

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Ostrava Equities Pty Ltd

[2016] FCA 1064

File number: VID 201 of 2015

Judge: DAVIES J

Date of judgment: 1 September 2016

Catchwords: **CORPORATIONS** – application by Australian Securities and Investments Commission for declarations of contraventions – orders restraining a person from carrying on financial services business – orders disqualifying a person from managing a corporation – providing managed discretionary account services without Australian financial services licence – carrying on a financial services business and providing financial services without holding an Australian financial services licence – providing financial services without providing a financial services guide – providing a defective financial services guide – giving personal advice without providing a statement of advice – dishonest conduct in relation to financial products – misleading and deceptive conduct – false and misleading representations – unlicensed credit activity – failing to retain statements of advice – failing to retain financial records – persons knowingly concerned in contraventions – breach of directors’ duty of care and diligence – breach directors’ duty of good faith – breach of directors’ duty not to improperly use position – breach of duty to act in best interests of the client

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth), ss 12DA, 12DB
Corporations Act 2001 (Cth) ss 9, 180, 181, 182, 206C, 206E, 286, 461, 464, 763A, 911A, 911B, 941B, 942B, 942C, 946A, 946C, 952E, 961B, 961G, 961Q, 1041G, 1041H, 1101B, 1317E, 1324
Corporations Regulations 2001 (Cth), reg 7.7.09C
Federal Court of Australia Act 1976 (Cth), s 21
National Consumer Credit Protection Act 2009 (Cth), s 29

Cases cited: *ACCC v MSY Technology Pty Ltd* (2012) 201 FCR 378; [2012] FCAFC 56
ASIC v Activesuper Pty Ltd (No 2) (2013) 93 ACSR 189; [2013] FCA 234

ASIC v Activesuper Pty Ltd (in liq) (No 2) (2015) 106 ACSR 302; [2015] FCA 527
ASIC v Adler (2002) 42 ACSR 80; [2002] NSWSC 483
ASIC v Astra Resources Ltd (No 2) (2016) 113 ACSR 162; [2016] FCA 560
ASIC v Axis International Management Pty Ltd (No 6) (2011) 84 ACSR 703; [2011] FCA 811
ASIC v Bilkurra Investments Pty Ltd [2016] FCA 371
ASIC v Chase Capital (2001) 36 ACSR 778; [2001] WASC 27
ASIC v Finchley Central Funds Management Ltd [2009] FCA 1110
ASIC v Maxwell (2006) 59 ACSR 373; [2006] NSWSC 1052
ASIC v Pegasus Leveraged Options Group Pty Ltd (2002) 41 ACSR 561; [2002] NSWSC 310
ASIC v Planet Platinum [2015] VSC 682
ASIC v Sino Australia Oil & Gas Ltd [2016] FCA 201
Re Idylic Solutions; ASIC v Hobbs (2013) 93 ACSR 421; [2013] NSWSC 106
Re Vault Market Pty Ltd [2014] NSWSC 1641
Registrar of Aboriginal and Torres Strait Islander Corporations v Murray [2015] FCA 346

Date of hearing: 21 June 2016

Registry: Victoria

Division: General Division

Category: Catchwords

Number of paragraphs: 62

Counsel for the Plaintiff: J Moore QC

Solicitors for the Plaintiff: Australian Securities and Investments Commission

Counsel for the Fourth and Fifth Defendants: P Lithgow

Solicitors for the Fourth and Fifth Defendants: Neill Ogge Lawyers

ORDERS

VID 201 of 2015

IN THE MATTER OF OSTRAVA EQUITIES PTY LTD (ACN 006 970 930)

BETWEEN: **AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION**
Plaintiff

AND: **OSTRAVA EQUITIES PTY LTD**
First Defendant

OSTRAVA ASSET MANAGEMENT PTY LTD
Second Defendant

OSTRAVA SECURITIES PTY LTD
Third Defendant (and others named in the Schedule)

JUDGE: **DAVIES J**

DATE OF ORDER: **1 SEPTEMBER 2016**

THE COURT ORDERS BY CONSENT THAT:

1. The Court declares that the First Defendant contravened:
 - (a) sections 911A and 911B of the *Corporations Act 2001* (Cth) (“**the Corporations Act**”) during the period June 2009 to May 2015 by providing managed discretionary account services to its clients (including Rodney Bonsack, Douglas Laphorne, Daniel Hoff, Jean Walsh, Richard Stringer, Client BT, Shannon Milligan and William Tobin) without holding an Australian financial services licence or authorisation from the holder of an Australian financial services licence.
 - (b) section 941B of the Corporations Act during the period 2009 to May 2015 by providing financial services to at least 26 retail clients (including Rodney Bonsack, Douglas Laphorne, Daniel Hoff, Jean Walsh and Shannon Milligan) without providing a financial services guide.
 - (c) section 942C of the Corporations Act by:
 - (i) providing Richard Stringer in February 2014 and William Tobin in 2010 with financial services guides that were not dated as required by s 942C(5); and

- (ii) providing a financial services guide to clients WP and KE in January 2014 that was not dated as required by s 942C(5), did not provide the level of detail required by s 942C(3), and was not worded in a clear, concise and effective manner as required by s 942C(6A);
- (d) sections 946A and 946C of the Corporations Act during the period 2009 to February 2014 by giving personal advice to Rodney Bonsack, Daniel Hoff, Jean Walsh and Shannon Milligan, who were retail clients, without providing a Statement of Advice;
- (e) section 1041G of the Corporations Act by engaging in dishonest conduct in relation to financial products and/or services by:
 - (i) during the period July 2012 to June 2015, purporting to charge and recovering unauthorised fees from the PR Associates Super Fund, the Stringer Super Fund and the Milligan Super Fund; and
 - (ii) during the period August 2014 to May 2015, overstating the value of the Tobin Super Fund and representing to William Tobin that the value of the Tobin Super Fund's shareholdings in the Seventh, Ninth and Tenth Defendants represented their purchase price;
- (f) section 1041H of the Corporations Act and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) ("**the ASIC Act**"), by engaging in misleading and deceptive conduct, and s 12DB of the ASIC Act, by making false and misleading representations, during the period June 2013 to May 2015 by overstating the value of the PR Associates Super Fund, the Laphorne Super Fund, the Stringer Super Fund, the Tobin Super Fund and the Gordon Super Fund;
- (g) section 1041H of the Corporations Act and s 12DA of the ASIC Act, by engaging in misleading and deceptive conduct, and s 12DB of the ASIC Act, by making false and misleading representations, by representing to William Tobin in 2010 that it would not invest funds in unlisted investments promoted by the First Defendant;
- (h) section 1041H of the Corporations Act and s 12DA of the ASIC Act by engaging in misleading and deceptive conduct during the period November 2015 to January 2016 by causing funds from the Walsh Super Fund to be

transferred to and received by the Eleventh Defendant without the authorisation or consent of Jean Walsh;

- (i) section 29 of the *National Consumer Credit Protection Act 2009* (Cth) by lending the sum of \$38,000 to client JM in April 2014 and thereby engaging in unlicensed credit activity;
 - (j) regulation 7.7.09C of the *Corporations Regulations 2001* (Cth) by failing to retain a Statement of Advice provided to clients KW and MT and the MT Superannuation Fund in April 2009; and
 - (k) section 286 of the *Corporations Act* by failing to keep for a period of seven years written financial records that correctly recorded and explained its transactions, financial position and performance and would enable true and fair financial statements to be prepared and audited.
2. The Court declares that the First Defendant was knowingly concerned in the Fifth Defendant's contravention of s 961Q of the *Corporations Act* referred to in paragraph 7(a) below.
 3. The Court declares that the Second Defendant contravened s 911A of the *Corporations Act* during the period April 2012 to May 2015 by carrying on a financial services business and providing financial services to Douglas Laphorne, Daniel Hoff, Jean Walsh, Richard Stringer and Shannon Milligan without holding an Australian financial services licence.
 4. The Court declares that the Third Defendant contravened s 952E of the *Corporations Act* in September 2015 by giving Jean Walsh a defective financial services guide in circumstances where the financial services guide:
 - (a) was not dated as required by s 942B(5) of the *Corporations Act*;
 - (b) did not provide the level of detail that a person would reasonably require for the purpose of making a decision whether to acquire financial services from Ostrava Securities as a retail client, as required by s 942B(3) of the *Corporations Act*;
 - (c) was not worded or presented in a clear, concise and effective manner, as required by s 942B(6A) of the *Corporations Act*.

5. The Court declares pursuant to s 1317E of the Corporations Act that the Fourth Defendant contravened s 180 of the Corporations Act as a director of the First to Third Defendants during the period 2009 to January 2016 by:
- (a) failing to take reasonable steps to prevent the First Defendant from committing the contraventions referred to above of sections 286, 911A, 911B, 941B; 942C, 946A, 946C, 1041G and 1041H of the Corporations Act; sections 12DA and 12DB of the ASIC Act; s 29 of the *National Consumer Credit Protection Act 2009* (Cth); and regulation 7.7.09C of the *Corporations Regulations*;
 - (b) failing to take reasonable steps to prevent the Second Defendant from committing the contraventions of s 911A of the Corporations Act referred to above; and
 - (c) failing to take reasonable steps to prevent the Third Defendant from committing the contravention of s 952E of the Corporations Act referred to above.
6. The Court declares that the Fifth Defendant contravened:
- (a) sections 911A and 911B of the Corporations Act during the period June 2009 to May 2015 by providing managed discretionary account services to clients of the First Defendant (including Rodney Bonsack, Douglas Laphorne, Daniel Hoff, Jean Walsh, Richard Stringer, Client BT, Shannon Milligan and William Tobin) without holding an Australian financial services licence or authorisation from the holder of an Australian financial services licence;
 - (b) section 941B of the Corporations Act during the period 2009 to May 2015 by providing financial services to at least 26 retail clients (including Rodney Bonsack, Douglas Laphorne, Daniel Hoff, Jean Walsh and Shannon Milligan) without providing a financial services guide;
 - (c) section 942C of the Corporations Act by providing Richard Stringer in February 2014 with an undated financial services guide;
 - (d) sections 946A and 946C of the Corporations Act during the period 2009 to February 2014 by giving personal advice to Rodney Bonsack, Daniel Hoff, Jean Walsh and Shannon Milligan, who were retail clients, without providing a Statement of Advice;

- (e) section 1041G of the Corporations Act during the period July 2012 to June 2015 by engaging in dishonest conduct in relation to financial products and/or services by purporting to charge and recovering unauthorised fees from the PR Associates Super Fund, the Stringer Super Fund and the Milligan Super Fund;
 - (f) section 1041G of the Act during the period August 2014 to May 2015 by engaging in dishonest conduct in relation to financial products and/or services by overstating the value of the Tobin Super Fund and representing to William Tobin that the value of the Tobin Super Fund's shareholdings in the Seventh, Ninth and Tenth Defendants represented their purchase price;
 - (g) section 1041H of the Corporations Act and s 12DA of the ASIC Act, by engaging in misleading and deceptive conduct, and s 12DB of the ASIC Act, by making false and misleading representations, during the period June 2013 to May 2015 by overstating the value of the PR Associates Super Fund, the Laphorne Super Fund, the Stringer Super Fund, the Tobin Super Fund and the Gordon Super Fund; and
 - (h) section 1041H of the Corporations Act and s 12DA of the ASIC Act during the period November 2015 to January 2016 by engaging in misleading and deceptive conduct by causing funds from the Walsh Super Fund to be transferred to and received by the Eleventh Defendant without the authorisation or consent of Jean Walsh.
7. The Court declares pursuant to s 1317E of the Corporations Act that the Fifth Defendant contravened:
- (a) section 961Q of the Corporations Act by:
 - (i) not acting in the best interests of, and not providing appropriate advice to, Shannon Milligan in February 2014 by advising her to establish a SMSF in contravention of sections 961B and 961G of the Corporations Act in circumstances where it was uneconomic for Ms Milligan to establish and operate an SMSF having regard to the starting balance of the SMSF, the costs likely to be incurred in administering the SMSF and Ms Milligan's personal financial circumstances; and
 - (ii) not acting in the best interests of, and not providing appropriate advice to, three other clients of the First Defendant during the period February

2014 to August 2014 to establish SMSFs in contravention of sections 961B and 961G of the Corporations Act in circumstances where it was uneconomic for those clients to establish and operate an SMSF having regard to the starting balance of the SMSF and the costs likely to be incurred in administering the SMSF;

- (b) section 180 of the Corporations Act as a director of the First Defendant during the period 2009 to January 2016 by:
- (i) providing managed discretionary account services to clients of the First Defendant (including Rodney Bonsack, Douglas Lapthorne, Daniel Hoff, Jean Walsh, Richard Stringer, Client BT, Shannon Milligan and William Tobin) during the period June 2009 to May 2015 without holding an Australian financial services licence or authorisation from the holder of an Australian financial services licence in contravention of sections 911A and 911B of the Corporations Act;
 - (ii) providing financial services to at least 26 retail clients (including Rodney Bonsack, Douglas Lapthorne, Daniel Hoff, Jean Walsh and Shannon Milligan) during the period 2009 to May 2015 without providing a financial services guide in contravention of s 941B of the Corporations Act;
 - (iii) providing Richard Stringer with an undated financial services guide in February 2014 in contravention of s 942C of the Act;
 - (iv) giving personal advice to Rodney Bonsack, Daniel Hoff, Jean Walsh and Shannon Milligan, who were retail clients, during the period 2009 to February 2014 without providing a Statement of Advice in contravention of sections 946A and 946C of the Corporations Act;
 - (v) engaging in dishonest conduct in relation to financial products and/or services during the period July 2012 to June 2015 in contravention of s 1041G of the Corporations Act by purporting to charge and recovering unauthorised fees from the PR Associates Super Fund, the Stringer Super Fund and the Milligan Super Fund;
 - (vi) engaging in dishonest conduct in relation to financial products and/or services during the period August 2014 to May 2015 in contravention of s 1041G of the Corporations Act by overstating the value of the

Tobin Super Fund and representing to William Tobin that the value of the Tobin Super Fund's shareholdings in the Seventh, Ninth and Tenth Defendants represented their purchase price;

- (vii) engaging in misleading and deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act and making false and misleading representations in contravention of s 12DB of the ASIC Act during the period June 2013 to May 2015 by overstating the value of the PR Associates Super Fund, the Laphorne Super Fund, the Stringer Super Fund, the Tobin Super Fund and the Gordon Super Fund;
- (viii) engaging in misleading and deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act during the period November 2015 to January 2016 by causing funds from the Walsh Super Fund to be transferred to and received by the Eleventh Defendant without the authorisation or consent of Jean Walsh;
- (ix) not acting in the best interests of, and providing advice that was inappropriate to, Shannon Milligan in February 2014 and clients of the First Defendant between February 2014 and August 2014, in contravention of s 961Q of the Corporations Act;
- (x) failing to keep accurate records relating to its management and conduct of the Gordon Super Fund;
- (xi) charging and withdrawing fees from the Gordon Super Fund between November 2012 and November 2013 without authorisation or permission;
- (xii) selling 220,000 shares in World Reach Limited on behalf of the Laphorne Super Fund in March 2015 contrary to the express instructions of Douglas and Lynette Laphorne; and
- (xiii) charging and withdrawing fees from the Hoff Super Fund during the period 8 August 2012 to 31 October 2014 without authorisation or permission of Daniel Hoff or the Hoff Super Fund;
- (xiv) causing funds to be transferred from the SMSF cash management accounts of clients of the First Defendant during the period December

- 2013 to June 2014 to the Ostrava Fund for the purpose of acquiring shares in CGR and CGO and failing to transfer the shares from the Ostrava Fund to clients of the First Defendant;
- (xv) permitting and failing to take reasonable steps to prevent the First Defendant from committing the contraventions referred to above of sections 286, 911A, 911B, 941B, 942C, 946A, 946C, 1041G and 1041H of the Corporations Act; sections 12DA and 12DB of the ASIC Act; s 29 of the *National Consumer Credit Protection Act 2009* (Cth); and regulation 7.7.09C of the Corporations Regulations; and
 - (xvi) being knowingly concerned in the First Defendant's contraventions of sections 286, 911A, 911B, 941B, 942C, 946A, 946C, 1041G and 1041H of the Corporations Act; sections 12DA and 12DB of the ASIC Act; s 29 of the *National Consumer Credit Protection Act 2009* (Cth); and regulation 7.7.09C of the Corporations Regulations;
- (c) sections 181 and 182 of the Corporations Act as a director of the First Defendant by:
- (i) purporting to charge and recovering unauthorised fees from the PR Associates Super Fund, the Stringer Super Fund and the Milligan Super Fund during the period July 2012 to June 2015;
 - (ii) overstating the value of the PR Associates Super Fund, the Laphorne Super Fund, the Stringer Super Fund and the Tobin Super Fund during the period August 2013 to May 2015;
 - (iii) representing to William Tobin in February 2014 that the value of the Tobin Super Fund's shareholdings in the Seventh, Ninth and Tenth Defendants represented their purchase price;
- (d) section 182 of the Corporations Act as a director of the First Defendant during the period September 2011 to October 2012 by investing funds from the PR Associates Super Fund, the Laphorne Super Fund and the Tobin Super Fund in the Ostrava Fund without notifying and obtaining the consent of Rodney Bonsack, Douglas Laphorne and William Tobin;
- (e) sections 181 and 182 of the Corporations Act as a director of the First and Eleventh Defendants during the period November 2015 to January 2016 by

causing funds from the Walsh Super Fund to be transferred to and received by the Eleventh Defendant without the authorisation or consent of Jean Walsh;

- (f) section 180 of the Corporations Act as a director of the Second Defendant during the period April 2012 to May 2015 by:
 - (i) permitting and failing to take reasonable steps to prevent the Second Defendant from committing contraventions of s 911A of the Corporations Act; and
 - (ii) being knowingly concerned in the Second Defendant's contraventions of s 911A of the Corporations Act;
- (g) section 180 of the Corporations Act as a director of the Third Defendant in September 2015 by:
 - (i) permitting and failing to take reasonable steps to prevent the Third Defendant from committing the contravention of s 952E of the Corporations Act; and
 - (ii) being knowingly concerned in the Third Defendant's contravention of s 952E of the Corporations Act;
- (h) section 180 of the Corporations Act as a director of the Eighth Defendant during the period July 2012 to October 2015 by permitting or failing to prevent the Eighth Defendant from failing to obtain or retain application forms or any other record of consent for the acquisition by shareholders of shares in Prometheus Capital; and
- (i) sections 181 and 182 of the Act as a director of the Eleventh Defendant by causing the Eleventh Defendant to pay \$25,000 to the provisional liquidators in November 2015 purportedly in accordance with the terms of a funding deed in circumstances where:
 - (i) the funds paid to the provisional liquidators had been transferred to the Eleventh Defendant by clients of the First Defendant; and
 - (ii) those clients had not consented to contributing equity to the Eleventh Defendant and were not aware that the Eleventh Defendant had made a payment to the provisional liquidators.

