

**Submission
No 34**

**INQUIRY INTO INQUIRY INTO THE OPERATIONS OF
THE HOME BUILDING SERVICE**

Organisation:

Name: Mr Minh Ai Tran

Telephone:

Date received: 23/11/2006

This submission has been kept partially confidential by resolution of the Committee.

CGP232

From:
To:
Date: 23/11/2006 13:00:41 pm
Subject: Inquire into the operations of the HOME BUILDING SERVICE

22/11/06
Minh Ai Tran

RECEIVED

26 NOV 2006

GPSC's

The Director
General Purpose Standing Committee No.4
Parliament House
Sydney NSW 2000.

Dear Madam,

I am writing to you to say that Department of Fair Trading with two of its arms, The CTTT and Office of Fair Trading have failed to protect home owners against bad builder and cause us to suffer extensively on both financial and emotional loss.

On 9/4/2002 I signed a contract with a licensed builder and trusted that he had the skill to build our house according to the BCA, AS and local authorities' requirements and was given the license accordingly. This was not the case as omissions & defects have been found which cost more than \$400,000 to fix. I came to the Department of Fair Trading on 10/10/02 for advice and was referred to the CTTT and the CTTT had failed to resolve my case expeditiously.

The dispute with concerning the construction of our house at the above address was brought before CTTT on 8/1/03 and 21/2/03. On both occasions, the conduct of the member hearing the case, Mr. Jeffrey Smith was bias and unprofessional.

ON 8/1/03, the hearing was conduct by Mr. Jeffrey Smith took no longer than fifteen minutes before we were order to pay \$15,000 of the \$ 21,217.47 this company was claiming from us.

Prior to order my wife and me to pay 15,000.00, the member heard no evidence from me, and to my observation heard no evidence from my wife, did not sight the building contract made between the parties, and did not ask for any submissions from my wife. At the conclusion of the hearing I tried to make a submission but was stopped from doing so by the member.

On 21/2/03 a further hearing took place before the same member, Mr. Jeffrey Smith.

tendered to the tribunal an "extra contract", an electrician's account and a plumber's account. I was then asked to give evidence and I tendered a copy of the contract that the parties had entered on 9/4/02.

The members ask me about having moved into the house. When I tried to explain why, by telling the tribunal more about having terminated the contract than I managed to say then, the member would not let me do so.

Member Jeffrey Smith, on Behalf of the CTTT, is to act in accordance with section 35 of the Consumer, Trader and Tenancy Tribunal Act 2001 ("The Act") and is also subject to the rules of procedural fairness by virtue of Section.28 (2) and 65 (3) (b) of the Act.

However, my wife was not called upon to give or present evidence or make submissions on both of the hearing in relation to the claim of but we were order to "jointly and severally" pay I what they claimed. As such, member Jeffrey Smith did not comply with Section 28 (4) of the Act in respect to my wife, Thi Nguyen Phan.

Member Jeffrey Smith is obliged, as far as is practicable, to ensure that all relevant material is disclosed to him to enable him to determine all relevant facts in issue, under Section 28 (5) of the act; Nevertheless, member Jeffrey Smith ordered us to pay without hearing any evidence from us and without having seen the contract.

Evidence was given to the tribunal that we had a defence by way of set - off to the builder's claim due to alleged incomplete and defective works. In addition to the general law, clause 15.6 of the contract allows such a defence in relation to the builder claim. Nevertheless, member Jeffrey Smith proceeded with and completed the hearing of the builder's claim and made orders therein without hearing our cross - application, this being adjourned for further hearing. By such action, member Jeffrey Smith denied us procedural fairness.

The tribunal, having complete the hearing of the builder's claim and made orders in respect thereto in favour of the builder, has failed to stay those orders until the determination of our cross claim. In doing so the tribunal denied us procedural fairness, particularly as the tribunal was aware that the builder had already taken step to enforce the tribunal's orders and intended to take further step (the sheriff has come to our house three times and put a lot of stress on our family, they told us that if we don't pay, they can sell our house because the builder had taken a caveat on our house.).

More than one, we were prevented by member Jeffrey Smith from giving evidence we wished to present in respect to our termination of the contract with the builder prior to entering into occupation of the property, which entry the member based his decision on to award monies to the builder. The termination had been mentioned in evidence and we wanted to give details thereof. Member Jeffrey Smith denied us the opportunity to do this. In doing so member Jeffrey Smith denied us procedural fairness, particularly as such evidence if accepted, would negated the effect of clause 28 of the contract upon which the member relied.

In deciding that it was not disputed that \$15,115 was owed by us to the builder, member Jeffrey Smith made an error of law by making a finding that was not supported by any evidence. The amount of \$15.115 was not disputed, but the liability to pay the amount was disputed.

