

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2019-090-001050
[2021] NZDC 2219**

COMMERCE COMMISSION

Prosecutor

v

HOME FUNDING GROUP LIMITED

Defendant Company

Hearing: 12 January 2021

Appearances: A Luck for the Prosecutor
A Williams for the Defendant Company

Judgment: 12 January 2021

NOTES OF JUDGE A-M J BOUCHIER ON SENTENCING

[1] The Commerce Commission today is proceeding on two charging documents; numbers -0250 and -0251 against Home Funding Group Limited. This hearing is a hearing of formal proof in respect of the charges in those charging documents. The first charge in -0250 is an offence between 1 February 2015 and on or about 31 March 2016 at Auckland and other locations in New Zealand. Home Funding Group Limited hereafter called HFG being in trade in connection with the supply or possible supply of services made false or misleading representations that services were of a particular kind. HFG made representations that it operated a savings scheme through a document described as an agency agreement under which customers would be entitled to have amounts paid to HFG and returned to them after a particular period of time had passed, also called the savings scheme representations.

[2] Those saving scheme representations were false or misleading because the payments customers made under the agency agreements were in fact fee payments for financial coaching and/or brokering services and a customer was only entitled to a fee rebate in particular circumstances and in all other cases the fees paid would be forfeited to HFG.

[3] The second charge is also between the dates of 1 April 2016 and 30 April 2017, the same charge. The legislative reference is ss 13B and 40(1) of the Fair Trading Act 1986. The caption summary which is lengthy has been supplied to the Court and it sets out how the defendant company was first incorporated with a different name, the director of the company, that he has come to the attention of the Commission in respect of previous business operations and HFG's businesses offered services to prospective home buyers who found it difficult to save for a deposit or qualify for bank finance. Many of the company's customers were drawn from the Samoan communities in South Auckland and in Wellington. The company employed three staff at various times.

[4] The summary of facts then goes on to the savings scheme charges relating to misrepresentations and it sets out those misrepresentations, the advertising and vetting that the company undertook through telemarketing, flyers, Facebook, radio and a dedicated website and in particular on Radio Samoa through regular advertorials.

[5] Then after a customer contact with the company what then occurred is also set out in the summary of facts as to the first and second appointments that the parties would undergo with HFG. Their representations are then referred to that during the customer's two appointments there were representations made that HFG was providing the customer with the opportunity to participate in a savings scheme and as part of those representations that the customers were told they would receive their money back at the end of the contract term when they bought a house.

[6] Paragraph 3.14 of the summary of facts set out what the customers were told and it is then stated that in total HFG entered into contracts with at least 131 customers during the savings scheme charges period. At paragraph 3.16 it is then set out why the savings scheme representations were false or misleading. The contracts provided

financial coaching and brokerage services under two different contractual arrangements which are then set out at paragraph 3.18 and 3.19. Contrary to the saving scheme representations under the agency and CFO agreements a customer would only be permitted to have the agency agreement fees or finance option fees as applicable returned to them in certain circumstances. In particular those agreements provided that HFG was only obliged to provide the factors set out in paragraph 3.20(a) and (b) of the summary of facts. The Commission is not aware of any of the customers who successfully received a fee rebate.

[7] So the history of HFG is referred to and whilst it has no previous convictions for breaches of the FTA, the company has been known to the Commission and that is set out in paragraph 6 of the summary of facts. Paragraph 7 relates to the consumer detriment and orders sought. The detriment was that HFG induced customers to enter into the contracts on the basis they were entering into a savings scheme that would help them to purchase homes and to date none of the customers have successfully exercised the finance offer.

[8] Under the contracts during the charge period HFG received a total of \$316,361.20 from 149 customers which includes a total of \$39,090 for eight customers in schedule 1 in respect of whom specific relief is sought. Many of HFG's customers were on low or modest incomes and had significant debts, these customers could little afford to forfeit the amounts they paid. Therefore the Commission seeks orders under ss 43(3)(a) and (e) of the Fair Trading Act 1986 in respect of the customers who entered into the agency or CFO agreements as applicable with the company during the charge period, who subsequently assisted the Commission with its investigation and those customers are identified in schedule 1 and the Commission also seeks orders declaring their contracts with HFG to be void ab initio and requiring HFG to refund all payments made by the customers as set out.

[9] In support of this summary of facts the Court has received the following:

- (a) The affidavit of James Richard McIvor dated 18 December 2020 which sets out the Commission's investigation into the company, the background, the initial interviews, the requests to supply documents,

the enquiries with consumers, the compulsory interview with Ms Tiimalu who was an employee of the company, the investigations into the bank account, advertising, customer presentations and so forth.

- (b) I then have the affidavits of Pele Upu Brown, Peter Sikai, Falao Futi, Uani Faulau which set out their dealings with HFG and reading those affidavits makes very sad reading when one goes through the efforts those people were making to purchase housing and that they have paid money which they have not received back and are still renting and are unable to purchase houses – extremely sad reading.

[10] All of those documents which I have referred to satisfy me that the Commission has proved these charges to the necessary standard and therefore the Home Funding Group Limited will have orders made against it in terms of what is set out in the caption summary that I have already referred to. Orders are to be made under ss 43(3)(a) and (e) of the Fair Trading Act in respect of the customers who entered into the agency or CFO agreements. The list of the customers as identified in schedule 1 of the summary of facts are the customers in respect of whom those orders are made. Further, orders are made that the contracts that those customers entered into with HFG are void ab initio and that HFG is required to refund all fee payments made by the customers under the agency or CFO agreements as applicable as set out in schedule 1.

[11] The conviction is recorded. The submission is then made regarding fines in respect of the two charges which the Court has now convicted the company of. The maximum fine available to the Court is \$600,000. This clearly indicates that Parliament intends for this legislation to be taken seriously. It has been submitted to the Court that this offending is serious offending against vulnerable people and I most certainly accept that submission is a correct one given that the affidavits of the people who have supplied evidence to the Court in furtherance of formal proof really makes heart rending reading that they were taken in by what appeared to be a very carefully crafted scheme that was targeted in a way that would catch the sort of people in its web who ultimately did get caught and leave them high and dry without the money that they had so carefully saved.

[12] Accordingly, I am of the view that a fine of \$200,00 is appropriate in these circumstances together with Court costs of \$130 and that is of course is the fine on each charge and costs.

A-M J Bouchier
District Court Judge

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned to the right of the printed name.