8. The Court declares that the Eleventh Defendant was involved in contraventions by the First and Fifth Defendants of s 1041H of the Corporations Act and s 12DA of the ASIC Act during the period November 2015 to January 2016 by:
 - (a) causing funds from the Walsh Super Fund to be transferred to it without authorisation or consent; and
 - (b) receiving funds from the Walsh Super Fund without authorisation or consent.
9. The First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defendants be wound up pursuant to ss 461(1)(k) and 464 of the Corporations Act.
10. Leanne Chesser and Craig Shepard of KordaMentha, Level 24, 333 Collins Street, Melbourne in the State of Victoria be appointed joint and several liquidators for the purposes of winding up the First, Second, Third, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defendants.
11. The Fourth and Fifth Defendants be restrained for a period of 10 and 20 years respectively, whether by themselves, their servants, agents and employees or otherwise, from:
 - (a) carrying on a business related to, concerning or directed to financial products or financial services within the meaning of s 761A of the Corporations Act;
 - (b) providing any of the following services:
 - (i) providing financial product advice within the meaning of s 761A of the Corporations Act;
 - (ii) dealing in financial products within the meaning of s 761A of the Corporations Act;
 - (c) in any way holding themselves out as doing the things in (a) or (b) above.
12. The Fourth Defendant be disqualified pursuant to sections 206C and 206E of the Corporations Act from managing corporations for a period of 7 years.
13. The Fifth Defendant be disqualified pursuant to sections 206C and 206E of the Corporations Act from managing corporations for a period of 15 years.
14. Paragraph 3 of the Order dated 18 December 2015 be varied from the date hereof as follows:
 - (a) The injunction does not apply to the income derived from the legal practice conducted by the Fourth Defendant; and

- (b) There be no further deductions by the Fourth Defendant for reasonable living expenses from the funds held in trust with Neill Ogge Lawyers, pursuant to paragraph 1 of the Order dated 10 December 2015 whilst the injunction remains in place.
15. Paragraph 3 of the Order dated 18 December 2015, as varied by paragraph 14 of this Order, is to remain in place until 1 November 2016.
 16. The trial listed for hearing commencing 12 September 2016 (on an estimate of five days) be vacated.
 17. The order of costs against the Plaintiff made on 23 October 2015 be vacated.
 18. No further order, as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

DAVIES J:

INTRODUCTION

- 1 This proceeding was commenced by the Australian Securities and Investments Commission (“ASIC”) in April 2015 seeking orders against the First to Fifth Defendants pursuant to s 1323 of the *Corporations Act 2001* (Cth) (“**the Corporations Act**”). The orders were in aid of an investigation which ASIC had commenced pursuant to s 13 of the *Australian Securities and Investments Commission Act 2001* (Cth) (“**the ASIC Act**”) in relation to possible contraventions of the Corporations Act, and the ASIC Act by the Defendants in respect of the provision of financial services in connection with self-managed superannuation funds.
- 2 In August 2015, ASIC amended its originating process to join the Sixth to Tenth Defendants as parties and sought orders for the winding up of the corporate Defendants and injunctions restraining the Defendants from providing financial services. Orders by consent appointing provisional liquidators to the corporate Defendants (save for the Eleventh Defendant (“**Equity Capital Partners**”) which was then not a party) and restraining the corporate Defendants and the Fifth Defendant (“**Mr Grimm**”) from providing financial services were made in October 2015 without admission of any contravention or wrongdoing.
- 3 In April 2016, ASIC amended its originating process to join Equity Capital Partners as a Defendant and to seek declarations of various contraventions of the Corporations Act and the ASIC Act against the Defendants.
- 4 In June 2016 an agreed statement of facts and admissions was filed jointly on behalf of ASIC, Ms Ash, Mr Grimm and Equity Capital Partners (the only corporate Defendant that is not in provisional liquidation). On the basis of that agreed statement of facts and admissions (which is Annexure 1 to these reasons), ASIC seeks:
 - (a) declarations that the First Defendant (“**Ostrava Equities**”), the Second Defendant (“**Ostrava Asset Management**”), the Third Defendant (“**Ostrava Securities**”), Equity Capital Partners, Ms Ash and Mr Grimm have contravened and/or were involved in contraventions of various provisions of the Corporations Act, the ASIC Act, the *National Consumer Credit Protection*

Act 2009 (Cth) (“**the National Consumer Credit Protection Act**”) and/or the *Corporations Regulations 2001* (Cth) (“**Corporations Regulations**”);

- (b) the winding up of each of the corporate Defendants;
- (c) injunctions preventing Ms Ash and Mr Grimm from carrying on a financial services business and/or being engaged in the provision of financial services for a period of 10 years and 20 years respectively; and
- (d) the disqualification of Ms Ash and Mr Grimm from managing corporations for a period of 7 years and 15 years respectively.

5 These orders have been consented to by Ms Ash, Mr Grimm and Equity Capital Partners.

THE OSTRAVA GROUP

6 The corporate Defendants are all members of the Ostrava group of companies which was established by Mr Grimm. Before turning to the facts and admissions, it is useful to give a broad overview of the Ostrava group’s activities prior to the appointment of the provisional liquidators on 20 October 2015.

7 Ostrava Equities carried on a business of providing financial services in connection with the establishment and administration of self-managed superannuation funds. Ostrava Equities was authorised to provide financial services to retail clients as an authorised representative of Marigold Falconer International Limited (“**Marigold Falconer**”), an Australian financial services licensee. Ostrava Equities was also an authorised representative of Ostrava Securities and the trustee of the Ostrava Fund, an unregistered managed investment scheme.

8 Ostrava Asset Management acted as administrator and/or investment manager for the self-managed superannuation funds established by clients of Ostrava Equities.

9 Ostrava Securities has held an Australian financial services licence since 22 November 2013. The three authorised representatives of Ostrava Securities are Ms Ash, Mr Grimm and Ostrava Equities.

10 The Sixth Defendant (“**Ostrava Wealth Management**”) provided administration services to, and received payments from, the accounts of clients of Ostrava Equities.

11 The Eighth Defendant (“**Prometheus Capital**”) made investments (including on behalf of clients of Ostrava Equities) in listed and unlisted companies and participated in start-ups and venture capital as an unlisted investment company.

12 In February 2015:

- (a) the Seventh Defendant (“**Beta Pharmacology**”) was incorporated for the purpose of participating in the medicinal cannabis industry;
- (b) the Ninth Defendant (“**Thrive Lending**”) was incorporated for the primary purpose of conducting a start-up “peer to peer” lending business; and
- (c) the Tenth Defendant (“**Trade BTC**”) was incorporated for the purpose of providing a start-up “physical” Bitcoin exchange in Melbourne.

13 Equity Capital Partners was recapitalised in or around October or November 2015 (after several years of inactivity) for the purpose of establishing a Bitcoin trading business.

14 Ms Ash is the sole director of Ostrava Equities, a director of Ostrava Securities, and with Mr Grimm a joint director of Ostrava Asset Management. Mr Grimm has admitted that at relevant times he has acted in the position of a director of Ostrava Equities and Ostrava Securities and is therefore a director of those companies as defined in s 9 of the Corporations Act. Mr Grimm is the sole director of Ostrava Wealth Management, Beta Pharmacology, Prometheus Capital, Thrive Lending, Trade BTC and Equity Capital Partners. He is also an authorised representative of Marigold Falconer and Ostrava Securities.

CONTRAVENTIONS

15 The following contraventions have been admitted.

Contraventions of s 911A of the Corporations Act by Ostrava Equities and Mr Grimm:

16 During the period June 2009 to May 2015, Ostrava Equities and Mr Grimm provided managed discretionary account services to retail clients by investing in securities on behalf of the self-managed superannuation funds that Ostrava Equities managed for those clients. The provision of managed discretionary account services to those clients involved an arrangement for making financial investments and thereby constituted a dealing in a financial product within the meaning of ss 763A(1)(a) and 766A of the Corporations Act, and the provision of a “financial service” and the carrying on of a “financial services business” for the purposes of s 911A of the Corporations Act. Neither Ostrava Equities nor Mr Grimm held an Australian financial services licence covering the provision of managed discretionary account services and it was admitted that the provision of such services without an Australian financial services licence was a contravention of s 911A(1) of the Corporations Act.

Contraventions of s 911B of the Corporations Act by Ostrava Equities and Mr Grimm:

17 Ostrava Equities and Mr Grimm were authorised representatives of Marigold Falconer and Ostrava Securities but neither Marigold Falconer nor Ostrava Securities were authorised to provide managed discretionary account services and they were prohibited by clause 21 of the Marigold Falconer Australian financial services licence and clause 19 of the Ostrava Securities Australian financial services licence from providing such services. It was admitted that the provision of managed discretionary account services without authorisation was a contravention of s 911B(1) of the Corporations Act.

Contraventions of s 911A of the Corporations Act by Ostrava Asset Management:

18 During the period April 2012 to May 2015, Ostrava Asset Management provided financial services to clients without holding an Australian financial services licence or being an authorised representative of the holder of an Australian financial services licence. It was admitted that the provision of such services without an Australian financial services licence was a contravention of s 911A(1) of the Corporations Act.

Mr Grimm's knowing involvement in the contraventions of ss 911A and 911B by Ostrava Equities and s 911A by Ostrava Asset Management:

19 Mr Grimm has admitted that he was knowingly concerned in Ostrava Equities' contraventions of ss 911A and 911B of the Corporations Act and Ostrava Asset Management's contraventions of s 911A of the Corporations Act.

Contraventions of s 941B of the Corporations Act by Ostrava Equities and Mr Grimm:

20 During the period 2009 to May 2015, Ostrava Equities and Mr Grimm provided financial services to at least 26 retail clients without giving a financial services guide to those clients. The financial services provided included advice in relation to the establishment of self-managed superannuation funds, arranging for the establishment of self-managed superannuation funds, advice in relation to the investments to be made by self-managed superannuation funds and making investments on behalf of self-managed superannuation funds. It was admitted that the provision of financial services to those clients without giving a financial services guide to those clients was a contravention of s 941B of the Corporations Act.

Mr Grimm's knowing involvement in the contraventions of s 941B by Ostrava Equities:

21 Mr Grimm admitted that he was knowingly concerned in Ostrava Equities' contraventions of s 941B of the Corporations Act.

Contraventions of s 942C of the Corporations Act by Ostrava Equities and Mr Grimm:

22 Four instances were admitted where Ostrava Equities provided clients with a financial services guide that did not provide the level of detail required by s 942C(3) of the Corporations Act, and/or was not worded in a clear concise and effective manner as required by s 942C(6A) of the Corporations Act and/or were not dated as required by s 942C(5) of the Corporations Act. It was admitted that the failure to provide a financial services guide which contained all the information required by s 942C of the Corporations Act was a contravention of that section.

Mr Grimm's knowing involvement in the contraventions of s 942C by Ostrava Equities:

23 Mr Grimm admitted that he was knowingly concerned in Ostrava Equities' contraventions of s 942C of the Corporations Act.

Contravention of s 952E of the Corporations Act by Ostrava Securities:

24 It was admitted that Ostrava Securities provided a client with a financial services guide that failed to provide the level of detail required by s 942B(3), was not worded in a clear concise and effective manner as required by s 942B(6A) of the Corporations Act and was not dated as required by s 942B(5) of the Corporations Act. The giving of a defective financial services guide was a contravention of s 942B and an offence under s 952E of the Corporations Act.

Mr Grimm's knowing involvement in the contravention of s 952E by Ostrava Securities:

25 Mr Grimm admitted that he was knowingly concerned in Ostrava Securities' contravention of s 952E of the Corporations Act.

Contraventions of ss 946A and 946C of the Corporations Act by Ostrava Equities and Mr Grimm:

26 During the period 2009 to 2014, Ostrava Equities and Mr Grimm advised four clients to establish a self-managed superannuation fund with Ostrava Equities and/or in relation to the investments to be made by their self-managed superannuation funds without providing

Statements of Advice to each client. It was admitted that the failure to provide Statements of Advice was a breach of s 946A and s 946C of the Corporations Act.

Mr Grimm's knowing involvement in the contraventions of ss 946A and 946C by Ostrava Equities:

27 Mr Grimm has admitted that he was knowingly concerned in Ostrava Equities' contraventions of those sections.

Contraventions of ss 961B, 961G and 961Q of the Corporations Act by Mr Grimm:

28 Ostrava Equities and Mr Grimm advised nine clients to establish self-managed superannuation funds in circumstances where the rollover balance of each client's self-managed superannuation fund was less than \$50,000. Four of those clients received the advice after 1 July 2013, when ss 961B, 961G and 961Q were inserted into the Corporations Act. It was admitted that it was uneconomic for those clients to establish and operate a self-managed superannuation fund having regard to the starting balance, the cost likely to be incurred in administering such a fund and in the case of one client her personal financial circumstances. It was further admitted that Mr Grimm failed to act in the best interests of those clients as required by s 961B(1) of the Corporations Act and failed to provide those clients with appropriate advice as required by s 961G of the Corporations Act. The contraventions of ss 961B and 961G were also contraventions of s 961Q of the Corporations Act, which is a civil penalty provision.

Ostrava Equities' knowing involvement in the contravention of s 961Q by Mr Grimm:

29 It was admitted that Mr Grimm provided that advice on behalf of Ostrava Equities. Ostrava Equities was thus knowingly concerned in Mr Grimm's contraventions of s 961Q of the Corporations Act.

Contraventions of s 1041G of the Corporations Act by Ostrava Equities and Mr Grimm:

30 During the period July 2012 to June 2015, Ostrava Equities and Mr Grimm knowingly charged and recovered unauthorised fees from the self-managed superannuation funds established by three of its clients.

31 During the period August 2014 to May 2015, Mr Grimm and Ostrava Equities knowingly significantly overstated the value of a superannuation fund in client holding statements and in

advice given to the client about the value of shareholdings held by the client's superannuation fund in Beta Pharmacology, Trade BTC and Thrive Lending.

32 It was admitted that Ostrava Equities and Mr Grimm acted dishonestly by doing so and thereby contravened s 1041G of the Corporations Act.

Mr Grimm's knowing involvement in the contravention of s 1041G by Ostrava Equities:

33 Mr Grimm has admitted that he was knowingly concerned in Ostrava Equities' contravention of s 1041G of the Corporations Act.

Contraventions of s 1041H of the Corporations Act and ss 12DA and 12DB of the ASIC Act by Ostrava Equities and Mr Grimm:

34 During the period 2010 to January 2016, Mr Grimm and Ostrava Equities:

- (a) gave five clients client holding statements that misrepresented the value of their self-managed superannuation funds by overstating the value;
- (b) misrepresented to a client that Ostrava Equities would not invest funds in unlisted investments promoted by Ostrava Equities; and
- (c) falsely represented to a client that she was required to sign share transfer forms for the purpose of selling shares in order to generate funds needed to pay off a credit card debt, causing funds from a self-managed superannuation fund to be transferred to and received by Equity Capital Partners without the authorisation or consent of the client.

35 It was admitted that this conduct contravened s 1041H(1) of the Corporations Act and ss 12DA(1) and 12DB(1) of the ASIC Act.

Equity Capital Partners was involved in the contraventions of s 1041H of the Corporations Act and ss 12DA and 12 DB of the ASIC Act by Ostrava Equities and Mr Grimm:

36 It was admitted that Equity Capital Partners was involved in the contraventions of s 1041H of the Corporations Act and ss 12DA and 12DB of the ASIC Act by Ostrava Equities.

Mr Grimm's knowing involvement in the contraventions of s 1041G by Ostrava Equities:

37 Mr Grimm admitted that he was knowingly concerned in Ostrava Equities' contraventions of s 1041H of the Corporations Act and ss 12DA and 12DB of the ASIC Act.

