



Fair
Trading

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UNDERTAKING PURSUANT TO SECTION 38, PROPERTY AND STOCK AGENTS ACT 2002

Person Giving This Undertaking:

- Britney Kraus Real Estate Pty Ltd (ACN 614 022 865) trading as Assured Rent Real Estate
- Ms Britany Kraus, in the capacity as a Director of the above corporation, additionally as the Licensee in charge of said corporation.

Licensee: Britney Kraus Real Estate Pty Ltd

Licensee No: 10051777
Corporation: Property
Start: 10/10/2016 End: 09/10/2022

Licensee: Britany Kraus
20132066

Licensee No:
Class 1: Real Estate Sales and Leasing
Start: 26/08/2016 End: 25/08/2022

Address: Shop 3/17 Warby Street, CAMPBELLTOWN NSW 2560

INTERPRETATION AND DEFINITION

In this undertaking, unless the context otherwise indicates:

- a. 'the Act' means *the Property & Stock Agents Act 2002*.
- b. The Customer Assistance System (CAS) is a system used by Fair Trading to register complaints lodged by consumers.

The Commissioner for Fair Trading ("the Commissioner"), the Director Investigations & Operations ("the Director") and NSW Fair Trading ("NSWFT") perform functions pursuant to section 9 of the *Fair Trading Act 1987*. These include the receipt and investigations of complaints, the compliance with the provisions of the Fair Trading Act and any other legislation administered by the Minister for Fair Trading from time to time including the Act.

The subject corporation is registered with the Australian Securities and Investments Commission (ASIC) pursuant to the *Corporations Act 2001(Cth)*.

Ms Kraus is an individual licence holder. Issued under the provisions of section 8 of the Act.

Ms Kraus is the Director of the subject corporation licence. Issued under the provisions of section 9 of the Act.

Ms Kraus is the licensee in charge of the above mentioned corporation which offers a range of real estate services as defined by section 3A of the Act.

BACKGROUND & NON COMPLIANT BEHAVOUIR

1. Since the corporation commenced trading, NSW Fair Trading have received in excess of 171 complaints.
2. Most of the 171 reported matters relate to Property Management, which is the core business of the corporation.
3. Between 2017 and September 2019, Ms Kraus was subject to 62 various complaints resulting in two separate inspections. Ms Kraus was also invited to attend a formal record of interview.
4. Ms Kraus was issued 4 Penalty Infringement Notices (PINs) for failure to lodge rental bonds, failure to complete trust account trial balance, failure to supervise business in a compliant manner and contravene the rules of conduct.
5. Between October 2019 to October 2020 Ms Kraus was again subject to further complaints and from around mid-2020 to February 2021, Ms Kraus averaged 3 complaints each month.
6. Between February 2021 to April 2021 Ms Kraus was subject to 13 new complaints which resulted in referral to the Property Inspectorate.
7. It was discovered that a Facebook group had also been created and Ms Kraus and her

business was the subject of this 'hate' group. Ms Kraus indicated that the group was the reason behind an increase in complaints.

8. In May 2021 another inspection was carried out on Ms Kraus with another 6 complaints been received. A statutory notice was issued on Ms Kraus to produce certain records; however, Ms Kraus failed to comply and was issued a PIN for the offence of obstruction.
9. In July 2021, Ms Kraus was issued yet another PIN for the offence of failing to lodge a rental bond.
10. Between August 2021 and October 2021, Ms Kraus averaged 3 complaints per month and were dealt with directly by the Property Inspectorate. Dispute resolution was provided on those matters where needed and Ms Kraus was provided additional advice of provide a higher level of customer service.
11. February 2022 to June 2022, 10 complaints were received, and related to various property management issues such as;

- clients not receiving documents
- not releasing landlords from managing contract upon request
- not responding to correspondence
- ® withholding funds from landlords / not receiving rental payments
- water and electricity being paid for querying separate metres
- missing keys /keys do not work
- ® loss of rental income
- ® not paying bills, Strata, Water & Council

12. The continued concerns of Ms Kraus not undertaking payment of utilities has been an ongoing issue which was first addressed with Ms Kraus in 2021.
13. Section 37(2) of the *Property and Stock Agents Act 2002* stipulates that a licence holder must observe in the course of carrying on their business rules of conduct that may be prescribed in the regulations. Any licensee holder, who without reasonable excuse contravenes a rule of conduct as prescribed is guilty of an offence.
14. NSW Fair Trading have identified that Ms Kraus has breached or continually breaches the following Rules of Conduct as prescribed in the *Property and Stock Agents Regulation 2014*;

Schedule 1 General rule of conduct applying to all agents and assistant agents

Rule 1 Knowledge of Act and regulations

An agent must have a knowledge and understanding of the Act and the regulations under the Act, and such other laws relevant to the category of licence or certificate of registration held (including, laws relating to residential tenancy, fair trading, competition and consumer protection, anti-discrimination and privacy) as may be

necessary to enable the agent to exercise his or her functions as agent lawfully.

4 Skill, care and diligence

An agent must exercise reasonable skill, care and diligence.

6 To act in client's best interests

An agent must act in the client's best interests at all times unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

9 To act in accordance with client's instructions

An agent must act in accordance with a client's instructions unless it would be contrary to the Act or regulations under the Act or otherwise unlawful to do so.

19 Agency agreements must comply with regulations

An agent must not enter into an agency agreement unless the agreement complies with any applicable requirements of this Regulation, as required by section 55 of the Act.

