

## Information sheet: Motor Finance Wizard - Walker v DTGV1 Pty Ltd

### Use this fact sheet if you:

- want to know more about a case involving DTGV1 Pty, a company which is part of a national group of companies which trades under the name of 'Motor Finance Wizard'.

### More information can be found in our related Information and Action sheets:

- [Information Sheet: Motor Finance Wizard](#)
- Action Sheet: [Motor Finance Wizard - making a free complaint](#) to the Credit Ombudsman Service

### Walker v DTGV1 Pty Ltd trading as V1 Leasing (Credit)

In [Walker v DTGV1 Pty Ltd](#), the Victorian Civil and Administrative Tribunal found that DTGV1 Pty Ltd, which is part of a group of companies which trades as Motor Finance Wizard, had:

- claimed an early termination fees which were unenforceable (amounts of \$1690 and \$4,290 were claimed at different times);
- entered into a lease which was unjust under the *Consumer Credit (Victoria) Code*;
- engaged in unconscionable conduct in breach of the *Fair Trading Act 1999 (Vic)*;
- engaged in misleading or deceptive conduct under in breach of the *Fair Trading Act 1999 (Vic)*.

### What was the outcome?

VCAT set aside (cancelled) the consumer's lease and ordered that DTGV1 Pty Ltd:

- return a \$1,100 deposit paid by Ms Walker;

- pay her \$200 which ought to have been credited to her under the agreement as compensation for the loss of her trade-in vehicle;
- ensure that no adverse listing was made on her credit report.

### Seriously flawed process

VCAT observed that, '[t]he evidence shows that [DTGV1 Pty Ltd's] process in its transaction with Ms Walker was seriously flawed and needs urgent change' [130].

VCAT expressed particular concern about 'the length of the stay at the dealership, the delay in clearly explaining what the nature of the transaction was, the speed and inadequacy of explanations of the transaction given, the lack of real choice in car selection, and the lack of real opportunity given to read or understand the consumer lease'. [130]

### How do I get a copy of the decision?

If you want to consider whether [Walker v DTGV1 Pty Ltd](#) might relate to your circumstances, you can read the case [here](#).

### Can I also go to VCAT?

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[The Credit Ombudsman Service](#) offers a free dispute resolution service for complaints against Motor Finance Wizard. See our 'Action Sheet: [Motor Finance Wizard - making a free complaint](#) to the Credit Ombudsman Service'.

You will need to get legal advice before taking action in a Court or Tribunal.

### **What were some of the things that VCAT found?**

The following is a list of some of the findings of VCAT which may help you in getting a sense of some of the things that the [Credit Ombudsman Service](#) might take into account when considering Motor Finance Wizard's conduct:

#### **The early termination fees were unenforceable**

- The Tribunal was not satisfied that the early termination fees claimed were a genuine reasonable and proportionate pre-estimate of the loss or damage which DTGV1 Pty Ltd would be likely to have suffered because of the early termination of the lease. [105]
- The early termination fees claimed were penalties and unenforceable.

#### **Misleading or deceptive conduct**

The following amounted to unfair pressure and unfair tactics:

- the amount of time taken to complete the transaction was 'excessive and unexplained';
- the use of 'fist points' (questions that are designed to emphasise positives about the company) that 'had the effect of distracting the customer from the legal and financial implications...and focus the customer's attention on obtaining a car';
- 'the most important part of the transaction (the signing of the lease) occurred at the very end, after the customer was already fatigued and inattentive, and least able to deal with or understand that documentation';
- showing the cars in order from the worst to the best, and limiting the range of cars meant that the choices were 'unreasonably directed and restricted.' [122]

#### **Unjust contract**

In finding that the contract was unjust the Tribunal took into account many factors, including the following:

- 'It is not in the public interest that a consumer be bound by a contract of which he/she has little or no understanding.'
- The transaction was not between equals;
- DTGV1 Pty Ltd had not taken all reasonable steps to explain the transaction to the customer;
- It had not given the customer a chance to read all documentation before signing;
- It had not ensured the customer understood the document and the explanations. [114]

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### Ms Walker could not pay without substantial hardship

- DTGV1 Pty Ltd could, by reasonable enquiry at the time of the transaction, have ascertained that Ms Walker would not be able to pay (at the very least) any early termination fee or residual value amount, or be able to maintain rental payments under the lease throughout the term, either at all or without substantial hardship. [124]
- the credit scoring process used by DTGV1 Pty Ltd applied an artificial figure for Ms Walker's living expenses, a figure which underestimated and bore no relation to her actual living expenses [124]
- the process used to determine the weekly payment and what the consumer could afford was 'flawed, inflexible, formulaic ...' [81]

### Failure to explain and understand the lease

- The legal and practical effects of the lease were not adequately explained...and some of the provisions were not explained at all. Some of the explanations were potentially inaccurate and misleading." [121]
- DTGV1 Pty Ltd did not tell the consumer at the beginning what the transaction was, and only did so after a long period, and when she was tired and inattentive.
- DTGV1 Pty Ltd did not tell the consumer the cash price of the Mazda. [123]
- Ms Walker was given no time alone to read the documents.
- Ms Walker was given no opportunity to seek independent legal or professional advice.

- A lease sign-up script which was read to Ms Walker was defective in a number of ways, including:[84]
  - failing to explain clearly what would happen if the consumer offered to purchase the vehicle; [85]
  - the term 'finalisation amount' was explained merely by repeating what is in the lease and its definition was complex and unlikely to be understood by a person without legal knowledge;
  - it did not clearly state when the lessee would be in default under the lease, and what she could do;
  - it 'did not cover every detail of the lease' and 'a complete understanding of the transaction can only be gained by the customer reading the lease documentation'. [91]

### Terms of the lease

- VCAT was not satisfied that the early termination fees or the residual value amount were reasonably necessary to protect the legitimate interests of DTGV1 Pty Ltd. [117]
- the very large difference between what DTGV1 Pty Ltd spent in respect of Ms Walker's lease and what it received, taking into account the terms of the lease concerning residual value and finalisation amount were not reasonably necessary to protect DTGV1 Pty Ltd legitimate interests. [117]



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### **Consumer Action Law Centre**

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Free telephone and email information regarding credit and debt and consumer law matters