

**WHITE COLLAR CRIME AND PROPERTY AGENTS:
A SELECTION OF CONVICTIONS INVOLVING TRUST ACCOUNTING
FRAUD**

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ABSTRACT

Property agents in New South Wales are entrusted with the responsibility of monitoring and accounting for all trust money held on behalf of their principle, for example the landlord and vendor. This procedure includes, but is not limited to the receipting and banking of trust funds, correct allocation of the money into the ledger accounts, and the appropriate accounting of trust funds to their principle.

During the last decade, there has been a steady increase in fraud with agency's trust accounts. These identified trust account deficiencies and actions of dishonesty have been disguised by licensees and their employees using various methods of application.

Literature suggests white collar crime is "those illegal activities that occur in connection with a person's job or work"(Sutherland 1939). The purpose of this research paper is to examine a selection of court cases which relate to trust accounting fraud. The aim of this research was to identify any trends as to why the crime was committed. An Occupational Corruption Equation was developed and mapped against the court cases to determine a relationship with any trends which led to the misappropriation of those trust funds. The research concluded that the ready availability of trust funds provided a temptation for the offenders, who displayed little regard for the laws and ethics of their behaviour.

KEYWORDS: Crime, Fraud, Trust Accounting, white collar crime

INTRODUCTION

In New South Wales (NSW), the licensing of property agents is regulated under the auspices of individual state and territory Offices of Fair Trading (OFT), with licensing first introduced in the late 1800's. During these last 100 years, regulatory policy has been developed to exemplify the standards for social responsibility and ethical behaviour between property agents and their principal. However, in NSW, documented increases in trust accounting fraud, indicates a clear need to enhance consumer protection in the property industry. During the financial years ended 30th June 2003 to 30th June 2011, between \$362,000 to \$1,024,000 of trust funds were claimed each year, against Fair Trading, for failure to account to the consumer. (Office of Fair Trading, Individual Annual Reports 2003 to 2011).

Generally, those who work in the property industry buying, selling, leasing and negotiating in property transactions must be either licensed or hold a certificate of registration. A licensed property agent, under the Property Stock and Business Agents Act 2002 (Property Act), is a person who for reward is able to "negotiate or induce a range of property transactions including a sale, purchase, exchange and leasing" and to "receive money associated with these transactions" (Office of Fair Trading, NSW, May 2008). The receipt of this money requires the licensed entity to hold this money in a separate Trust Account for the exclusive benefit of their client.

Therefore, transactions undertaken by the property profession usually involves large amounts of money, which are held in a trust account by property agents on behalf of their client. So the safe keeping of these monies held in trust, and the level of competence by the people who supervise this money requires an ethical code of conduct to preserve and enhance consumer protection. In recent times, a risk management objective of the legislation has highlighted the need for the correct handling of trust money.

Examples of trust money include deposits on sales, rent from tenants, bonds and prepaid advertising. Trust accounting is the recording, classification, reporting and analysis of all trust money received by an agency on behalf of their client. In addition to mathematical dimensions, trust accounting is also concerned with regulatory compliance. Hence, an agency's books and records must meet the provisions of the relevant legislation. (Antoniades, 2007). The legislative obligations placed on real estate agents can be enormous and time consuming, however, ultimately the licensee of the property agency is considered accountable for all trust money held on behalf of the property owner, tenants, purchasers and other stakeholders with a vested interest. (Antoniades 2010).

Consequently, in NSW, every property agent is liable at common law and statute law to account to their principal for any money held, collected, or disbursed on their behalf. Examples of a principal include landlords and vendors. The Real Estate and Business Agents Supervision Board (REBA) of Western Australian, defines trust money as "*the money is received or held by an agent or any member of an agent's staff on behalf of another person in relation to a real estate or business sales transaction or property management transaction*". In conclusion, trust money is broadly classified as money held by an agent on behalf of a principal for their property transaction.

