IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-404-803
[2025] NZHC 2521

BETWEEN	THE CHIEF EXECUTIVE OF LAND INFORMATION NEW ZEALAND Plaintiff
AND	JIN OUYANG First Defendant
	JIE XIE Second Defendant
	NEW LIFE GROUP (NZ) LIMITED Third Defendant
	HERMOSA CASA LIMITED Fourth Defendant
	BELLA CASA (NZ) LIMITED Fifth Defendant

Hearing:	21 August 2025
Appearances:	SM Earl and WE Webster for the Plaintiff CJ Thwaite and FF Teh for the First to Fourth Defendants
Judgment:	1 September 2025

JUDGMENT OF MACGILLIVRAY J

This judgment was delivered by me on 1 September 2025 at 4.00pm, pursuant to r 11.5 of the High Court Rules 2016.

Registrar/Deputy Registrar

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Solicitors:
Meredith Connell, Auckland
Millennium Lawyers, Auckland

[1] The Chief Executive of Land Information New Zealand (the **Regulator**), as regulator responsible for the enforcement of the Overseas Investment Act 2005 (the **Act**),[1] seeks civil penalties against the defendants for breaches of their obligations under the Act.

[2] The defendants admit the claims against them. The factual basis for the admitted claims is set out in an agreed statement of facts dated 31 March 2025.

[3] The parties are unable to agree on the amount of the penalties to be imposed. Nor are the parties able to agree on one aspect of orders sought by the plaintiff in relation to the disposal of property. This judgment determines those issues.

Statutory framework

[4] The Act's purpose is set out in s 3:

> **3 Purpose**
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> (1) The purpose of this Act is to acknowledge that it is a privilege for overseas persons to own or control sensitive New Zealand assets by—
>
> (a) requiring overseas investments in those assets, before being made, to meet criteria for consent; and
>
> (b) imposing conditions on those overseas investments.

[5] A transaction requires consent if it will result in an overseas investment in sensitive land.[2] Sensitive land includes residential land.[3] An overseas investment in sensitive land is the acquisition by an overseas person or an associate of an overseas person of certain estates and interests in sensitive land, including a freehold estate.[4]

[6] An "overseas person" includes an individual who is neither a New Zealand citizen nor ordinarily resident in New Zealand.[5] An "associate" of an overseas person in relation to an overseas investment includes a person who acts jointly or in concert with the overseas person in relation to the overseas investment, or who participates in

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1 Overseas Investment Act, s 30.
2 Section 10.
3 Part 1, sch 1.
4 Section 12.
5 Section 7(2)(a).

the overseas investment as a consequence of any arrangement with the overseas person.[6]

[7] It is an offence for an overseas person to give effect to an overseas investment without obtaining the consent required by the Act.[7] It is also an offence to knowingly or recklessly enter into a transaction that defeats, evades or circumvents the operation of the Act.[8]

[8] The Court may order the disposal of the relevant property if satisfied a person has contravened the Act.[9] The Court may also order the person in breach of the Act to pay a civil penalty.[10]

Factual background

[9] The first defendant, Ms Jin Ouyang, is a real estate agent. The second defendant, Mr Jin Xie, is Ms Ouyang's husband and a businessman. Both are ordinarily resident in New Zealand, and neither is an "overseas person" for the purposes of the Act.

Purchase of Burton Street property

[10] In January 2019, Ms Ouyang and her mother, Ms Liping Ouyang (**Ms Ouyang Snr**), agreed that:

(a) Ms Ouyang would purchase an apartment, Unit 1D, 16 Burton Street, Grafton, Auckland (the **Burton Street property**) in her own name;

(b) Ms Ouyang Snr would contribute the total purchase price for the Burton Street property;

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6 Section 8(1)(c) and 8(1)(d).
7 Section 42.
8 Section 43.
9 Section 47.
10 Section 48.

(c) Ms Ouyang and Mr Xie would pay the costs of recladding the Burton Street property; and

(d) once the Burton Street property had been reclad, Ms Ouyang would either rent out or sell the property and any profit would be split evenly between her and Ms Ouyang Snr.

[11] After reaching this agreement with her mother, Ms Ouyang acquired an equitable interest in the Burton Street property by executing an agreement for sale and purchase of the property on 21 January 2019. Ms Ouyang acquired legal title to the property on 18 March 2019 when the sale and purchase agreement settled.

[12] The Burton Street property is sensitive land under s 12(a) and sch 1, pt 1 of the Act because it is residential land.