Contravention of s 286 of the Corporations Act by Ostrava Equities:

38 It was admitted that the books and records kept by Ostrava Equities contained a number of errors, discrepancies and omissions including:

- (a) no records of employment contracts;
- (b) no record of any assets register or depreciation schedule in circumstances where the balance sheet prepared for the FY16 disclosed that Ostrava Equities had an interest in motor car(s) with a book value of \$94,007 net of accumulated depreciation;
- (c) no record or account for funds drawn by the directors from the funds of Ostrava Equities for payment of expenses personally incurred by the directors;
- (d) the failure to obtain and retain signed application forms from clients for the acquisition of units in the Ostrava Fund;
- (e) the failure to maintain a unit register in the form required by the trust deed and the failure to provide certificates to unit holders as required by clause 25 of the trust deed of that fund.

39 It was admitted that the failures in record keeping was a contravention of s 286 of the Corporations Act.

Mr Grimm's knowing involvement in the contravention of s 286 by Ostrava Equities:

40 It was admitted that Mr Grimm was knowingly involved the contravention of s 286 of the Corporations Act by Ostrava Equities

Contravention of s 29 of the National Consumer Credit Protection Act by Ostrava Equities:

41 Ostrava Equities made a loan to a client when it was not licensed or authorised to engage in that credit activity. It was admitted that Ostrava Equities engaged in a "credit activity" within the meaning of that expression as defined in s 6 of the National Consumer Credit Protection Act and by making a loan to a client without holding a licence authorising it to engage in that credit activity, Ostrava Equities contravened s 29(1) of the National Consumer Credit Protection Act.

42 Mr Grimm has admitted that he was involved in that contravention.

Contraventions of regulation 7.7.09C of the Corporations Regulations by Ostrava Equities:

43 Regulation 7.7.09C imposes the requirement that a Statement of Advice must be retained for seven years after the day on which the statement is provided to the client. It was admitted that Ostrava Equities contravened reg 7.7.09C by failing to retain Statements of Advice provided to three clients.

Mr Grimm's knowing involvement in the contraventions of regulation 7.7.09C by Ostrava Equities:

44 Mr Grimm has admitted that he was involved in those contraventions.

Contraventions of s 180 of the Corporations Act by Ms Ash and Mr Grimm:

45 Mr Grimm admitted the following breaches of directors duties under s 180 of the Corporations Act:

- (a) as a director of Ostrava Equities, Ostrava Asset Management and Ostrava Securities, Mr Grimm was involved in, and failed to take reasonable steps to prevent, the contraventions of each of those companies. Mr Grimm admitted that those contraventions caused the companies' actual damage and it was reasonably foreseeable that those contraventions would harm the companies' interests; and
- (b) as a director of Prometheus Capital, Mr Grimm did not cause Prometheus Capital to obtain or retain application forms or any other record of consent for the acquisition by shareholders of shares in Prometheus Capital.

46 Ms Ash admitted that as a director of Ostrava Equities, Ostrava Asset Management and Ostrava Securities, she breached her director's duties under s 180 of the Corporations Act by failing to take reasonable steps to supervise Mr Grimm and prevent those companies from committing contraventions of the Corporations Act.

Contraventions of ss 181 and 182 of the Corporations Act by Mr Grimm:

47 Mr Grimm admitted that in his capacity as a director of Ostrava Equities he:

- (a) charged and withdrew unauthorised fees from three superannuation funds;
- (b) overstated the value of three superannuation funds in client holding statements; and

- (c) invested funds from three superannuation funds in the Ostrava Fund without notifying and obtaining consent from those clients.

48 By that conduct he breached his duties as a director under s 181 and/or s 182 of the Corporations Act by:

- (a) improperly using his position to gain an advantage for himself or for Ostrava Equities;
- (b) acting for an improper purpose; and
- (c) failing to act in good faith and in the best interest of Ostrava Equities.

49 Mr Grimm admitted that in his capacity as a director of Ostrava Equities and Equity Capital Partners he transferred client funds to Equity Capital Partners without the authorisation or consent of the client and that by this conduct he breached his duties as a director under ss 181 and 182 of the Corporations Act by:

- (a) improperly using his position to gain an advantage for himself or for Equity Capital Partners;
- (b) acting for an improper purpose; and
- (c) failing to act in good faith and in the best interest of Ostrava Equities and Equity Capital Partners.

50 Mr Grimm also admitted that in his capacity as a director of Equity Capital Partners, he caused Equity Capital Partners to pay \$25,000 to the provisional liquidators which he warranted were not the subject of any of the claims made by ASIC in this proceeding when those funds had been transferred to Equity Capital Partners from Ostrava Equities without authorisation from the clients and at least some of the money transferred is the subject of claims made by ASIC in this proceeding. He admitted that by this conduct he breached ss 181 and 182 of the Corporations Act by:

- (a) improperly using his position to gain an advantage for himself, Ms Ash the corporate Defendants; and
- (b) failing to act in good faith in the best interests of Equity Capital Partners and for a proper purpose.

DECLARATIONS

51 The declarations sought by ASIC are within the jurisdiction of the Court (see s 21 of the *Federal Court of Australia Act 1976* (Cth) and/or s 1317E of the Corporations Act), Mr Grimm and Ms Ash are proper contradictors because they have an interest in opposing the making of the declarations sought by ASIC (*ACCC v MSY Technology Pty Ltd* (2012) 201 FCR 378; [2012] FCAFC 56) and it is appropriate to grant the declaratory relief. The declarations have utility as they serve the public interest by identifying the contravening conduct and recording the Court's disapproval of that contravening conduct.

INJUNCTIONS

52 The Court's power to grant the injunctions which ASIC seeks is conferred by s 1324(1) of the Corporations Act. Section 1324(1) provides as follows:

Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:

- (a) a contravention of this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
- (f) conspiring with others to contravene this Act;

the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

53 The relevant principles and considerations were addressed by Santow J in *ASIC v Adler* (2002) 42 ACSR 80; [2002] NSWSC 483 at [56] ("*Adler*"). That case concerned disqualification orders, but the same principles have been held to apply to restraint orders made under s 1324: *Re Idyllic Solutions*; *ASIC v Hobbs* (2013) 93 ACSR 421; [2013] NSWSC 106 at [92]-[106]; *ASIC v Activesuper Pty Ltd (in liq) (No 2)* (2015) 106 ACSR 302; [2015] FCA 527 at [30]. In *Adler* Santow J summarised the types of cases that warrant permanent orders or orders for very long periods (25 years), medium periods (of between 7 and 12 years), and the shortest periods (up to 3 years). In relation to the length of injunctions, Santow J at [56] noted the following from the cases decided to that point:

(xiii) Factors which lead to the imposition of the longest periods of disqualification (that is disqualifications of 25 years or more) were:

- large financial losses;
- high propensity that defendants may engage in similar activities or conduct;
- activities undertaken in fields in which there was potential to do great financial damage such as in management and financial consultancy;
- lack of contrition or remorse;
- disregard for law and compliance with corporate regulations;
- dishonesty and intent to defraud;
- previous convictions and contraventions for similar activities.

Australian Securities and Investments Commission v Hutchings; Australian Securities and Investments Commission v Pegasus Leveraged Options Group Pty Ltd; Australian Securities Commission v Parkes;

(xiv) In cases in which the period of disqualification ranged from 7-12 years, the factors evident and which lead to the conclusion that these cases were serious though not “worst cases”, included:

- serious incompetence and irresponsibility;
- substantial loss;
- defendants had engaged in deliberate courses of conduct to enrich themselves at others’ expense, but with lesser degrees of dishonesty;
- continued, knowing and wilful contraventions of the law and disregard for legal obligations;
- lack of contrition or acceptance of responsibility, but as against that, the prospect that the individual may reform;

Australian Securities Commission v Forem-Freeway Enterprises; Australian Securities Commission v Donovan; Australian Securities Commission v Roussi; Re Strikers Management Pty Ltd; Re Gold Coast Holdings Pty Ltd.

....

(xv) The factors leading to the shortest disqualifications, that is disqualifications for up to 3 years, were:

- although the defendants had personally gained from the conduct, they had endeavoured to repay or partially repay the amounts misappropriated;
- the defendants had no immediate or discernible future intention to hold a position as manager of a company;
- in *Donovan’s* case, the respondent had expressed remorse and contrition, acted on advice of professionals and had not contested the proceedings;

Australian Securities Commission v Donovan; Re Tasmanian Spastics

Association.

54 Taking these factors into account, the periods of restraint from providing financial services which ASIC, Mr Grimm and Ms Ash have agreed upon, being for a period of 20 years and 10 years respectively, are appropriate in their cases.

55 Mr Grimm admitted to numerous very serious statutory contraventions by the companies of which he was a director and acting as a director, and of knowing involvement in those contraventions and breaches of his duties as a director, including engaging in conduct that was dishonest and using his position as a director of those companies for improper purposes. His conduct was deliberate and in contumelious disregard of the law and statutory requirements. There is evidence that clients have suffered significant losses occasioned by the contravening conduct. Many clients were low income earners without significant funds under management, at least nine clients were advised to establish a self-managed superannuation fund where it was uneconomic for them and in the case of four clients, they made contributions that exceeded the closing or most recent value of the superannuation fund after fees and payments deducted by the Defendants. Mr Grimm engaged in deliberate courses of conduct to enrich himself and the corporate group that he established at others' expense. Another weighty factor that I take into account is that Mr Grimm was acting as a director during a period when he was disqualified from doing so by reason that he was bankrupt. He has since taken responsibility for his conduct and actions by admitting to the contraventions, but the serious nature of many of the contraventions justifies a lengthy period of restraint from carrying on a business of, and providing, financial services.

56 Ms Ash admitted to fewer contraventions of the Corporations Act and no allegation of dishonesty has been made or admitted by her. It is relevant however that Ms Ash is a qualified lawyer and was employed by ASIC within the Enforcement Team between 2000 and 2009, including as team leader. Her qualifications and professional experience put her in the position where she either knew, or ought to have known, the standard of conduct required by law but she appears to have relied passively on Mr Grimm in the carrying on of the financial services business without proper supervision or exercising any independent or critical judgment as a director. In assessing the appropriateness of the agreed period of restraint I attach considerable weight to Ms Ash's position as a director and her professional experience. The term of the restraint agreed upon is justified in her case, albeit recognising that she also has taken responsibility by admitting her part in the contraventions.

DISQUALIFICATION ORDERS

57 The Court has the power pursuant to s 206E of the Corporations Act to disqualify a person from managing corporations for a period that the Court considers appropriate if the person has been an officer of a company which has twice contravened the Corporations Act and, on each occasion, the person failed to take reasonable steps to prevent the contravention: s 206E(1)(a)(i); *ASIC v Pegasus Leveraged Options Group Pty Ltd* (2002) 41 ACSR 561; [2002] NSWSC 310, at [102]; *ASIC v Maxwell* (2006) 59 ACSR 373; [2006] NSWSC 1052 at [124]; *ASIC v Axis International Management Pty Ltd (No 6)* (2011) 84 ACSR 703; [2011] FCA 811 at [6], [7], [18] and [19]; and *Re Vault Market Pty Ltd* [2014] NSWSC 1641, at [67], [88]; *ASIC v Astra Resources Ltd (No 2)* (2016) 113 ACSR 162; [2016] FCA 560 at [72].

58 In addition to s 206E(1), the Court has the power to impose disqualification orders on Mr Grimm and Ms Ash pursuant to s 206C of the Corporations Act given that Mr Grimm and Ms Ash have admitted to contraventions of s 180 of the Corporations Act and Mr Grimm admitted to contraventions of ss 181 and 182 of the Corporations Act, which are civil penalty provisions.

59 In *Adler*, Santow J set out the principles applicable to making a disqualification order. These were recently restated by Gordon J in *Registrar of Aboriginal and Torres Strait Islander Corporations v Murray* [2015] FCA 346 at [220] as follows:

- (1) Disqualification orders are designed to protect the public from the harmful use of the corporate structure or from use that is contrary to proper commercial standards.
- (2) Disqualification orders are designed to protect the public by seeking to safeguard the public interest in the transparency and accountability of companies and in the suitability of directors to hold office.
- (3) Protection of the public also envisages protection of individuals that deal with companies, including consumers, creditors, shareholders and investors.
- (4) A disqualification order is protective against present and future misuse of the corporate structure.
- (5) The order has a motive of personal deterrence, though it is not punitive.
- (6) The objects of general deterrence are also sought to be achieved.
- (7) In assessing the fitness of an individual to manage a company, it is necessary that they have an understanding of the proper role of the company director and the duty of due diligence that is owed to the company.
- (8) Longer periods of disqualification are reserved for cases where

contraventions have been of a serious nature such as those involving dishonesty.

- (9) In assessing the appropriate length of prohibition, consideration has been given to the degree of seriousness of the contraventions, the propensity that the defendant may engage in similar conduct in the future and the likely harm that may be caused to the public.
- (10) It is necessary to balance the personal hardship to the defendant against the public interest and the need for protection of the public from any repeat of the conduct.
- (11) A mitigating factor in considering a period of disqualification is the likelihood of the defendant reforming.
- (12) The eight criteria to govern the exercise of the court's powers of disqualification set out in *Commissioner for Corporate Affairs (WA) v Ekamper* (1987) 12 ACLR 519 are influential. The criteria were character of the offenders, nature of the breaches, structure of the companies and the nature of their business, interests of shareholders, creditors and employees, risks to others from the continuation of offenders as company directors, honesty and competence of offenders, hardship to offenders and their personal and commercial interests and offenders' appreciation that future breaches could result in future proceedings.
- (13) Factors which lead to the imposition of the longest periods of disqualification (of 25 years or more), were large financial losses, high propensity that defendants may engage in similar activities or conduct, activities undertaken in fields in which there was potential to do great financial damage, lack of contrition or remorse, disregard for law and compliance with corporate regulations, dishonesty and intent to defraud and previous convictions and contraventions for similar activities.
- (14) In cases in which the period of disqualification ranged from 7 to 12 years, the factors included serious incompetence and irresponsibility, substantial loss, defendants had engaged in deliberate courses of conduct to enrich themselves at others' expense, but with lesser degrees of dishonesty, continued, knowing and wilful contraventions of the law and disregard for legal obligations and lack of contrition or acceptance of responsibility, but as against that, the prospect that the individual may reform.
- (15) The factors leading to the shortest disqualifications, that is disqualification for up to three years, were although the defendants had personally gained from the conduct, they had endeavoured to repay or partially repay the amounts misappropriated, the defendants had no immediate or discernible future intention to hold a position as manager of a company and the defendant had expressed remorse and contrition, acted on the advice of professionals and had not contested the proceedings.

60 In this case, a number of those matters are pertinent in considering the period of disqualification. The elements of protection of the public and personal deterrence are particularly relevant given the numerous serious contraventions and in the case of Mr Grimm, and admission of actual dishonesty on his behalf. For the same reasons that lengthy terms of restraint from carrying on a business of, and providing, financial services are justified,

I consider that the periods of disqualification of Ms Ash and Mr Grimm from managing corporations which they have agreed to, being for a period of seven years and fifteen years respectively, are appropriate. In so concluding I take into account that Mr Grimm and Ms Ash have admitted the contravening conduct which is a mitigating factor in respect of the length of disqualification that should be imposed.

WINDING UP

61 ASIC also seeks the winding up of the corporate Defendants on just and equitable grounds under ss 461(1)(k) and 464 of the Corporations Act. The winding up orders have been consented to by Mr Grimm and Ms Ash and Equity Capital Partners. There is little doubt in the present case that winding up orders should be made. There is a justified lack of confidence in the conduct and management of the companies' affairs such as to give rise to a real risk to the public interest that warrants protection: *ASIC v Bilkurra Investments Pty Ltd* [2016] FCA 371 at [55]; *ASIC v Activesuper Pty Ltd (No 2)* (2013) 93 ACSR 189; [2013] FCA 234 at [20]. No evidence has been led concerning the solvency of the companies, but I do not consider that solvency in this case is a factor that would point against a winding up order on the just and equitable ground. Even if the companies are solvent, on the findings made, there has been serious and substantial misconduct and mismanagement in the affairs of the companies and having regard to the nature and extent of the contraventions, the order is justified in order to prevent and condemn the repeated breaches of the law: *ASIC v Sino Australia Oil & Gas Ltd* [2016] FCA 201 at [24]; *ASIC v Planet Platinum* [2015] VSC 682. Public interest considerations justify the intervention for investor protection circumstances where there has been repeated breaches of the law: *ASIC v Finchley Central Funds Management Ltd* [2009] FCA 1110 at [3]; *ASIC v Chase Capital* (2001) 36 ACSR 778; [2001] WASC 27 at [75].

CONCLUSION

62 The declarations and other orders sought by ASIC will be made.

I certify that the preceding sixty-two (62) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies.

Associate:

A handwritten signature in black ink, appearing to be 'E. J. Davies', written over a horizontal line.

Dated: 1 September 2016

ANNEXURE 1

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/06/2016 7:21:14 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: Statement of Agreed Facts
File Number: VID201/2015
File Title: Australian Securities and Investment Commission v Ostrava Equities Pty Ltd & Ors
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 20/06/2016 7:21:19 PM AEST

Registrar

A handwritten signature in cursive script, appearing to read 'Warwick Soden'.

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.



No. VID 201 of 2015*

Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF OSTRAVA EQUITIES PTY LTD (ACN 108 866 717)

BETWEEN

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

AND

OSTRAVA EQUITIES PTY LTD (ACN 108 866 717) and others named in the schedule
First Defendant

AGREED STATEMENT OF FACTS AND ADMISSIONS (made pursuant to s 191 of the Evidence Act 1995 (Cth))

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I. INTRODUCTION AND PARTIES

1. This Agreed Statement of Facts and Admissions is made jointly by the plaintiff and the defendants pursuant to s191 of the *Evidence Act 1995* (Cth) and for the purpose of this proceeding only.