Therefore, government appears to indicate acknowledgement of the large sums of money involved in real estate transactions, and the need to "safeguard" the trust accounts. This is to instil confidence and provide redress for the consumer. However, research undertaken in 2008 also identified risk relating to trust accounting could be associated with a "lack of knowledge of trust accounting", "failure to have proper financial systems in place to monitor and review trust accounts regularly", "failure to monitor the actions of staff" or to "comply with audit requirements and fraudulent conduct". (NSW Office of Fair Trading, July 2008 The Report). In order to strengthen consumer protection, under the Property Act, the Property Services Compensation Fund was established to provide financial compensation to people whose money had been misappropriated by a licensed property agent.

This research paper examines a number of interrelated areas concerning white collar crime and trust accounting fraud. The first part of the paper discusses the literature for white collar crime and the responsibilities associated with trust accounts in a property agency. The research then leads into a discussion exploring the circumstances which provide the offender with the opportunity to carry out the fraud. This discussion is complemented with relevant court cases and the subsequent decisions by the courts, and the impact of the crime against the Property Services Compensation Fund. The research concludes with a discussion on the relationship between any identified trends on why the crime was committed and the increase in the misappropriation of trust funds.

LITERATURE REVIEW

Research undertaken by Sutherland (1939) identified two fields of study, namely crime and high society. He attempted to prove a correlation between money and social status, based on the premise of the likelihood of the offender being sentenced to jail and concluded that the majority sentenced to jail for white collar crime, were in fact blue-collar crime. However, researchers have argued that a contributing factor to this outcome, related to the Great Depression, where people had lost their wealth and were working long hours to regain their financial independence. This afforded the worker the opportunity to take advantage of their position of authority and commit fraud. So, is there a difference between the white collar crime and the blue collar crime? Does fraud include white collar crime and blue collar crime? To some extent the answer would be affirmative. Taft (1951) identified blue-collar crimes as the crimes of the under-privileged, whilst white collar crimes brought “material rewards with little or no loss of status”, although both types of crime are usually a criminal prosecution by the courts.

Sutherland (1939) classified blue-collar street crimes as arson, burglary, theft, assault, rape, and vandalism, whereas white collar criminals were considered to be “opportunists” who took advantage of their circumstances; and were usually educated, intelligent and affluent and held in high esteem and were placed in a position of trust and therefore able to commit the crime. However, society over the years has changed and with the increase of white collar crime, consumer confidence has eroded, and in particular property agencies who hold a large amount of money in their trust account, are required to provide full accountability of their records; hence the purpose of occupational licensing: to provide a form of consumer protection.

In the 21st century, white collar crime can now also include corporate crime and computer crime. However, Sutherland (1939) identified white collar crime as “those illegal activities that occur in connection with a person’s job or work” and further concluded, “a crime committed by person of respectability and high social status in the course of his occupation”. Therefore, white collar crime is a broad inclusion of fraud such as false or misleading advertising, evading corporate taxes, computer crime, and misappropriation of money held in a property agents trust account.

Subsequently to Sutherland, there have been a number of definitions relating to white collar crime, such as Clinard (1952) who defined white-collar crime as "a violation of the law committed primarily by groups such as businessmen, professional men, and politicians in connection with their occupations". This definition deviated slightly with Hartung (1950) who proposed white collar crime as “a violation of law regarding business which is committed for a firm by a firm or its agents in the conduct of its business”. Therefore, is the misappropriation of trust money considered white collar crime? The answer is yes, according to these various definitions, because trust money evolves from the furtherance of running a property agency business, the agent is required by law to be the holder of an occupational license, and the fraud is the stealing of the trust funds. Therefore, to further define the “white-collar crime” concept it is important to recognise that the crime which has been committed is “job-specific”.

So, if we were to exam the need for regulation and mandatory occupational licensing, the answer would lead back to consumer protection, namely the misappropriation of trust money as a priority area. The concept of occupational licensing correlates to regulation theory and the government is generally interested in overcoming information asymmetries. Academic research has identified two basic schools of thought emerging from regulatory policy, as the positive theories of regulation and the normative theories of regulation. (Jamison and Berg 2008).

