

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Chief Executive, Department of Justice and Attorney-General v Dhillon* [2020] QCAT 141

PARTIES: **CHIEF EXECUTIVE, DEPARTMENT OF JUSTICE
AND ATTORNEY-GENERAL**
(applicant)

v

SATIVINDER SINGH DHILLON
(respondent)

APPLICATION NO/S: OCL104-19

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 5 May 2020

HEARD AT: Brisbane

DECISION OF: Adjudicator Gaffney

ORDERS: **The Respondent is liable to pay to the Applicant the amount of \$1,992.80 within 21 days of the date of this order.**

CATCHWORDS: *AGENTS FINANCIAL ADMINISTRATION ACT* 2014 (QLD) - CLAIM FUND – REIMBURSEMENT ORDER – whether reimbursement order should be made – real estate agent – misappropriation or misapplication of trust property –reimbursement order sought from respondent in relation to two claims brought by separate claimants

STATUTORY INTERPRETATION – whether *Agents Financial Administration Act* 2014 (Qld) allows a reimbursement order for total value of separate claims against the claim fund

Acts Interpretation Act 1954 (Qld), s 14A, s 32C
Agents Financial Administration Act 2014 (Qld), s 6, s 82(1), s 116, s 117, s 118, s 119

Chief Executive, Office of Fair Trading, The Department of Justice and Attorney-General v Youssef [2020] QCAT 123
No 20 Cannon Street Ltd v Singer & Friedlander Ltd [1974] 1 Ch 229

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

REASONS FOR DECISION

Background

- [1] This Application derives from two separate and unrelated instances of conduct engaged in by the Respondent, a licensed Real Estate Agent Principal.
- [2] The first instance was an alleged failure to remit rental money to the owners of a rental property at Bracken Ridge ('the First Claimants').¹ The second instance was a failure by the Respondent to remit rental money paid by a tenant of a property at Caboolture to the new agent for the property. The Public Trustee ('the Second Claimant') is the Administrator of financial matters for the tenant.²
- [3] The First Claimants and the Second Claimant each brought claims under section 82 of the *Agents Financial Administration Act 2014 (Qld)* ('the AFA Act') against the claim fund established under section 78 of the AFA Act ('the claim fund'). I shall refer to the claim by the First Claimants as the 'First Claim' and the claim by the Second Claimant as the 'Second Claim', and to the claims collectively as the 'Claims'.
- [4] In relation to the First Claim, on 31 October 2016, the Applicant, by its delegate, made a decision, relevantly, to the following effect:
- (a) that the First Claim be allowed and the amount of \$1,692.80 be paid to the First Claimants from the claim fund at the expiration of the review period outlined in section 122 of the AFA Act;
 - (b) that Lionheart Realty Pty Ltd ('Lionheart') (of which the Respondent was a director)³ and the Respondent are liable for the First Claimants' financial loss; and
 - (c) that, pursuant to sections 102(3) and 116(3) of the AFA Act, Lionheart and the Respondent are jointly and severally liable to reimburse the claim fund \$1,692.80.⁴
- [5] In relation to the Second Claim, on 31 October 2016, the Applicant, by its delegate, made a decision, relevantly, to the following effect:
- (a) that the Second Claim be allowed and the amount of \$300.00 be paid to the Second Claimant from the claim fund at the expiration of the review period outlined in section 122 of the AFA Act;
 - (b) that Lionheart and the Respondent are liable for the Second Claimant's financial loss; and
 - (c) that, pursuant to sections 102(3) and 116(3) of the AFA Act, Lionheart and the Respondent are jointly and severally liable to reimburse the claim fund \$300.⁵

¹ Information Notice dated 31 October 2016, Statement of Claim OFT-1 ('First Claim Information Notice'), [1], [2], [5]-[7], [22].

² Information Notice dated 31 October 2016, Statement of Claim OFT-2 ('Second Claim Information Notice'), [1]-[6].

³ First Claim Information Notice, [12].

⁴ First Claim Information Notice.

⁵ Second Claim Information Notice.

