



ASIC

Australian Securities & Investments Commission

INFRINGEMENT NOTICE

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 21 July 2016

Unique identification code: R20160000440563

TO: RS Capital Partners Pty Ltd ACN 145 282 908
Unit 503 110 Pacific Highway
North Sydney NSW 2060

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**).
2. ASIC has reasonable grounds to believe that RS has contravened section 12DB(1)(i) of the ASIC Act, which is an infringement notice provision because:
 - (a) Between 23 February 2016 and 30 March 2016 (**the Relevant Period**) R S Capital Partners Pty Ltd (**RS**) made false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy and the false or misleading representations were made in trade or commerce, in connection with the promotion by any means of the supply or use of financial services.
 - (b) In particular, RS, on the My SMSF Property website located at www.mysmsfproperty.com.au (**the My SMSF Property Website**)¹, made a representation about financial services offered by RS trading as My SMSF Property, in relation to self managed superannuation funds (**SMSFs**), namely "FREE SMSF SET UP" (**the Free SMSF Representation**).
 - (c) The My SMSF Property Website homepage did not display, or did not display prominently, the existence or the effect of the conditions that applied to the Free SMSF Representation.
 - (d) The My SMSF Property Website, on various other pages, noted that the following conditions applied to the Free SMSF Representation:
 - i) \$100,000 minimum superannuation balance;
 - ii) 24 months accounting services, at a cost of \$2,200, unless the consumer wanted to use an option other than the default cash management account option, in which case the accounting services would cost more;
 - iii) CBA bank account;
 - iv) individual trustee SMSF; and
 - v) use My SMSF Property's lending service to apply for a loan.

¹ Operated by RS Capital Partners Pty Ltd

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is \$10,800.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):

- (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
- (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1,800,000.

Time for payment

7. The time for payment is:
- (a) within 28 days after the day on which the notice is issued to you; or
 - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

Alexandra Smith
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000
or by email: ACLInfringementNotices@asic.gov.au



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Signature of delegate issuing the notice

Peter Kell

as a delegate of the Australian Securities and Investments Commission