The positive theories of regulation will include an examination of “why regulation occurs”, and “group theory that describes the roles of stakeholders interest in regulation”. So with regards to real estate licensing regulation, the property owners, tenants, and purchasers would represent the stakeholders. The governments’ solution with regulation requirement is to address the stakeholders individual interest such as the safekeeping of the trust funds. To this end from the inception of property agency occupational regulation in New South Wales there was expectancy for trust funds to be accountable and transparent for the stakeholder. The Property Act provides for a compensation fund to be established and maintained for the purpose of providing financial compensation to people whose money has been misappropriated by a licensed property agent. Therefore, the compensation fund is considered an important consumer protection mechanism and is a key feature of the regulatory system.

From a normative perspective the regulators encourage competition where feasible, and minimise the costs of information asymmetries. Additionally, the regulatory agency is intended to improve consumer confidence and welfare. Because of differences in the governments objectives and the real estate agency the government will adopt instruments or policies to achieve their objective. In the scenario of consumer protection with trust funds, the government has introduced legislation and penalties to deter fraudulent behaviour of the agent. So the question arises, whether in New South Wales, information asymmetries has been considered for real estate licensing provisions. Normative theories require the regulator to provide the stakeholder with information about the sector.

In a research paper undertaken by Akerlof in 1970, the author stated that “The necessity for occupational licensing has traditionally been justified on the basis of asymmetric information. The asymmetry arises when buyers are unable to differentiate the various services offered for sale in the market on the basis of quality.” Therefore, for the purpose of this research paper, we could surmise that the asymmetry arises when property stakeholders are unable to determine whether or not the person they are dealing with is a holder of an appropriate licence or certificate of registration.

Prior to 2002, property stakeholders had no access to information regarding the licensing status of the person that they were dealing with. But provisions now under the 2002 Property Act require the Office of Fair Trading to maintain a public register for licensing checks on property agents and certificate of registration holders. Therefore, prior to 2002, the government had information advantage, with regards to who held a licence or certificate of registration. This is generally referred to as information asymmetry. From 1st September 2003, licence and certificate of registration information available to the public includes the name and business address of the holder, the category of the licence or certificate, the licence or certificate number, date of issue and expiry, and disciplinary action taken against the licence or certificate holder.

Agency theory relationship is based on trust, and involves the consumer engaging a person to act on their behalf. One party is designated as the agent, and acts for and on behalf, or is a representative for the other party, designated the principal (Ross 1973). The regulatory impact for property agents is to ensure correct accountability in the handling of trust money – which has been identified as “one of the greatest areas of risk property owners face in transactions with real estate agents”. (Fair Trading 2008).

Gu, Liang and Wang (2005) developed a theoretical framework for detecting accounting fraud, using the three elements theory concept and identified interest, environment and implementation method as those three necessary elements. This theoretical concept involved the use of interest as the motivational power of fraud, secondly, environment such as the lack of environmental control providing the opportunity for fraud, and thirdly various kinds of illegal implementation methods which could trigger accounting fraud. If this was aligned to trust account agency fraud, the three elements could be applied in this way. Firstly an agent could be identified as committing the fraud due to their business not being successful and requiring funds urgently to keep their business afloat; the second element which related to regulatory control is very prevalent in New South Wales, where research and continuous discussions and amendments to the legislation have ensured that this is kept at optimum consumer requirements; and thirdly the illegal implementation methods which could trigger accounting fraud tends to be that the owner of the property agency has met the first element and therefore does not keep correct accounting records because of the missing funds; or if a staff member has committed the fraud, then there is usually an accounting cover up from the staff member.

