

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/06/2017 4:14:50 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: QUD324/2017
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION &
ANOR v MALOUF GROUP ENTERPRISES PTY LTD ACN 115 371 581
& ANOR
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 3/07/2017 11:47:43 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Concise Statement

No.



Federal Court of Australia
District Registry: Queensland
Division: General Division

Australian Securities and Investments Commission and another
Applicants

Malouf Group Enterprises Pty Ltd (ACN 115 371 581) and another
Respondents

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. This case concerns a credit repair business, Malouf Group Enterprises Pty Ltd (**MGE**) that used an unconscionable system to mislead vulnerable consumers. Among other things, MGE sales consultants misled consumers to believe that its services could remove negative listings from their credit file when often nothing could, in fact, be done about those listings. In many cases MGE “accepted” a consumer for its services, when there was nothing, in fact, wrong with the consumer’s credit file.
2. Negative listings on a consumer’s credit file (such as defaults on loans and other credit infringements) can affect a consumer’s credit worthiness. A Credit Reporting Body (as defined in s6 *Privacy Act 1988* (Cth)) (**CRB**) compiles credit files about consumers that list, inter alia, negative listings. Negative listings may be incorrectly listed on a consumer’s credit file. Incorrect negative listings can be corrected by a CRB. MGE carried on, in trade or commerce, a business that purported to provide a service of removing incorrect negative listings from a credit file (**credit repair**). The second respondent, Jordan Francis Malouf (**Mr Malouf**), is and was at all relevant times, the sole director and shareholder of MGE.
3. MGE’s services were defined in clause 1 of the agreement entered into between MGE and consumers (**MGE Agreement**) and consisted of MGE providing the consumer with a copy of the consumer’s credit report and written instruction about, inter alia, how to seek to repair their credit file. Pursuant to the MGE Agreement, MGE was not required itself to act on behalf of the consumer in dealing with third parties to remove incorrect negative listings from their credit file, contrary to what MGE led consumers to believe prior to their entering into the MGE Agreement.
4. The unconscionable system was applied to MGE’s customers from at least 1 January 2014 to 31 December 2015 (**the relevant period**). As further outlined in paragraphs 5 to 12 below, the system included: targeting its services to financially vulnerable consumers;

utilising website advertising and sales scripts that were misleading or deceptive or otherwise contravened the *Australian Consumer Law*; using unfair tactics; and paying its sales representatives by commission. Mr Malouf developed the system and caused it to be applied to consumers who were customers, or prospective customers, of MGE.

5. MGE operated a number of websites and actively targeted consumers who: were unaware of the process for listing defaults; had, or were concerned that they might have had, a bad credit file; and who were in a vulnerable financial position and often seeking to repair their credit file in order to apply for a loan. Such consumers would likely search the internet for information on how to contact a CRB like Veda. MGE used up to 86 "Google Adwords", which included the word "Veda", so that MGE's websites appeared as a top ranking sponsored link result for such searches.
6. During the relevant period, MGE made representations on its websites and in its advertising that MGE's service included removal of "*credit defaults*", "*clear outs*" and "*court judgments*" resulting in savings of thousands of dollars in interest payments and "*instant approval for finance*". A disclaimer purporting to limit the service appeared in smaller font at the foot of the websites' homepages. The websites also included misrepresentations about MGE's services, about consumer testimonials, and about it having been voted "Australia's No 1 Credit Repair Solutions Company" or similar.
7. Consumers completed an online form or called MGE directly. In either case, the consumer ultimately spoke to a sales consultant. Sales consultants used a script (**the sales script**) that required them to have at least two calls with the consumer. In the first call the sales consultant would ascertain the basis for the consumer calling MGE and tell the consumer that lenders would "*check your credit history, as soon as they see you've got bad credit, you will be declined*". Sales consultants usually directed consumers to complete an application form that included the terms and conditions of the MGE services. The sales script required the sales consultant to represent to the consumer that MGE had "*an investigation team*" and MGE would "*open your file and look into it and see what procedure and protocol had been used before they have damaged your credit history*". At the end of the first call sales consultants would usually state "*I will have an answer for you in about an hour*".
8. In the second call, usually about an hour later, the sales consultant represented, pursuant to the sales script, that MGE was looking at the consumer's credit file to determine if they had been accepted for the service, whereas in fact no work had been done by MGE in relation to the consumer's credit file between the first and second calls. The sales script required the sales consultant to put the consumer on hold twice during the second call, purportedly to see whether the consumer had been accepted for MGE's service, whereas in fact nothing was done while the consumer was on hold – it was merely a sales tactic.

The sales consultant, following the sales script, then asked the consumer questions about the consumer's own knowledge of their credit history. After the second hold the consumer was told if they had been accepted or rejected for MGE's service.

