



QCAT update – Disciplinary action against property manager

WORDS BY CARTER NEWELL SENIOR ASSOCIATE, ANDREW PERSIJN

*In the recent decision of **Chief Executive, Department of Justice and Attorney General v Ford** [2017] QCAT 4, the Queensland Civil and Administrative Tribunal (**Tribunal**) has provided a reminder to all real estate agents that it is prepared to exercise its disciplinary powers for breaches of the repealed **Property Agents and Motor Dealers Act 2000** (Qld) (**PAMD Act**), in order to ensure that the integrity of the industry, as well as the protection of consumers, is maintained.*

Background

Sarah Leah Ford (**Respondent**) was a property manager employed by Progress Properties Pty Ltd trading as Progress Properties. The Chief Executive submitted that the Respondent dishonestly dealt with a total of \$10,965.48, which was received from tenants during the period between 4 January 2013 and 24 February 2014.

Over this period, the Respondent had the responsibility of receiving rental payments from tenants and ensuring that they were credited to the correct account. The Respondent was also a tenant of premises managed by Progress Properties and she was expected to pay her own rental payments to the agency. On a number of occasions between the aforementioned dates, the Respondent diverted money paid by tenants into the agency's trust account so that it was credited to her own rent account.

This was discovered by Robert Ford (**Mr Ford**), the director of Progress Properties and the Respondent's brother, when a tenant disputed their rent position. Mr Ford examined the computer records and found that the tenant's rent payment had been credited to the Respondent's rent account. When questioned by Mr Ford, the Respondent claimed that

it was an honest mistake. Mr Ford immediately corrected the error on the computer records and credited the tenant's account with the correct amount. Two days later Mr Ford found a second similar discrepancy and he immediately reported the matter to the police and to the Office of Fair Trading. Mr Ford conducted an investigation and found that there had been 26 occasions where the Respondent had diverted rental money from other tenants to credit her own rental account.

Seventeen tenants and their corresponding owners were affected by the actions of the Respondent. Mr Ford credited the accounts of the tenants and owners concerned.

The Office of Fair Trading delivered a written request to the Respondent's residential address asking her to attend a formal interview but she did not respond. The Respondent also failed to respond to the proceedings commenced in the Tribunal and she did not reimburse the money which her employer, her brother, had reimbursed.

Grounds for taking disciplinary action against the Respondent

Pursuant to s 497 of the PAMD Act¹, the Chief Executive may start disciplinary proceedings by applying to the Tribunal for the Tribunal to decide whether grounds exist under s 496 of the PAMD Act² for taking disciplinary action against a registered employee.

In the application, the Chief Executive outlined two grounds for taking disciplinary action, namely that:

- Under s 496(1)(b)(i) of the PAMD Act, the Respondent contravened s 583(3) of PAMD Act by making an entry in a document required or permitted to be made under the Act, knowing the entry to be false or misleading in a material particular; and
- Under s 496(1)(h)(ii) of the PAMD Act, the Respondent, in performing an activity of a licensee, was incompetent or acted in an unprofessional way.

The Tribunal found that the Respondent stole tenants' rental payments as outlined above. The Tribunal held that this was obviously a deliberate act and that the Respondent must have known that the entries she was making in the accounts system were false or misleading. The Tribunal held that these actions also amounted to acting in an unprofessional way. Accordingly, the Tribunal concluded from the evidence that grounds existed for taking disciplinary action against the Respondent under s 496 of the PAMD Act.

Penalty

The Tribunal disqualified the Respondent from holding or obtaining a licence or certificate of registration under the PO Act for a period of ten years. The Tribunal also imposed a fine of \$10,000.

The Tribunal imposed these penalties in reference to various similar cases, in particular *The Chief Executive, Department of Tourism, Fair Trading and Wine Industry Development v Ms Kate Maree Matheson* [2006] CCT PD011-06 and *The Chief Executive, DTRFT v Turner* [2003] PAMDT X011-03.

In *Matheson*, a real estate salesperson certificate holder was responsible for receiving rent and bonds on behalf of the real estate agency for which she worked. She stole \$13,200 over a period of nearly three months and gambled to try and repay the money. She admitted these matters, was charged and convicted of a criminal offence in respect of them, was ordered to pay restitution and she sought help for her gambling problem. The Chief Executive did not seek a monetary order in light of the criminal proceedings and the Tribunal imposed a ten year disqualification plus costs.

In *Turner*, a real estate salesperson stole \$12,333 over a period of twelve months. She co-operated with the investigation, was charged and convicted of a criminal offence and was ordered to pay \$12,333 in restitution. As in *Matheson*, the Chief Executive did not seek a monetary order and the Tribunal imposed a ten year disqualification plus costs.

In addition to the above cases, the Tribunal took into consideration the Respondent's lack of response to the proceedings, the fact that she had not repaid the money, the absence of any criminal proceedings, the Respondent's attempts to cover up the theft as well as the need to protect the public.

Conclusion

Central to the maintenance of real estate industry standards and integrity is the assurance that money acquired by agents, in the course of their business, will be dealt with in accordance with the PO Act and *Agents Financial Administration Act 2014* (Qld).

This case demonstrates that disciplinary proceedings against agents or agencies are intended to protect members of the public, as well as upholding the professional standards of the real estate industry.

While the adverse publicity generated by decisions such as this can be damaging to the real estate industry, agents can also consider these decisions a win for the industry, serving as an assurance to the public that the industry has effective and transparent systems in place to protect and promote the integrity of the industry.

¹ Section 173 of the *Property Occupations Act 2014* (Qld) (PO Act).

² Section 172 of the PO Act.