- [6] On 28 November 2019 the Applicant filed an ‘Application for a reimbursement order – Agents Financial Administration Act 2014’. The order sought by the Applicant in that document is as follows:

[The Respondent] is, pursuant to ss 117 and 119 of the Agents Financial Administration Act 2014, liable to reimburse, and is ordered to pay, to the Claim Fund established under s 78 of the Agents Financial Administration Act 2014, the sum of one thousand, nine hundred and ninety-two dollars and eighty cents (\$1,992.80) within 21 days of the date of this order.

Directions made on 4 December 2019

- [7] Directions in this proceeding were made by Senior Member Brown on 17 December 2019. Direction 4 provided, in effect, that if the Respondent fails to file any submissions regarding the Application, or there is no request for an oral hearing, this Application would be determined on the papers.

The applicable legislation

- [8] Before turning to consider the Application, it is worthwhile outlining how claims are made against the claim fund and the process for reimbursement.
- [9] Under section 82(1) of the AFA Act, a person may claim against the claim fund if he or she suffers financial loss because of the happening of any one of a number of events. By section 82(1)(b), those events include a stealing, misappropriation or misapplication by a ‘relevant person’ of property entrusted to the person as agent for someone else in the person’s capacity as a relevant person.⁶ In both Claims, the conduct of the Respondent was held by the chief executive to amount to misappropriation or misapplication of trust property within the meaning of s 82(1)(b) of the AFA Act.
- [10] I adopt the following summary of the claim process from *Chief Executive, Office of Fair Trading, The Department of Justice and Attorney-General v Youssef* [2020] QCAT 123 (‘*Youssef*’):

The chief executive may decide the claim or refer the claim to the Queensland Civil and Administrative Tribunal (‘QCAT’). If the chief executive proceeds to decide the claim, he or she must allow the claim, wholly or partly, or reject the claim. The chief executive must then give the parties an information notice for the chief executive’s decision, which must comply with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (‘the QCAT Act’) and contain other information. A party who is dissatisfied with the chief executive’s decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

If a claim is allowed, the chief executive must authorise payment from the claim fund in the amount decided by the chief executive (footnotes omitted).⁷

- [11] The AFA Act also provides for a respondent to reimburse the claim fund. As a close analysis of the relevant provisions is required they are set out in full.

116 Liability for payment from the fund

- (1) This section applies if—

⁶ AFA Act, s 82(1)(b). ‘Relevant person’ is defined in s 80 of the AFA Act.

⁷ *Youssef*, [6]-[7].

- (a) a person is named in the chief executive's decision or QCAT's order as being liable for a claimant's financial loss; and

Note—

See sections 100 (Deciding claims), 105 (Deciding claims) and 106 (Orders QCAT may make on claim hearing).

- (b) an amount has, under section 112, been paid from the fund in settlement of the claimant's claim.
- (2) This section also applies if a person is the holder of an account under part 4 in relation to which the chief executive makes a special payment under section 115.
 - (3) A person mentioned in subsection (1)(a) or (2) is the responsible person for the amount.
 - (4) Each of the following persons is jointly and severally liable to reimburse the fund to the extent of the amount paid from the fund for the claim or special payment—
 - (a) the responsible person;
 - (b) if the responsible person is a corporation, each person who was an executive officer of the corporation when the relevant event mentioned in section 82 happened.
 - (5) The chief executive may recover as a debt from each person mentioned in subsection (4) an amount for which the person is, under the subsection, liable to reimburse the fund.
 - (6) Before taking action to recover the amount of the debt, the chief executive must give a letter of demand to the debtor requiring the debtor to pay the amount to the chief executive within 28 days after receiving the letter.