[13] Ms Ouyang Snr is a citizen of the People's Republic of China and resides in Shanghai. At all relevant times she was an "overseas person" for the purposes of the Act. Ms Ouyang was an associate of Ms Ouyang Snr within the meaning of s 8(1) of the Act in relation to the investment in the Burton Street property. The acquisition of the Burton Street property was, therefore, an overseas investment in sensitive land within the meaning of s 12(1).

[14] Ms Ouyang admits that she gave effect to the overseas investment in the Burton Street property without obtaining consent, in breach of s 42 of the Act. She admits that she did so knowingly or recklessly in breach of s 43 of the Act.

[15] Ms Ouyang still owns the Burton Street property.

Joint investment agreement between Mr Xie and Ling Ngai Lok

[16] In early 2019, Mr Xie and Ling Ngai Lok (**Mr Lok**) agreed (the **joint investment agreement**) that:

(a) Mr Xie and Mr Lok would purchase properties in New Zealand to complete residential developments as joint investments;

(b) Mr Xie would purchase the properties through a company of which he would be the sole shareholder and director;

(c) Mr Lok would contribute 60 per cent and Mr Xie 40 per cent of the funds for the developments; and

(d) any profits would be shared evenly.

[17] Mr Lok is a citizen of the People's Republic of China and resides in Hong Kong. At all relevant times he was an "overseas person" for the purposes of the Act. Mr Xie was an associate of Mr Lok within the meaning of s 8(1) of the Act in relation to the two property purchases made under the joint investment agreement and described at [18] to [29] below.

Purchase of Norman Lesser Drive property

[18] In October 2019, Mr Lok and Mr Xie agreed to purchase a property at 17 Norman Lesser Drive, St Johns, Auckland (the **Norman Lesser Drive property**). Like the Burton Street property, the Norman Lesser Drive property is sensitive land under the Act because it is residential land.

[19] On 27 July 2017, Mr Xie incorporated New Life Group (NZ) Ltd (**New Life**). On 5 October 2019, Mr Xie caused New Life to enter into an agreement for sale and purchase of the Norman Lesser Drive property. New Life acquired an equitable interest in the Norman Lesser Drive property on 6 November 2019 when the agreement became unconditional.

[20] On 29 April 2020, Mr Xie incorporated the fourth defendant, Hermosa Casa Ltd (**Hermosa Casa**). On 15 May 2020, New Life nominated Hermosa Casa as purchaser of the Norman Lesser Drive property under a deed of nomination. As a result of the deed of nomination, Hermosa Casa acquired an equitable interest in the Norman Lesser Drive property.

[21] On 18 May 2020, the sale and purchase of the Norman Lesser Drive property settled, and Hermosa Case acquired legal title to the property. Mr Lok contributed

$416,000 and Ms Ouyang Snr contributed $597,700 to the purchase price of the Norman Lesser Drive property. The balance of funds came from a bank loan guaranteed by Mr Xie.

[22] The acquisition of the Norman Lesser Drive property was an overseas investment in sensitive land within the meaning of s 12(1). Mr Xie, New Life and Hermosa Casa admit that, as associates of Mr Lok, they gave effect to the overseas investment in the Norman Lesser Drive property without obtaining consent under the Act in breach of s 42 of the Act. Mr Xie admits doing so knowingly or recklessly in breach of s 43 of the Act.

[23] On 20 January 2022, Hermosa Casa sold the Norman Lesser Drive property for $3,500,000. The Regulator consented to Ms Ouyang and Mr Xie using part of the sale proceeds to settle the purchase of their family home at Riddell Road. The remaining balance of the sale proceeds after repayment of the mortgage and other expenses, which amounts to $833,887.60, is held on trust pending the assessment of a penalty against Hermosa Casa.

Purchase of Codrington Crescent property

[24] In October 2019, Mr Lok and Mr Xie agreed to purchase a property at Lot 1, 42A Codrington Crescent, Mission Bay, Auckland (the **Codrington Crescent property**). The Codrington Crescent property is sensitive land under s 12(a) and sch 1, pt 1 of the Act because it is residential land.

[25] On 21 October 2019, Mr Xie caused New Life to enter into an agreement for sale and purchase of the Codrington Crescent property. New Life acquired an equitable interest in the Codrington Crescent property on 23 October 2019 when the agreement became unconditional.

