescribed period.
47. Section 110A(5) of the AL Act obliges business managers to have effective and substantial control over the business carried on under the licence.
48. Regulation 18 of the Agents Licensing Regulations 1979 provides that:
- “A provision of Part V or XII of the Act or these Regulations that requires a licensed agent to do, or to refrain from doing, an act or to carry out an obligation shall, in the case of a licensed agent which is a company or firm, be read as imposing jointly and severally on:*
- (a) in the case of a company which is a licensed agent – a licensed agent who is a branch manager, employee or director of the company; ...*
- a like requirement to do, or to refrain from doing, the act or to carry out the obligation, as the case may be, in relation to the business of the licensed agent.”*
49. Section 64A of the AL Act provides that regulations may prescribe rules of conduct for real estate agents. The rules of conduct are set out in Schedule 4 of the *Agents Licensing Regulations 1979* (AL Regulations). The Real Estate Institute of Northern Territory (REINT) has also published a voluntary code of conduct titled ‘Real Estate Practitioners Code of Conduct’ (Code of Conduct). This code was designed to ‘set boundaries of acceptable conduct in real estate practice and define minimum standards of behaviour expected’ of its members.
50. Section 65 of the AL Act provides that a ‘licensed agent must not breach the rules of conduct’. Section 65(4) provides that a company or firm is guilty of a breach of the rules of conduct for agents if: (a) the company or firm is a licensed agent acting on behalf of a client; and (b) a director or employee of the company or firm does an act, or fails to do an act, or attempts to do an act, the doing of, or the failure to do, which would, if the director or employee were a licensed agent, make the director or employee guilty of a breach of the rules of conduct for agents. Breaches of the REINT code are also breaches of the rules of conduct.
51. Section 110A(1) of the AL Act provides that ‘a licensed agent must ensure that there is at all times in the agent's service a business manager, who is a licensed agent appointed by the agent, in respect of each office of the business carried on under the licence.’ Section 110A(5) of the AL Act

then provides that a 'business manager must ensure that he or she exercises substantive and effective control of the day-to-day operations of an office in relation to which he or she was appointed'.

52. The Board may take disciplinary action against a licensed agent on one or more of the grounds outlined in section 67 of the AL Act. In particular, the Board may take disciplinary action if a licensed agent has been guilty of a breach of the rules of conduct for agents' (section 67(1)(c) of the AL Act). The Board may also take disciplinary action on "any other reasonable ground which in the opinion of the Board, is sufficient to warrant revocation of the licence of the agents" (section 67(1)(m) of the AL Act).
53. Section 68(4) of the *AL Act* provides that the Board shall hold an inquiry where the Board considers that *there* may be grounds under section 67 for disciplinary action to be taken against a licensed agent'.

Rules of Conduct

54. The role of the Board is to consider whether Mercury Real Estate or Mr Thompson has contravened any of the rules of conduct. The rules of conduct possibly relevant to this matter are:

Rule 8: An agent must not breach any provision of the Act or the regulations.

Board's findings

General principles

55. The inquiry hearing and process is governed by section 77 of the AL Act. The procedure is at the discretion of the Board, parties may be legally represented, and the Board is not bound by the rules of evidence but may inform itself in such manner as it thinks fit.
56. The purpose of disciplinary proceedings is to maintain proper ethical and professional standards, primarily for the protection of the public, but also the protection of the profession.
57. In occupational disciplinary matters, an issue needs to be proven to the reasonable satisfaction of the decision maker, having regard to the seriousness of the allegation made, the inherent unlikelihood of the occurrence of a given description (or the inherent improbability of an explanation) or the gravity of the consequences flowing from a particular finding.

Issue - failure to provide annual audit reports

58. Mercury Real Estate Pty Ltd and Mr Thompson did not contest the allegation that the audit reports had not been provided. The Board was provided with information about attempts to conduct the audits. The Board considers that this information is mainly of relevance to any penalty that might be applied if it finds that the failure to lodge audits is a breach of the rules of conduct.
59. Where there is a failure to lodge audits there are two main regulatory options. They are to prosecute through the criminal courts or take disciplinary action. The Board has previously decided that, for disciplinary proceedings, it can find that the Act been breached (in respect of provisions where there is a criminal law penalty) regardless of whether there has been a formal prosecution under the legislation.
60. On the basis of these matters, the Board finds that Mercury Real Estate has breached section 59 of the AL Act by not ensuring that its trust accounts were audited as required by that section. The Board considers that it is authorised under section 69 of the AL Act to take disciplinary action against Mercury Real Estate Pty Ltd.

Failure to provide accurate information on renewal

61. In each of the licence renewal applications, Mr Thompson on behalf of Mercury Real Estate Pty answered “no” to the questions concerning whether the agent has failed to lodge an audit or whether the agent had breached the AL Act.
62. Mr Thompson would have known or should have known that the audits had not been completed and that that was a breach of the AL Act.
63. Mr Thompson also provided apparent misleading information concerning the status of audits. For example, on 29 October 2024, he advised that the outstanding audit report would be completed by 30 November 2024 – that is, within about a month. There is no evidence that, as at 29 October 2024, an auditor had been appointed.
64. The Board finds that Mercury Real Estate Pty Ltd and Mr Thompson provided misleading information in each of the licences applications and renewals.

Responsibility of the business manager

65. Regulation 18 (as set out above) means that Mr Thompson as branch/business manager and/or an employee of Mercury Real Estate Pty Ltd is subject to the same obligations as the Mercury Real Estate Pty Ltd concerning section 59 of the AL Act (noting that section 59 is a provision within Part V of that Act).

