



Suspension and fine for agent over trust account misuse (Christopher Fyson / Vasad Pty Ltd)

A Kalgoorlie real estate agency and its licensee have been reprimanded, fined \$8,000 and the agent suspended from holding a licence and triennial certificate for nine months by the State Administrative Tribunal (SAT) after making an illegal withdrawal from the agency's trust account.

Vasad Pty Ltd, trading as **Fyson & Associates**, and its licensee **Christopher Hugh Fyson** faced disciplinary action by Consumer Protection after \$6,848.97 was withdrawn from a trust account in August 2013 without the authorisation of their client. This was in breach of the *Real Estate and Business Agents Act 1978* and the Code of Conduct for Agents and Sales Representatives 2011.

The funds were withdrawn by the agency during a dispute with the owner of a combined commercial and residential property in Hannan Street, which the agency had been managing. While the original time period under the residential management agreement had expired, the five-year commercial management agreement was still in effect for another four months.

When the owner of the property arranged to terminate the agreements and list the property with another agency, Mr Fyson and his agency claimed the money as compensation for liquidated damages, which the owner disputed, having already requested the matter be taken to arbitration.

Consumer Protection believes the actions of the agency were particularly reckless because the agency:

- withdrew the funds without consulting the terms of the agreement;
- failed to formally invoice the client for the sum;
- disregarded the client's instructions to arbitrate the matter; and
- withdrew an amount that was greater than the amount allowed under the agreement.

The SAT reprimanded both the company and Mr Fyson, ordered the company to refund the money to the owner and pay a fine of \$8,000 and banned Mr Fyson from holding a licence or triennial certificate for nine months. Both the company and agent were ordered to pay total costs of \$1,500.

Acting Commissioner for Consumer Protection Gary Newcombe said the agency failed to act fairly and honestly and in accordance with its client's instructions as required by the law.

"Those in charge of real estate trust accounts should not act as judge and jury and are required to allow the Court to resolve any contractual or financial disputes," Mr Newcombe said.

"Money held in trust does not belong to the agency, so those in control of trust accounts cannot make unilateral decisions when disputes arise and take funds without the agreement of the client.

"The laws covering the handling of trust account funds should not be flouted by real estate agents or property managers. Owners expect complete honesty and a high standard of integrity when they place the management of their properties in the hands of a property manager, so that trust should not be abused."

More information on the obligations of real estate agents and sales representatives is available on the Consumer Protection [website](#) or enquiries can be made by email: consumer@commerce.wa.gov.au or by calling **1300 30 40 54**.