[26] On 22 May 2020, Mr Xie incorporated the fifth defendant, Bella Casa (NZ) Ltd (**Bella Casa**). On 10 June 2020, New Life nominated Bella Casa as purchaser of the Codrington Crescent property under a deed of nomination. As a result of the deed

of nomination, Bella Casa acquired an equitable interest in the Codrington Crescent property.

[27] On 12 June 2020, Bella Casa acquired legal title to the Codrington Crescent property on settlement of the agreement for sale and purchase. Mr Lok contributed $540,000 towards the purchase price of the Codrington Crescent property paid on settlement. The balance of funds came from a bank loan guaranteed by Mr Xie.

[28] The acquisition of the Codrington Crescent property was an overseas investment in sensitive land within the meaning of s 12(1). Mr Xie, New Life and Bella Casa admit that, as associates of Mr Lok, they gave effect to the overseas investment in the Codrington Crescent property without obtaining consent in breach of s 42 of the Act. Mr Xie admits doing so knowingly or recklessly in breach of s 43 of the Act.

[29] Bella Casa still owns the Codrington Crescent property and is close to completing a residential development of the property.

Approach to assessing civil penalties

[30] The settled approach to determining the quantum of civil penalties under s 48 of the Act is, broadly, to follow the approach taken in sentencing for criminal offending. This involves:[11]

(a) identifying the maximum penalty available;

(b) identifying the aggravating or mitigating factors of the contravening conduct to determine an appropriate starting point; and

(c) adjusting the starting point to reflect mitigating or aggravating factors that are personal to the defendant.

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[11] *Chief Executive of Land Information New Zealand v Tang* [2018] NZHC 382, (2018) 19 NZCPR 460 at [14]–[16]; and *Chief Executive of Land Information New Zealand v Jarvis* [2025] NZHC 212 at [24].

[31] The primary purpose of penalties imposed under the Act is deterrence.[12]

[32] The following factors are relevant when setting the starting point for a penalty:[13]

(a) the nature and extent of the breach;

(b) the nature and extent of any loss or damage caused by the breach;

(c) the nature and extent of any financial gain made from the breach;

(d) whether the breach was intentional, negligent, or inadvertent;

(e) the level of civil pecuniary penalties that have been imposed in previous similar situations; and

(f) the circumstances in which the breach took place.

[33] Factors personal to the defendant that may justify an uplift or reduction from the starting point include:[14]

(a) any previous misconduct of a similar nature by the defendant;

(b) the size of the defendant;

(c) any cooperation with the authorities;

(d) any admission of liability; and

(e) any compliance programmes put in place by the defendant.

[34] Where a person in breach has made a quantifiable gain from the transaction in issue, a penalty that disgorges that gain has been considered appropriate, given that the purpose of a penalty is to deter the wrongdoer and others.[15]

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12 *Chief Executive of Land Information New Zealand v Trinity Green Estate Partnership* [2023] NZHC 2330 at [11]; and *Chief Executive of Land Information New Zealand v Jarvis*, above n 11, at [25].

13 *Chief Executive of Land Information New Zealand v Carbon Conscious New Zealand Ltd* [2016] NZHC 558 at [31].

14 At [47].

15 *Chief Executive of Land Information New Zealand v Tang*, above n 11, at [31].

Maximum penalties

[35] Under s 48(2) of the Act (as enacted at the time of the breaches) the maximum civil penalty that the Court may impose must not exceed the higher of:

(a) $300,000; or

(b) three times the amount of any quantifiable gain to the person in contravention of the Act in relation to the property for which a consent should have been obtained; or

(c) the cost of remedying the breach of condition; or

(d) the loss suffered by a person in relation to a breach of condition.

[36] In the present case, (c) and (d) are not relevant.

[37] The maximum penalty applies to each separate contravention of the Act.

Penalty against Ms Ouyang

The competing positions

[38] The Regulator submits that the starting point for Ms Ouyang should be $90,000, which should then be reduced by 25 per cent to reflect her admissions and cooperation. This results in a final penalty of $67,500. Counsel for Ms Ouyang submits that the starting point should be $50,000, discounted by 75 per cent to reach a final total penalty of $12,500.

The maximum penalty

[39] Ms Ouyang faces a maximum penalty of $600,000 ($300,000 for each of her two admitted contraventions) or, if higher, three times her quantifiable gain on her investment in the Burton Street property. For an unsold property, the quantifiable gain can be an increase in value since acquisition. Ms Ouyang's quantifiable gain would

therefore be half the increase in the Burton Street property's value,[16] multiplied by three.