177 Application for reimbursement order

- (1) This section applies if—
 - (a) for a claim against the fund—
 - (i) the chief executive decides to allow, wholly or partly, the claim under section 100; and
 - (ii) the responsible person liable to reimburse the fund under section 116 has not done so as required under a letter of demand given to the person under section 116(6); or
 - (b) the chief executive has made a special payment under section 115, and the person who is the holder of the account under part 4 in relation to which the chief executive made the special payment has not reimbursed the fund as required under a letter of demand given to the respondent under section 116(6); or
 - (c) a person is liable to reimburse the chief executive for a receiver's remuneration and costs, and has not done so as

required under a letter of demand given to the person under section 64(4); or

- (d) a person is liable to reimburse the chief executive for an investigator's remuneration and costs, and has not done so as required under a letter of demand given to the person under section 75(4).
- (2) In this division, a *respondent* is a person mentioned in subsection (1)(a)(ii), (b), (c) or (d).
 - (3) The chief executive may apply, as provided under the QCAT Act, to QCAT for an order that the respondent reimburse the fund or the chief executive.
 - (4) The application must be accompanied by the following documents—
 - (a) if the application relates to the reimbursement of a claim against the fund—a copy of the information notice given under section 102;
 - (b) a copy of the letter of demand given under section 64(4), 75(4) or 116(6);
 - (c) a statutory declaration by the chief executive stating—
 - (i) the amount paid from the fund for the special payment or in settlement of the claim, or the amount paid to a receiver or investigator for remuneration and costs; and
 - (ii) the amount of any payment received from the respondent in satisfaction of the claim, special payment or amount paid to the receiver or investigator.

118 Respondent to be advised of application

- (1) The chief executive must—
 - (a) give a copy of the application and the accompanying documents to the respondent; and
 - (b) advise the respondent that QCAT will make a reimbursement order if satisfied that—
 - (i) a letter of demand was sent to the respondent under section 64(4), 75(4) or 116(6); and
 - (ii) the respondent has not paid the stated amount within the time allowed under the letter of demand; and
 - (iii) if the application relates to the reimbursement of a claim against the fund or special payment—the matters stated in subsection (2) apply; and
 - (c) advise the respondent that the respondent may make written submissions for QCAT's consideration about when and in what way the respondent intends to satisfy the amount paid in settlement of the claim or as a special payment or to a receiver or investigator.

- (2) For subsection (1)(b)(iii), the matters are—
 - (a) under the chief executive’s decision the respondent is liable to reimburse the fund in a stated amount; and
 - (b) an information notice under section 102 was given to the respondent; and
 - (c) either—
 - (i) the respondent did not apply to QCAT under section 103 to have the decision reviewed; or
 - (ii) the decision has been reviewed by QCAT, and under QCAT’s decision, the respondent is liable to reimburse an amount to the chief executive or the fund.

119 Reimbursement orders

- (1) QCAT must consider an application for a reimbursement order and any written submissions made by the respondent for the application.
- (2) QCAT must make a reimbursement order if satisfied that—
 - (a) the respondent has not paid the stated amount within the time allowed under the letter of demand; and
 - (b) if the application relates to the reimbursement of a claim against the fund—the matters stated in subsection (3) apply.
- (3) For subsection (2)(b), the matters are—
 - (a) the chief executive has made a decision about a claim against the fund; and
 - (b) under section 116 the respondent is liable to reimburse the fund in a stated amount; and
 - (c) either—
 - (i) the respondent did not apply to QCAT under section 103 to have the decision reviewed; or
 - (ii) the decision has been reviewed by QCAT, and under QCAT’s decision, the respondent is liable to reimburse an amount to the chief executive or the fund; and
 - (d) written notice of the chief executive’s decision, a copy of the decision and an information notice under section 102 was given to the respondent.
- (4) If QCAT makes a reimbursement order, the order must state that the respondent is liable to pay to the chief executive a stated amount within a stated period.

Consideration

Preliminary issue: Can a reimbursement order be granted for the total value of separate claims against the claim fund?

- [12] A distinguishing feature of this Application is that the order sought is for reimbursement for monies paid from the claim fund in settlement of two separate and unrelated claims by different claimants. The Application is supported by a number of documents, which I describe briefly below and whose significance I will discuss later in these reasons.
- [13] There are separate information notices for each Claim, each dated 31 October 2016, recording the respective decisions of the chief executive. The first is OFT-1 to the Statement of Claim and the second is OFT-2 to the Statement of Claim. I will refer to these respectively as the ‘First Claim Information Notice’ and the ‘Second Claim Information Notice’ and collectively as the ‘Information Notices’.
- [14] However, there is only a single letter of demand provided with the Application, dated 7 January 2019 (‘the Letter of Demand’),⁸ demanding payment of the combined value of the Claims, namely \$1,992.80. The Letter of Demand stated:

I refer to the following decisions of the Chief Executive which allowed claims against the Claim Fund established under the *Agents Financial Administration Act 2014* (“the Act”).