9. The cumulative effect of the website representations and the sales script was that MGE represented that:
 - (a) it had an investigation team which could determine whether negative listings had been correctly listed on the consumer's credit file. In fact there was no such investigation team. The extent of the "investigation process" was the questions asked by the sales consultant. Consumers were not told that this was the extent of the "investigation" conducted by MGE;
 - (b) after receiving the consumer's application it would obtain the consumer's credit report to establish whether the consumer's credit file could be repaired. In fact it did not usually obtain and consider a consumer's credit report to establish whether their credit file could be repaired;
 - (c) before approving the consumer's application it would establish whether credit providers had failed to correctly follow relevant procedures prior to making a negative listing on the consumer's credit file. In fact it had not usually established that it could remove negative listings from their credit file before approving applications;
 - (d) it would only approve the consumer's application if it established that their credit file could be repaired. In fact it approved consumers' applications without usually establishing whether their credit file could be repaired;
 - (e) its fee would only be payable if it established that negative listings could be removed. In fact its fee was usually payable by consumers who entered into the MGE Agreement, irrespective of whether or not negative listings could be removed from their credit file; and
 - (f) after accepting a consumer for its service, MGE itself would act on behalf of the consumer in dealing with third parties to remove incorrect negative listings from their credit file. However, this was not the service offered pursuant to the MGE Agreement.
10. If, during a sales call, a consumer asked whether MGE could guarantee that their negative listings would be removed, or what the nature of the help was that MGE provided, the sales script required the sales consultant to misrepresent by omission, or obfuscate, the true position. The sales script included other misrepresentations.
11. On accepting the consumer for the MGE service:
 - (a) Payment in full was usually required to be made immediately, despite clause 6 of the MGE Agreement providing it was payable "*upon the provider accepting the client's application and at the client's discretion*";

- (b) The sales script and commission structure of MGE caused sales consultants to pressure consumers to make immediate payment for the service; and
 - (c) Consumers were pressured not to obtain advice or to take time to consider whether or not to proceed with the service, for example by being told that if they wished to proceed later then MGE would have to reopen their file and that doing so could further damage the consumer's credit file by putting another enquiry on it.
12. Consumers were vulnerable to MGE's system due to their financial position.
13. Among those consumers who entered into the MGE Agreement during the relevant period, are four identified consumers who either had no negative listings when they entered into the MGE Agreement, or otherwise had negative listings that were not removed from their credit file after having paid MGE the required fee.

B. THE RELIEF SOUGHT FROM THE COURT

14. The Applicants seek the relief set out in the Application, comprising:
- (a) Declaratory relief under s 21 of the *Federal Court of Australia Act 1976 (Cth)*;
 - (b) Pecuniary penalties under s 224 of the *Australian Consumer Law (ACL)*, being Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)*;
 - (c) Injunctive relief under s 232 of the ACL;
 - (d) Orders under s 237 of the ACL directing the First Respondent to refund money to three of four identified consumers;
 - (e) Orders under s 239 of the ACL directing the Respondents to refund moneys to customers of MGE;
 - (f) Orders under s 246 of the ACL, directing MGE to implement a compliance program, to implement a training program, to revise its internal operations, to issue a corrective notice and requiring it to provide copies of the orders to employees and contractors; and
 - (g) Costs.

C. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

15. By reason of the conduct outlined in paragraphs 3 to 13 MGE, in trade or commerce:
- (a) engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18(1) ACL;
 - (b) made false or misleading representations in connection with the supply or the possible supply of services that the service was of a particular standard, quality, value or grade in contravention of s 29(1)(b) ACL, made false or misleading representations that purport to be testimonials in contravention of s 29(1)(e) ACL, made false or misleading representations concerning testimonials by a person in

contravention of s 29(1)(f) ACL, and made false or misleading representations as to the benefits of the service in contravention of s 29(1)(g) ACL;

- (c) engaged in conduct that was liable to mislead the public as to the characteristics and suitability for their purpose of the MGE service in contravention of s 34 ACL;
- (d) in connection with the supply or possible supply of goods or services, engaged in conduct which was, in all the circumstances, unconscionable, in contravention of s 21 of the ACL.

16. Mr Malouf was knowingly concerned in the contraventions by MGE for the purposes of s 224(1) of the ACL.

D. THE ALLEGED HARM SUFFERED

17. During the relevant period:

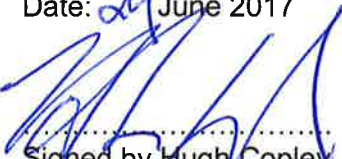
- (a) MGE usually charged consumers a fee of \$1,095 pursuant to the MGE Agreement;
- (b) MGE had 10,530 consumers who paid it for the MGE service;
- (c) Of those 10,530 consumers, 1,516 (or 14.40%) did not, at the time of being accepted by MGE and paying MGE for its service, have any negative listings on their credit file (and thus did not have a credit file requiring repairing and did not need the MGE service); and
- (d) Of those remaining 9,014 consumers with negative listings on their credit file, MGE was usually unable to assist consumers remove negative listings if the credit provider had correctly made a negative listing. MGE was only able to assist approximately 35% of the 9,014 consumers to remove a negative listing from their credit file.

18. MGE thereby received total payments of approximately \$11,530,350.00 from consumers pursuant to the system outlined in paragraphs 3 to 12.

Certificate of lawyer

I, Hugh Copley, certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the statement.

Date: 29 June 2017


Signed by Hugh Copley
Lawyer for the Applicants

This statement was prepared by Mr T Sullivan of Queen's Counsel and Mr S Cleary of Counsel.