A. ASIC

2. The plaintiff, the Australian Securities and Investments Commission (**ASIC**), is a body corporate able to sue in its corporate name by reason of s 8 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

B. Ostrava Equities

3. The first defendant, Ostrava Equities Pty Ltd (**Ostrava Equities**):

3.1 is, and was since 28 April 2004, a company incorporated in Australia;

3.2 was at all material times the trustee of the Ostrava Equities Unit Trust (**Ostrava Fund**), a managed investment scheme that was not registered under s 601ED of the *Corporations Act 2001* (Cth) (**Act**);

3.3 was an authorised representative of:

- (a) Marigold Falconer International Limited (ACN 006 970 930) (**Marigold Falconer**), an Australian financial services licensee (AFSL 244315) (MF AFSL), between 8 November 2004 and 21 October 2015; and

- (b) the third defendant, Ostrava Securities Pty Ltd (**Ostrava Securities**), an Australian financial services licensee (AFSL 436231) (**OS AFSL**), from 30 March 2015;

3.4 was placed into provisional liquidation on 20 October 2015.

4. Until 20 October 2015, Ostrava Equities was engaged in the business of:

4.1 providing services associated with the establishment and administration of self-managed superannuation funds (**SMSFs**); and

4.2 providing financial services as an authorised representative of Marigold Falconer and/or Ostrava Securities.

5. On the 'About Us' page of the website www.ostrava.com.au, as at 14 April 2015, Ostrava Equities marketed its director, the fourth defendant, Vanessa Ash (**Ash**), as 'a fully qualified barrister, offering a full suite of legal services in conjunction with Bradley. This includes the proper legal documentation for Wills, trusts, self-managed superannuation, and a host of other elements that need the experienced hand of a professional'.

6. As an authorised representative of Marigold Falconer between 8 November 2004 until 21 October 2015, Ostrava Equities was authorised to:

6.1 apply for, acquire, vary or dispose of financial products on behalf of another;

6.2 arrange for a person to deal in a financial product; and

6.3 provide financial product advice,

in relation to the financial products specified in the MF AFSL.

7. As an authorised representative of Marigold Falconer, Ostrava Equities was prohibited, by clause 21 of the MF AFSL, from providing managed discretionary account services to retail clients except where operating a registered scheme.

~~8. As an authorised representative of Ostrava Securities from 30 March 2015, Ostrava Equities was authorised to:~~

~~8.1 apply for, acquire, vary or dispose of financial products on behalf of another;~~

~~8.2 provide general financial product advice only; and~~

8.3 deal in a financial product,

in relation to the financial products referred to in paragraph 12 below.

9. As an authorised representative of Ostrava Securities, Ostrava Equities was prohibited, by clause 19 of the OS AFSL, from providing managed discretionary account services to retail clients except where operating a registered scheme.

C. Ostrava Asset Management

10. The second defendant, Ostrava Asset Management Pty Ltd (**Ostrava Asset Management**):

10.1 is and was since 1 July 2010 a company incorporated in Australia;

10.2 acted as administrator and / or investment manager of SMSFs established by clients of Ostrava Equities;

10.3 provided:

(a) administration services to clients of Ostrava Equities; and

(b) professional advice to SMSFs established by clients of Ostrava Equities in the formulation of an investment strategy; and

10.4 was placed into provisional liquidation on 20 October 2015.

D. Ostrava Securities

11. The third defendant, Ostrava Securities:

11.1 is and was since 13 August 2012 a company incorporated in Australia;

11.2 held the OS AFSL from about 22 November 2013; and

11.3 was placed into provisional liquidation on 20 October 2015.

12. Pursuant to the OS AFSL, Ostrava Securities was authorised to carry on a financial services business to:

12.1 provide general financial product advice to retail and wholesale clients for the following classes of financial products:

- (a) deposit and payment products, limited to basic deposit products;
 - (b) interests in managed investment schemes, including investor directed portfolio services; and
 - (c) securities; and
- 12.2 deal in a financial product for retail and wholesale clients by applying for, acquiring, varying or disposing of a financial product on behalf of another person in respect of the following classes of financial products:
- (a) deposit and payment products limited to basic deposit products;
 - (b) interests in managed investment schemes, including investor directed portfolio services; and
 - (c) securities.
13. The authorised representatives of Ostrava Securities are:
- 13.1 from 22 November 2013, the fourth defendant (**Ash**);
 - 13.2 from 30 March 2015, Ostrava Equities; and
 - 13.3 from 30 March 2015, the fifth defendant (**Grimm**).

E. Ash

14. The fourth defendant, Ash:
- 14.1 has been married to Grimm since 8 April 2008;
 - 14.2 is a qualified Australian legal practitioner;
 - 14.3 was a director of Ostrava Equities between 20 May 2008 and 21 October 2010 and has been the sole director since 29 April 2011;
 - 14.4 Ash's role at Ostrava Equities was a director and a lawyer and she undertook compliance and legal work;
 - 14.5 has been a director and the company secretary of Ostrava Asset Management since 1 July 2010;

- 14.6 has been a director and the company secretary of Ostrava Securities since 13 August 2012;
 - 14.7 has been a director of GB Ash and Co Pty Ltd (**GB Ash and Co**) since 29 July 2013;
 - 14.8 has been an authorised representative of Ostrava Securities since 22 November 2013;
15. Ash was previously employed by ASIC within the Enforcement Team between 20 November 2000 and 30 November 2009. At the time her employment with ASIC ceased, Ash was a Team Leader within the Enforcement Team.

F. Grimm

16. The fifth defendant, Grimm:

- 16.1 has been married to Ash since 8 April 2008;
- 16.2 was a director and company secretary of Ostrava Equities from 22 February 2006 until 21 May 2008;
- 16.3 was declared bankrupt on 20 May 2008 and discharged from bankruptcy on 21 May 2011;
- 16.4 has been a director of Ostrava Asset Management since 28 March 2012;
- 16.5 has been the sole director of the sixth defendant, Ostrava Wealth Management Pty Ltd (**Ostrava Wealth Management**) since 28 August 2013;
- 16.6 has been a director of GB Ash and Co since 12 December 2013;
- 16.7 has been the sole director of:
 - (a) the seventh defendant, Beta Pharmacology Pty Ltd (**Beta Pharmacology**), from 23 February 2015;
 - (b) the eighth defendant, Prometheus Capital Pty Ltd (**Prometheus Capital**), from 12 July 2012;
 - (c) the ninth defendant, Thrive Lending Pty Ltd (**Thrive Lending**), from 11 February 2015;

- (d) the tenth defendant, Trade BTC Pty Ltd (**Trade BTC**), from 11 February 2015; and
 - (e) the eleventh defendant, Equity Capital Partners Hedge Fund Pty Ltd (**Equity Capital Partners**), from 20 March 2013;
- 16.8 was an authorised representative of Marigold Falconer International Limited between 16 August 2005 and 13 November 2009 and between 20 June 2011 to 21 October 2015, and when acting in that capacity was:
- (a) authorised to apply for, acquire, vary or dispose of financial products on behalf of another;
 - (b) authorised to arrange for a person to deal in a financial product;
 - (c) authorised to provide financial product advice; and
 - (d) not authorised to provide managed discretionary account services.
- 16.9 has been an authorised representative of Ostrava Securities since 22 November 2013 and when acting in that capacity was:
- (a) authorised to apply for, acquire, vary or dispose of financial products on behalf of another;
 - (b) authorised to provide general financial product advice only;
 - (c) not authorised to provide personal advice;
 - (d) authorised to deal in a financial product; and
 - (e) not authorised to provide managed discretionary account services.
17. At all material times, Grimm:
- 17.1 made, or participated in making, decisions that affected the whole or substantial part of the business of Ostrava Equities;
 - 17.2 was responsible for the day to day operations of Ostrava Equities, including: conducting initial meetings with clients of Ostrava Equities; providing financial advice to clients; liaising with clients regarding their accounts; managing and facilitating transactions on clients' accounts; calculating and drawing fees to

Ostrava Equities from clients' accounts; and communicating with accountants to facilitate preparation of client financial information;

17.3 had sole, or alternatively primary, responsibility within Ostrava Equities for making investment decisions for the Ostrava Fund; and

17.4 thereby acted in the position of a director of Ostrava Equities.

18. At all material times, Grimm:

18.1 made, or participated in making, decisions that affected the whole or substantial part of the business of Ostrava Securities; and

18.2 was responsible for the operations of Ostrava Securities; and

18.3 thereby acted in the position of a director of Ostrava Securities.

19. By reason of the matters referred to in paragraphs 17 and 18 above, at all material times, Grimm was a director of Ostrava Equities and Ostrava Securities within the meaning of s 9 of the Act.

G. Ostrava Wealth Management

20. The sixth defendant, Ostrava Wealth Management:

20.1 is and was since 20 December 2009 a company incorporated in Australia;

20.2 received payments from the accounts of clients of Ostrava Equities; and

20.3 was placed into provisional liquidation on 20 October 2015.

H. Beta Pharmacology

21. The seventh defendant, Beta Pharmacology:

21.1 is and was since 23 February 2015 a company incorporated in Australia;

21.2 as recorded in a one-and-a-half page business plan dated November 2014, was established for the primary purpose of participating in the medicinal cannabis industry, should the use of cannabis for medicinal purposes be legalised;

- 21.3 since its incorporation, has issued 316,325 preference shares for no consideration;
- 21.4 has never traded;
- 21.5 had no cash flow, no legally protected intellectual property and no identifiable plan for the future of the business at any relevant time; and
- 21.6 was placed into provisional liquidation on 20 October 2015.

I. Prometheus Capital

22. The eighth defendant, Prometheus Capital:

- 22.1 is and was since 12 July 2012 a company incorporated in Australia;
- 22.2 was established for the purpose of investing in both listed and unlisted companies and participating in start-ups and venture capital as an unlisted investment company;
- 22.3 received payments from the accounts of clients of Ostrava Securities in the amount of about \$247,350;
- 22.4 as at 14 July 2015, had funds of \$30,864.64;
- 22.5 was placed into provisional liquidation on 20 October 2015.

J. Thrive Lending

23. The ninth defendant, Thrive Lending:

- 23.1 is and was since 11 February 2015 a company incorporated in Australia;
- 23.2 as recorded in a one-and-a-half page business plan dated January 2015, was established for the primary purpose of conducting a start-up "peer to peer" lending business;
- 23.3 since its incorporation, has issued 235,100 preference shares for no consideration; and
- 23.4 has never traded;

23.5 had no cash flow, no legally protected intellectual property and no identifiable plan for the future of the business; and

23.6 was placed into provisional liquidation on 20 October 2015.

K. Trade BTC

24. The tenth defendant, Trade BTC:

24.1 is and was since 11 February 2015 a company incorporated in Australia;

24.2 as recorded on a three page business plan dated December 2014, was established for the purported purpose of providing a start-up "physical" Bitcoin exchange in Melbourne;

24.3 since its Incorporation, has issued 177,600 preference shares for no consideration;

24.4 has never held any Bitcoins or established any infrastructure;

24.5 has never traded;

24.6 had no cash flow, no legally protected intellectual property and no identifiable plan for the future of the business; and

24.7 was placed into provisional liquidation on 20 October 2015.

L. Equity Capital Partners

25. The eleventh defendant, Equity Capital Partners:

25.1 is and was since 3 July 2006 a company incorporated in Australia;

25.2 was "recapitalised" by Grimm in or around October or November 2015 for the purpose of establishing a Bitcoin trading business;

25.3 has never traded; and

25.4 at all relevant times had no cash flow, no legally protected intellectual property and no identifiable plan for the future of the business.

II. DEFENDANTS' DEALINGS WITH CLIENTS

A. RODNEY BONSACK AND PRIYA COOPER

A.1 Provision of financial services and advice by Grimm and Ostrava Equities

26. In or about the first half of 2009, Grimm and Ostrava Equities advised Rodney Bonsack (**Bonsack**) and his wife (**Cooper**) to establish an SMSF with Ostrava Equities (**PR Associates SMSF Advice**). The PR Associates SMSF Advice was given by Grimm during a meeting between Grimm and Bonsack in or about the first half of 2009.
27. The PR Associates SMSF Advice was:
 - 27.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire a superannuation interest, namely an SMSF, within the meaning of the *Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act)*;
 - 27.2 personal advice within the meaning of s 766B(3) of the Act; and
 - 27.3 provided to Bonsack and Cooper as retail clients within the meaning of s 761G of the Act.
28. In or about June or July 2009, Grimm and Ostrava Equities arranged for Bonsack and Cooper to establish an SMSF with Ostrava Equities called the PR Associates Superannuation Fund (**PR Associates Super Fund**).
29. In or about June or July 2009, Grimm and Ostrava Equities established a cash account for the PR Associates Super Fund with Bankwest.
30. Under cover of a letter dated 10 February 2010, Grimm and Ostrava Equities gave Bonsack and Cooper financial advice in relation to investments to be made by the PR Associates Super Fund (**Bonsack and Cooper Advice**).
31. The Bonsack and Cooper Advice was:
 - 31.1 financial product advice, constituted by recommendations intended to influence persons making decisions in relation to superannuation interests (or

which could reasonably be regarded as being intended to have such an influence) in recommending an investment strategy for the PR Associates Super Fund;

- 31.2 personal advice within the meaning of s 766B(3) of the Act; and
 - 31.3 provided to Bonsack and Cooper as retail clients within the meaning of s 761G of the Act.
32. Between August 2011 and May 2014, Grimm and Ostrava Equities made investments on behalf of the PR Associates Super Fund.
33. By the conduct in paragraph 32 above, Grimm and Ostrava Equities dealt in financial products.
34. Between April and June 2012, Grimm and Ostrava Equities arranged for the following funds to be transferred from Bonsack and Cooper's existing superannuation funds to the PR Associates Super Fund cash account:

15 June 2012	Super Trace	\$1,212.86
2 & 22 May 2012, 5, 19 & 28 June 2012	QSuper	\$1,316.65
12 & 26 April 2012, 11 & 24 May 2012, 7 & 21 June 2012	Paradigm TSM	\$3,360
19 June 2012	AMP	\$10,212.72
26 June 2012	GESB Super	\$269,393.69

35. By the conduct in paragraphs 28, 29, and 34 above, Grimm and Ostrava Equities dealt in financial products by arranging for Bonsack and Cooper to acquire superannuation interests within the meaning of the SIS Act.
36. By the conduct in paragraphs 26 to 34, Grimm and Ostrava Equities provided Bonsack and Cooper with:
- 36.1 financial services as retail clients; and
 - 36.2 personal advice as retail clients.
-
37. Grimm and Ostrava Equities did not provide Bonsack or Cooper with:
- 37.1 a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act; or

37.2 a Statement of Advice within the meaning of s 947C of the Act as required by s 946A and / or 946C of the Act,

at the time they engaged in the conduct in paragraphs 26 to 34, or any other time.

A.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

38. In or about 2009, Bonsack and Cooper authorised Grimm and Ostrava Equities to administer and manage the PR Associates Super Fund and make investment decisions on its behalf, including by giving Grimm authority to operate the PR Associates cash account and the share trading account held with Patersons Securities Ltd (**Patersons**).

39. When managing the PR Associates Super Fund and making on its behalf the investments referred to in paragraph 32 above, Grimm and Ostrava Equities did not:

39.1 seek or obtain instructions from Bonsack or Cooper prior to making investment decisions; or

39.2 refer to or notify Bonsack or Cooper prior to making investments on behalf of the PR Associates Super Fund using funds from the PR Associates Super Fund.

40. By reason of the matters referred to in paragraphs 32 and 38 to 39 above, Grimm and Ostrava Equities provided managed discretionary account services to Bonsack and Cooper and the PR Associates Super Fund.

A.3 Unauthorised charging of fees by Grimm and Ostrava Equities

41. In or about the first half of 2009, Bonsack and Grimm agreed at a meeting at Bonsack's home in Currabine, Western Australia that:

41.1 Ostrava Equities would charge a performance fee of 20% of the returns made by the PR Associates Super Fund; and

~~41.2 If the SMSF did not generate a return, Grimm and Ostrava Equities would not charge fees to Bonsack, Cooper or the PR Associates Super Fund.~~

42. In the year ending 30 June 2013, the PR Associates Super Fund did not generate a positive return and decreased in value from \$257,902 to \$243,458.

43. By reason of the matters referred to in paragraph 41 and 42 above, Grimm and Ostrava Equities were not authorised to charge any fees for the financial year ending 30 June 2013.

44. In the year ending 30 June 2013, Ostrava Equities and Grimm charged and withdrew fees from the PR Associates Super Fund cash account in the sum of \$10,048.00.

A.4 Misrepresentations as to the value of the PR Associates Super Fund by Grimm and Ostrava Equities

45. The investments made by Grimm and Ostrava Equities on behalf of the PR Associates Super Fund referred to in paragraph 32 above included the acquisition of:

45.1 shares in ASX listed companies;

45.2 units in the Ostrava Fund;

45.3 25,000 shares in Beta Pharmacology;

45.4 27,500 shares in Thrive Lending; and

45.5 25,000 shares in Trade BTC.

