



james conomos lawyers

6 September 2012

The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

email: thlgc@parliament.qld.gov.au

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THLGC

Dear Sirs / Madam

Inquiry into the Operation and Performance of the Queensland Building Services Authority

We act for [REDACTED].

We write in relation to the *Inquiry into the Operation and Performance of the Queensland Building Services Authority*.

Summary of submission

It is our submission that the Queensland Building Services Authority ("BSA") has failed in its responsibility to properly administer [REDACTED] building licence. As a direct result of this failure, our client's business was, in effect, closed down unnecessarily by the actions of the BSA in December 2010.

In summary, the BSA misinformed both itself and [REDACTED] that our client could not operate its building business using its Carpentry and Joinery licence with its then nominated supervisor, and wrongly suspended the company's licence. At that time, [REDACTED] had a valid Carpentry and Joinery licence, had a valid nominee supervisor for that licence and was only performing work that was within the scope of that licence. In short, the suspension had no valid legal basis and was contrary to the Act.

The BSA clarified and corrected its position by letter dated 11 February 2011, where it stated:

"Please be advised the scope of work on Roof and Wall Cladding can be performed by the Carpentry licence."

However by then the BSA's actions had destroyed [REDACTED] business in that it had issued a notice dated 21 December 2010 which notified [REDACTED]

- (a) that its licence had been suspended as of 21 December 2010;

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- (b) that it cannot carry out or undertake any building work whilst its licence is suspended;
- (c) that continuation of building work may result in prosecution; and
- (d) that it may not be able to recover payment for its work whilst suspended.

As such, the notice had the effect of bringing the Business to an end on 21 December 2010.

Background and facts

From in or about November 1994 until December 2010, [REDACTED] operated as a supplier and fixer of roofing in the building industry predominantly in South East Queensland (the "Business"). Over its 16 years of operation, the company provided a valuable and reliable service in South East Queensland. The BSA's licence search for [REDACTED] shows that the company had absolutely no disciplinary record. [REDACTED].

[REDACTED] was highly profitable and in recent years a possible sale to its major supplier was mooted at between \$3 million and \$5 million.

The facts material to Business' forced closure are as follows:

1. as at November 2010, [REDACTED] operated the Business in the building industry supplying and fixing metal roofing utilising a Carpentry Licence, number 71158;
2. the 'scope of work' listed for a carpentry licence issued by the BSA [REDACTED] states, inter alia:
 - (6) *Install exterior cladding, fascias and soffits.*
 - (7) *install metal roofing.*
3. the nominee for the carpentry licence of [REDACTED] in November/December 2010 was [REDACTED] and he was an employee of [REDACTED] at that time;
4. as at November 2010 and for some years prior [REDACTED] had not utilised its Roof and Wall Cladding licence as it was not necessary to carry on its business. For that reason, it did not have a nominee for that license. This was well known to the BSA, having regard to the information freely available on its website.

Importantly, the BSA permits a contractor to hold different licences utilising the same licence number. That position applied in respect of our client;

5. at this time, in late November 2010, [REDACTED] received a letter from the BSA dated 16 November 2010. [REDACTED]. The reference on the letter is:

'Notice of intent to suspend licence for failure to have nominee'

The letter stated that the BSA had become aware that certain persons were no longer the nominee of the company, specifically in reference to 'roof and wall cladding (Trade Contractor Licence)' and gave as the reason:

"[REDACTED] ceased to act as nominee as at 17/08/2005."

The letter also stated:

"... Failure to complete and return the attached Company Nominee form within fourteen 14 days is an offence and will result in prosecution or the issuing of a ticket requiring the company to pay a fine.

To avoid the issue of a fine or prosecution, you must complete and return the attached Company Nominee form within fourteen (14) days from the date of this letter advising the changes to the company nominee details

TAKE NOTICE, pursuant to Section 49(1) of the Act, the Authority intends to cancel the company's licence if it fails to provide an appropriate nominee, who holds a licence in the same class or classes as the company, within twenty one (21) days of the date of this letter. [Original emphasis]

..."