Claims determined by the Chief Executive

File reference	Claimant	Date decided	Amount allowed
0014040	Sheen THOLATH, Sindhu THOLATH	31-OCT-2016	\$1,692.80
0014039	The Public Trustee as Administrator of Financial Matters for t/a Joshua Michael HENN	31-OCT-2016	\$300.00
			TOTAL \$1,992.80

In each of the above decisions of the Chief Executive, you were found liable for the financial loss suffered by each of the Claimants and liable to reimburse the Claim Fund.

I confirm that you have previously been sent copies of the above decisions of the Chief Executive. You may request further copies if you require them.

I advise that all the Claimants have been paid from the Claim Fund and the total amount paid was \$1,992,80. Pursuant to Part 8 of the Act, the Chief Executive of the Department is authorised to pursue recovery of monies paid from the Claim Fund, therefore, on behalf of the Chief Executive, I hereby make demand on you for the amount of \$1,992.80.

Please forward to this office a cheque in the amount of \$1,992.80 made payable to the 'Office of Fair Trading', with the enclosed repayment slip, within 28 days of the date of receipt of this letter...

- [15] Further, there is only a single statutory demand provided with the Application, which is that of Nicholas Pirie, Acting Manager for the Claims and Recoveries Branch within the Office of Fair Trading, dated 28 November 2019 ('the Statutory Demand').⁹ Mr Pirie does not separately identify the amount paid in settlement of each of the Claims. Rather, he declares:

One thousand, nine hundred and ninety-two dollars and eighty cents (\$1,992.80) has been paid from the Claim Fund in settlement of two claims determined by the Chief Executive in the matter OFT/0014039 and OFT/0014040. In the decisions, Lionheart Realty Pty Ltd (Deregistered) and [the Respondent] were found liable for the financial loss of the claimant and found jointly and severally liable to reimburse the Claim Fund.¹⁰

- [16] Turning to the legislation, section 116 of the AFA Act, which imposes liability for reimbursement of the claim fund, is cast in singular terms: it is expressed to apply where, relevantly, 'a person is named in the chief executive's *decision*' as being 'liable for a *claimant's* financial loss' and an amount has been paid from the claim fund in settlement of the '*claimant's claim*'. Liability is imposed to the extent of the amount paid from the fund for the '*claim*'.
- [17] Section 117(3) of the AFA Act allows the chief executive to apply to QCAT 'for an order that the respondent reimburse the fund or the chief executive' but the reference to '*a claim against the fund*' in section 117(1)(a) indicates that such an order must relate to a single claim, and not more than one claim. Similarly, the documents required to accompany the application set out in section 117(4) are expressed in the singular. The statutory declaration which must accompany the application is required to state the amount paid in settlement of the '*claim*' and the amount of any payment received in satisfaction of the '*claim*'.
- [18] Sections 118 and 119 of the AFA Act follow a similar pattern.
- [19] The question is whether the machinery of the legislation will permit a combined claim, supported by the material which has been provided by the Applicant. That will be the case if, to the extent necessary, the singular references are deemed to include the plural.
- [20] Section 32C of the *Acts Interpretation Act* 1954 (Qld) ('the AIA') provides that in an Act, words in the singular include the plural, and words in the plural include the singular.
- [21] But in order for this Application to 'fit' within the relevant sections, the use of section 32C must be selective. For example, in sections 116(1) and (4) and 119(3) of the AFA Act, 'decision' would need to be constructed as 'decisions', and 'claim' as 'claims' but 'letter of demand' in section 116(6) and 119(2)(a) would be required to be confined to the singular. However, there is compelling authority interpreting

⁹ Statement of Claim OFT-4.