46. Prior to causing the PR Associates Super Fund to acquire units in the Ostrava Fund, or at any other time, Grimm and Ostrava Equities did not:

46.1 disclose to Bonsack, Cooper or the PR Associates Super Fund that:

(a) funds from the PR Associates Super Fund would be invested in the Ostrava Fund; and

(b) Grimm and Ostrava Equities controlled the Ostrava Fund;

46.2 seek or obtain the consent of Bonsack, Cooper or the PR Associates Super Fund.

47. The shares in Beta Pharmacology, Thrive Lending and Trade BTC were acquired by the PR Associates Super Fund for no consideration.

48. Between August 2014 and May 2015, Grimm and Ostrava Equities emailed Client Holding Statements to Bonsack and Cooper that represented that the value of the PR Associates Super Fund (**PR Associates Value Representations**) was as follows:

Date of Client Holdings Statement	Represented value of the PR Associates Super Fund
18 August 2014	\$337,994.50
8 December 2014	\$302,408.40
13 January 2015	\$387,886.46
9 February 2015	\$337,974.65
9 March 2015	\$371,822.47
12 April 2015	\$387,479.94
25 May 2015	\$389,414.51

49. The PR Associates Value Representations were made by Grimm and Ostrava Equities in the course of trade or commerce and in relation to financial services.

50. The PR Associates Value Representations were false or misleading because they overstated the value of the shares held by the PR Associates Super Fund by:

50.1 overstating the value of the ASX listed shares held by the PR Associates Super Fund as follows:

Date of Client Holdings Statement	Value of ASX listed shares in Client Holdings Statement	Actual value as at the date of the Client Holdings Statement
18 August 2014	\$233,333.70	\$222,120.75
13 January 2015	\$158,632.93	\$150,392.06
6 March 2015	\$193,481.11	\$177,471.25
10 April 2015	\$208,918.43	\$195,066.43
25 May 2015	\$213,103.00	\$202,652.14

50.2 overstating the value of the shares held by the PR Associates Super Fund in Beta Pharmacology, Thrive Lending and Trade BTC. The Client Holding Statements stated that the value of each share was \$1 when in fact the actual value of each share was nil or less than \$1.

A.5 Contraventions of the Act by Ostrava Equities

51. By engaging in the conduct in paragraphs 28 and 30 above, Ostrava Equities contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.
52. By reason of the matters referred to in paragraphs 26 to 37, Ostrava Equities contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
53. By engaging in the conduct in paragraphs 38 to 40, Ostrava Equities:
 - 53.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and
 - 53.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
54. By reason of the matters referred to in paragraphs 41 to 44, Ostrava Equities engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by purporting to charge, and by recovering, fees from clients of the financial services business that were not authorised by the clients.
55. By reason of the matters referred to in paragraphs 45 to 50, Ostrava Equities in the course of trade or commerce:
 - 55.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and
 - 55.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

A.6 Contraventions of the Act by Grimm

56. By engaging in the conduct in paragraphs 26 and 30 above, Grimm contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.
57. By reason of the matters referred to in paragraphs 26 to 37 above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
58. By engaging in the conduct in paragraphs 38 to 40, Grimm:
- 58.1 was involved in Ostrava Equities' contravention of s 911A of the Act;
 - 58.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
59. By reason of the matters referred to in paragraphs 41 to 44, Grimm engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by knowingly charging and recovering unauthorised fees from clients of the financial services business.
60. By engaging in the conduct in paragraph 46, Grimm:
- 60.1 Improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the increase in the fees that would be charged by Ostrava Equities as the trustee of the Ostrava Fund; and
 - 60.2 thereby, contravened s 182 of the Act.
61. By reason of the matters referred to in paragraphs 45 to 50, Grimm in the course of trade or commerce:
- 61.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

61.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and /or s 12DB(1)(e) of the ASIC Act.

62. Grimm was involved in and/or failed to take reasonable steps to prevent Ostrava Equities from committing the contraventions in paragraphs 51 to 55 above.

63. The contraventions by Ostrava Equities referred to in paragraphs 51 to 55 caused actual damage to Ostrava Equities and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities.

64. By reason of the matters referred to in paragraphs 56 to 63 above, Grimm:

64.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and

64.2 thereby, contravened s 180(1) of the Act.

65. By engaging in the conduct in paragraphs 41, 44 and 48, Grimm:

65.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the unauthorised fees charged and recovered from the PR Associates Super Fund and the retention of clients' custom from overstating the value of the PR Associates Super Fund;

65.2 acted for an improper purpose, by seeking the advantages referred to in paragraph 65.1;

65.3 failed to act in good faith in the best interests of Ostrava Equities; and

65.4 thereby contravened ss 181(1) and 182(1) of the Act.

A.7 Contraventions of the Act by Ash

66. As a director of Ostrava Equities, Ash failed to take reasonable steps to prevent Ostrava Equities from committing the contraventions in paragraphs 51 to 55 above.

67. By reason of paragraphs 51 to 55 and 66 above, Ash:

67.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities; and

67.2 thereby, contravened s 180(1) of the Act.

B. DOUGLAS AND LYNETTE LAPHORNE

B.1 Provision of financial services and advice by Grimm and Ostrava Equities

68. Between February and April 2012, Grimm and Ostrava Equities advised Douglas Laphorne (**Laphorne**) and his wife (**Lynette Laphorne**) orally and in writing to establish an SMSF with Ostrava Equities (**Laphorne SMSF Advice**).

69. The Laphorne SMSF Advice was:

69.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire a superannuation interest, namely an SMSF, within the meaning of the SIS Act;

69.2 personal advice within the meaning of s 766B(3) of the Act; and

69.3 provided to Laphorne and Lynette Laphorne as retail clients within the meaning of s 761G of the Act.

70. On or around 28 April 2012, Ostrava Equities gave Laphorne and Lynette Laphorne a Statement of Advice dated 28 April 2012 (**Laphorne Statement of Advice**).

71. In or about May 2012, in accordance with the Laphorne SMSF Advice, Grimm and Ostrava Equities arranged for Laphorne and Lynette Laphorne to establish an SMSF with Ostrava Equities called the Laphorne Superannuation Fund (**Laphorne Super Fund**).

72. In or about May 2012, Grimm and Ostrava Equities established a cash account with Bankwest for the Laphorne Super Fund.

73. From about 15 June 2012, Grimm and Ostrava Equities:

73.1 caused the Laphorne Super Fund to invest in shares; and

73.2 caused the Laphorne Super Fund to invest in the Ostrava Fund.

74. By the conduct in paragraphs 70 to 73, Grimm and Ostrava Equities dealt in financial products.

75. Between February and April 2012, Grimm, Ostrava Equities and Ostrava Asset Management gave Laphorne and Lynette Laphorne financial advice in relation to the investments to be made by the Laphorne Super Fund (**Laphorne Investment Advice**). The Laphorne Investment Advice was provided by Ostrava Equities in a client proposal entitled "Client Proposal Doug & Lyn Laphorne February 2012" and by Ostrava Asset Management in the Laphorne Super Fund Investment Strategy dated 28 April 2012.

76. The Laphorne Investment Advice was:

76.1 financial product advice, constituted by recommendations intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) in recommending an investment strategy for the Laphorne Super Fund;

76.2 personal advice within the meaning of s 766B(3) of the Act; and

76.3 provided to Laphorne and Lynette Laphorne as retail clients within the meaning of s 761G of the Act.

77. By reason of the matters referred to in paragraphs 68 to 76, Grimm, Ostrava Equities and/or Ostrava Asset Management provided Laphorne and Lynette Laphorne with:

77.1 financial services as retail clients; and

77.2 personal advice as retail clients.

78. Grimm, Ostrava Equities and/or Ostrava Asset Management did not provide Laphorne or Lynette Laphorne with a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act at the time of engaging in the conduct in paragraphs 68 to 75, or any other time.

B.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

79. Grimm and Ostrava Equities made investment decisions, and carried out those decisions, for and on behalf of the Lapthorne Super Fund.
80. When managing the Lapthorne Super Fund and making investments on its behalf, Grimm and Ostrava Equities did not:
- 80.1 seek or obtain instructions from Lapthorne or Lynette Lapthorne prior to making investment decisions; or
 - 80.2 refer to or notify Lapthorne or Lynette Lapthorne prior to making investments on behalf of the Lapthorne Super Fund using funds from the Lapthorne Super Fund.
81. By reason of the matters referred to in paragraphs 79 and 80 above, Grimm and Ostrava Equities provided managed discretionary account services to Lapthorne, Lynette Lapthorne and the Lapthorne Super Fund.

B.3 Misrepresentations as to the value of the Lapthorne Super Fund by Grimm and Ostrava Equities

82. The investments made by Grimm and Ostrava Equities on behalf of the Lapthorne Super Fund referred to in paragraph 73 included the acquisition of:
- 82.1 shares in ASX listed companies; and
 - 82.2 units in the Ostrava Fund.
83. Grimm and Ostrava Equities did not:
- 83.1 disclose to Lapthorne, Lynette Lapthorne or the Lapthorne Super Fund that:
 - (a) funds from the Lapthorne Super Fund would be invested in the Ostrava Fund; and
 - (b) Grimm and Ostrava Equities controlled the Ostrava Fund;
 - 83.2 seek or obtain the consent of Lapthorne, Lynette Lapthorne or the Lapthorne Super Fund;

prior to causing the Laphome Super Fund to acquire units in the Ostrava Fund, or at any other time.

84. On or around 7 November 2014, Grimm and Ostrava Equities represented to Laphome, Lynette Laphome and the Laphome Super Fund in a Client Holding Statement that the value of the Laphome Super Fund (**Laphome Value Representation**) was \$401,339.83.

85. The Laphome Value Representation was made by Grimm and Ostrava Equities:

85.1 in the course of trade or commerce; and

85.2 In relation to financial products.

86. The Laphome Value Representation was false or misleading because it overstated the value of the shares held by the Laphome Super Fund in ASX listed companies as follows:

Date of Client Holdings Statement	Value of ASX listed shares in Client Holdings Statement	Actual value as at the date of the Client Holdings Statement
7 November 2014	\$340,653.87	\$321,944.42

B.4 Failure to act in accordance with client instructions

87. On or around 14 February 2015, in an email to Grimm, Lynette Laphome instructed Grimm to suspend all trading activity on behalf of the Laphome Super Fund.

88. On or around 2 March 2015, contrary to the express instruction referred to in paragraph 87, Grimm sold 220,000 shares in World Reach Limited held by the Laphome Super Fund.

B.5 Contraventions of the Act by Ostrava Equities

89. By engaging in the conduct in paragraphs 68 to 76 above, Ostrava Equities ~~contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.~~

90. By engaging in the conduct in paragraphs 79 and 80, Ostrava Equities:

90.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

90.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

91. By making the Laphome Value Representation and by reason of the matters in paragraphs 82 to 86, Ostrava Equities in the course of trade or commerce:

91.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

91.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

B.6 Contraventions of the Act by Ostrava Asset Management

92. By engaging in the conduct in paragraph 75 above, Ostrava Asset Management contravened s 911A by carrying on a financial services business and providing financial services without an Australian financial services licence.

B.7 Contraventions of the Act by Grimm

93. By reason of the matters in paragraphs 68 to 76 above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.

94. By engaging in the conduct referred to in paragraphs 79 and 80, Grimm:

94.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act;

94.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

95. By making the Laphome Value Representation and by reason of the matters in paragraphs 82 to 86, Grimm in the course of trade or commerce:

95.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

95.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

96. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 89 to 92 above.

97. The contraventions by Ostrava Equities and Ostrava Asset Management referred to in paragraphs 89 to 92 above caused actual damage to Ostrava Equities and Ostrava Asset Management and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities and Ostrava Asset Management.

98. By reason of the matters in paragraphs 93 to 97 above, Grimm:

98.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities and Ostrava Asset Management; and

98.2 thereby, contravened s 180(1) of the Act.

99. By engaging, and permitting Ostrava Equities and Ostrava Asset Management to engage, in the conduct in paragraphs 83 and 89 to 92 above, Grimm:

99.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities and Ostrava Asset Management; and

99.2 thereby, contravened s 180(1) of the Act.

100. By engaging in the conduct in paragraphs 87 and 88, Grimm:

100.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and

100.2 thereby, contravened s 180(1) of the Act.

101. By engaging in the conduct in paragraphs 83 to 86, Grimm:

101.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the increase in fees that would be charged by Ostrava Equities as trustee of the Ostrava Fund and the retention of clients' custom from overstating the value of the Laphome Super Fund; and

101.2 acted for an improper purpose, by seeking the advantages referred to in paragraph 65.1;

101.3 failed to act in good faith in the best interests of Ostrava Equities; and

101.4 thereby contravened ss 181(1) and 182(1) of the Act.

B.8 Contraventions of the Act by Ash

102. As a director of Ostrava Equities and Ostrava Asset Management, Ash failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 89 to 92 above.

103. By reason of the matters referred to in paragraphs 89 to 92, 97 and 102 above, Ash:

103.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities and Ostrava Asset Management; and

103.2 thereby, contravened s 180(1) of the Act.

C. DANIEL HOFF

C.1 Provision of financial services and advice by Grimm and Ostrava Equities

104. In or around April 2012, during discussions between Grimm and Daniel Hoff (Hoff) at Hoff's house in Pyrmont, NSW, Grimm agreed with Hoff:

- 104.1 Ostrava Equities would manage the Daniel Hoff Superannuation Fund (**Hoff Super Fund**) on behalf of Hoff and his wife (**Borysenkova**); and
- 104.2 Grimm would buy and sell shares on behalf of the Hoff Super Fund;
(Hoff Agreement).
105. In or around April 2012, Grimm, Ostrava Equities and Ostrava Asset Management provided Hoff with financial advice in relation to investments to be made by the Hoff Super Fund (**Hoff Investment Advice**). The Hoff Investment Advice was provided by Ostrava Equities in the "Ostrava Asset Management & Superannuation Client Proposal: Dan Hoff April 2012" and provided by Ostrava Asset Management as recorded in the "Hoff Super Fund Investment Strategy".
106. The Hoff Investment Advice was:
- 106.1 financial product advice, constituted by recommendations intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) in recommending an investment strategy for the Hoff Super Fund;
- 106.2 personal advice within the meaning of s 766B(3) of the Act; and
- 106.3 provided to Hoff as a retail client within the meaning of s 761G of the Act.
107. In or about 2012, in accordance with the Hoff Agreement, Grimm and Ostrava Equities:
- 107.1 established a cash account for the Hoff Super Fund with Bankwest; and
- 107.2 established a share trading account for the Hoff Super Fund with Patersons.
108. From around June 2012, Grimm and Ostrava Equities managed the Hoff Super Fund and made investment decisions on its behalf.
109. By the conduct in paragraphs 107 and 108, Grimm and Ostrava Equities dealt in financial products.
110. By the conduct in paragraphs 104 to 109, Grimm, Ostrava Equities and Ostrava Asset Management provided Hoff with:
- 110.1 financial services as retail clients; and

110.2 personal advice as retail clients.

111. At the time of engaging in the conduct in paragraphs 104 to 108, or any other time, Grimm, Ostrava Equities and Ostrava Asset Management did not provide Hoff with:

111.1 any Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act; or

111.2 any Statement of Advice within the meaning of s 947C of the Act as required by s 946A and / or 946C of the Act,

C.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

112. In or around April 2012, Hoff authorised Grimm and Ostrava Equities to administer and manage the Hoff Super Fund and make Investment decisions on its behalf.

113. When managing the Hoff Super Fund and making investments on its behalf, Grimm and Ostrava Equities did not obtain instructions from Hoff prior to making investment decisions.

114. By reason of the matters referred to in paragraphs 112 and 113 above, Grimm and Ostrava Equities provided managed discretionary account services to Hoff and the Hoff Super Fund.

C.3 Unauthorised deduction of fees by Grimm and Ostrava Equities

115. In or around April 2012, during discussions between Grimm and Hoff at Hoff's house in Pymont, NSW, Grimm and Hoff agreed that Ostrava Equities would charge the Hoff Super Fund fees of between \$800 and \$1,200 per year to manage the Hoff Super Fund, including the provision of accounting and auditing services (**Hoff Fee Agreement**).

116. Grimm and Ostrava Equities:

116.1 did not charge the Hoff Super Fund fees in accordance with the Hoff Fee Agreement referred to in paragraph 115;

116.2 withdrew fees from the Hoff Super Fund without the authorisation or permission of Hoff or the Hoff Super Fund; and

116.3 during the period 8 August 2012 to 31 October 2014, charged the Hoff Super Fund approximately \$13,306 in "brokerage" fees.

C.4 Contraventions of the Act by Ostrava Equities

117. By engaging in the conduct in paragraph 105 above, Ostrava Equities contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.

118. By engaging in the conduct in paragraphs 104 to 109 above, Ostrava Equities contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.

119. By engaging in the conduct in paragraphs 112 to 114, Ostrava Equities:

119.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

119.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

C.5 Contravention of the Act by Ostrava Asset Management

120. By engaging in the conduct in paragraphs 105 and 106 above, Ostrava Asset Management contravened s 911A by carrying on a financial services business and providing financial services without an Australian financial services licence.

C.6 Contraventions of the Act by Grimm

121. By engaging in the conduct in paragraphs 105 and 106 above, Grimm contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing to the client a Statement of Advice.

122. By engaging in the conduct in paragraphs 104 to 109 above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.

123. By engaging in the conduct referred to in paragraphs 112 to 114, Grimm:

123.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act;

123.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

124. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 117 to 120 above.

