



COMMERCE COMMISSION

Media Release

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Balmoral Homes directors fined and ordered to pay reparation for Fair Trading Act breaches

Two directors of a Christchurch-based building company that has gone into liquidation pleaded guilty to multiple charges of breaching the Fair Trading Act in the Christchurch District Court today. They have been fined \$15,000 each and have been ordered to pay a total of \$97,000 in reparation and a further \$30,000 for emotional harm reparation in total for six complainants.

The fines, reparation and emotional harm payments were ordered by the court despite both directors having been declared bankrupt in February 2009. In making these orders the Court took into account the fact that these directors were able to and did access funds in their family trusts.

Leslie James Day and Malcolm Bruce Jones were directors of Balmoral Homes Limited, a company that designed and built residential homes in the Christchurch area. From October 2000, Balmoral Homes was a member of the Canterbury Registered Master Builders Association, which gives automatic membership to the Registered Master Builders Federation and entitlement to offer clients a Master Build Guarantee, as well as use of resources such as the Master Build logo and documents.

In October 2007 Balmoral Homes was suspended from the Registered Master Builders Federation as a result of a complaint made about the quality of work on a property. Despite that suspension Mr Day and Mr Jones continued to represent to consumers that the company was a member of the Registered Master Builders Federation and that consumers would receive Master Build Guarantees for work undertaken by Balmoral Homes.

In other instances Balmoral Homes accepted payments from a number of consumers for Master

Build Guarantees but did not forward the applications and payments to Master Build Services until physical construction had begun on site. As a consequence some of these consumers, who had paid deposits but had no physical construction commence on their sections, did not have any cover for loss of deposit when Balmoral Homes went into liquidation in April 2008.

“The Master Build logo carries with it an expectation of quality workmanship and financial security. Clients of Balmoral Homes made decisions based on the understanding that they had a Master Build Guarantee and were surprised to later find out that they had no cover when the company went into liquidation. Master Build Services has already paid over \$350,000 in ex-gratia payments to some affected consumers following Balmoral Homes’ liquidation. The \$97,000 in compensation ordered by the court today is in addition to the payments already made by Master Build and should restore all affected consumers to the position they would have been in had they in fact had a Master Build Guarantee,” said Stuart Wallace, Commerce Commission Enforcement Branch Manager, Christchurch.

“The Fair Trading Act specifically prohibits making false or misleading representations about endorsement and affiliation. The protections provided by organisations such as the Master Builders Federation are very important to most home buyers,” said Mr Wallace.

This case is also a reminder that, even when a company is in liquidation, if company executives have breached the Fair Trading Act, they can be personally liable for prosecution, reparation payments and fines.

In setting the sentencing, Judge Farish noted that the conduct was wilful and deliberate over a relatively long period of time and that extensive misrepresentations had been made, including some which were made close to when the company went into liquidation. The Judge also noted that there had been a significant abuse of trust as the complainants had all been attracted by the presence of Master Build Guarantees and that the complainants had had a significant amount of stress and distress caused to them.

Background

As part of the Registered Master Builders Federation membership application process, quality checks, financial checks and reference checks are made to ensure the applicant is competent, qualified and financially secure. Membership entitles the member to use of the Master Build logo and documents and to offer to supply clients a Master Build Guarantee provided by Master Build Services Limited.

The Master Build Guarantee is managed by Master Build Services. Master Build Services is an independent subsidiary of Master Build.

Master Build members are able to offer buyers a Master Build Services Guarantee as provided by Master Build Services. Prior to any work beginning, the Master Build member must, together with the client, sign a building contract, a guarantee application form, and an Owner's Acknowledgement of Arbitration Agreement. These must be sent to Master Build Services immediately together with payment of the guarantee fee. After detaching the application/arbitration agreement, the guarantee booklet is given to the client by a Master Build member.

Master Build Services accepts the guarantee application and forwards documentation to both the member and the client. If the guarantee application is declined by Master Build Services, however, notification is only sent to the member that the application was declined. In the past, the clients received nothing to put them on notice that they were not covered by a Master Build Services Guarantee. As a direct result of this case, Master Build Services has changed its practices.

Master Build Guarantee

At the time of this offending the Master Build Guarantee provided protection for clients in three components. Together these span seven years in addition to the construction period of the building. These periods are:

The construction component: There are two phases to this stage: loss of deposit and non-completion. The loss of deposit phase provides protection for clients following the payment of a deposit to the building company up until the physical construction begins on site. The maximum claim allowable is up to ten per cent of the contract price or \$20,000, whichever is the lesser. The non-completion phase provides protection to clients where construction has begun on site but where the builder is unable or unwilling to complete the work. The maximum claim allowable is up to ten per cent of the contract price or \$40,000, whichever is the lesser.

The builders' component: This period begins from when Master Build Services receive notification of completion of the construction period. It runs for two years. During these two years, the client is able to claim for defects on workmanship and/or materials. That could be in relation to such things as a leaking shower, defective cladding, or a roof.

Structural cover component: This lasts for five years. It begins from when the two years builder's component expires and ends on the fifth anniversary of that date.

The Fair Trading Act. Breaches of the Fair Trading Act may result in prosecution in court. Companies found guilty of breaching provisions of the Fair Trading Act may be fined up to \$200,000 and individuals up to \$60,000. Only the courts can decide if a representation has breached the Fair Trading Act.

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