Since the early 1930’s the real estate brokerage industry throughout the United States has been stringently regulated with a great deal of variance in the licensing requirements within each state. An article in 1971 by Amdur highlighted the need for real estate agents regulation for the state of Texas, USA, citing increases in the population and the volume of land exchanged through agents as a contributing factor. Furthermore, the continuously increasing of licenses issued to agents identified the need for more stringent regulation to regulate the “relationship between real estate agents and the public”. The licensing regulation in Texas was initially incorporated in 1939, where as in comparison to New South Wales licensing was regulated from the late 1800’s and formalised in the early 1900s.

In a research paper undertaken by Jamison and Berg in 2008, the authors contended that governments establish regulation of utilities to “improve sector performance”, and debated whether this implied to control market power and /or to facilitate competition, or to protect operation and customers from politically-driven decisions. However, it can be said that regulation of any industry requires a “control mechanism” from the regulator. In the case of occupational licensing, there does appear a trend to use educational requirements as the vehicle to determine acceptance of a licence.

A study undertaken by Johnson and Loucks in 1986 examined the entry barriers within the real estate brokerage industry in America. Items examined included the effect of differing state entry requirements in relation to the supply of practitioners and the quality of service provided. Embedded in these findings they theorised that the impact of licensure was to increase earnings and to decrease employment in the licensed occupations and concluded that regulation may either increase or decrease the quality of service provided. Johnson and Loucks pointed out that empirical investigations of the effects of regulation dealt with outcomes of licensure on wages and employment and ignored the simultaneous impact of regulation and consequence on quality. Maurizi (1980) measured quality of contractors by the number of consumer complaints in California and hypothesized that consumer complaints were a “function of the proportionate annual increase in the number of licensees”.

Maurizi also commented on the relationship between an increase in contractor license examination schools and the quality of contractors, and concluded that “consumers may be receiving a quality of service similar to what would prevail in the absence of licensing and they may be paying higher prices for that quality”. Interestingly Johnson and Loucks found the quality of service to increase as a result of fewer licensees per capita. A 10% reduction in licensees yielded a 5.7% decrease in complaints per transaction. A further empirical study in America concluded that “the level of complaints against real estate agents is smaller if the licensing board is comprised of a greater number of industry members”. (Shilling & Sirmans 1988). The result of their enquiry into the relationship between complaints against real estate agents and pass rates of the exams conducted by the licensing board, suggested that a decrease in the pass rate decreased the total number of complaints.

The question therefore arises whether or not white collar crime can be prevented. Research undertaken by Boyd (1995) focused on the motivating factors contributing to fraud and the control environment of the business with the Corruption Prevention Division of the Criminal Justice Commission identifying the following elements which underpin the contributing circumstances for white collar crime:

Motive + Targets + Access + Opportunity

and concluded that most people who commit the crime hold positions of trust within those organisations.

RESEARCH OBJECTIVE, METHODOLOGY and LIMITATIONS

The documented increases in trust accounting fraud and the subsequent criminal convictions of property agents, questions if the Property Act is relevant in today’s changing society. Occupational licensing requirements are mandated throughout the world for many professions, and in particular the property sector, in NSW, has been regulated for over 100 years. The mishandling of trust money is a criminal offence and this is usually accompanied by a jail sentence.

Therefore, the research objective is to explore the reasons and/or circumstances which contribute to this act of fraud with the aim to explore suggestions to implement barriers to deter this behaviour and to discuss any apparent trends contributing to the initiation of the crime.

In this instance, the following research questions for each fraud case demand attention:

1. *Was the fraud committed by a licensed person or a certificate of registration holder?*
IMPACT: Educational requirements differ for licenses and certificates.
2. *Was the fraud committed by an owner of the business or by an employee of the business?*
IMPACT: Determines the level of supervision by the licensee in charge and the level of “internal control procedure” in the office to minimise risk in crime and fraud.
3. *Was the fraud committed by a person who had “X” number of years experience in the industry and in particular the handling of trust money.*
IMPACT: Determines the level of work experience in the industry and in particular experience in handling trust money. Also links back to question number 2.

