

**Supplementary
Submission**

No 2a

INQUIRY INTO OPERATIONS OF THE HOME BUILDING SERVICE

Organisation:

Name: Mr Chris Fitzgerald

Telephone:

Date Received: 20/10/2006

Subject:

Summary

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

Mr Chris Fitzgerald

General Purpose Standing Committee No. 4
Parliament House
Macquarie Street
Sydney NSW 2000
FAX 9230-3416

RECEIVED

20 OCT 2006

GPSC's

Tuesday, 17 October 2006

**Parliamentary Inquiry into Operations of the Home Building Service
Brickwork at**

Dear Sir / Madam,

Thank you for conducting an enquiry into Fair Trading's Home Building Service.

I note the Minister has stated in Parliament (18/02/04) as follows:-

Ms REBA MEAGHER: I am pleased to inform the House of the improvements achieved by the Home Building Service in helping consumers and builders resolve disputes before they turn into costly legal battles. Before 1 July last year disputes were dealt with through a centralised system within the Consumer, Trader and Tenancy Tribunal [CTTT].

My experience of making complaints directly to the Minister are attached.

On 4 August 2004, I e-mailed the Minister direct about the shady dealing of trading as

As you can see, on 20 June 2005, after almost 11 months, I finally received the nonsense reply.

The reply indicated there was no investigation into breaches of the:-

Home Building Act
Fair Trading Act or
Trade Practices Act.

The e-mail was also sent to hence the failure to investigate and uphold the laws sent a very clear message that the company could break the laws and victimise consumers with impunity.

Although I provided documentary evidence, there was no action taken for:-

- 1) Claiming full payment before any goods were received.
- 2) Falsifying their books to make it look like they hadn't been paid before goods were supplied.
- 3) Advertising services they were not licenced to provide --they are only licenced to construct and erect frames and supply kit homes. Not the complete service they advertised.
- 4) conducted an "inspection" they were not qualified to do, which covered up faulty brickwork on my home. They were not qualified to do this inspection, and it covered up faulty workmanship done by their advertised, "recommended tradesmen".

false and misleading advertising was clearly designed to get my signature on their contract and deceive consumers into believing they were getting professional qualified advice on construction as well as reliable tradesmen.

Today my house is unfinished and requires \$92,338 in rectification work.

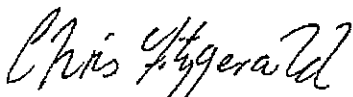
sold their franchise but have not supplied all of the kit to my home.

What has Fair Trading done..... **NOTHING!** Except waste time and tax-payers' money.

It must cost over a thousand dollars to answer each Ministerial Enquiry --so why are Consumers fobbed off?

Thank you for your efforts.

Sincerely,



Chris Fitzgerald

Mr C Fitzgerald

RML: M05/528

Dear Mr Fitzgerald

I refer to your correspondence to the former Minister for Fair Trading concerning your dealings with a former franchisee. I have been asked to respond to you.

Disciplinary action in relation to the contractors involved in the construction of your house is under active consideration by Fair Trading. You will be kept informed of the progress of this aspect of the matter.

The *Home Building Act 1989* provides for certain statutory warranties to be included in every contract to do residential building work. The warranties include matters such as work being undertaken in a proper and workmanlike manner, suitability of materials and compliance with relevant laws. It is not clear from the information provided in your correspondence whether the disclaimer allegedly used by franchisees is attempting to restrict or remove the rights of a person in respect of those statutory warranties. However, the Act states that a provision of an agreement or other instrument that purports to restrict or remove the rights of a person in respect of any statutory warranty is void.

I have noted your comments regarding obtaining compensation and resolving the contractual issues associated with your complaint and I understand that you have been provided with the necessary information to enable you to lodge a claim with the Consumer, Trader and Tenancy Tribunal. The Tribunal is the appropriate forum in which to pursue these matters.

The *Fair Trading Act 1987* provides that a person who suffers loss or damage by the conduct of another person that contravenes certain provisions of the Act may recover the amount of the loss or damage by action against the other person. Such action may be commenced at any time within six years after the day on which the conduct occurred. If the matter of such loss or damage arises in connection with a matter the subject of proceedings in the Tribunal the Tribunal may proceed to decide it.

