

Commerce Commission gets Tough on CCCFA Breaches

By Craig Langstone

Financiers, insurers and brokers look out! The Commerce Commission has declared that 2007 is the year that it will get tough on breaches of the Credit Contracts and Consumer Finance Act (CCCFA). So the honeymoon is over and the Commission will play hardball with anyone breaching the provisions of the CCCFA.

The Commerce Commission has recently issued two media releases relating to the CCCFA. The first release on 25 May 2007 concerned only the second successful prosecution under the CCCFA thus far.

The prosecution of Anthony Baker and David Dolbel (partners in Auckland car finance business Dolbak Finance) concerned various car loan contracts. In particular, the 21 charges under the CCCFA resulted from:

- Their failure to issue credit contracts that complied with the CCCFA
- Their failure to provide guarantors with copies of the guarantees entered into
- The debiting of interest before the day interest was in fact due

A further charge under sections 13 and 40 of the Fair Trading Act was laid as Baker and Dolbel had sought to enforce a number of the car loan contracts, despite having not made proper disclosure under the CCCFA. This constituted a separate breach of the Fair Trading Act.

Baker and Dolbel pleaded guilty to all charges and negotiated their level of fines with the Commerce Commission. Ultimately, the District Court accepted that the proposed fines were appropriate (\$50,500.00 for Baker and \$45,000.00 for Dolbel).

These fines were acceptable only because there were a number of mitigating factors (including reliance by Baker and Dolbel on legal advice obtained by a financier!) and also because of the early guilty pleas. Otherwise the fines would have been much higher.

Baker and Dolbel also had to pay statutory damages of \$46,600.00 to individuals involved in the car loan contracts.

With Court costs and solicitor's costs, Baker and Dolbel ended up paying in excess of \$147,500.00. Of course Baker and Dolbel had to pay their own defence costs as well. All in all, a very expensive exercise for a business that apparently made a profit of around \$90,000.00 for the previous financial year.

The second media release from the Commerce Commission concerned an out of Court settlement reached with Auckland company Club Finance. The settlement saw Club Finance refunding \$788,000.00 to borrowers who were required to insure their car loans against the risk of injury and redundancy, despite being unemployed when they took out the loans. Even if the borrowers later found work and then were made redundant, a clause in the contract meant that they would not be able to claim on the redundancy insurance. Thus, the redundancy insurance provided no conceivable benefit whatsoever for the borrowers.

The Commerce Commission pointed out that the CCCFA explicitly says that borrowers cannot be required to take out insurance that is not "reasonably necessary". Club Finance admitted breaching the CCCFA and agreed to refund approximately 1,564 customers differing amounts averaging \$504.00. The 1,564 customers will also receive a further refund of interest that they have paid on the insurance premiums.

Now that the Commission has said that enforcing the CCCFA is a priority in 2007, any party involved in the retail finance sector, either directly or as an insurer or broker, should be prepared for a visit from the Commerce Commission. Don't be the next one to be prosecuted. Ensure that your documents and procedures stand up to scrutiny now!

And for those in the insurance industry, a test case on "reasonable commission" cannot be far away either.



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