The research method involved a random selection of 10 court cases, which occurred during 2010 to 2012. These court cases were a combination of prosecutions and in some instances also included a prison sentence. The court cases were analysed with the purpose of obtaining the following information:

Prosecution year, location of office, date offences occurred, licence/certificate including the years, reason for the fraud, amount misappropriated and court outcome. The purpose of these nominated classifications, was to explore the possibility of a common link between the 10 court cases and to identify any emerging trends for fraudulent behaviour in the property agency office. The small sample of 10 court cases undertaken in this research is a trial analysis prior to undertaking a larger selection of court cases from the year 1993 to present.

As mentioned earlier in the literature the following equation has been identified to contain the elements of contributing circumstances for white collar crime:

Motive + Targets + Access + Opportunity

With the nominated classifications for the current research in this paper, the correlation with the white collar crime equation, with regards to trust accounts, is as follows:

MOTIVE	Reason for the misappropriation of trust funds
TARGETS	Specific aim to utilize the trust funds which are not required for immediate disbursement on behalf of the agency's clients
ACCESS	Availability of trust funds
OPPORTUNITY	Is the offender in a position of trust and able to access trust funds

Therefore the proposed *Occupational Corruption Equation* with this research paper is extended to incorporate the characteristics associated with occupational licensing:

$$\text{Motive} + \text{Target} + \text{Access} + \text{Opportunity} + \text{Education} + \text{Industry Experience} = \text{White Collar Crime}$$

Whilst the research methodology has narrowed the parameters to these identifiable clusters, this is not intended to dismiss other contributing factors associated with white collar crime. For example, it is worthy to mention the economic upturn and downturn in the real estate industry, and the geographical location of the agency office, as possible additions to the corruption equation.

DISCUSSION AND ANALYSIS

The discussion considers 10 court cases selected at random. The misappropriation of Trust Funds ranged from \$58,855 to \$1,294,576 with jail sentences extending from suspended sentences to 18 months in prison, and disqualification from holding a licence or certificate and working in property. In the majority of the cases the misappropriated money was not recovered, with the consumer lodging claims against the Property Services Compensation Fund. It is beyond the scope of this paper to discuss each court case in detail; therefore these 10 court cases are discussed with issues relating to the categories of the Occupational Corruption Equation, developed within the research method section of this paper. The relevant data for each of these court cases is listed in table 1. From this table, the court case with the highest amount of trust accounting fraud was selected for further discussion.

Summation of 10 Court Cases

This section of the discussion and analysis considers data from Table 1. All the court cases selected related to misappropriation of trust funds. In some instances the final amount of money missing from the trust funds has not yet been determined, as the consumer has up to 2 years from when they become aware of the fraudulent act, to lodge a claim against the Property Services Compensation Fund. In many instances the offender has not repaid the misappropriated funds and this is noted on the public register with the Office of Fair Trading.

In the first instance, we will consider the issue of *Motive* and note from the analysis on table 1, there were 8 instances where the motive related to personal and business use and one instance where the offender was unfortunately involved in a Nigerian Loan scam and also lost a large amount of his own personal wealth. Information for the issue of *Motive* was not available for one of these court cases. Therefore, the overview with these results clearly indicates a greedy approach to the use of other peoples' money, and a lack of ethics and consideration for the trust relationship that accompanies the correct accountability of the trust funds.

The next item considered, related to the *target*, i.e. with whose money within the trust account did the offender select to target. A property agents trust account contains accumulated funds which relate to property management, sales, strata and stock/station agency. Generally if there is a misappropriation of property management funds, this is generally discovered in the early stages of the fraud, since the landlords receive monthly statements with their funds; therefore, the alert to missing money would occur quite quickly. However the other categories mentioned usually function differently, with regards to the consumer accessing these funds regularly. Of the 10 court cases analysed, one case related to a deliberate fraud with a sales deposit; another case related to stock and station agency funding which comprised of large amounts of deposits, and the remainder of the cases were a mixture of property management and sales funds, and a small amount of strata. The conclusion here points to a disregard by the offender to selectively target specific trust money. It does appear that if the offender has the "need" and the funds are existing, a process will be

undertaken to misappropriate the money. However, with the small sample of court cases selected, the issue of target cannot be dismissed altogether, without further consideration. It might be the scenario that the *target* would be a focus point, if other variables, such as opportunity and location played an influence; it could also be the situation that we interpret *target* as the trust funds in general and therefore, not aim to specify the composition of the trust funds.

