

<http://www.fwo.gov.au/Media-centre/2009/Pages/20091218-Landchoice-penalty.aspx>

## **Media release**

**18 December 2009**

### ***Real estate firm fined \$30,000 over sham contracting and underpayment***

A Sydney real estate company and its director have been fined almost \$30,000 for underpaying a salesperson more than \$20,000 as a result of sham contracting.

The penalty – handed down in the Federal Magistrates Court – is the result of a prosecution by the Fair Work Ombudsman.

Land Choice Pty Ltd, which traded as Kingsford First National Real Estate until October, 2008, has been fined \$24,600 - and sole director Sugiharto Sugiharto (correct) a further \$4840 for his involvement.

Federal Magistrate Shenagh Barnes found the company had treated the female salesperson “recklessly” by appointing her as an independent contractor instead of an employee.

The woman was a new-arrival from Singapore with no experience in the Australian real estate industry.

The Court heard that the woman received just one payment of \$1414.20 for working an average of 40 hours a week from March 23, 2007 until her employment was terminated on September 27, 2007.

She was underpaid more than \$20,000, of which the company had only back-paid \$5000 in October, 2009. FM Barnes ordered Land Choice to repay the outstanding \$15,119 plus interest of \$3104.

In handing down her 44-page decision, FM Barnes said it had been submitted that the real estate industry in NSW often paid individuals on a commission basis.

“Nonetheless, I accept that a message should be sent to the community, and to the real estate industry in general, that employees should be correctly identified and appropriately remunerated and should not be paid on a commission-only basis if not licensed,” she said.

“The imposition of penalties does act as a warning to other employers and reinforces the seriousness with which the courts treat the underpayment of employee entitlements.

“Both small and large businesses have an obligation to meet these requirements. If not, it will normally be necessary to mark the failure by imposing an appropriate monetary sanction at a meaningful level.”

FM Barnes said Land Choice’s breaches represented “a significant failure to provide basic and important wage and condition entitlements”.

She said: “This continued for six months and involved, at the least, a reckless disregard for the respondents’ obligations. It took some time to be acknowledged and was not remedied before the (court) hearing beyond a \$5000 payment.

“The penalty should reflect the need for some specific deterrence and more particularly for general deterrence, reinforcing the seriousness with which the courts treat the non-payment of basic employee entitlements.”

**Fair Work Ombudsman Executive Director Michael Campbell welcomed the outcome for what was the first prosecution by the Agency for sham contracting.**

Mr Campbell says ignorance of the law is no excuse for employers underpaying entitlements, reiterating that it is the responsibility of all employers, large and small, to understand their lawful obligations to their staff.

“We can help with that. We have over 200 Fair Work advisers manning our national Infoline (13 13 94) from 8am to 6pm weekdays ready to field questions and assist employers,” he said.

“Our website – [www.fairwork.gov.au](http://www.fairwork.gov.au) – also provides a range of information to help employers seeking up-to-date information on wage rates and conditions.”

The Fair Work Ombudsman promotes harmonious, productive and co-operative workplaces and monitors compliance with and investigates breaches of national workplace laws.