[40] The Burton Street property was purchased for $219,500 and has a current rateable value of $420,000. This would mean Ms Ouyang's quantifiable gain is $100,250, making no allowance for any expenses incurred in relation to the property. Ms Ouyang has produced tax invoices showing that she was invoiced $134,603 for body corporate remediation levies for the property from 2020 to 2022. Taking account of that remediation expense, there may be no quantifiable gain at all. Even allowing for a market value somewhat above rateable value, I conclude that 3 times any quantifiable gain to Ms Ouyang is likely to be considerably less than $600,000. Accordingly, the maximum penalty that can be imposed on Ms Ouyang is $600,000.

The starting point

[41] The Regulator accepts that the nature and extent of the breach—the purchase of a one-bedroom apartment for $219,500—is a mitigating factor in relation to the contravening conduct.

[42] Mr Thwaite for Ms Ouyang submits that the issue of Ms Ouyang's knowledge of the law is "problematic". He points to the fact that changes to the law to cover residential land were enacted in 2018, not long before the purchase of the Burton Street property. Counsel also submits that the statute may be difficult for a layperson to follow, particularly one who does not speak English as her first language. The agreed statement of facts records, however, that Ms Ouyang knew from her training and experience as a real estate agent that the Act restricted the ability of overseas persons to invest in sensitive land in New Zealand and that the Act had been amended to impose additional restrictions on overseas persons purchasing residential property. I accept the Regulator's submission that Ms Ouyang's experience as a real estate agent, her knowledge of the Act and her decision not to take legal advice makes her breaches reckless if not intentional.

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[16] This is on the basis that Ms Ouyang is entitled to a half share of the profit from the Burton Street property.

[43] Mr Thwaite submits that I should take into account the "basic economic legality" of the transaction and the benefit to the community derived from Ms Ouyang and her mother improving the quality of a property. It is submitted that no New Zealand resident was disadvantaged by the purchase. I do not consider these to be proper mitigating factors. Ms Ouyang could have proceeded with this investment, with any attendant benefits to New Zealand's housing stock, by obtaining consent under the Act. She cannot make a virtue of doing so without obtaining consent. The submission, which is in effect that there was little mischief here, seeks to second-guess the policy behind the Act.

[44] I also reject Mr Thwaite's submission that there is a reduced justification for a deterrent penalty as previous cases will already have served that deterrent purpose in relation to others, and Ms Ouyang is unlikely to repeat her error regardless of the size of the penalty. The deterrent policy purpose of the penalty regime requires a continued and consistent approach to the imposition of penalties on those who breach the Act.

[45] Counsel for the Regulator has referred me to cases in which the defendant did not make a quantifiable gain and in which the Court adopted starting points ranging between $103,000 and $140,000 for breaches of s 42, and ranging between $100,000 and $250,000 for breaches of s 43.

[46] The Regulator's proposed starting point of $90,000 is slightly below the lowest end of the range indicated by these cases, reflecting an acceptance that the nature, size and value of the Burton Street property makes this acquisition less serious in comparison to the larger and more valuable properties involved in the other cases. Against that, Ms Ouyang has breached ss 42 and 43 and has admitted to doing so recklessly if not intentionally. Most of the other cases referred to me have involved a single breach with a $300,000 maximum penalty.

[47] Ms Ouyang does not point to any cases supporting a starting point as low as $50,000 for conduct in breach of both ss 42 and 43.

[48] In the round and having regard to the maximum available penalty of $600,000, and the reckless if not intentional nature of the conduct, I conclude that $90,000 is an

appropriate starting point. I consider that $50,000 would be too low a starting point having regard to Ms Ouyang's knowledge and experience as a real estate agent and the deterrent purpose of penalties under the Act.

Mitigating or aggravating factors personal to Ms Ouyang

[49] There are no aggravating factors personal to Ms Ouyang that justify an uplift to the starting point. Ms Ouyang's knowledge and experience has been taken into account in setting the starting point as a factor going to the nature of the contravention.

[50] The Regulator accepts that Ms Ouyang should be given credit for admitting liability, which took place late in the pre-commencement phase but prior to filing. The Regulator proposes a discount of 25 per cent. In written submissions, Ms Ouyang's counsel proposes a discount of 50 per cent, but then arrives at a proposed total penalty of $12,500. This represents a total discount of 75 per cent from the proposed starting point of $50,000.