The analysis of *Access* and *Opportunity* in all of these cases identified the ready availability of the trust funds and the substantial amounts available in a property agency. The offenders were either the owners or directors of the business, and therefore in a position of trust to manipulate the books and accounting records. There is currently a court case where the offender is an employee of the property agency, however due to limiting data it was not possible to include this information in the analysis. Except for one instance, the entities were all licensed with the appropriate category of licences. This licensing is very important, since the consumer has no recourse to claim on the compensation fund, if they chose to transact with an unlicensed entity.

The *Educational Background* embraces the minimum requirements to apply for a property licence, and since 2003 there has been no need to compliment education with *Industry Experience*. However, these two categories do warrant further discussion, since the misappropriation of trust funds has increased during the last decade, as opposed to previous time frames; and coincidentally, the educational programs changed from 2003 alongside with the elimination of industry experience as a prerequisite to licensing. The analysis in table 1 indicates 3 situations where the offenders were licensed prior to 2003; 5 offenders were licensed after 2003; one was not licensed; and one case did not have available information. It would not be possible to comment on an obvious trend with only 10 random court cases, however, the analysis indicates 30% were licensed under the former formal method of education and experience, as opposed to 50% who have undergone training under the new regime since 2003. Also, if the government establishes regulation of utilities to improve the sector performance, and educational requirements are the selected vehicles to determine acceptance of a licence an additional issue is now raised with regards to the adequacy of the current educational requirements.

As mentioned previously, the 10 random court cases have been selected for the purpose of a trial analysis and to identify if there is a need to extract further information from the cases. Due to the complexity of the category of licenses available for property agents, the research would benefit from an analysis of these categories, since an entity such as a corporation requires their own licence with an individual nominated as the licensee. It was observed during the research, that some court cases recorded prosecutions for both the licensed corporation and the directors/licensee in charge. Where this has occurred, the research disregarded the corporation for the purpose of the occupational corruption equation, since the corporation entity is the *vehicle* to service the administrative function of the property agency. Therefore, the offenders in the physical realty would be the personnel within the agency office, such as the licensee, directors, employees etc. However, The Office of Fair Trading seeks to prosecute both the corporation entity and the offenders; the reason being that both of these entities have contributed to the misappropriation of funds. If the analysis in this research paper included the corporation entity, and the individual offenders, the data represented would be incorrectly accounted twice; whereas an entity that is a sole trader is prosecuted only once. Therefore, Table 1 shows the entity alongside the individual offender, and classifies the misappropriated funds for one instance of occurrence only.

The literature review in this paper identified white collar crime as “opportunists” who took advantage of their circumstances; this does appear to be correct with the analysis from the data in table 1. In all instances the offenders were in a position of trust and had access to the trust funds, with one court case in particular, which related to the Nigerian loan scam, where the offender had been a well respected community member for over 30 years. Additionally, the literature identified white collar crime as a descriptor for individuals who were educated, intelligent and affluent and had committed a crime against society. At this stage of the analysis, one can only question if the term “white collar crime” camouflages the true extent of the crime and the impact on society, and if the title “white collar crime” truly is the appropriate title for this type of crime. For instance a person who murders, also commits a crime, but is labelled a “murderer”; a person who robs a bank commits a crime, but is labelled a “bank robber”. Therefore, it is worth considering a more specific label to the general term of white collar crime. Is the offender an “embezzler”; or maybe a “thief” or “fraudster”? Perhaps due to the changing nature and attitudes of society, the term “white collar crime” and the definitions and characteristic relationships of the offenders, which emerged from the 20th Century, require revisiting during the 21st Century.