Processes are in place whereby possible breaches of legislation detected during Tribunal proceedings are notified to Fair Trading for investigation. Where a person is convicted by a Local Court of an offence against the Fair Trading Act and the Court is satisfied that another person has sustained loss or damage as a result of the conduct of the convicted person the Court may, in addition to any penalty, order the convicted person to compensate the other person for the loss or damage.

You may wish to seek your own independent legal advice on these issues.

I trust that this information is of assistance to you.

Yours sincerely



D B O'Connor
Commissioner for Fair Trading

20.6.05

Chris Fitzgerald

From: Chris Fitzgerald |
Sent: Wednesday, 4 August 2004 08:04
To: 'minister@meagher.minister.nsw.gov.au'
Cc: 'todaytonight@i7.com.au'; 'sales@i7.com.au';
Subject: FW: Problems with Nu-Steel Homes (Licence#13595c)

Mr Chris Fitzgerald

Wednesday 4 August 2004

The Hon Reba Meagher
Minister for Fair Trading

Dear Minister,

I am writing to you about fraudulent dealings I have had with [redacted]. I believe the company and its Directors and listed licence holders need to be investigated in order to protect Consumers from the type of harm I have been subjected to over the past 5 years. For more than 2 years I have been forced to live in my unfinished first home without council approval, unable to get proper insurance and without the chance of being able to sell the house because it is so defective.

Although [redacted] has been paid in full, I cannot take delivery of the remaining materials (gyprock, cornices, architraves, skirting boards) until major issues with the brickwork have been rectified. I have also had to live with the fear that my Credit Union would inspect the construction and sell the house out from under me to recover its loan monies.

In this e-mail I believe I have provided proof of breaches of:-

The Home Building Act
The Fair Trading Act
The Trade Practices Act

I am willing to supply any of my documents to substantiate my claims.

DELIBERATELY FALSE AND MISLEADING ADVERTISING AND DECEPTIVE CONDUCT

Although [redacted] makes many claims about Reliable Tradesmen and Professional Qualified Staff and Backup for their customers (Refer Attachment Page No. 1) the advertising is simply **NOT TRUE**.

Basically, [redacted] advertises services it does not provide, is **not qualified** for and **not licenced** for.

Based on the services advertised, I signed a contract with [redacted] for \$73,841 on 15 August 1999 (Refer Attachment Page No. 4) and on 6 April 2000 I took out an Owner Builder Permit.

Yet on the back of that contract (Refer Attachment Page No. 5), Point 11 states:-

"This Agreement constitutes the entire agreement between the parties and there are no other understandings, agreements, warranties, guarantees or representations in any way extending, defining or otherwise relating to the subject matter of this Agreement which are not set out in this Agreement"

In other words, all of their advertising is designed to be false and misleading as it is rendered invalid by this clause of their "contract".

This clause overrides all advertising presented in their Web Site (<http://www.nu-steel.com.au>)

If [redacted] only sells steel frames and kit homes, their advertising should be limited to that and only that -not deceiving people to expect more.

Here is a summary of advertised claims [redacted] makes in its advertising -I can provide all of the original brochures:-

- 1 Recommended, Reliable Tradesmen
- 2 Getting the job done right the first time
- 3 Reputable
- 4 [redacted] will give you the guidance and assurance to complete the project
- 5 [redacted] prides itself on service and therefore has personnel available seven days a week to assist you with advice, or if required, visit your site until your home is completed.
- 6 Aftersales service is a [redacted] speciality!
- 6 [redacted] will always provide support to owner-builders

- 7 makes owner building fast, straight-forward and cost effective
- 8 you should never settle for less
- 9 taking the time to listen to your needs – to fully understand what you want in a home, and then meeting those needs completely, and without fuss
- 10 A standard of free after sales service is maintained to the highest level
- 11 a solid reputation for taking the time to listen to your needs
- 12 guarantees you will have the home of your dreams
- 13 Our professional consultants are available to provide on-going advice
- 14 you can be confident that will be there every step of the way

This advertising is no accident, it is intended to get signatures on contracts and deceives prospective customers to achieve this end!