6. on 6 December 2010, [REDACTED] director, [REDACTED] spoke with the signatory and author of the above letter, [REDACTED] of the BSA. She informed [REDACTED] that [REDACTED] licence would be suspended unless a new nominee was found for the Roof and Wall Cladding licence or its licence was cancelled. During this telephone discussion, [REDACTED] informed [REDACTED] that [REDACTED] had a carpentry licence which was acceptable for the work being undertaken by [REDACTED] and was not using the Roof and Wall Cladding licence. Despite acknowledging the existence of the carpentry licence, [REDACTED] still maintained that the company's licence would be suspended if a new nominee was not found for the Roof and Wall Cladding licence;
7. later that day, by email received at 13.04 p.m., [REDACTED] confirmed the discussion, attached the scope of work for the carpentry licence and said:

"In order to avoid licence suspension you have 2 options:

1. *find someone to act as nominee from the company who has Roof and Wall Cladding licence OR (complete both Company nominee form and nominee form)*

- _____”

- By this email, [REDACTED] made it clear:

- "Hi [REDACTED]

Currently the Company has

1. *Carpentry*
2. *Joinery*
3. *Roof and Wall Cladding*

_____S
_____.

- "While the company's licence is suspended, the company is prohibited from carrying out or undertaking to carry out any building work. This includes signing building contracts, providing quotes or tenders, or completing building work currently in progress. Continuation of these activities while the licence is suspended may result in prosecution and may also prejudice the company's right to payment for this work."*

12. in reliance of the statement made in BSA's letter dated 21 December 2010, [REDACTED]:
 - (a) ended [REDACTED] employment with the Business as his services were no longer needed;
 - (b) advised clients that it was no longer able to complete work in progress, give quotes or enter contracts;
 - (c) ceased trading under the Business in the building industry; and
 - (d) suffered significant financial loss;
13. by letter dated 20 January 2011, the BSA gave notice of its intention to cancel [REDACTED] licence unless the company made representations on the matter within 21 days. [REDACTED] [REDACTED];
14. on 25 January 2011, [REDACTED] was contacted by [REDACTED] of the BSA who stated that the previous advice given by the BSA and the decision to suspend D [REDACTED] licence was wrong. [REDACTED] informed our client that [REDACTED] the company's former nominee, was qualified to act as company nominee, that our client's carpentry licence was valid when the licence was suspended, and that all work that was performed by the Business was covered by the carpentry licence;

15. by letter dated 8 February 2011, the BSA wrote to [REDACTED] and confirmed [REDACTED]s oral advice, when it said:

"Please be advised the scope of work on Roof and Wall Cladding can be performed by the Carpentry licence."

[REDACTED];

16. this advice was completely contrary to the communications previously had with the BSA and the suspension of our client's licence on 21 December 2010;

17. on 11 February 2011, [REDACTED] had a telephone conversation with [REDACTED]. In this conversation, [REDACTED] made it clear that the suspension of the [REDACTED]s licence in December 2010 had, in effect, ended the Business;

18. later on 11 February 2011, a letter from the BSA under the hand of [REDACTED] proposed a way forward. The letter does not accurately record the discussions on 11 February 2011 and does not recognise that by then the suspension of the company's business on 21 December 2010 had in effect destroyed the business. [REDACTED]d [REDACTED];

19. by an email dated 17 March 2011, our client's accountant [REDACTED], wrote to [REDACTED] and set out the company's position and sought to enter into discussions with the BSA as to how the company may be compensated. [REDACTED] [REDACTED];

20. in response, a letter was sent by the BSA to our client's accountants dated 30 March 2011, which stated:

"Firstly, BSA will not be entering into any discussions regarding compensation for [REDACTED]. BSA has not erred in this matter. [REDACTED].. is a large company that has been licensed for a number of years and would be aware they have an obligation to comply with legal and statutory requirements at all time when operating their business.

After reviewing the file I can advise that the company is about to have its roofing and wall cladding licence cancelled. BSA will also continue with action to cancel the carpentry and joinery licences for it failing to maintain a nominee supervisor with the company.