125. The contraventions by Ostrava Equities and Ostrava Asset Management in paragraphs 117 to 120 caused actual damage to Ostrava Equities and Ostrava Asset Management and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities and Ostrava Asset Management.

126. By reason of the matters referred to in paragraphs 115, 116 and 121 to 125 above, Grimm:

126.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and

126.2 thereby, contravened s 180(1) of the Act.

C.7 Contraventions of the Act by Ash

127. As a director of Ostrava Equities and Ostrava Asset Management, Ash failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 117 to 120 above.

128. By reason of paragraphs 117 to 120, 125 and 127 above, Ash:

128.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities and Ostrava Asset Management; and

128.2 thereby, contravened s 180(1) of the Act.

D. JEAN WALSH

D.1 Provision of financial services and advice by Grimm, Ostrava Equities and Ostrava Asset Management

129. In or about May 2013, during a meeting with Jean Walsh (**Walsh**), Grimm and Ostrava Equities advised Walsh to establish an SMSF with Ostrava Equities (**Walsh SMSF Advice**).

130. The Walsh SMSF Advice was:

130.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire a superannuation interest, namely an SMSF, within the meaning of the SIS Act;

130.2 personal advice within the meaning of s 766B(3) of the Act; and

130.3 provided to Walsh as a retail client within the meaning of s 761G of the Act.

131. In or about May 2013, in accordance with the Walsh SMSF Advice, Grimm and Ostrava Equities arranged for Walsh to establish an SMSF with Ostrava Equities called the Walsh Super Fund (**Walsh Super Fund**).

132. In or about May 2013, Grimm, Ostrava Equities and / or Ostrava Asset Management established a cash account with Bankwest for the Walsh Super Fund.

133. In the period between about 1 July 2013 and about 26 September 2014, Grimm and Ostrava Equities arranged for about \$180,948.49 to be transferred from Walsh's existing superannuation funds to the Walsh Super Fund cash account.

134. Between about 1 July 2013 and May 2015, Grimm and Ostrava Equities undertook share trades on behalf of the Walsh Super Fund.

135. In or about May 2015, Grimm, Ostrava Equities and / or Ostrava Asset Management arranged:

135.1 for the Walsh Super Fund cash account to be closed; and

- 135.2 for a Macquarie cash account to be opened on behalf of the Walsh Super Fund.
136. By the conduct in paragraphs 131 to 134, Grimm, Ostrava Equities and / or Ostrava Asset Management dealt in financial products.
137. In about May 2013, Grimm, Ostrava Equities and Ostrava Asset Management provided Walsh and the Walsh Super Fund with financial advice in relation to investments to be made by the Walsh Super Fund (**Walsh Investment Advice**). The Walsh Investment Advice was provided by Ostrava Equities on or about 15 May 2013 and on or about 23 May 2013 by Ostrava Asset Management.
138. The Walsh Investment Advice was:
- 138.1 financial product advice, constituted by recommendations intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) in recommending an investment strategy for the Walsh Super Fund;
 - 138.2 personal advice within the meaning of s 766B(3) of the Act; and
 - 138.3 provided to Walsh as a retail client within the meaning of s 761G of the Act.
139. By the conduct in paragraphs 129 to 137, Grimm, Ostrava Equities and Ostrava Asset Management provided Walsh with financial services as a retail client.
140. Prior to and at the time of engaging in the conduct in paragraphs 129 to 137 above, Grimm and Ostrava Equities did not provide Walsh with a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act.
141. Prior to and at the time of engaging in the conduct in paragraphs 129 and 137 above, Grimm and Ostrava Equities did not provide Walsh with a Statement of Advice within the meaning of s 947C of the Act as required by s 946A and /or s 946C of the Act.

D.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

142. In about May 2013 Walsh authorised Grimm and Ostrava Equities to administer and manage the Walsh Super Fund and make investment decisions on behalf of the Walsh Super Fund.

143. When managing the Walsh Super Fund and making investments on its behalf, Grimm and Ostrava Equities did not:

143.1 seek or obtain instructions from Walsh prior to making investment decisions;
or

143.2 refer to or notify Walsh prior to making investments on behalf of the Walsh Super Fund using funds from the Walsh Super Fund.

144. By reason of the matters referred to in paragraphs 142 and 143 above, Grimm and Ostrava Equities provided managed discretionary account services to Walsh and the Walsh Super Fund.

D.3 Funds used for the acquisition of shares in CGR and CGO

145. Grimm and Ostrava Equities caused funds to be transferred from the Walsh Super Fund to the Ostrava Fund for the purpose of acquiring shares in CPT Global Limited (CGO) and CML Group Ltd (CGR) as follows:

145.1 \$15,000 was withdrawn from the Walsh Super Fund Cash Account with the notation 'CGR' on 16 December 2013; and

145.2 \$10,000 was withdrawn from the Walsh Super Fund Cash Account with the notation 'CGO Pershing' on 2 June 2014.

146. No shares in CGR or CGO were transferred to the Walsh Super Fund.

147. CGR paid dividends to the Ostrava Fund in respect of shareholdings that included the holding funded by Walsh as follows:

147.1 On 28 March 2014, a dividend in the amount of \$10,528.85 was paid by CGR to the Ostrava Fund;

147.2 On 14 April 2014, a dividend in the amount of \$10,403.98 was paid by CGR to the Ostrava Fund;

147.3 On 30 October 2014, dividends in the amount of \$5,454.55 and 10,419.75 were paid by CGR to the Ostrava Fund; and

147.4 On 17 April 2015, a dividend in the amount of \$4,545.46 was paid by CGR to the Ostrava Fund.

148. No dividend or part of any dividend paid by CGR in respect of the shareholding funded by Walsh was paid to the Walsh Super Fund or Walsh.

D.4 Failure to act in accordance with client Instructions

149. In or about May 2013, on a telephone call with Grimm, Walsh instructed Grimm that only a small proportion of the assets of the Walsh Super Fund were to be invested in shares.
150. Grimm and Ostrava Equities caused the Walsh Super Fund to invest solely or mainly in shares, contrary to the direction provided by Walsh.
151. In or about May 2015, Walsh instructed Grimm to transfer funds from the Walsh Super Fund to a credit card account held by Walsh.
152. Walsh requested that Grimm transfer the funds referred to in paragraph 151 in April, August and September 2015, but the funds were not transferred until 27 November 2015 when the sum of \$9,144.29 was paid to Walsh's Commonwealth Bank credit card account.

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153. In or around early December 2015, Walsh instructed Grimm to transfer \$5,000 from the Walsh Super Fund to Walsh's bank account with National Australia Bank.

154. Contrary to Walsh's instructions, on or about 22 December 2015, the sum of only \$1,500 was transferred to Walsh's bank account with National Australia Bank.

D.5 Unauthorised transfer of funds to Equity Capital Partners

155. On or about 4 November 2015, at a meeting at Walsh's home, Grimm represented to Walsh that she was required to sign share transfer forms for the purpose of selling shares in order to generate funds to pay for the credit card debt of \$9,144.29 referred to in paragraphs 151 and 152 above.

156. The representation referred to in paragraph 155 above was false because the share transfer forms were for the acquisition of shares in Equity Capital Partners and were not required for the purpose of selling shares in order to generate funds to pay for Walsh's credit card debt.

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157. Walsh signed the forms in accordance with the representation referred to in paragraph 155 above.

158. In November or December 2015, Grimm transferred shares worth approximately \$50,000 from the Walsh Super Fund to Equity Capital Partners.
159. On or about 18 January 2016, on a telephone call with Walsh, Grimm informed Walsh that \$63,000 of funds from the Walsh Super Fund had been invested in Equity Capital Partners and that the remaining funds had been invested in the Ostrava Fund.
160. On or about 21 January 2016, on a telephone call with Grimm, Walsh instructed Grimm to reverse the share transfer and return the funds invested in Equity Capital Partners to the Walsh Super Fund.
161. Contrary to Walsh's instructions, no funds have been returned from Equity Capital Partners to the Walsh Super Fund.

D.6 Misleading conduct regarding fees and defective Financial Services Guide by Ostrava Securities

162. On or about 7 September 2015, Ostrava Securities provided Walsh with a financial services guide (Walsh FSG). The Walsh FSG had a date of preparation of August 2015 and was provided to Walsh under cover of an email from Mark Duthie dated 7 September 2015.
163. The Walsh FSG stated that Ostrava Securities would charge the following fees to the Walsh Super Fund:
 - 163.1 an "Asset Based Fee" of "0 – 2.5%"; and
 - 163.2 a "Securities Transactions" fee of "0 – 2.5%",(Walsh Fee Representation).
164. The Walsh Fee Representation was misleading or deceptive or likely to mislead or deceive because it was confusing and likely to lead to error in:
 - 164.1 stating a range of percentages without explaining what the percentage was referable to (such as net or gross assets of the fund or net growth over a particular period);
 - 164.2 not explaining the time or time period in respect of which the percentage was to be applied; and

- 164.3 not explaining how a determination would be made as to what percentage within the disclosed range would be applied to the Walsh Super Fund.
165. By reason of the matters referred to in paragraph 164 above, the Walsh FSG was defective in that the information about the remuneration to be received by Ostrava Securities:
- 165.1 was not dated as required by s 942B(5) of the Act;
- 165.2 did not provide the level of detail that a person would reasonably require for the purpose of making a decision whether to acquire financial services from Ostrava Securities as a retail client, as required by s 942B(3) of the Act;
- 165.3 was not worded or presented in a clear, concise and effective manner, as required by s 942B(6A) of the Act.

D.7 Contraventions of the Act by Ostrava Equities

166. By engaging in the conduct in paragraphs 129 and 137 above, Ostrava Equities contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.
167. By reason of the matters referred to in paragraphs 129 to 137 to above, Ostrava Equities contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
168. By engaging in the conduct in paragraphs 142 to 144, Ostrava Equities:
- 168.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and
- 168.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
169. By reason of the matters referred to in paragraphs 155 to 161, Ostrava Equities engaged in misleading or deceptive conduct in trade or commerce in relation to a

financial product in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act.

D.8 Contraventions of the Act by Ostrava Asset Management

170. By engaging in the conduct in paragraphs 132, 135 and 137 above, Ostrava Asset Management contravened s 911A by providing financial services without an Australian financial services licence.

D.9 Contraventions of the Act by Ostrava Securities

171. By reason of the matters referred to in paragraphs 162 to 165 above, Ostrava Securities contravened s 952E(1) of the Act by giving Walsh a defective Financial Services Guide.

D.10 Contraventions of the Act by Equity Capital Partners

172. By engaging in the conduct in paragraphs 155 to 160, Equity Capital Partners was involved in the contraventions of s 1041H of the Act and / or s 12DA of the ASIC Act by Ostrava Equities and Grimm referred to in paragraphs 169 and 176 by:

- 172.1 causing funds from the Walsh Super Fund to be transferred to it without authorisation or consent; and
- 172.2 receiving funds from the Walsh Super Fund without authorisation or consent.

D.11 Contraventions of the Act by Grimm

173. By engaging in the conduct in paragraphs 129 and 137 above, Grimm contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.
174. By engaging in the conduct in paragraphs 129 to 137 above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
175. By engaging in the conduct referred to in paragraphs 142 to 144, Grimm:

- 175.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act; and
- 175.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of

an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

176. By reason of the matters referred to in paragraphs 155 to 161, Grimm engaged in misleading or deceptive conduct in trade or commerce in relation to a financial product in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act.

177. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities, Ostrava Asset Management, Ostrava Securities and Equity Capital Partners from committing the contraventions in paragraphs 166 to 172 above.

178. The contraventions by Ostrava Equities, Ostrava Asset Management, Ostrava Securities and Equity Capital Partners referred to in paragraphs 166 to 172 caused actual damage to Ostrava Equities, Ostrava Asset Management, Ostrava Securities and Equity Capital Partners and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities, Ostrava Asset Management, Ostrava Securities and Equity Capital Partners.

179. By reason of the matters referred to in paragraphs 145 to 154 and 166 to 172 above, Grimm:

179.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities, Ostrava Asset Management, Ostrava Securities and Equity Capital Partners; and

179.2 thereby, contravened s 180(1) of the Act.

180. By reason of the matters referred to in paragraphs 155 to 161, Grimm:

180.1 improperly used his position to gain an advantage for himself or for Equity Capital Partners, being the receipt of funds by Equity Capital Partners from the Walsh Super Fund;

180.2 acted for an improper purpose; by seeking the advantage referred to in paragraph 180.1 above;

180.3 failed to act in good faith in the best interests of Ostrava Equities; and

180.4 thereby contravened ss 181(1) and 182(1) of the Act.

D.12 Contraventions of the Act by Ash

181. Ash failed to take reasonable steps to prevent Ostrava Equities, Ostrava Asset Management and Ostrava Securities from committing the contraventions in paragraphs 166 to 171 above.
182. By reason of paragraphs 166 to 171, 178 and 181 above, Ash:
- 182.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities, Ostrava Asset Management and Ostrava Securities; and
- 182.2 thereby, contravened s 180(1) of the Act.

E. RICHARD STRINGER

E.1 Provision of financial services and advice by Grimm, Ostrava Equities and Ostrava Asset Management

183. Between December 2013 and February 2014, Grimm and Ostrava Equities advised Richard Stringer (**Stringer**) to establish an SMSF with Ostrava Equities (**Stringer SMSF Advice**). The Stringer SMSF Advice was given at a meeting between Grimm and Stringer at Stringer's house on 10 December 2013 and in a Statement of Advice dated 11 February 2014.
184. The Stringer SMSF Advice was:
- 184.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire a superannuation interest, namely an SMSF, within the meaning of the SIS Act;
- 184.2 personal advice within the meaning of s 766B(3) of the Act; and
- 184.3 provided to Stringer as a retail client within the meaning of s 781G of the Act.
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185. On or around 11 February 2014, Grimm provided to Stringer:
- 185.1 a Statement of Advice dated 11 February 2014 (**Stringer Statement of Advice**); and

185.2 a Financial Services Guide (Stringer Financial Services Guide).

186. The Stringer FSG was not dated as required by s 942C(5) of the Act.
187. In or about January or February 2014, in accordance with the Stringer SMSF Advice, Grimm and Ostrava Equities arranged for Stringer to establish an SMSF with Ostrava Equities called the Stringer Superannuation Fund (**Stringer Super Fund**).
188. In or about February 2014, Grimm, Ostrava Equities and Ostrava Asset Management established a cash account for the Stringer Super Fund with Bankwest. The cash account was in the name of the "the Manager Sankalpa Pty Ltd Super Fund", with the address of "Ostrava Asset Management, L11 350 Collins Street, Melbourne".
189. In or about February 2014, Grimm and Ostrava Equities arranged for Stringer's existing superannuation funds to be transferred to the Stringer Super Fund cash account. \$108,181.04 was transferred from Colonial First Choice Super and \$8,522.63 was transferred from Hesta Super to the Stringer Super Fund cash account.
190. From about 18 February 2014, Grimm and Ostrava Equities made investments on behalf of the Stringer Super Fund.
191. By the conduct in paragraphs 187 to 190, Grimm and Ostrava Equities dealt in financial products.
192. By reason of the matters referred to in paragraphs 183 to 190, Grimm, Ostrava Equities and Ostrava Asset Management provided Stringer with:
- 192.1 financial services as retail clients; and
 - 192.2 personal advice as retail clients.
193. Grimm, Ostrava Equities and Ostrava Asset Management did not provide Stringer with a Statement of Advice within the meaning of s 947C of the Act as required by s 946A and / or 946C of the Act prior to or at the time of engaging in the conduct in paragraph 190.

~~E.2 Provision of managed discretionary account services by Grimm and Ostrava Equities~~

194. In or about 2014, Stringer authorised Grimm and Ostrava Equities to administer and manage the Stringer Super Fund and make investment decisions on its behalf.

195. When managing the Stringer Super Fund and making on its behalf the investments referred to in paragraph 190 above, Grimm and Ostrava Equities did not:

195.1 seek or obtain instructions from Stringer prior to making investment decisions;
or

195.2 refer to or notify Stringer prior to making investments on behalf of the Stringer Super Fund using funds from the Stringer Super Fund.

196. By reason of the matters referred to in paragraphs 194 and 195 above, Grimm and Ostrava Equities provided managed discretionary account services to Stringer and the Stringer Super Fund.

E.3 Unauthorised deduction of fees by Grimm and Ostrava Equities

197. On or about 10 December 2013, Ostrava Equities represented to Stringer that Ostrava Equities would charge the Stringer Super Fund fees of approximately \$30 to \$40 per month. The representation was made orally by Mark Duthie, an employee of Ostrava Equities, in the presence of Grimm, at a meeting at Stringer's house on 13 December 2013.

198. The Stringer Financial Services Guide and the Stringer Statement of Advice provided to Stringer on 11 April 2014 stated that Ostrava Equities would charge the following fees to the Stringer Super Fund:

198.1 Investment management fee: 1% of portfolio value;

198.2 Securities transaction: 1% per transaction;

198.3 Performance fee: 20% above 10% return on portfolio, subject to a high watermark.

199. On or around 21 August 2014, Ostrava Equities represented to Stringer and the Stringer Super Fund that it would charge the following fees to the Stringer Super Fund:

199.1 "Management Fee: 1.1%"; and

199.2 "Performance Fee: 20% of the excess return above XAO, net of other fees. No performance fee in a negative year."