[51] The case law recognises that there is a considerable public benefit in defendants admitting to their wrongdoing, thereby avoiding lengthy and expensive litigation. The cases referred to me indicate discounts for admissions and co-operation ranging from 10 to 35 per cent. I consider that a discount of 25 per cent, which is towards the top end of that range, is appropriate. This results in a total final penalty of $67,500.

Penalty against Mr Xie

The competing positions

[52] The Regulator submits that the starting point for Mr Xie should be $210,000, which should then be reduced by 25 per cent to reflect his admissions and co-operation. This results in a final penalty of $157,500. Mr Xie says that the starting point should be $175,000 discounted by 35 per cent to reach a final total penalty of $113,750.

Maximum penalties

[53] Mr Xie faces a maximum penalty of $300,000 for each of his four admitted breaches, for an overall maximum of $1,200,000.

The starting point

[54] The size and values of the Norman Lesser Drive and Codrington Crescent properties are relatively modest as compared with the properties involved in some of the other cases referred to me. However, the combined acquisition value of the properties—over $3,000,000—is substantial. The properties were purchased for financial gain.

[55] I do not accept the submission made by counsel for Mr Xie that the issue of his knowledge and understanding of the law is "problematic" and should be viewed as mitigating his breaches. The agreed facts indicate that Mr Xie deliberately concealed Mr Lok's involvement in both transactions. When applying for the bank loan to purchase the Norman Lesser Drive property, Mr Xie falsified bank statements to support his statement of income, and he falsely told his solicitors that the source of funds for the purchase was personal family funds and the bank loan. Further, it is an agreed fact that Mr Xie and Mr Lok decided that Mr Lok would not be a shareholder in New Life, Bella Casa or Hermosa Casa because Mr Xie believed that this would trigger Overseas Investment Office "procedures". The agreed facts lead to the conclusion that Mr Xie's breaches were intentional.

[56] As with Ms Ouyang, I reject the submission that I should treat as mitigating factors the benefits to New Zealand said to have flowed from the transaction, including increasing housing, payments to tradespeople and for building materials, payments of tax to the government, as well as the "basic economic legality" of the business structures. Mr Xie could have proceeded with these transactions with these attendant benefits lawfully by seeking consent under the Act.

[57] While Mr Xie is the sole shareholder of Bella Casa and Hermosa Casa, separate orders are sought to penalise the companies by disgorging their gains. It is appropriate

therefore to proceed on the basis that Mr Xie will not make any quantifiable gain from the transactions.

[58] The Regulator's proposed starting point of $210,000 is towards the upper end of the cases referred to me involving a breach of s 43 in which no gain was made by the defendant.[17] The decisions in *HK Search,*[18] *Hong*[19] and *Jarvis*[20] are of particular assistance.

[59] In *HK Search*, a lawyer breached s 43 by recklessly enabling an associate of an overseas person to buy 18 hectares of non-urban land for $3,000,000. The Court adopted a starting point of $120,000 to $150,000 in the context of a maximum penalty of $300,000 for the defendant's involvement in a single transaction.

[60] In *Hong*, the defendants breached s 43 by transferring 44 hectares of non-urban land worth $2,750,000 after they became aware of their obligations under the Act. The defendants in that case acted to avoid suffering harm through the fraudulent conduct of a business associate. They always intended to seek and did in fact seek consent retrospectively. Despite that mitigating factor, the Court adopted a starting point of between $200,000 and $220,000.

[61] In *Jarvis*, a lawyer recklessly enabled two associates of overseas persons to purchase 111 hectares and 160 hectares of non-urban land for $626,350 and $1,270,000 respectively. The Court adopted a starting point of $120,000 to $150,000 in respect of the 111 hectares and $220,000 to $240,000 in respect of the larger block.

[62] The purchases in the present case of urban residential land are smaller in size than the non-urban properties in the above cases, but that will generally be so when comparing non-urban land with urban land. I consider a comparison of the value of the transactions is of more assistance. The combined value of the properties at issue

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17 *Chief Executive of Land Information New Zealand v HK Search Ltd* [2022] NZHC 444; *Chief Executive of Land Information New Zealand v Hong* [2019] NZHC 1561; *Chief Executive of Land Information New Zealand v Jarvis* [2024] NZHC 3010; and *Chief Executive of Land Information New Zealand v Jarvis*, above n 11.

18 *Chief Executive of Land Information New Zealand v HK Search Ltd*, above n 17.

19 *Chief Executive of Land Information New Zealand v Hong*, above n 17.

20 *Chief Executive of Land Information New Zealand v Jarvis*, above n 17.

here is similar to the value of the property at issue in *HK Search* and greater than in *Hong* and *Jarvis*.

