

Real estate company back-pays Dandenong salesman \$10,000

14 January 2013

The Fair Work Ombudsman has recovered more than \$10,000 for a Melbourne real estate salesman who was underpaid as part of an unlawful employment arrangement.

The salesman, a recent Sri Lankan immigrant in his 50s, was underpaid between October, 2010 and February, 2011 whilst employed at the Dandenong branch of McDonald Real Estate.

McDonald Real Estate directors, John and Le Hoa Wysham of Aspendale, also operate other real estate agencies in Melbourne.

An investigation by the Fair Work Ombudsman found that the salesman was initially unlawfully required to perform four weeks of unpaid work under a purported 'training program'.

Over the next three months, he was paid \$551 a week as an 'advance against future commissions', plus a car allowance of \$115 a week.

However, the retainer was cancelled after about three months and the employee was paid only the \$115 weekly car allowance for a month before his employment was then terminated.

Under the Real Estate Industry Award 2010, commission-only arrangements are applicable only when it can be demonstrated that an employee has earned more than the minimum wage payable under the Award selling real estate in any 12-month period over the preceding five years.

As the employee did not fit into this category, the employer should have paid wages of at least \$557 a week throughout his employment.

The Fair Work Ombudsman investigated the matter after the salesman lodged a complaint.

Mr and Mrs Wysham - the owner-operators of the McDonald Real Estate Dandenong branch - admitted being involved in the underpayment of the employee's lawful entitlements.

As an alternative to litigation, Mr and Mrs Wysham and the Dandenong branch of McDonald Real Estate have back-paid the employee \$10,300 and entered into an Enforceable Undertaking with the Fair Work Ombudsman.

As part of the Enforceable Undertaking, they have agreed to:

- Donate \$1000 to the Peninsula Community Legal Centre
- Make a formal written apology to the underpaid employee
- Develop processes for ensuring future compliance with workplace laws for all real estate agencies they are involved in - and provide evidence of the measures to the Fair Work Ombudsman
- Undertake a professional audit of all real estate agencies they are involved in and rectify any underpayments identified
- Conduct further compliance audits for the next three years
- Provide professional workplace relations training for all managerial, human resources, recruitment and payroll staff at real estate agencies they are involved in for the next three years,
- Publish a public notice detailing the contraventions of workplace laws on the McDonald Real Estate website and in The Dandenong Leader and Melbourne Weekly newspapers, and
- Display the notice at the premises of all real estate agencies they are involved in.

Fair Work Ombudsman Nicholas Wilson says that in cases of significant non-compliance, Enforceable Undertakings are being used as an effective alternative to litigation.

"They are an important part of our Agency's commitment to drive future compliance and help us remain confident we are upholding the provisions of the Fair Work Act," he said.

The Fair Work Ombudsman has entered into more than 30 Enforceable Undertakings since July, 2009, recovering \$5.4 million for more than 6900 employees.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au. A free interpreter service is available on 13 14 50.

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An 'Industries' section on the website provides extra, specialised information for employers and employees in the retail, cleaning, clerical, hair and beauty, security, vehicle, horticulture, fast food and hospitality industries.

A new Fair Work Handbook has recently been designed to help employers better understand their workplace obligations. The Handbook outlines the aspects of the Fair Work Act that employers must be familiar with and also helps them to prevent and resolve workplace issues within their business. You can find the Handbook at www.fairwork.gov.au/employment/employers (www.fairwork.gov.au/find-help-for/Small-business/default) .

[Enforceable Undertaking McDonald Real Estate Dandenong Pty Ltd \(PDF 594KB\)](http://www.fairwork.gov.au/ArticleDocuments/721/EU-McDonald-Real-Estate-Dandenong-Pty-Ltd.pdf.aspx) (www.fairwork.gov.au/ArticleDocuments/721/EU-McDonald-Real-Estate-Dandenong-Pty-Ltd.pdf.aspx)

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Fair Work Online: www.fairwork.gov.au

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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