The representation was made in a document entitled "Ostrava SMSF Fact Sheet August 2014", which was emailed to Stringer by Grimm on 21 August 2014.

200. In the period 24 January 2014 to 30 June 2015:

200.1 Grimm and Ostrava Equities charged the Stringer Super Fund \$13,736 in fees, which represented approximately 8% of the value of the Stringer Super Fund; and

200.2 the performance of the Stringer Super Fund did not exceed:

(a) 10% return on the value of the portfolio held by the Stringer Super Fund; and / or

(b) the performance of the ASX All Ordinaries.

201. By reason of the matters referred to in paragraph 200 above, Grimm and Ostrava Equities:

201.1 did not charge the Stringer Super Fund fees in accordance with the representations made in paragraphs 197 and 199 of the Stringer Financial Services Guide and the Stringer Statement Advice; and

201.2 withdrew fees from the Stringer Super Fund without the authorisation or permission of Stringer or the Stringer Super Fund.

E.4 Unauthorised investments and misrepresentations as to the value of the Stringer Super Fund by Grimm and Ostrava Equities

202. The investments made by Grimm and Ostrava Equities on behalf of the Stringer Super Fund referred to in paragraph 190 included the acquisition of:

202.1 shares in ASX listed companies; and

202.2 8,000 shares in Prometheus Capital on or around 12 May 2014.

203. Prior to causing the Stringer Super Fund to acquire shares in and make a payment to Prometheus Capital, or at any other time, Grimm and Ostrava Equities did not:

203.1 disclose to Stringer or the Stringer Super Fund that funds from the Stringer Super Fund would be invested in and/or paid to Prometheus or that Grimm was the sole director of Prometheus Capital; and

203.2 seek or obtain the consent of Stringer or the Stringer Super Fund.

204. Between around February 2014 and January 2015, Grimm and Ostrava Equities represented to Stringer and the Stringer Super Fund, in "Client Holding Statements" emailed by Grimm to Stringer, that the value of the Stringer Super Fund (**Stringer Value Representations**) was as follows:

Date of Client Holdings Statement	Represented value of the Stringer Super Fund
18 February 2014	\$116,464.00
21 August 2014	\$131,581.54
6 January 2015	\$134,048.79

205. The Stringer Value Representations were made by Grimm and Ostrava Equities in the course of trade or commerce and in relation to financial services.

206. The Stringer Value Representations were false or misleading because they overstated the value of the shares held by the Stringer Super Fund. The Client Holding Statements overstated the value of the ASX listed shares held by the Stringer Super Fund as follows:

Date of Client Holdings Statement	Value of ASX listed shares in Client Holdings Statement	Actual value as at the date of the Client Holdings Statement
21 August 2014	\$74,543.00	\$69,732.50
6 January 2015	\$74,543.00	\$53,881.50

The valuation provided on 6 January 2015 also represented that the Stringer Super Fund held shares in "Hansen TEC FPO" worth \$17,345.00 when that shareholding had been sold in September 2014.

E.5 Contraventions of the Act by Ostrava Equities

207. By reason of the matters referred to in paragraphs 185 and 186 above, Ostrava Equities contravened s 942C of the Act by giving Stringer a defective Financial Services Guide.

208. By engaging in the conduct in paragraphs 194 and 195, Ostrava Equities:

208.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

208.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

209. By engaging in the conduct in paragraphs 197 to 200 above, Ostrava Equities engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by purporting to charge, and by recovering, fees from clients of the financial services business that were not authorised by the clients.

210. By making the Stringer Value Representations and engaging in the conduct in paragraph 204, Ostrava Equities in the course of trade or ~~commerce~~ commerce:

210.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

210.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and / or s 12DB(1)(e) of the ASIC Act.

E.6 Contraventions of the Act by Ostrava Asset Management

211. By engaging in the conduct in paragraph 188 above, Ostrava Asset Management contravened s 911A by carrying on a financial services business and providing financial services without an Australian financial services licence.

E.7 Contraventions of the Act by Grimm

212. By reason of the matters referred to in paragraphs 185 and 186 above, Grimm contravened s 942C of the Act by giving Stringer a defective Financial Services Guide.

213. By engaging in the conduct referred to in paragraphs 194 and 195, Grimm:

- 213.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act;
- 213.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
214. By engaging in the conduct in paragraphs 197 to 200 above, Grimm engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by purporting to charge, and by recovering, fees from clients of the financial services business that were not authorised by the clients.
215. By making the Stringer Value Representations and engaging in the conduct in paragraph 204, Grimm in the course of trade or commerce:
- 215.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and
- 215.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and / or s 12DB(1)(e) of the ASIC Act.
216. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 183 to 211 above.
217. The contraventions by Ostrava Equities and Ostrava Asset Management in paragraphs 183 to 211 above caused actual damage to Ostrava Equities and Ostrava Asset Management and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities and Ostrava Asset Management.
218. By reason of the matters in paragraphs 212 to 217 above, Grimm:
- 218.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities and Ostrava Asset Management; and
- 218.2 thereby, contravened s 180(1) of the Act.

219. By engaging, and permitting Ostrava Equities and Ostrava Asset Management to engage, in the conduct in paragraphs 207 to 211 above, Grimm:

219.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities and Ostrava Asset Management; and

219.2 thereby, contravened s 180(1) of the Act.

220. By engaging in the conduct in paragraphs 197 to 200 and 204, Grimm:

220.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the unauthorised fees charged and recovered from the Stringer Super Fund and the retention of clients' custom from overstating the value of the Stringer Super Fund;

220.2 acted for an improper purpose, by seeking the advantages referred to in 220.1; and

220.3 failed to act in good faith in the best interests of Ostrava Equities; and

220.4 thereby contravened ss 181(1) and 182(1) of the Act.

E.8 Contraventions of the Act by Ash

221. As a director of Ostrava Equities and Ostrava Asset Management, Ash failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 207 to 211 above.

222. By reason of the matters referred to in paragraphs 207 to 211, 217 and 221 above, Ash:

222.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities and Ostrava Asset Management; and

222.2 thereby, contravened s 180(1) of the Act.

F. CLIENT BT

F.1 Provision of managed discretionary account services by Grimm and Ostrava Equities

223. In about June 2010, Grimm and Ostrava Equities arranged for client BT to establish an SMSF with Ostrava Equities called the Parker Quest Super Fund.

224. From about June 2010, Grimm and Ostrava Equities administered and managed the Parker Quest Super Fund and made investment decisions on behalf of the Parker Quest Super Fund.

225. When managing the Parker Quest Super Fund and making the investments on its behalf referred to in paragraph 224 above, Grimm and Ostrava Equities did not:

225.1 seek or obtain instructions from client BT prior to making investment decisions; or

225.2 refer to or notify client BT prior to making investments on behalf of the Parker Quest Super Fund using funds from the Parker Quest Super Fund.

226. By reason of the matters referred to in paragraphs 223 to 225 above, Grimm and Ostrava Equities provided managed discretionary account services to client BT and the Parker Quest Super Fund.

F.2 Contraventions of the Act by Ostrava Equities

227. By engaging in the conduct in paragraphs 223 to 226 above, Ostrava Equities:

227.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

227.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

F.3 Contraventions of the Act by Grimm

228. By engaging in the conduct referred to in paragraphs 223 to 226 above, Grimm:

- 228.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act;
- 228.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

229. By engaging in the conduct in paragraphs 223 to 225 above, Grimm:

- 229.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and
- 229.2 thereby, contravened s 180(1) of the Act.

G. SHANNON LOUISE MILLIGAN

G.1 Provision of financial services and advice by Grimm, Ostrava Equities and Ostrava Asset Management

230. In or about February 2014, Grimm and Ostrava Equities advised Shannon Milligan (Milligan):

- 230.1 to establish an SMSF with Ostrava Equities (**Milligan SMSF Advice**); and
- 230.2 in relation to the investments to be made by the SMSF established by Milligan (**Milligan Investment Advice**).

The Milligan SMSF Advice was given:

- 230.3 orally by Grimm and Duthie at a meeting in early February 2014 at the offices of Ostrava Equities, level 11, 350 Collins Street, Melbourne (**Milligan Meeting**); and
- 230.4 in writing in a document entitled "Investment Summary Shannon Milligan, February 2014", which was received in the post by Milligan shortly after the Milligan Meeting.

The Milligan Investment Advice was in writing and provided by Ostrava Equities:

230.5 In the "Investment Summary Shannon Milligan, February 2014", which was received in the post by Milligan shortly after the Milligan Meeting; and

230.6 In the Milligan Super Fund Investment Strategy dated 25 February 2014.

231. Prior to giving Milligan the Milligan SMSF Advice and the Milligan Investment Advice, Grimm and Ostrava Equities were aware of Milligan's personal financial position. At the Milligan Meeting, in response to questions from Grimm and Duthie, Milligan informed Grimm and Ostrava Equities that:

231.1 her income was approximately \$43,000 a year;

231.2 she had recently moved from full time to casual employment;

231.3 she had approximately \$24,800 in personal debt;

231.4 she had approximately \$13,000 in superannuation; and

231.5 she did not otherwise hold any investments.

232. The Milligan SMSF Advice and the Milligan Investment Advice was:

232.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire a superannuation interest, namely an SMSF, within the meaning of SIS Act;

232.2 personal advice within the meaning of s 766B(3) of the Act; and

232.3 provided to Milligan as a retail client within the meaning of s 761G of the Act.

233. In or about March 2014, in accordance with the Milligan SMSF Advice, Grimm and Ostrava Equities arranged for Milligan to establish an SMSF with Ostrava Equities called the Milligan Superannuation Fund (Milligan Super Fund), with an opening balance of \$18,282.85.

234. In or about March or April 2014, Grimm, Ostrava Equities and/or Ostrava Asset Management established a cash account with Bankwest for the Milligan Super Fund. The cash account was in the name of the "the Manager Shannon Milligan Holdings Pty

Ltd", with the address of "Milligan Super Fund, Ostrava Asset Management, L11 350 Collins Street, Melbourne".

235. On or about 7 April 2014, Grimm and Ostrava Equities arranged for Milligan's existing superannuation funds, in the sum of \$18,282.85, to be transferred to the Milligan Super Fund cash account.
236. From about 9 April 2014 to about 11 September 2014, Grimm and Ostrava Equities made investments on behalf of the Milligan Super Fund.
237. By the conduct in paragraphs 233 to 236, Grimm, Ostrava Equities and/or Ostrava Asset Management dealt in financial products.
238. By reason of the matters referred to in paragraphs 230 to 237, Grimm, Ostrava Equities and/or Ostrava Asset Management provided Milligan with:
- 238.1 financial services as retail clients; and
 - 238.2 personal advice as retail clients.
239. At the time they engaged in the conduct in paragraphs 230 to 236, or any other time, Grimm, Ostrava Equities and/or Ostrava Asset Management did not provide Milligan with:
- 239.1 a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act; or
 - 239.2 a Statement of Advice within the meaning of s 947C of the Act as required by s 946A and / or 946C of the Act,

G.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

240. When managing the Milligan Super Fund and making the investments referred to in paragraph 236 above, Grimm and Ostrava Equities did not seek or obtain instructions from Milligan prior to making those investments.
-
241. By reason of the matters referred to in paragraph 240 above, Grimm and Ostrava Equities provided managed discretionary account services to Milligan and the Milligan Super Fund.

G.3 Misrepresentations and unauthorised charging of fees by Grimm and Ostrava Equities

242. In or around February 2014, Ostrava Equities disclosed to Milligan and the Milligan Super Fund, in a document entitled "Ostrava SMSF Update, January 2014", that it would charge the following fees to the Milligan Super Fund:

242.1 *"Management Fee: 1.1%"; and*

242.2 *"Performance Fee: 20% of the excess return above 12%, net of other fees. Additionally the Performance Fee is subject to a high water mark."*

243. Grimm and Ostrava Equities:

243.1 did not charge the Milligan Super Fund fees in accordance with representations referred to in paragraph 242; and

243.2 withdrew fees of \$5,038 from the Milligan Super Fund for the period between 10 April 2014 and 12 February 2015 (representing over 25% of the value of the fund) without the authorisation or permission of Milligan or the Milligan Super Fund. During the period 10 April 2014 to 12 February 2015, the Milligan Super Fund:

(a) had an opening balance in its cash account of \$18,282.85;

(b) conducted 8 trades on the share trading account it held with Patersons;

(c) was charged "brokerage fees" on 52 occasions and administration fees on 11 occasions.

G.4 Contraventions of the Act by Ostrava Equities

244. By engaging in the conduct in paragraph 230 above, Ostrava Equities contravened s 946A and / or 948C of the Act by giving personal advice to retail clients without providing a Statement of Advice.

~~245. By engaging in the conduct in paragraphs 230 to 237, above, Ostrava Equities contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.~~

246. By the conduct in paragraphs 230 and 231, Ostrava Equities contravened s 961Q of the Act by failing to:

246.1 act in the best interests of Milligan in contravention of s 961B of the Act; and

246.2 provide Milligan with appropriate advice in contravention of s 961G of the Act, because it was uneconomic for Milligan to establish and operate an SMSF, having regard to:

246.3 the starting balance of the SMSF of \$18,282.85;

246.4 the costs likely to be incurred in administering the SMSF; and

246.5 Milligan's personal financial circumstances.

247. By engaging in the conduct in paragraphs 240 and 241 above, Ostrava Equities:

247.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

247.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

248. By engaging in the conduct in paragraphs 242 and 243 above, Ostrava Equities engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by purporting to charge, and by recovering, fees from clients of the financial services business that were not authorised by the clients.

G.5 Contraventions of the Act by Ostrava Asset Management

249. By engaging in the conduct in paragraph 234 above, Ostrava Asset Management ~~contravened s 911A by carrying on a financial services business and providing financial services without an Australian financial services licence.~~

G.6 Contraventions of the Act by Grimm

250. By engaging in the conduct in paragraph 230 above, Grimm contravened s 946A and / or 946C of the Act by giving personal advice to retail clients without providing a Statement of Advice.
251. By engaging in the conduct in paragraphs 230 to 237, above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
252. By the conduct in paragraph 230 and 231, Grimm contravened s 961Q of the Act by failing to:
- 252.1 act in the best interests of Milligan in contravention of s 961B of the Act; and
 - 252.2 provide Milligan with appropriate advice in contravention of s 961G of the Act, because it was uneconomic for Milligan to establish and operate an SMSF, having regard to:
 - 252.3 the starting balance of the SMSF of \$18,282.85; and
 - 252.4 Milligan's personal financial circumstances.
253. By engaging in the conduct referred to in paragraphs 240 and 241 above, Grimm:
- 253.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act; and
 - 253.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
254. By engaging in the conduct in paragraphs 242 and 243 above, Grimm engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act, by knowingly charging and recovering unauthorised fees from clients of the financial services business.
-
255. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 244 to 249 above.

256. The contraventions by Ostrava Equities and Ostrava Asset Management in paragraphs 244 to 249 above caused actual damage to Ostrava Equities and Ostrava Asset Management and it was reasonably foreseeable that those contraventions or conduct might harm the interests of Ostrava Equities and Ostrava Asset Management.

257. By reason of the matters in paragraphs 250 to 256 above, Grimm:

257.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities and Ostrava Asset Management; and

257.2 thereby, contravened s 180(1) of the Act.

258. By engaging, and permitting Ostrava Equities and Ostrava Asset Management to engage, in the conduct in paragraphs 244 to 249 above, Grimm:

258.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Securities and Ostrava Asset Management; and

258.2 thereby, contravened s 180(1) of the Act.

259. By engaging in the conduct in paragraphs 242 and 243 above, Grimm:

259.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the unauthorised fees charged and recovered from the Milligan Super Fund;

259.2 acted for an improper purpose, by seeking the advantage referred to in paragraph 259.1 above;

259.3 failed to act in good faith in the best interests of Ostrava Equities; and

259.4 thereby contravened ss 181(1) and 182(1) of the Act.

G.7 Contraventions of the Act by Ash

260. As a director of Ostrava Equities and Ostrava Asset Management, Ash failed to take reasonable steps to prevent Ostrava Equities and Ostrava Asset Management from committing the contraventions in paragraphs 244 to 249 above.

261. By reason of paragraphs 244 to 249, 256 and 260 above, Ash:

261.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities and Ostrava Asset Management; and

261.2 thereby, contravened s 180(1) of the Act.

H. WILLIAM TOBIN

H.1 Provision of financial services and advice by Grimm and Ostrava Equities

262. In or about August 2009, Grimm and Ostrava Equities advised William Tobin (Tobin) and his wife (Christine Tobin):

262.1 to establish a self-managed superannuation fund (SMSF) with Ostrava Equities (Tobin SMSF Advice);

262.2 in relation to the investments to be made by the SMSF established by Tobin (Tobin Investment Advice).

The Tobin SMSF Advice and Tobin Investment Advice was given orally by Grimm during discussions with Tobin in or about August 2009 and in writing in the following documents:

262.3 a statement of advice dated 19 August 2009, which was provided to Tobin and Christine Tobin by Grimm in or about August 2009;

262.4 a document entitled "Ostrava Equities Wealth Management Tobin Super Fund August 2009", which was provided under cover of a letter from Grimm to Tobin dated 19 August 2009; and

262.5 a document entitled "Tobin Superannuation Fund: Investment Strategy" dated 1 October 2009.