66. The Board also considers that branch/business managers are responsible, as a general rule, for the compliance of a licensed company agent with the requirements of the Act. Significant noncompliance can be the basis of disciplinary action as referred to in section 67(1)(m) of the AL Act.
67. The Board finds that Mr Thompson has failed to comply with section 59 of the AL Act as referred to in regulation 18. This means that Mr Thompson has breached rule of conduct 8.
68. On the basis of this finding and the finding concerning the provision of misleading information the Board considers that it is authorised under section 69 of the AL Act to take disciplinary action against Mr Thompson.

Penalties

69. The powers of the Board after the inquiry into a licensed agent are outlined in section 68 of the AL Act as follows:

“68. If, at the conclusion of an inquiry conducted under section 68(4), the Board is satisfied that it is authorised to take disciplinary action against a licensed agent, the Board may do one or more the of the following:

- (a) reprimand or caution the agent;*
- (b) by written notice, impose a fine not exceeding 50¹ penalty units on the agent;*
- (c) by written notice, suspend the licence of the agent until the expiration of the period, or the fulfilment of a condition, specified in the notice;*
- (d) by written notice, revoke the licence of the agent.”*

70. All the possible penalties are serious for persons in professions and licensed occupations. They all adversely impact on reputation. The outcomes of this matter, including the penalties will be published as required by section 84A(1) of the AL Act.

Penalty for Mercury Real Estate Pty Ltd

71. The Board considered past penalty decisions for disciplinary matters relating failures to provide audit reports. The main ones of some relevance are as follows:

- (1) 2004 - \$500 after agent failed to have the 2003 audit completed with either the statutory time or that time as extended.

¹ 50 penalty units is \$9250 for the period 1 July 2024 – 30 June 2025. *Penalty Units Regulations 2010*

- (2) 2011 – reprimand after there was an 8-month delay in the audit along with various procedural problems revealed by the audit
- (3) 2020 – licence revoked after agent failed to have audit for 2018/2019. Improper dealings with the trust monies
- (4) 2023 – reprimand after late filing of audit report with unreconciled amounts over a four-year period
- (5) 2023 – reprimand after prolonged delay in audit reports arising out of inaccurate trust accounting. Agent making genuine efforts to fix the problem.

- 72. From this brief summary it is fairly plain that the Board has taken a variety of approaches over the past 20 years.
- 73. The Board's current view is that a reprimand is not a sufficient penalty for major breaches of the legislation. This is said noting that the criminal sanction for a single breach of section 59(1) of the AL Act is a maximum of 20 penalty units and/or 3 months imprisonment. Such an offence is also a "regulatory offence" for the purposes of the Criminal Code. This means, in effect, that the offence is an offence of strict liability.²
- 74. The Board considers that compliance with the audit requirements is a key provision in terms of client protection. In determining the penalty the Board took into account the lengthy period of the 4 successive breaches, the ignoring of information provided by the department and the misleading information provided during the licensing processes. The current efforts of the agent to have the audits completed along with the apparent absence of any irregularities with the actual records has meant that the Board considers that a fine rather than suspension or revocation is the appropriate penalty.
- 75. The Board noted that information provided as to the agent's attempts to arrange for audits over the past four years. However, aside from the efforts made since the commencement of these disciplinary proceedings the Board considers that the efforts were nowhere near that which is required.
- 76. The Board considers that the failure to have the audits over four years plus the misleading information provided in respect of the renewal of licences and in respect of the status of audits warrants a penalty close to the maximum fine. The Board considers that the timely provision of the audit reports is a critical regulatory requirement of the AL Act. The Board accepts that there is no

² Section 125B, *Agents Licensing Act 1979*

evidence of any missing funds. If there has been any such evidence the penalty would have been significantly greater (for example, suspension or cancellation).

77. The Board also notes that in each of the other matters quoted above concerning penalties is that in most of them the agent took action to fix the problem once identified. In contrast, Mercury Real Estate Pty Ltd and Mr Thompson appear to have resisted or ignored the apparent urgency of the problem.
78. The Board also considers that the provision of misleading information is a serious matter. Delegates of the Board make decisions about renewals based largely on the answers provided in the application forms. Provision of misleading information can lead to licences being wrongly renewed.
79. Under section 69(1)(a) of the AL Act the penalty imposed on Mercury Real Estate Pty Ltd is that of a penalty of \$3,700.
80. Under section 69(3) of the AL Act the Board also directs Mercury Real Estate Pty to provide all relevant information for the outstanding audits to a registered company auditor by 30 June 2025.

Penalty for Mr Thompson

81. The Board has found that, as referred to in section 68(1) of the AL Act, that Mr Thompson, in his roles as business/branch manager and director of Mercury Real Estate Pty Ltd, has breached the rules of conduct and that it is authorised to take disciplinary action.
82. Under section 69(1)(b) of the AL Act the penalty imposed is that of a fine of \$9000. The reasons are the same as those set out concerning Mercury Real Estate Pty Ltd with the differential in the penalty being the fact that Mr Thompson bears personal responsibility for the breaches.

Right of review

83. Section 85(3) of the AL Act provides that an affected person can apply to the Northern Territory Civil and Administrative Tribunal for a review of decisions of the Board.
84. For the purposes of section 85(3), "affected persons" include the applicant, agents and agents representatives affected by the decisions.
85. An application for review must be made within 28 days of the day of notification to an affected person of the decision in this matter.

Dated 4 June 2025

Robert Bradshaw

Chairperson (for Agents Licensing Board of the Northern Territory)