I used recommended Supervisor and recommended brick-layers to work on my **FIRST HOME**. The quality of this work is now subject to a **Fair Trading Rectification Order** (Refer Attachment Page No. **3Reference C2004/0883**).

This order has now been breached and I have a home which will not pass reasonable inspection and cannot be guaranteed or sold.

It is going to be expensive to repair and the bricklayer (now aged 65) has made very clear he intends declaring bankruptcy.

Both, my **Engineer's Report** and the **Fair Trading Rectification Order** agree that my does not comply with Australian Standard, AS 3700 - 1998, "Masonry structures" (The Building Code of Australia) for which compliance is a statutory requirement for all building approvals under the Local Government Act in NSW as well as under the Home Building Act.

When I read this report, all he could say was that had no obligation to me".

The Engineer's report prepared 2002 goes into detail, but summarises:-

- 1 **"Generally the level of workmanship of the brickwork is not of an acceptable industry standard, and not in accordance with Australian Standard, AS 3700 - 1998, "Masonry structures". Examples of non compliance with AS 3700 and sub-standard workmanship are given below."**
- 2 **"However in view of the nature and extent of defects it is considered the cost of rectification of the individual defects may be greater than complete replacement of the brickwork."**

SECTION 52 OF THE HOME BUILDING ACT - IMPROPER CONDUCT: ASSISTING OTHERS

As a consumer, I do not believe I should need to know the trades of Fair Trading Licence Holders nor should I need to know the relevant Acts in order to deal with them.

As Licence Holders they are to do work according to legally defined standards, adhere to the Acts and Laws under which they hold their licences and to be people of good character.

To hold a licence is a privilege, accreditation the holder is trusted to operate a business within the community. It is not a hunting licence where the holder becomes a predator, ruining the lives of its prey.

As mentioned above, when I called on Professionally Qualified Support, they down-played the seriousness of the problem and covered up for their Recommended Supervisor and Recommended Bricklayers -this caused almost 4 years of years of delay giving the bricklayer and supervisor opportunity to move and disappear. It's only I discovered the renewal of the bricklayer's licence in December 2003 that I was able to get Fair Trading to act. Even Electoral Rolls gave his old address, although he sold his house in early 2002.

It appears), and have aided and abetted fellow licence-holders (their recommended tradesmen -) to get away with not performing their trade in a proper and workmanlike manner, with due diligence, in accordance with all applicable laws.

<http://www.licencecheck.fairtrading.nsw.gov.au/licence-check/Search.do>

As a victim of I faced a succession of their Recommended Tradesmen who **did NOT offer contracts** and were working on site without my knowledge.

In two cases, Home Owners' Warranty was not provided although after many months, one of them was finally provided.

I will be quite happy to provide details of all tradesmen who were breaching their licence requirement -all of them recommended by

CLAIMING MONEY THEY ARE NOT ENTITLED TO AND FALSIFYING THEIR PAYMENT RECORDS

Section 8 of the Home Building Act states:-

"A person must not demand or receive a payment on account before delivery of part of the kit home is made under a contract to supply a kit home,"

17 August 1999 (Attachment Page No. 6), I paid a deposit of \$3,692
2 November 1999 (Attachment Page No. 7), I sent an Invoice (No.858) requesting payment of \$59,073
4 February 2000 (Attachment Page No. 8), I paid \$59,073 direct to [redacted] account
via Electronic Funds Transfer
8 April 2000 (Attachment Page No. 9), FAX from [redacted] confirming more
than 2 months later, nothing has been supplied.
18 July 2000 (Attachment Page No. 10), another EFT of \$17,416 direct into [redacted] Account
31 May 2001 (Attachment Page No. 11), A [redacted] Statement of Account with a
Falsified entry for \$59,073 shown as received 28-4-00
This money was paid 4 February 2000 about 11 weeks earlier.
This entry is designed to appear the frame was supplied before they were paid!

Please investigate what I have disclosed about [redacted] in order to protect other consumers from this Unconscionable Conduct.

Thank you for your time. I await your reply.

Sincerely,
(Mr) Chris Fitzgerald



(1 MB)