

CITATION: Turpin v The Chief Executive, Department of Justice and Attorney General [2014] QCAT 027

PARTIES: Richard Eric Turpin
(Applicant)
v
The Chief Executive, Department of Justice and Attorney General
Dealer Network Queensland Pty Ltd
Barry Forbes
(Respondents)

APPLICATION NUMBER: GAR001-14

MATTER TYPE: General administrative review matters

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Paratz**

DELIVERED ON: 23 January 2014

DELIVERED AT: Brisbane

ORDERS MADE:

1. The name of the existing Respondent is amended to **The Chief Executive, Department of Justice and Attorney-General.**
2. **Dealer Network Queensland Pty Ltd and Barry Forbes are joined as Respondents.**

I give Directions as follows:

1. The Chief Executive is to, as soon as practicable, give a copy to Dealer Network Queensland Pty Ltd and Barry Forbes of:-
 - (a) the Claim Form in PAMD Form 50 dated 26 October 2013 (and supporting documents);
 - (b) the PAMD Form 52 Notice dated 22 November 2013;
 - (c) the letter from the Office of Fair Trading to Mr Turpin dated 22 November 2013 advising the claim was assessed as being outside the

- time limitation;
 (d) the Application to Extend time filed on 23 December 2013, and these reasons and orders;
 and file an affidavit of service of these documents in the Tribunal.
2. Dealer Network Queensland Pty Ltd and Barry Forbes are to file in the Tribunal, and give a copy to each of the Chief Executive and Mr Turpin, any material including submissions or statements of evidence in response, by: 4:00pm on 28 February 2014.
 3. Mr Turpin and the Chief Executive must file any response to the material of Dealer Network Queensland Pty Ltd and Barry Forbes by: 4:00pm on 31 March 2014.
 4. Any application for an oral hearing of the application to extend time is to be made by: 4:00pm on 31 March 2014.
 5. If no application for an oral hearing is made, the application for extension of time will be determined on the papers by the Tribunal not before 31 March 2014.

CATCHWORDS:

PAMD Act – extension of time – proper respondent – joinder of respondent – party affected by proceedings – tribunal joining party of its own initiative

Property Agents and Motor Dealers Act 2000 (Qld), s 490
Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 42

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

REASONS FOR DECISION

- [1] Mr Turpin alleges that he bought a Toyota Landcruiser from Dealer Network Queensland in about May of 2011.
- [2] He alleges that the vehicle was later sold by Dealer Network Queensland Pty Ltd and is claiming from the fund.
- [3] On 6 November 2013 he lodged a claim form in PAMD Form 50 dated 26 October 2013 with the Office of Fair Trading to seek to recover an

amount of \$13,769.04 from the fund established under the *Property Agents and Motor Dealers Act 2000* (Qld) (PAMD Act). The date of the event alleged to give rise to the claim is stated to be 4 August 2012, and that he became aware of the financial loss on 4 September 2012.

- [4] The Office of Fair Trading wrote to him on 22 November 2013 advising that his claim had been assessed as being outside the time limitation because it was lodged more than one year after he became aware of the financial loss. A PAMD Form 52 "Claim Out of Time Notice" was attached.
- [5] The PAMD Form 52 named Respondent 1 as Dealer Network Queensland Pty Ltd and Respondent 2 as Barry Forbes.
- [6] The letter went on to advise Mr Turpin that he could apply to this tribunal to extend the time within which his claim may be made against the claim fund. The letter enclosed a QCAT Form 42 application to extend time.
- [7] Mr Turpin filed an application for extension of time in the Tribunal on 19 December 2013 naming the Office of Fair Trading as respondent.
- [8] The proper person to name when bringing an application against the Office of Fair Trading is The Chief Executive, Department of Justice and Attorney-General.
- [9] The Chief Executive has filed submissions in previous similar matters in which it argued that:
- In the case of an application to extend time the proper respondent is not the Chief Executive but rather the party or parties whose actions are alleged to have given rise to the claim.
- [10] The Chief Executive further has previously submitted that such an application cannot proceed until the correct respondent has been afforded the opportunity to make submissions on relative hardship, having regard to s 511(1)(b)(iii) of the PAMD Act.
- [11] I will accept that it is appropriate for the respondents as named in the PAMD Form 52 to be named as respondents in the extension of time application, and to have the opportunity to reply to the application.
- [12] The Tribunal may join parties under s 42 of the QCAT if it considers that the person's interests may be affected by the proceeding, and may do so on the application of a person or on its own initiative.
- [13] The interests of the new respondents may well be affected as the Chief Executive may seek to recover any payment made from the fund from them under s 490 of the PAMD Act.
- [14] I do not consider it necessary to put Mr Turpin to the trouble of filing an application to join the new respondents, and will exercise the prerogative of the Tribunal to do so.

- [15] I will therefore order that Dealer Network Queensland Pty Ltd and Barry Forbes be joined as respondents in claim no GAR001-14.
- [16] For clarity, I will amend the name of the current respondent, and order accordingly.
- [17] I have not removed the Chief Executive as a respondent as it will be convenient for it to receive documents as a respondent, and this will keep it apprised of developments in the matter.
- [18] The proceedings and material will need to be served on the new respondents. The Chief Executive is best placed to make inquiries as to their current addresses and to effect service.
- [19] I will therefore direct that the Chief Executive is to give notice of these orders and directions to the new respondents as soon as practicable.
- [20] I give directions as follows:-
1. The Chief Executive is to, as soon as practicable, give a copy to Dealer Network Queensland Pty Ltd and Barry Forbes of:-
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 - (b) the PAMD Form 52 Notice dated 22 November 2013;
 - (c) the letter from the Office of Fair Trading to Mr Turpin dated 22 November 2013 advising the claim was assessed as being outside the time limitation;
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