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Table 1: Prosecutions for Trust Account Money Misappropriated

NAME	TRADING NAME	DIRECTORS	PROSECUTION YEAR	OFFICE LOCATION	DATE OFFENCES OCCURRED	REASON	TRUST AMOUNT MISAPPROPRIATED	Licence or certificate and years held	OUTCOME
St George Property Pty Ltd	Raine & Horne	Phillip Chau	2010	Kogarah	2010	Personal and business use	123,830	Cert. 11/4/89 to 27/7/2000 Lic. 15/7/91 to 14/7/93 Corp. 11/4/2003 to 10/4/2006	18 months prison
	J Real Estate	John Photi	2011	Enfield	2011	Not available	Not available	Lic 10/3/2008 to 9/3/2010	Disqualified
		Sarah A Dougan	2011	Byron Bay	2010-2011	Personal and business use	Not available	Cert. 21/10/2010 to 20/10/2011 Lic 15/2/2011 to 24/6/2011	Disqualified
Azzati Realty Pty Ltd	Raine & Horne	Navid Azzati	2011	Fairfield	2006 - 2007	Personal and business use	58,855 (23 comp. Claims)	Corp. 18/4/2006 to 17/4/2007	7 months suspended sentence
BPBB Pty Ltd	Belle Property Byron Bay		2011	Byron Bay		Personal and business use	550,000	Not available	continuing
PMD Central Coast Pty Ltd	Coastwide Real Estate	Ryan William Campbell	2011	Central Coast	2009	Personal and business use	Unlicensed – no recourse for consumers	Not applicable	2 year good behaviour bond
Hexahead Pty Ltd	Anthony Malouf Shire Properties	Anthony Norman Malouf	2011	Cronulla	2010-2011	Personal and business use	Pre-drawing commission from sales deposits	Corp. 25/5//2006 to 24/5/2011 Cert 8/12/95 to 9/12/96 Lic 5/11/96 to 3/12/2010	Disqualified from holding licence until Dec 2013
Deeds Not Words Pty Ltd	Marquette Turner Luxury Homes	Michael James Marqette and Simon Robert Turner	2011	Potts Point	2009-2011	Not available	Not available	Corp 18/8/2005 to 17/8/2010 Cert 8/3/2004 to 17/3/2006 Lic 8/4/2005 to 16/6/2011	Disqualified
B-Gold Realty Pty Ltd	Century 21 C-View Realty	Yena Suzen Foong	2012	Willoughby	2010	Personal use	80,000	Corp 5/9/2007 to 4/9/2011 Lic 3/7/2001 to 2/7/2011	15 months prison
Bill Wilkinson Agencies Pty Ltd	Bill Wilkinson Agencies Pty Ltd	William Barry Wilkinson	2012	Cooma	2010	Nigerian loan scam	1,294,576	Cor 15/12/82 to 14/12/2010 Lic 7/12/71 to 30/5/2011	18 months prison

Source: Collated and analysed from Annual Reports and schedules from the Office of Fair Trading

Case Study

Bill Wilkinson Agencies Pty Ltd

William Barry Wilkinson (2012)

This section of the paper discusses one selected court case, Bill Wilkinson Agencies Pty Ltd, where the total amount of \$1,294,576 was misappropriated from the trust account. The discrepancy was discovered during 2010, in Cooma, and the misappropriation occurred between February to October 2010. During the court hearing it was mentioned the missing funds related to a Nigerian Loan Scam and it was noted that an amount of approximately \$3.7 million was advanced to Denis Fing over a five year period, with no returns received for the funds.

Therefore, the funds advanced included a combination of trust funds, personal equity and borrowings from family members. The Corporation was licensed since 1982 with the licensee in charge, William Barry Wilkinson holding a licence since 1971. He was convicted and sentenced to 18 months prison, with a non parole period of 18 months.