Should [REDACTED] wish to continue to operate in the Queensland building industry, it must provide BSA with a new nominee supervisor as soon as practical..."

[REDACTED]

21. this letter is helpful, albeit misguided, in the following respects:
- (a) despite what the letter says, the BSA did err in its notification to [REDACTED]. This is evident from the letter itself because the BSA now accepts that the Roof and Wall Cladding Licence can be cancelled without cancelling the company's Carpentry and Joinery licence;
 - (b) until 21 December 2010, the company was operating its business validly under the Carpentry and Joinery licence and had an appropriate nominee employed with the company;
 - (c) the BSA's decision to suspend the [REDACTED] licence led to the closure of the Business and the ending of its nominees employment;
 - (d) the BSA's decision to continue with action to cancel [REDACTED] Carpentry and Joinery licence needs to be considered in light of the fact that this notification comes after its letter dated 21 December 2010 which, in effect, suspend the company's business at a time when the company had a valid nominee supervisor;
 - (e) the BSA attempts to pass blame onto [REDACTED] by stating that *it is a large company that has been licensed for a number of years and would be aware they have an obligation to comply with legal and statutory requirements at all time when operating their business*. All of that was moot by 30 March 2011 given their decision to suspend [REDACTED] licence and the consequences of that suspension stated in the letter of 21 December 2010;
22. by letter dated 6 April 2011, the BSA gave notice that the [REDACTED] licence was cancelled. [REDACTED];
23. by letter dated 27 April 2011, the BSA gave notice that the [REDACTED] Carpentry and Joinery licence was cancelled effective as at 27 April 2011. However the letter erroneously states that the cancellation was in response to recent advice from the company that it 'requested voluntary cancellation' of its licence. [REDACTED].
24. by 27 April 2011 and due to the suspension of the company's licence and consequences for the business of its closure, the company had not been operating since the December 2010.

Attempts at resolution

By letter dated 7 February 2012, we wrote to the BSA on behalf of our client to explain the situation and seek to resolve the issue. [REDACTED]
[REDACTED] In the letter, we requested on behalf of our client that an independent investigation of the situation take place and asked for a meeting to discuss resolution of the issues.

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██████████ In that letter, the BSA denied ██████████ requests and disregarded critical facts relevant to ██████████ complaints.

By facsimile dated 19 March 2012, we again contacted the BSA to further clarify ██████████'s position and to again request an independent investigation into the incident. A ██████████ at ██████████ To date we have not received a response from the BSA. Our client is attempting resolve this dispute amicably. Unfortunately, however, the BSA's consistent failure to acknowledge the issue is pushing our client towards litigation.

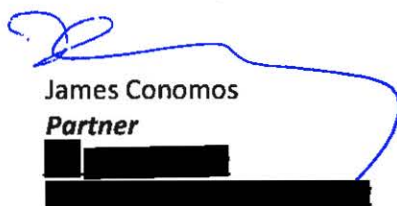
The BSA's refusal to take any responsibility for this matter, or even properly investigate the circumstances is extremely disappointing. The BSA is the sole entity responsible for the licencing of contractors in this state. However, despite its position, the BSA misled ██████████ and itself as to the requirements necessary to maintain the appropriate licence for the Business to continue to trade. The consequences of these misrepresentations have been serious resulting in the termination of a long standing, highly profitable and reputable building business in Queensland.


The BSA's refusal to properly investigate this matter not only brings the organisation's transparency into question, but also prevents the authority from learning from its mistakes and developing proper systems to ensure that:

- a) it correctly fulfils its role as a licensor of building contractors in Queensland; and
- b) what happened to ██████████ does not happen to other reputable and upstanding builders in Queensland.

We request that the committee take ██████████ experiences into account when drafting its report to parliament. We also ask if the enquiry can assist in the resolution of the likely dispute to avoid litigation that may well ensue if no action is taken.

Yours faithfully


James Conomos
Partner
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Joseph Crane
Solicitor
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