[63] Mr Xie's breaches are no less serious in my assessment than the breaches in *HK Search, Hong* and *Jarvis*. Given the maximum penalties available, the value of properties, the fact that Mr Xie has entered two successive transactions in breach of the Act, and the deliberate concealment of the true nature of the transactions, I consider that the second defendant's proposed starting point of $175,000 is too low and out of line with similar cases. I consider that a starting point of $210,000 (as the midpoint between $200,000 and $220,000) is within an appropriate range and is more consistent with principle and authority. I adopt $210,000 as the starting point.

Mitigating or aggravating factors personal to Mr Xie

[64] There are no aggravating factors personal to Mr Xie justifying an uplift of the starting point. Mr Xie's knowledge and experience has been taken into account in setting the starting point as a factor going to the nature of the contravention.

[65] The Regulator accepts that Mr Xie should be given credit for admitting liability, which took place late in the pre-commencement phase but prior to filing. The Regulator proposes a discount of 25 per cent. Mr Xie's counsel proposes a discount of 35 per cent in written submissions.

[66] Having regard to the discounts applied in *HK Search*, *Hong* and *Jarvis*, which ranged from 15 per cent to 25 per cent, I consider that a discount of 25 per cent is appropriate, resulting in a total final penalty of $157,500.

Penalty against New Life

The competing positions

[67] The Regulator submits that the starting point for New Life should be $50,000, which should then be reduced by 20 per cent to reflect admissions and cooperation. This results in a final penalty of $40,000. New Life says that no penalty should be

ordered against it as it was a mere conduit of property to Bella Casa and Hermosa Casa and did not take legal title or make any gain.

Maximum penalties

[68] New Life faces a total maximum penalty of $600,000 for its two breaches of s 42.

The starting point

[69] There are no aggravating or mitigating factors that are particular to New Life. It breached the Act by acquiring an equitable interest in the Norman Lesser Drive and Codrington Crescent properties for a short period, before nominating Bella Casa and Hermosa Casa as purchasers. It made no gain. New Life nonetheless breached s 42 in respect of two transactions and a modest penalty is appropriate.

[70] In *FFG Investments*,[21] the second defendant acquired an equitable interest in land under an ASP as an overseas person in breach of the Act. By the time the sale settled, the second defendant had restructured its shareholding so that it was no longer an overseas person when it took legal title. The Court adopted a starting point of $54,000. In *Lee*,[22] the third defendant acquired an equitable interest in land under an ASP in breach of the Act but only held the interest for a short time. The Court adopted a starting point of $50,000 to $55,000.

[71] The $50,000 starting point proposed by the Regulator is consistent with these authorities and is a modest penalty given that this case, unlike *FFG* and *Lee*, involves two transactions. New Life's submission that no penalty should be imposed would be an unwarranted departure from principle and authority. I adopt a starting point of $50,000.

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21 *Chief Executive of Land Information New Zealand v FFG Investment Ltd* [2019] NZHC 3293 at [20] and [22].

22 *Chief Executive of Land Information New Zealand v Lee* [2021] NZHC 1379 at [77].

Mitigation for admissions and co-operation

[72] I determine that New Life should obtain the same 25 per cent discount as Mr Xie for its admissions and cooperation. I consider there is no good reason to adopt a lower discount of 20% for New Life, as was proposed by the Regulator.

[73] Applying the 25 per cent discount, the final penalty against New Life is $37,500.

Penalty against Hermosa Casa

The competing positions

[74] The Regulator submits that the starting point for Hermosa Casa should be disgorgement of its quantifiable gain from the purchase of the Norman Lesser Drive property. The Regulator calculates that gain as being $709,100.

[75] Hermosa Casa accepts that a penalty disgorging its quantifiable gain is appropriate. However, it submits that the Court should adjourn the determination of the amount of that gain to be dealt with at the same time as Bella Casa's penalty is determined, after the sale of the Codrington Crescent property.

Maximum penalty

[76] The Norman Lesser Drive property was purchased for $2,081,800 and sold for $3,500,000, which on its face represents a quantifiable gain of $1,418,200 without making an allowance for expenses incurred in relation to the sale or any amounts expended to enhance the value of the property.[23] It is clear that three times Hermosa Casa's quantifiable gain is going to be greater than $300,000. The maximum penalty is therefore three times the quantifiable gain.

