

UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN UNDER SECTION 87B

BY

**KHAD PTY LTD (ACN 053 524 931), trading as THE
PROFESSIONALS - EDGE HILL**

Person Giving Undertaking

- 1) This undertaking is given to the Australian Competition and Consumer Commission ("the Commission") by Khad Pty Ltd (ACN 053 524 931), trading as The Professionals - Edge Hill, of Unit 1, 120 Collins Avenue, Edge Hill, in the State of Queensland under section 87B of the *Trade Practices Act 1974* ("the Act").

Background

- 2) Khad Pty Ltd ("Khad") is incorporated in Australia and carries on the business of a real estate agency under the business name of The Professionals - Edge Hill ("the real estate agency").
- 3) In carrying out the business of the real estate agency, Khad provides residential rental management services including the letting of premises, the management of the rental property and the collection of rental payments and charges, both current and outstanding.
- 4) In carrying out the business of the real estate agency, Khad, from time to time, approaches tenants or previous tenants of properties which it manages, seeking payment of alleged outstanding rent or payments for alleged breaches of tenancies. These approaches are often made in writing.
- 5) In February 2000, Khad sent by mail a letter, dated 11 February 2000, addressed to a previous tenant of a property managed by Khad. The letter sought payment from the previous tenant for alleged outstanding rental payments and various payments in relation to alleged breaches of the tenancy agreement. The letter stated:

"Because you have left a debt with our office, you have been lodged with TICA – Tenancy Information Centre of Australasia. This is a database worldwide with records of every person who has left a debt with a real estate agency. If you were to apply for a property through any other agency, TICA would inform all parties and you would be denied of renting any property. Having a debt lodged with TICA also gives you a bad credit rating. If for example you were to apply for a loan or buy a car you would be denied because of this outstanding debt."

("the Statement")

6) The letter referred to above was subsequently brought to the attention of the North Queensland office of the Australian Competition and Consumer Commission ("the Commission"). The Commission formed the view that the Statement contained the representations that:

- a) TICA is worldwide and that having an alleged debt lodged with TICA may have implications for the tenant in seeking tenancies worldwide;
- b) having an alleged debt lodged with TICA would result in future tenancy applications made by that tenant being denied through any other agency; and
- c) having an alleged debt lodged with TICA gave the tenant a bad credit rating.

Khad admits that the Statement made these representations ("the Representations").

7) Contrary however to the Representations, the Commission, having considered information produced by TICA, was of the understanding that:

- a) the TICA database is Australia/ New Zealand wide and not worldwide;
- b) Participating agencies can choose whether or not to provide tenancies to tenants listed on the database. Further, that not all real estate agencies are necessarily members of TICA. As such, in listing a tenant on the TICA data base, it would not necessarily be the case that future tenancy applications made by that tenant would be denied by any other agency; and
- c) TICA listings do not effect the credit rating of the tenant.

8) On 26 June 2000 the Commission wrote to Khad alerting it to the Commission's concern that in making the Representations, Khad may be at risk of contravening the fair trading provisions of the Act. The Commission was concerned that in making the representations Khad may have made false or misleading representations in breach of sections 52 and 53(g) of the Act, or may have engaged in undue harassment or coercion in connection with the supply of goods or services contrary to section 60 of the Act.

9) In response to the Commission's concerns, Khad advised the Commission that the Representations had been made on only two occasions in relation to two tenancies only. Khad also admitted the letters contained false statements.

Admissions

10) Khad advises that it is of the understanding that

- a) the TICA database is Australia/ New Zealand wide and not worldwide;
- b) Participating agencies can choose whether or not to provide tenancies to tenants listed on the database. Further, that not all real estate agencies are necessarily members of TICA. As such, in listing a tenant on the TICA data

base, it would not necessarily be the case that future tenancy applications made by that tenant being denied through any other agency; and

c) TICA listings do not effect the credit rating of the tenant.

11) Khad admits that in sending the letters containing the Representations, it made false or misleading representations and was likely to have contravened sections 52 and 53(g) of the Act. Khad further admits that in sending the letters containing the Representations, it engaged in harassment or coercion in relation to the payment for tenancy services and was likely to have contravened section 60 of the Act.

Commencement of Undertaking

12) This undertaking comes into effect when:

- a) the undertaking is executed by Khad; and
- b) the Commission accepts the undertaking so executed.

Undertakings

13) Khad gives the following undertakings to the Commission for the purposes of section 87B of the *Trade Practices Act 1974*:-

Conduct Undertakings

14) Khad or any of its servants or agents will not make any representations which state or imply that:

- a) TICA is worldwide and that having an alleged debt lodged with TICA may have implications for the tenant in seeking tenancies worldwide;
- b) having an alleged debt lodged with TICA would result in future tenancy applications made by that tenant being denied through any other agency; and
- c) having an alleged debt lodged with TICA gave the tenant a bad credit rating.

in any form unless the accuracy of the representations can be proved and the representations are not likely to mislead or deceive.

15) Khad or any of its servants or agents will not make any representations which are false, misleading or deceptive, or likely to mislead or deceive as to consequences of a tenants' failure to make payment for alleged debts.

- 16) Khad or any of its servants or agents will not engage in undue harassment or coercion in the course of collecting payment for rental or other services.

Corrective Letter of Apology

- 17) Khad will, at its own expense, cause to be disseminated corrective letters of apology ("the Corrective Letter") within two weeks of the acceptance of these undertakings in the same terms, font size, form, design and content of **Annexure A** to tenants or previous tenants to whom Khad sent letters containing the Representations or in which representations to similar effect were made.

- 18) Khad will provide copies of the Corrective Letters to the Commission within four weeks of the undertakings being accepted.

Trade Practices Compliance Program

- 19) Khad will implement a trade practices compliance program ("the Program") in accordance with **Annexure B**.

Acknowledgments

- 20) Khad acknowledges the Commission's right to make this undertaking available to the public including placing it on a register, publicising it and allowing third parties to publish it;
- 21) Khad further acknowledges that the Commission may issue a media release about this undertaking and may, from time to time, publicly refer to this undertaking.
- 22) Khad acknowledges and accepts that this undertaking in no way derogates the rights and remedies available to any person arising from the conduct of Khad.
- 23) Khad further acknowledges that the compliance program as in force from time to time will be held with this undertaking on the public register.

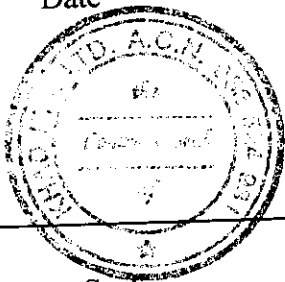
Signed on behalf of KHAD PTY LTD by

BILLY E. GARTNER *Billy E. Gartner* 28.8.00

Print Name (Director/ Secretary)

Signature

Date



28.8.00

Company Seal

Date

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974.

Allan Fels
(Professor Allan Fels)

Chairperson

This 6 day of September 2000