¹⁰ Statement of Claim OFT-4, [2].

analogous legislation which suggests that it is permissible to apply section 32C of the AIA selectively in this way.¹¹

- [22] Another consideration is relevant to the interpretation of the AFA Act. Pursuant to section 14A of the AIA, the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation. Section 6(1) of the AFA Act provides that the main object of the Act is to protect consumers from financial loss in dealings with agents regulated under an ‘Agents Act’. Section 6(2) provides that, amongst other means, the object is to be achieved mainly by ‘promoting administrative efficiency for claims against the claim fund’ (by subsection 6(2)(c)).¹²
- [23] To adopt an interpretation of the AFA Act which would allow for a reimbursement order to be made in respect of multiple claims would, in my view, promote administrative efficiency for claims against the claim fund, in that it would minimise the resources necessary to be devoted to reimbursement orders affecting the claim fund.
- [24] Accordingly, I consider that sections 116 to 119 of the AFA Act may be interpreted so as to permit a reimbursement order to be sought and given in respect of the combined value of amounts paid from the claim fund in settlement of multiple claims against a particular respondent (‘total amount’), and to permit ancillary steps such as:
- (a) the issue of a single letter of demand requiring payment of the total amount; and
 - (b) the provision of a single statutory declaration with respect to the payment of the total amount from the claim fund.
- [25] I will refer to this interpretation as the ‘broad interpretation’.

The substance of the Application

- [26] I turn now to consider the substance of the Application, adopting the broad interpretation of the AFA Act.
- [27] In the absence of any challenge to the facts asserted in the Application, or to the material provided with the Application, I accept the factual assertions made by or on behalf of the Applicant and the veracity of the documents provided with the Application.

The Applicant’s right to apply to QCAT: section 117 of the AFA Act

- [28] First, I consider the Applicant’s right to apply to QCAT under section 117(3) of the AFA Act.
- [29] Section 117(1)(a)(i) requires that the chief executive has decided to allow the Claims. That fact is verified by the Information Notices.
- [30] The next requirement is contemplated by section 117(1)(a)(ii): that the Respondent is the ‘responsible person liable to reimburse the [claim] fund under section 116’ of

¹¹ *No 20 Cannon Street Ltd v Singer & Friedlander Ltd* [1974] 1 Ch 229, 241-242, cited on this point with approval in *Baldestowe v Brown* (1990) 19 NSWLR 459, 465 and *Jones v Scully* (2001) 113 FCR 343, 347 [14].

¹² It should be noted that I do not consider section 14B of the AIA applies to allow consideration of extrinsic material.

the AFA Act. The effect of sections 116(1)(3) and (4) is that the Respondent must be a person named in the chief executive's decisions as being liable for the claimants' financial loss. That requirement is also verified by the Information Notices.

- [31] Finally, under section 117(1)(a)(ii), the Respondent must not have reimbursed the claim fund 'as required under a letter of demand given to the [Respondent] under section 116(6).'
- [32] The Letter of Demand has been set out above, and I consider it conforms to the requirements of section 116(6). The Letter of Demand was sent by ordinary prepaid post to the Respondent's last known address.¹³ Accordingly, I consider that the Letter of Demand was 'given' to the Respondent as permitted by sections 39 and 39A of the AIA.
- [33] The Statutory Declaration establishes that the Respondent had not reimbursed the claim fund as required by the Letter of Demand, thereby satisfying the second requirement of section 116(1)(a)(ii).
- [34] I therefore find that the Applicant was entitled to apply to QCAT under section 117(3) of the AFA Act for an order that the Respondent reimburse the claim fund.

Conformance of the Application to procedural requirements: section 117(4) of the AFA Act

- [35] I turn next to consider whether the Application was accompanied by the documents prescribed by s 117(4).
- [36] The first document is a copy of the information notice/s given under section 102 of the AFA Act.¹⁴ The Information Notices were provided with the Application and I consider that they met the requirements of section 102. I also consider that the Information Notices were given to the Respondent in the manner allowed by sections 39(1)(a)(ii) and 39A(1)(a) of the AIA, namely, by sending them by ordinary prepaid post to the last known address of the Respondent.¹⁵
- [37] The second document is the letter of demand given under section 116(6). As I have discussed, the Letter of Demand was provided with the Application, conformed to the requirements of section 116(6), and was 'given' to the Respondent as allowed by the AIA.
- [38] The third document is a statutory declaration by the chief executive (section 117(4)(c)). I consider that the Statutory Declaration provided with the Application satisfied the requirements of section 117(4)(c).
- [39] Accordingly, I find that the Applicant satisfied, respectively, the requirements of sections 117(4)(a) to (c) of the AFA Act.