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[23] It is an agreed fact that Hermosa Casa obtained a building consent to build four townhouses on the property and sold the property with that consent in place. Obtaining the consent is likely to have involved incurring cost and may have enhanced the value of the property.

Hermosa Casa's quantifiable gain

[77] In quantifying gain, the starting point is the $1,418,200 difference between the purchase price and sale price. The Regulator submits that the Court should bypass an examination of expenses incurred by Hermosa Casa[24] in relation to improvements or the sale of the property. Instead, the Regulator proposes that half of $1,418,200 be assessed as Hermosa Casa's gain, reflecting the agreement that Mr Lok was to be paid half of any profit. That is how the Regulator arrives at a quantifiable gain of $709,100.

[78] In *Lee*, the Court considered that it would have been disproportionate to engage in a detailed examination of the expense incurred in improving the properties. That appears to be largely because the properties were being used by the defendants in their revenue-making commercial enterprise, which means that the defendants would have obtained some commercial advantage from the cost of any improvements. In contrast, the Court in *Jarvis* did make allowance for actual and reasonable costs incurred by the defendants when assessing quantifiable gain.[25]

[79] In the present case, where the Norman Lesser Drive property has been purchased and on-sold and was not used as part of a revenue-generating business in the interim, I consider that it would be inappropriate to take account of costs and expenses incurred by Hermosa Casa.

[80] It is common ground that the net amount of sale proceeds currently held on trust is $833,887.60, after repayment of the mortgage, payment of costs associated with the sale, and deduction of the sum that Ms Ouyang and Mr Xie were permitted to use to settle the purchase of another property.[26]

[81] Mr Thwaite for Hermosa Casa asks the Court to adjourn the assessment of the quantifiable gain from Norman Lesser Drive on the basis that the figures involved are not clear. At the same time, Hermosa Casa seeks an order allowing it to access part of

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24 The Regulator relies on the approach in *Chief Executive of Land Information New Zealand v Lee*, above n 22.

25 *Chief Executive of Land Information New Zealand v Jarvis*, above n 17, at [45] and [56].

26 Hermosa Casa's balance sheet for the year ending 31 March 2022 records shareholder drawings of $576,762.28.

the sale proceeds held on trust to fund the completion of the Codrington Crescent development (by Bella Casa) and to pay legal costs incurred by all of the defendants.

[82] Hermosa Casa has produced no evidence that there are expenses in addition to those that already paid out of the sale proceeds and Mr Thwaite was not able to advance any positive position on the issue in his submissions at the hearing.

Assessment of penalty against Hermosa Casa

[83] Stepping back, the relevance of quantifiable gain is that three times the gain (if greater than $300,000) sets the maximum amount of a penalty the Court can impose. Otherwise, gain is merely a reference point that may or may not be used as a starting or an end point when fixing a penalty appropriate to the circumstances of the case.

[84] I am not prepared to adjourn the assessment of the penalty against the fourth defendant. If Hermosa Casa considered the quantifiable gain on the Norman Lesser Drive investment to be less than the $709,100 penalty sought by the Regulator, it has had ample opportunity to file evidence in relation to what other expenses it says should be taken into account. It advances no positive position on this issue.

[85] Further, in my assessment, the position taken by the Regulator is generous to Hermosa Casa. Logically, the relevant gain when considering disgorgement is the whole gain made by Hermosa Casa. On the agreed facts, Mr Lok contributed to the purchase price as an investor, not as a lender, on the basis that he would take a half share of any profit from the investment. The outcome of disgorgement would be that there would be no profit for Mr Lok to take a share of. On that basis, even if it were assumed that there might be some other expenses relating to the investment that Hermosa Casa has not already paid out of the sale proceeds, it is highly probable that the company's actual gain is greater than $709,100.

[86] Taking a broad approach and in the interests of avoiding further cost and delay, I adopt $709,100 as an appropriate penalty to be imposed on Hermosa Casa, being half of the gross capital gain on the Norman Lesser Drive investment. Given the deterrent purpose of the penalty and given that the assessment is generous to the fourth

defendant, I do not consider it appropriate to reduce the penalty for Hermosa Casa's admissions and co-operation.

[87] The final penalty against Hermosa Casa is therefore $709,100.

Penalty against Bella Casa

[88] The parties are agreed that the penalty hearing in relation to Bella Casa should be adjourned to a date following the sale of the Codrington Crescent property so that the assessment of penalty can take account of Bella Casa's quantifiable gain on its investment.