The *Occupational Corruption Equation* is mapped against the facts in this case, as follows:

Motive + Target + Access + Opportunity + Education + Industry Experience = White Collar Crime

- Bill Wilkinson was *motivated* with the opportunity to acquire wealth
- The trust account funds were *targeted*
- *Access* was very easy, with Bill Wilkinson as the licensee and therefore a signatory on the trust account
- *Opportunity* was available as Bill Wilkinson was in charge of the trust account
- *Education* – in the 1970's when Bill Wilkinson obtained his licence this would have been at a time when the licensing course was for approximately 12 months.
- *Industry Experience* – approximately 44 years working in the property, stock and station industry.

Therefore, this court case demonstrates the mapping of the *Occupational Corruption Equation* where the trust funds were targeted resulting with many consumers losing their funds due to the crime committed by the licensee in charge.

CONCLUSION

This research paper investigated 10 court cases selected at random. The criteria of selection required the prosecutions to relate to the misappropriation of trust funds. The research identified amounts from \$58,855 to \$1,294,576 as missing, with consumers lodging claims against the Property Services Compensation Fund.

The Occupational Corruption Equation was used to analyse and identify any trends which would assist with the understanding of the increase in white collar crime activity in the property profession. To this end the following conclusions were established during the analysis:

Motive: The results clearly indicated the deliberate misuse of the trust funds. There were no circumstances recorded where the misappropriation related to human error.

Target: In all of the 10 court cases, the Trust Funds were the target; however, in only one instance was there a specific target to deliberately use the entire sales deposit of a specific property being sold by the real estate agency, and the remainder of the trust funds were left intact.

Access: The trust funds were identified as being available and readily accessible as the offenders were in a position of trust to manipulate the books and accounting records.

Opportunity: Yes, with the licensees holding the authority to sign cheques, apart from the ethics and legislation, there are no other mechanisms to prohibit the offender using the Trust Funds incorrectly. Whilst the trust funds are audited each year, this has not appeared to be a deterrent for the offenders.

Education: The analysis indicated 30% of the offenders were licensed under the former formal method of education and experience; against 50% who were trained under the more recent educational approach and no requirement for industry experience prior to the granting of a licence. This might indicate an issue with the educational entry requirements.

In conclusion, this small selection of court cases has provided the opportunity to attempt a mapping of trends emerging from the property profession with regards to white collar crime; and it does appear that the ready availability of trust funds is a temptation for these offenders, who have little regard for the laws and ethics of their behaviour. The weakness of the educational requirements has been briefly mentioned and requires further research from a larger selection of cases, before any definite assumptions are established.

FURTHER RESEARCH

The following research questions must be investigated to assist with further research within this topic of white collar crime in a property agency.

Therefore, each fraud case relating to the misappropriation of trust funds, would require research and analysis within the following streams:

1. Identify the relevant educational method used to obtain the licence or certificate of registration. egg did the person complete a property diploma course; or complete a property Certificate IV course; or perhaps received recognition of prior learning.

IMPACT: Determines the level of educational information for property. Many educational institutions offer fast track courses over 15 days to qualify for a licence as opposed to previous educational requirements which required 12 months of full time study and a minimum of 2 years work experience. Links to questions 2 and 3 below.

2. Continue with the research of analysis by mapping the following court cases against the occupational corruption equation:
 - a) 1993 to 2002
 - b) 2003 to the present date

IMPACT: In September 2003, the educational requirements and entry qualifications were changed by lowering the entry requirements for licensing in the property industry. Links to question 1 above.

3. Quantify total licences and certificates issued and held in the property industry for the following years:
 - a) 1993 to 2002
 - b) 2003 to the present date

IMPACT: The data will quantify if the proportional increase or decrease of licensing/certificates correlates to the increase of fraud and or the increase of the value in the misappropriation of trust money.

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