Service requirement and advice requirements: section 118 of the AFA Act

- [40] Section 118(1)(a) of the AFA Act requires the Applicant to give a copy of the Application and accompanying documents to the Respondent. I accept the evidence of Mr Brett Gough, acting Senior Recoveries Officer within the Office of Fair Trading, given by an Affidavit affirmed on 6 January 2020, in which he deposed to

¹³ Statement of Claim, [10].

¹⁴ AFA Act, s 17(4)(a).

¹⁵ Statement of Claim, [3], [6].

serving a copy of the Application on the Respondent.¹⁶ Exhibit 1 to the Affidavit is a copy of a letter dated 5 December 2019, the Form 32 Application and the supporting documents including the Information Notices, the Letter of Demand and the Statutory Declaration. I therefore consider the requirements of section 118(1)(a) to be satisfied.

[41] Section 118(1)(b) of the AFA Act requires that the chief executive must advise the Respondent of the matters set out in sections 118(1)(b) and (c). The letter dated 5 December 2019 contains the advice required by those sections.

[42] Accordingly, I consider the requirements of section 118 of the AFA Act to be satisfied.

Substantive requirements: section 119 of the AFA Act

[43] Under section 119(1) of the AFA Act I am required to consider an application for a reimbursement order and any written submissions made by the Respondent for the application. No submissions have been made by the Respondent.

[44] Under section 119(2), I *must* make a ‘reimbursement order’ if I am satisfied of the matters set out in sections 119(2)(a) and (b). Section 119(2)(b) calls for the matters stated in section 119(3) to apply. ‘Reimbursement order’ is not defined in the AFA Act but it is clear from section 117(3) of the AFA Act that it refers to an order that a respondent reimburse the claim fund.

[45] Taking the matters in section 119(3) first, it is evident from the material provided by the Applicant that:

- (a) the chief executive has made a decision about the Claims;¹⁷
- (b) under section 116 of the AFA Act, the Respondent is liable to reimburse the claim fund, in the amount of \$1,992.80, given that, as is required by section 116:
 - (i) the Respondent was named in the chief executive’s decisions as being liable for, respectively, the financial loss of the First Claimants and the Second Claimant;¹⁸ and
 - (ii) the amount of \$1,992.80 was paid from the fund in settlement of the Claims;¹⁹
- (c) the Respondent failed to apply to QCAT to have the chief executive’s decisions reviewed;²⁰ and
- (d) the Respondent was given written notice of the chief executive’s decisions, a copy of the decisions and the information notices under section 102 of the AFA Act.²¹

¹⁶ Affidavit of Brett Gough affirmed 6 January 2020, [2] - [4].

¹⁷ First Claim Information Notice and Second Claim Information Notice respectively.

¹⁸ First Claim Information Notice and Second Claim Information Notice.

¹⁹ Statutory Declaration, [2] together with Statement of Claim, which indicates that each amount was paid pursuant to section 112 of the AFA Act ([4], [7]).

²⁰ Statement of Claim, [4], [7].

²¹ Statement of Claim, [3], [6], OFT-1, OFT-2. Further, the Letter of Demand (Statement of Claim OFT-3) indicates that a copy of the chief executive’s decisions was given to the Respondent.

- [46] Turning to the matters in section 119(2)(a), the Statutory Declaration evidences that the Respondent had not paid the amount stated in the letter of demand (which is what I consider to be meant by ‘the stated amount’ in section 119(2)(a)) within the 28 day period allowed under the letter of demand.
- [47] In light of the matters set out above, I am required to make a reimbursement order.
- [48] Under section 119(4) of the AFA Act, if QCAT makes a reimbursement order, the order must state that the Respondent is liable to pay to the chief executive a stated amount within a stated period.

Order

1. For the reasons set out above, it is ordered that the Respondent is liable to pay to the Applicant the amount of \$1,992.80 within 21 days of the date of this order.