

King v John McMahon Stock & Realty Pty (2005 NSWADT 260)

1) Reference Details

Jurisdiction: Equal Opportunities Division of the New South Wales Administrative Decisions Tribunal, Australia

Date of Decision: 21 November 2005

Link to full case:

<http://www.austlii.edu.au/au/cases/nsw/NSWADT/2005/260.html>

2) Facts

Ms King was an Aboriginal woman from the Bundjalung community who at the time lived in Casino. She tried to rent a property through JM Realty and was advised of five available properties. After completing the application form and submitting references she was advised by JM Realty that she would hear from them soon. Over the next fortnight she contacted the agency regularly with no success. Her brother-in-law and sister-in-law, who are not Aboriginal, enquired about similar properties and were informed of a number available. However, when Ms King went to the Agency and enquired about available rental properties she was told there were none available.

3) Law

- Section 20(1) of the Anti-Discrimination Act 1991 (discrimination by qualifying body in pre-qualification area)

4) Legal Arguments

The Complainant

The complainant alleged that she had been refused housing because of her Aboriginal origins, and that this constituted discrimination. She argued that her non-Aboriginal sister-in-law and brother-in-law had been offered property, indicating that the refusal to offer her similar property was on the basis of her racial origins.

The Respondent

The respondent denied all allegations made by the complainant.

5) Decision

The Tribunal found that there was no evidence presented which proved that similar applications from non-Aboriginal people were treated differently. Also, as Ms King's brother-in-law and sister-in-law had not actually applied for a property they were, therefore not an appropriate comparator. On this basis it found that the alleged breach of s. 20(1)(a) had not been proven. However, the Tribunal differentiated her application for accommodation from her subsequent visit to the agency which it deemed to be a further request for accommodation. It found that the proper comparator in relation to this request was other non-Aboriginal people who made the same enquiries about accommodation on that day, therefore Ms King's brother-in-law and sister-in-law's treatment was relevant. On

this basis the Tribunal found that Ms King had been treated less favourably than other people who also enquired about rental properties in that range on that day. The tribunal opined that there was no more probable or innocent explanation for the treatment of Ms King, and therefore concluded that it was on the basis of her Aboriginality.

The tribunal awarded her \$3,000 for non-economic loss.