20 Agent to pay rental income monthly to landlord

An agent must pay rental money for each calendar month (less any authorised expenses) owing to a landlord under a residential tenancy agreement at the end of each calendar month, unless instructed otherwise by the landlord.

Schedule 2 Rules specific to real estate agents and assistance real estate agents

13 Maintenance or repairs of rental property

(1) An agent managing a rental property must promptly respond to and, subject to the instructions of the owner, attend to all requests by a tenant, for maintenance of, or repairs to, the property.

(2) If the owner has instructed that a repair not be carried out, the agent must inform the owner if the owner's failure to carry out the repair would constitute a breach of any tenancy agreement in force in relation to the property.

14 Breach of tenancy agreement

An agent managing a rental property must immediately notify the owner in writing if the agent becomes aware of a tenant's breach of the tenancy agreement.

16 Final inspection of property

An agent must take all reasonable steps to ensure that any final inspection of the property, on vacation of the property, is conducted in the presence of the tenant (unless otherwise authorised by the tenant).

Note— *"Reasonable steps" by an agent would comprise contacting the tenant to discuss suitable times for the inspection, arranging to meet at a particular time*

and place and proceeding to meet the tenant at the arranged time and place.

18 Confirmation of specific instructions—property management services

Before or at the time of entering into an agency agreement under which an agent will provide property management services in respect of the leasing of residential property or rural land, the agent must prepare for inclusion in the agency agreement written confirmation of the extent of the agent's authority to undertake the following duties in connection with the management of the property or rural land and any limitations on the agent's authority to undertake those duties—

- (a) obtaining references from prospective tenants, arranging inspections of the property by prospective tenants and choosing a tenant,
- (b) entering into and signing a residential tenancy agreement (specifying the term for which the property may be let),
- (c) undertaking inspections of the property,
- (d) effecting repairs to and maintaining the property or engaging tradespersons to do so and detailing limitations on expenditure that may be incurred by the agent without obtaining the approval of the owner,
- (e) paying disbursements and expenses incurred in connection with the agent's management of the property,
- (f) collecting rent,
- (g) receiving, claiming and disbursing rental bond money,
- (h) serving notices for breach of the residential tenancy agreement or to terminate the residential tenancy agreement,
- (i) undertaking the necessary steps to obtain vacant possession and recover any money owing to the owner in relation to the tenancy of the property,
- (j) representing the owner in any tribunal or court proceedings in respect of the tenancy of the property,
 - (k) paying accounts for amounts owing in relation to the property (for example, water rates and charges, council rates, insurance premiums, maintenance expenses and owners corporation levies),
 - (l) advertising the property for letting or re-letting,
 - (m) reviewing the rent at the end of a tenancy.

CORRECTIVE COMPONENT

The corporation and Ms Krause, the licensees acknowledge their contraventions of the PSA Act.

That the licensee from the date of the commencement of this undertaking maintain full compliance with all of the provisions of the Property Stock Agents Act and the Residential

Tenancy Act.

- Implement a complaints management system and report to NSW Fair Trading on a quarterly basis with the following information:
 - Name of complainant
 - date complaint received
 - complaint details
 - action taken
 - date resolved

PECUNIARY PENALTY:

- That the 1st respondent Assured Rents pay a pecuniary penalty to the Commissioner for Fair Trading 's Consumer Law Fund an amount in the sum of \$4400 within one month of the commencement of this undertaking.

PRODUCTION OF EVIDENCE

- Within 30 days of the commencement of this undertaking and thereafter over 90 days the licensees will provided to the delegate for the Commissioner of Fair Trading evidence of your compliance with each of the corrective components until the period of this undertaking ends

COMMENCEMENT AND SCOPE OF UNDERTAKING

This undertaking comes into effect when the Director Investigation & Operations accepts it pursuant to section 38 of the Act and continues for a period of 24 months from the date of acceptance.

ACKNOWLEDGMENTS

The Director, Investigations and Operations acknowledges the licensee co-operate in resolving this matter.

Both respondents warrant that they have/ have not taken legal advice about this undertaking and understand the obligations imposed by this undertaking.

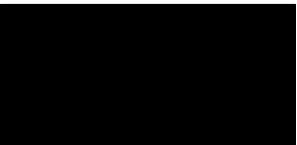
In accordance with section 38 of the Act, the persons giving this undertaking may withdraw from or vary this undertaking only with the written consent of the Director, Investigations & Operations.

If the Director Investigations & Operations considers that the person giving this undertaking has breached any of the terms of the undertaking, the Director Investigations & Operations may refer the matter to the Disciplinary Action Unit for consideration of a Notice to Show Cause (NTSC) in accordance with section 192 of the Act.

NSWFT will make this undertaking, available for inspection, on the public register pursuant to section 220(1) of the Act.

This undertaking in no way derogates from the power of the Director, Investigations & Operations to take any other action in respect of a contravention of the Act, or any other legislation administered by the Minister: or the rights and remedies available to any other person arising from conduct the subject of this Undertaking.

EXECUTION



Britney BK
Ms Britany Kraus

Executed on behalf of the corporation in accordance with section 127(1)(b) of the Corporations Act 2001 (Cth) by its Director, Ms Britany Krause

Date: 14 / 9 / 22



Britney BK
Ms Britany Kraus

Date: 14 / 9 / 22 .



Stephen French

Director, Investigations & Operations, NSW Fair Trading

Date: 14/9/2022