In deciding that practical completion could be deemed to have occurred because of the provision of clause 28.1 of the contract, member Jeffrey Smith made an error of law as he gave effect to a clause rendered void under section 18 G of the Home Building Act 1989.

Through out the hearing on 8/1/03 and 21/2/03, member Jeffrey Smith has made many more errors of law and those mentioned above were just the examples.

Having been denied procedural fairness and suffer from the member's error of law in handed down the wrong decisions, we have applied three times for rehearing but every time my application was denied by T Malone, E Massih and K Ryan with reasons like that our application was "misconceive,"

"The tribunal has no jurisdiction to entertain a second rehearing application"

"The decision to grant or refuse a rehearing application is final and not subject to review of any kind."

These members have all agreed with member Jeffrey Smith that we were wrong and should be punished. The tribunal had written to the local court in support of the builder to enforce the orders.

Our only option was to appeal to the Supreme Court. We have considered this step since 21/02/03 only as our last resort if our applications for rehearing were not successful. For that, we have applied for the statement of reason for the decision on 24/2/03 and were told to wait a month (we found out later that the statement must be supplied in 7 days), one month later we rang up and were told that my application was lost and was told to come and lodge another one. We came to Liverpool registry and make another application on 8/4/03 and were told to wait again. Another month passed and we still received nothing so we applied again on 12/5/03. We finally received it by mail on 3/6/03 nearly 5 months after the first hearing date of 8/1/03. The staffs of CTTT in Liverpool have seriously acted against the Act to deny us justice. Jeffrey Smith did not follow Section 35, Section 28 and Section 65 of the CTTT Act nor Section 18G of the Home Building Act in hearing the case, "Paul" received our application and "lost" it, "Maria" took our other application and did nothing, "Elly" the supervisor told us that our case was not finish so there was no decision to give to us.

We were in extremely difficult financial situation, let alone to finance our appeal to the Supreme Court,

so we had applied for legal assistance from the Office of Fair Trading.

On 19/6/2003, D B O'Connor, the Commissioner of fair-trading wrote to decline my application. In effect, the letter stated that it is not "in general interests of consumers or any class of consumers that legal assistance should be granted" Tony Gray rang me in June to persuade me to withdraw my appeal in the Supreme Court because if we lose the case we will suffer. We are now 50,000 in debt because of the mistake of Jeffrey Smith and those members like D B O'Connor, Kay Ransome, Kathy Thane, T Malone, E Massih, K Ryan who did not take reasonable step to investigate our case so that a cheap, expeditious & informal step can be taken to resolve the dispute.

What has made us so furious is because of the mistake (Corruption?) of the CTTT we have been suffering extensive loss while the builder who started all the troubles has been paid back by the government under the Suitor Fund Act.

Furthermore, section 83 of the CTTT Act gives right to the members like Jeffrey Smith to bully us because after all he won't be responsible for his decision.

We also asked Department of Fair Trading to investigate and disciplinary action against the builder in 2003 but the Home Building Service only started to investigate on the 13/9/2006 while at least two other home owners had suffered the same fate. Today our house has been condemned by Fairfield City council as unsafe and occupation certificate can not be issued unless the Building Code of Australia, Australian Standard and local authorities' requirements have been met.

This is consistent with the report of Mr. Alfred Frasca reported on 22/9/2003.

However, Mr. Paul Dangate, an officer from Home Building Service, in a telephone conversation with me on 23/10/06 insisted that it may take months or even years to take disciplinary action against the builder. In the mean time the builder had wind up his company, started another company, then transfer to his son and stay behind as a supervisor.

However, we note that his license and the company's license does not allow him to do work that require Home owner warranty i.e. can not do contract work value more than \$12,000. Yet this new company and the one which built our house kept on building hundred of houses and according to Mr. Paul Dangate this is perfectly legal! How can Department of Fair Trading be called fair when it took only one and half month to punish innocent people like us when four years have passed but nothing happen to unskilled and unscrupulous builder like and Mr.

Due to this dispute my mother had a stroke when sheriff came and seized our belongings. My son had to give up study to go to work so that he can help me to pay for the legal cost of this dispute. My job is unstable due to time taken off for dispute, and now Fairfield City Council wants us to move out because the house is unsafe. We are now spending close to 300,000 to fight the builder now having back up by a multimillion dollar company (Vero) in court. The prospect of getting back where we were in 2002 is very remote

In conclusion, Department of Fair Trading with the CTTT and Home Building Service have failed to protect consumer by unprofessional conduct of the CTTT, bias and the delay of investigating and disciplinary action of the Home Building Service has proven that the objective of home building service according to the Home Building Act 1989 has not been met to ensure that the CTTT and Home Building Service are expeditious, inexpensive, its proceedings are efficient and effective and its decisions are fair". The fair trading tribunal has been anything but fair. It has not delivered inexpensive, expeditious and informal justice.

Yours Faithfully

Minh Ai Tran