

## Decision of the Committee

Re: C44-7/04

### Charge:

On 19 October 2004 the valuer was charged that:

"being a registered valuer, did conduct herself in a manner amounting to misconduct in a professional respect, contrary to section 50(1)(a) of the Act, in that the said [valuer] being a registered valuer within the meaning of the Act did fail to obtain and verify factual data that may affect a valuation in particular failing to sketch the external walls and record dimensions of the improvements (dwelling) in respect of a property ..."

By Affidavit of Marcus Johnson sworn on 27 January 2005, details of the charge and supporting documents were provided.

At a Directions Hearing on 8 March 2005, the Solicitors for the valuer submitted that the Disciplinary Committee should withdraw the charge or take no further action pursuant to Section 50(5)(b) of the Valuers Registration Act 1992. It was submitted that the Investigator's report was flawed in a number of respects. Submissions were made about the methodology used by the valuer when conducting residential valuations using the sales comparison approach.

The Committee directed the Investigator and the Solicitors for the valuer to provide further material to enable it to consider the submissions of the Solicitors for the valuer.

On 29 March 2005 the Committee received a response to the valuer's submissions from the Investigator. On 20 April 2005 the Committee received further submissions from Mr O'Neill of Counsel.

### Issues for Consideration:

On 5 May 2005 the Committee considered whether it should withdraw the charge or take no further action. It was the Committee's view that there were two aspects of the charge being:

1. whether the valuer failed to obtain and verify factual data that might affect the valuation, in particular failing to sketch external walls and record dimensions of improvements of the subject property, and
2. whether this was a contravention of Section 7 of the Regulations, ie a failure to conform with the API Code of Professional Practice.

On the basis of the written material before the Committee there appears to be no doubt that the valuer did not sketch external walls and record dimensions of improvements of the subject property. The real issue is whether this failure constitutes a contravention of Section 7, that is whether it is a failure to conform with the API Code of Professional Practice. The API Code of Professional Practice sets

out practice standards and also provides Guidance Notes. The status of the Guidance Notes is said to be:

Guidance Notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of 'Professional Practice'.

While there is no doubt that the Guidance Notes require that sketches be made of external walls and that the dimensions of improvements be recorded, the Practice Standards relating to the sales comparison method do not specifically require sketching and measuring.

In this circumstance the Committee has decided that the appropriate course is that no further action be taken in respect of the charge.

The Committee notes that the submissions contain a significant amount of material that was irrelevant to the issues of narrow compass to be decided. The Committee disregarded irrelevant material.

While the Committee acknowledges the material provided by the valuer indicates that it is the usual practice of valuers to take such measurements, which noted appears to be in accordance with the Guidance Notes, that is not enough to establish non-conformance with the Code of Practice.

**Dated** this 17 day of May 2005

**J A McVeigh**

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Chairperson

Valuers Disciplinary Committee