Disposal orders

[89] The Regulator seeks orders under s 47 of the Act requiring Ms Ouyang to dispose of the Burton Street property and Bella Casa to dispose of the Codrington Crescent property within six months from the date of the order.

[90] Ms Ouyang and Bella Casa do not oppose these orders, save that they submit the six-month timeframe should exclude the six-week period from 15 December to 25 February, as that is traditionally a slow period in the real estate market. I agree that it appropriate to make some allowance for the summer holiday period. A deadline of 31 March 2026 provides sufficient time.

Costs

[91] The Regulator is entitled to the costs of filing this proceeding and, as it has been substantially the successful party in relation to the disputed penalty issues, it is also entitled to costs relating to this hearing.

[92] The amount sought, $12,478,[27] is reasonable and is allowed.

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[27] Costs are on a 2B scale, comprising three days for the commencement of the proceeding, 1.5 days for the hearing and 0.2 days for the sealing of the order.

Use of funds held on trust for Hermosa Casa

[93] As recorded at [81] above, the defendants sought orders that I permit them to access the funds held on trust for Hermosa Casa, which I understand are held subject to undertakings agreed with the Regulator, to fund the completion of the Codrington Crescent development and to pay legal costs.

[94] On the other hand, the Regulator will do doubt expect the penalty against Hermosa Casa to be paid from those funds. In addition, Ms Earl sought a direction that the costs of this proceeding (if awarded) be payable from the funds held on trust on the basis that the defendants are jointly and severally liable.

[95] I decline to make orders in relation to any of these matters which relate to enforcement. I am unaware of the terms of the undertakings in place regarding the funds. To assist the parties in attempting to resolve these issues by agreement, I make two observations. First, the costs award is a joint and several award against the defendants and it is open to the plaintiff to seek to execute that award in full against any of the defendants. Second, after Hermosa Casa has discharged its liability to the Regulator under the penalty order I make against it in this judgment, it is difficult to see what basis there could be to prevent Hermosa Casa from dealing with its own property. While liability for the costs award is joint and several, liability for the penalties imposed is not.

Result

[96] I order under s 48 of the Act that:

(a) Ms Ouyang is to pay a civil penalty of $67,500.

(b) Mr Xie is to pay a civil penalty of $157,500.

(c) New Life is to pay a civil penalty of $37,500.

(d) Hermosa Casa is to pay a civil penalty of $709,100.

[97] I order under s 47(2)(a) and (b) that:

(a) Ms Ouyang is to dispose of the Burton Street property at her expense and Bella Casa is to dispose of the Codrington Crescent property at its expense by 31 March 2026 and are each to:

(i) engage an independent registered valuer to provide the Regulator with a written market valuation of the property;

(ii) engage a licensed real estate agent to actively market and appropriately advertise the property for sale on the open market;

(iii) not dispose of the property to an associate (within the meaning of s 6 of the Act) of Ms Ouyang Snr or Mr Lok;

(iv) provide the Regulator on request with evidence of their compliance with (i)–(iii) including but not limited to the names of the valuer and estate agent and correspondence with them, copies of advertising material, details of offers received and trust account statements in relation to the settlement of any sale; and

(v) consult with the Regulator before entering into any binding agreement to sell the property.

(b) The proceeds of sale of the Burton Street property are to be held in Ms Ouyang's solicitor's trust account until she has paid the penalty of $67,500 imposed on her and until the costs awarded to the Regulator in this judgment have been paid, save that Ms Ouyang can use the sale proceeds to pay the penalty and (if still unpaid) the costs award.

(c) The proceeds of sale of the Codrington Crescent property are to be held in Bella Casa's solicitor's trust account pending further order of the Court after assessing the penalty to be imposed on Bella Casa.

[98] In relation to Bella Casa:

(a) I adjourn the penalty claim against Bella Casa to the first available one-hour fixture after 27 April 2026 (to allow time for pre-hearing steps following the end of the period allowed for the disposal) to be set in consultation with counsel.

(b) The parties are to file any affidavit evidence relating to the gain to Bella Casa from the sale of the Codrington Crescent property or any other relevant factual matters no later than 15 working days before the hearing.

(c) The Regulator is to file its submissions 10 working days before the hearing.

(d) The defendant is to file its submissions five working days before the hearing.

[99] The parties should endeavour to reach a joint position on quantifiable gain and penalty in advance of the hearing.

[100] The defendants are to pay $12,478 in legal costs to the Regulator. The issue of future costs in relation to the penalty claim against Bella Casa is reserved.

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MacGillivray J