

## Misleading conduct – record penalties of \$18M over ‘\$1 house’ claims



**It's a new penalty record for misleading and generally dodgy behaviour – We Buy Houses and its director just got hit with penalties totalling \$18M.**

It started with the simple idea of explaining to people how to make money in real estate investments. Buy a house for as little as \$1! Without a deposit, bank loan or real estate experience! Quit your job! Make big profits fast! You get the drift.

We Buy Houses peddled its false hope via a complicated web of seminars, boot camps and mentoring programs, along with various websites, a book, fake testimonials and training materials. The fact that it was found liable was entirely unsurprising. The penalty judgment illuminates the uncertainties of penalty assessment and the increasing trend toward big numbers; both of which should be a worry for businesses.

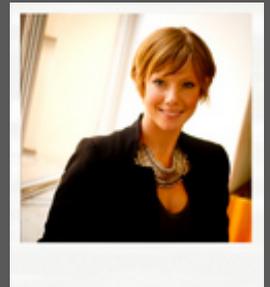
The outcome seems right: big contravention (or number of contraventions) should equal big penalty. But it was an unpredictable path to get there. This case was decided under the old maximum, \$1M. The maximum penalty now starts from \$10M. The courts say that the penalty can apply per contravention or, more often, they apply it to each 'course of conduct', because the literal number of contraventions – e.g. each book sold, each ad printed, would be many thousands.

There are a heap of considerations to apply when assessing a penalty. Few of them are mathematical. Instead they include broad general considerations like deterrence and a vibe-y process called 'instinctive synthesis'.

Here, the court determined a penalty for eight different courses of conduct (including testimonials, the book, the websites, boot camps, etc.) with penalties ranging from \$100K to \$4.2M. Out came \$12M for the company and \$6M for its director.

But what does this mean? It means that the quantum of a penalty can be very difficult to predict, and that the Courts are increasingly prepared to throw the book at businesses doing the wrong thing. In short, the penalty trend is upwards. And with the new, bigger maximum, that is set to be upwards *a lot*.

Questions? Give us a call.



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