263. The Tobin SMSF Advice and the Tobin Investment Advice was:

263.1 financial product advice, constituted by a recommendation intended to influence persons making decisions in relation to superannuation interests (or which could reasonably be regarded as being intended to have such an influence) to acquire an interest in a superannuation interest, namely an SMSF, within the meaning of the SIS Act;

263.2 personal advice within the meaning of s 766B(3) of the Act; and

263.3 provided to Tobin and Christine Tobin as retail clients within the meaning of s 761G of the Act.

264. On or about 19 August 2009, Grimm and Ostrava Equities gave Tobin and Christine Tobin a Statement of Advice dated 19 August 2009 (**Tobin Statement of Advice**).

265. In or about October 2009, in accordance with the Tobin SMSF Advice, Grimm and Ostrava Equities arranged for Tobin and Christine Tobin to establish an SMSF with Ostrava Equities called the Tobin Superannuation Fund (**Tobin Super Fund**).

266. At the time of engaging in the conduct in paragraphs 265 to 266, Grimm and Ostrava Equities did not provide Tobin and Christine Tobin with a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act.

267. On or about 21 October 2009, Grimm and Ostrava Equities arranged for funds, in the total sum of \$546,838.92, to be transferred from Tobin and Christine Tobin's existing superannuation funds to the Tobin Super Fund cash account.

268. In or around 2010, Grimm and Ostrava Equities provided Tobin and Christine Tobin with a Financial Services Guide (**Tobin FSG**). The Tobin FSG was headed "Financial Services Guide 2010" but was otherwise undated.

269. The Tobin FSG was not dated as required by s 942C(5) of the Act.

270. By the conduct in paragraphs 262 to 267, Grimm and Ostrava Equities provided Tobin and Christine Tobin with financial services as retail clients.

H.2 Provision of managed discretionary account services by Grimm and Ostrava Equities

271. In or about 2009, Tobin and Christine Tobin authorised Grimm and Ostrava Equities to administer and manage the Tobin Super Fund and make investment decisions on its behalf.

272. Between at least July 2011 and April 2015, Grimm and Ostrava Equities made investments for and on behalf of the Tobin Super Fund.

273. When managing the Tobin Super Fund and making investments on its behalf, Grimm and Ostrava Equities did not:

273.1 seek or obtain instructions from Tobin and Christine Tobin prior to making investment decisions; or

273.2 refer to or notify Tobin and Christine Tobin prior to making investments on behalf of the Tobin Super Fund using funds from the Tobin Super Fund.

274. By reason of the matters referred to in paragraphs 271 and 273 above, Grimm and Ostrava Equities provided managed discretionary account services to Tobin and Christine Tobin and the Tobin Super Fund.

H.3 Misrepresentation as to unlisted investments by Ostrava Equities

275. In or about 2010, Ostrava Equities represented to Tobin and the Tobin Super Fund that it would not invest their funds in unlisted investments promoted by Ostrava (Unlisted Investments Representation). The representation was made on page 12 of a document entitled "Ostrava Equities Wealth Management Overview: 2nd Quarter 2010", which was provided to Tobin in or about 2010.

276. The Unlisted Investments Representation was made in the course of trade or commerce and in relation to financial services.

277. The Unlisted Investments Representation was a representation with respect to future matters, and was made without a reasonable basis.

278. The investments made by Grimm and Ostrava Equities on behalf of the Tobin Super Fund included investments in unlisted companies.

279. By reason of the matters referred to in paragraph 278 above, the Unlisted Investments Representation was false or misleading.

H.4 Unauthorised investments and misrepresentations as to the value of the Tobin Super Fund by Grimm and Ostrava Equities

280. The investments made by Grimm and Ostrava Equities on behalf of the Tobin Super Fund included the acquisition of:

280.1 shares in ASX listed companies;

280.2 units in the Ostrava Fund;

280.3 121,225 shares in Beta Pharmacology;

280.4 115,000 shares in Thrive Lending; and

280.5 127,500 shares in Trade BTC.

281. Prior to causing the Tobin Super Fund to acquire units in the Ostrava Fund, or at any other time, Grimm and Ostrava Equities did not:

281.1 disclose to Tobin, Christine Tobin or the Tobin Super Fund that:

- (a) funds from the Tobin Super Fund would be invested in the Ostrava Fund; and
- (b) Grimm and Ostrava Equities controlled the Ostrava Fund;

281.2 seek or obtain the consent of Tobin, Christine Tobin or the Tobin Super Fund.

282. The shares in Beta Pharmacology, Thrive Lending and Trade BTC were acquired by the Tobin Super Fund for no consideration.

283. Prior to causing the Tobin Super Fund to acquire shares in Beta Pharmacology, Thrive Lending and Trade BTC, or at any other time, Grimm and Ostrava Equities did not:

283.1 disclose to Tobin or the Tobin Super Fund that Grimm was the sole director of Beta Pharmacology, Thrive Lending and Trade BTC; or

283.2 seek or obtain the consent of Tobin or the Tobin Super Fund.

284. Between August 2014 and May 2015, Grimm and Ostrava Equities represented to Tobin, Christine Tobin and the Tobin Super Fund in Client Holdings Statements that the value of the Tobin Fund (**Tobin Value Representations**) was as follows:

Date of Client Holdings Statement	Represented value of the Tobin Fund
13 August 2013	\$907,764.52
18 August 2014	\$839,717.17
12 February 2015	\$1,057,031.99

285. The Tobin Value Representations were made by Grimm and Ostrava Equities in the course of trade or commerce and in relation to financial services.

286. The Tobin Value Representations were false or misleading because they overstated the value of the shares held by the Tobin Super Fund, including by:

286.1 overstating the value of the ASX listed shares held by the Tobin Super Fund as follows:

Date of Client Holdings Statement	Value of ASX listed shares in Client Holdings Statement	Actual value as at the date of the Client Holdings Statement
13 August 2013	\$902,596.60	\$690,495.99
18 August 2014	\$512,107.31	\$470,488.11
12 February 2015	\$408,561.28	\$328,216.27

286.2 overstating the value of the shares held by the Tobin Super Fund in Beta Pharmacology, Thrive Lending and Trade BTC by stating that the value of each share was \$1. The actual value of each share was nil, or alternatively less than \$1.

287. On or around 17 February 2015, Grimm and Ostrava Equities represented to Tobin that the value of the Tobin Super Fund's shareholdings in Trade BTC, Thrive Lending and Beta Pharmacology represented their purchase price. The representation was made in an email from Grimm to Tobin dated 17 February 2015.

288. By reason of paragraph 281, the representation in paragraph 287 was false and misleading.

H.5 Contraventions of the Act by Ostrava Equities

289. By reason of the matters referred to in paragraphs 268 and 269 above, Ostrava Equities contravened s 942C of the Act by giving Tobin a defective Financial Services Guide.

290. By engaging in the conduct in paragraphs 271 to 274, Ostrava Equities:

290.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those financial services in contravention of s 911A(1) of the Act; and

290.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

291. By engaging in the conduct in paragraphs 275 to 278, Ostrava Equities in the course of trade or commerce:

291.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

291.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and / or s 12DB(1)(e) of the ASIC Act.

292. By engaging in the conduct in paragraphs 280 to 286, Ostrava Equities in the course of trade or commerce:

292.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

292.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and / or s 12DB(1)(e) of the ASIC Act.

293. By engaging in the conduct in paragraphs 284 and 287 above, Ostrava Equities engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act.

H.6 Contraventions of the Act by Grimm

294. By engaging in the conduct in paragraphs 272 and 273, Grimm:

294.1 was involved in Ostrava Equities' contravention of s 911A(1) of the Act;

294.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.

295. By engaging in the conduct in paragraphs 280 to 286, Grimm in the course of trade or commerce:

295.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

295.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and / or s 12DB(1)(e) of the ASIC Act.

296. By engaging in the conduct in paragraph 281, Grimm:

296.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the revenue from the increase in the fees that would be charged by Ostrava Equities as the trustee of the Ostrava Fund; and

296.2 thereby, contravened s 182 of the Act.

297. By engaging in the conduct in paragraphs 284 and 287 above, Grimm engaged in dishonest conduct in relation to financial products and / or services in contravention of s 1041G of the Act.

298. Grimm was involved in and failed to take reasonable steps to prevent Ostrava Equities from committing the contraventions in paragraphs 289 to 293 above.

299. The contraventions by Ostrava Equities referred to in paragraphs 289 to 293 caused actual damage to Ostrava Equities and it was reasonably foreseeable that those contraventions would harm the interests of Ostrava Equities.

300. By reason of the matters in paragraphs 294 to 299 above, Grimm:

300.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and

300.2 thereby, contravened s 180(1) of the Act.

301. By engaging in the conduct in paragraphs 284 and 287 above, Grimm:

- 301.1 improperly used his position to gain an advantage for himself or for Ostrava Equities, being the retention of the custom of Tobin and the Tobin Super Fund;
- 301.2 acted for an improper purpose, Grimm's purpose being to obtain for himself and Ostrava Equities the advantage referred to in paragraph 301.1 above;
- 301.3 failed to act in good faith in the best interests of Ostrava Equities; and
- 301.4 thereby contravened ss 181(1) and 182(1) of the Act.

H.7 Contraventions of the Act by Ash

- 302. As a director of Ostrava Equities, Ash failed to take reasonable steps to prevent Ostrava Equities from committing the contraventions in paragraphs 289 to 293 above.
- 303. By reason of the matters referred to in paragraphs 289 to 293, 299 and 302 above, Ash:
 - 303.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities; and
 - 303.2 thereby, contravened s 180(1) of the Act.

I. ELIZABETH BUDNIK & EREZ GORDON

I.1 Misrepresentations as to the value of the Gordon Super Fund by Grimm and Ostrava Equities

- 304. On or about 18 June 2013, Grimm and Ostrava Equities represented to Erez Gordon (Gordon) that the value of the Gordon Super Fund was \$135,616.10 as at that date (Gordon Value Representation). The Gordon Value Representation was contained in a client holdings statement sent by Grimm to Gordon in an email dated 18 June 2013.
- 305. The Gordon Value Representation was made by Grimm and Ostrava Equities in the course of trade or commerce and in relation to financial services.
- 306. The Gordon Value Representation was false or misleading because it overstated the value of the ASX listed shares held by the Gordon Super Fund as follows:

Date of Client	Value of ASX listed	Actual value as at the
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Holdings Statement	shares in Client Holdings Statement	date of the Client Holdings Statement
18 June 2013	\$135,616.10	\$86,538.34

1.2 Unauthorised charging of fees by Grimm and Ostrava Equities

307. Grimm and Ostrava Equities withdrew fees from the Gordon Super Fund without the authorisation or permission of Gordon, Elizabeth Budnik (Budnik) or the Gordon Super Fund.

1.3 Record keeping failures

308. Grimm and Ostrava Equities failed to keep accurate and/or adequate records relating to its management and conduct of the Gordon Super Fund. In particular, the Gordon Super Fund client file produced to ASIC pursuant to a notice issued under s 33 of the ASIC Act does not contain:

308.1 any statements of advice;

308.2 any document setting out the basis on which fees were charged to the Gordon Super Fund; and

308.3 any document detailing the fees charged to the Gordon Super Fund (other than copies of the bank statements of the Gordon Super Fund).

1.4 Contraventions of the Act by Ostrava Equities

309. By reason of the matters referred to in paragraphs 304 to 306, Ostrava Equities in the course of trade or commerce:

309.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

309.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

I.5 Contraventions of the Act by Grimm

310. By reason of the matters referred to in paragraphs 304 to 306, Grimm in the course of trade or commerce:

310.1 engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Act and / or s 12DA of the ASIC Act; and

310.2 made a false or misleading representation in connection with the supply of financial services in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

311. By reason of the matters referred to in paragraph 304 to 308, Grimm:

311.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director or officer of Ostrava Equities; and

311.2 thereby, contravened s 180(1) of the Act.

I.6 Contraventions of the Act by Ash

312. As a director of Ostrava Equities, Ash failed to take reasonable steps to prevent Ostrava Equities and Grimm from committing the contraventions in paragraphs 309 to 311 above.

313. By reason of paragraphs 304 to 312 above, Ash:

313.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities; and

313.2 thereby, contravened s 180(1) of the Act.

III. OTHER CONTRAVENING CONDUCT BY THE DEFENDANTS

A. Ostrava Equities

314. During the period between about August 2011 and March 2015, Grimm and Ostrava Equities made investments on behalf of clients of Ostrava Equities without:

- 314.1 seeking or obtaining instructions from the relevant client prior to making an investment decision; or
- 314.2 referring to or notifying the relevant client prior to making the investment on behalf of the client using funds from the client's SMSF cash management account.
315. By reason of the matters referred to in paragraph 314 above, Grimm and Ostrava Equities provided managed discretionary account services to clients of Ostrava Equities.
316. By engaging in the conduct in paragraphs 314 and 315 above, Ostrava Equities:
- 316.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those services in contravention of s 911A(1) of the Act; and
- 316.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
317. The books and records kept by Ostrava Equities contained the following discrepancies and omissions:
- 317.1 no records of employment contracts or terms were retained by Ostrava Equities in respect of its employment of Grimm, Ash and Mark Duthie;
- 317.2 no record of any asset register or depreciation schedule, in circumstances where the balance sheet prepared for the financial year ending 30 June 2016 disclosed that Ostrava Equities had an interest in motor vehicle(s) with a book value of \$94,007 net of accumulated depreciation;
- 317.3 no record that payments made to Macquarie Leasing and BMW in the financial year ending 30 June 2014 were made for and on behalf of Ash and / or Grimm;
- 317.4 no record or account for funds drawn by the directors from the funds of Ostrava Equity for payment of expenses personally incurred by the directors;

- 317.5 an absence of a financial services guide and statement of advice provided to clients KW and MT and the MT Superannuation Fund in circumstances where Ostrava Equities' "SMSF File Control Sheet" recorded that an FSG was provided on 30 April 2009 and an SOA was provided on 30 April 2009;
- 317.6 an error in note 7 of the accounts prepared for the financial year ending 30 June 2013;
- 317.7 a failure to obtain and retain signed application forms from clients for the acquisition of units in the Ostrava Fund;
- 317.8 a breach of Ostrava Equities' obligation pursuant to the Ostrava Fund Unit Trust Deed by failing to maintain a unit register in the form required by the Trust Deed;
- 317.9 a breach of Ostrava Equities' obligation pursuant to the Ostrava Fund Unit Trust Deed by failing to provide certificates to unit holders as required by clause 25 of the Trust Deed; and
- 317.10 a breach of Ostrava Equities' obligation pursuant to the Ostrava Fund Unit Trust Deed by failing to keep records of the number of units in the Ostrava Fund on issue and the net asset value of the fund as required by cl 29 of the Trust Deed.
318. By reason of the matters referred to in paragraph 317, Ostrava Equities failed to keep for a period of seven years written financial records that:
- 318.1 correctly recorded and explained its transactions and financial position and performance; and
- 318.2 would enable true and fair financial statements to be prepared and audited.
319. By reason of paragraphs 317 and 318 above, Ostrava Equities contravened s 286 of the Act.
320. By reason of the matters in subparagraph 317.5, Ostrava Equities contravened regulation 7.7.09C of the Corporations Regulations by failing to keep statements of advice.
321. On at least 26 occasions, Ostrava Equities and Grimm:

- 321.1 failed to provide clients of Ostrava Equities with a Financial Services Guide within the meaning of s 942C of the Act as required by s 941B of the Act; or
- 321.2 alternatively to subparagraph 321.1, failed to retain a copy of a Financial Services Guide or any other record of the basis on which the client was charged fees for a period of seven years.
322. By engaging in the conduct in paragraph 321 above, Ostrava Equities:
- 322.1 contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide; or
- 322.2 alternatively to subparagraph 322.1, Ostrava Equities contravened s 286 of the Act.
323. On or about 30 April 2014, Ostrava Equities lent the sum of \$38,000 to client JM pursuant to an unsigned loan agreement between Ostrava Equities and client JM dated 30 April 2014.
324. By the conduct referred to in paragraph 323, Ostrava Equities engaged in unlicensed credit activity in contravention of s 29 of the *National Consumer Credit Protection Act 2009* (Cth).
325. Ostrava Equities and Grimm caused client CF and / or the CF Super Fund to acquire and pay for 30,000 shares in Prometheus Capital at a cost of \$1 per unit, without the consent or authority of CF.
326. Ostrava Equities and Grimm advised at least the following nine clients to establish an SMSF in circumstances where the rollover balance of the clients existing superannuation fund was less than \$50,000:

Client	Rollover balance
AA	\$4,534.91
AB	\$5,804.04
AC	\$11,528.39
AD	\$12,500
AE	\$17,285.98
Milligan	\$18,282.85
AF	\$18,330.62

AG	\$36,221.51
AH	\$41,513.71

The names of the clients for whom anonymised initials have been provided in the above table are set out in paragraph 51 of the affidavit of Elaine Wilson affirmed on 19 August 2015.

327. By the conduct in paragraph 326, Ostrava Equities contravened s 961Q of the Act by failing to:

327.1 act in the best interests of clients in contravention of s 961B of the Act; and

327.2 provide clients with appropriate advice in contravention of s 961G of the Act,

because it was uneconomic for those clients to establish and operate an SMSF, having regard to:

327.3 the starting balance of the SMSF; and

327.4 the costs likely to be incurred in administering the SMSF.

328. In or about January 2014, Ostrava Equities provided a financial services guide to clients WP and KE (P & E FSG). The P and E FSG had a date of preparation of January 2014.

329. The P & E FSG stated that Ostrava Equities would charge the following fees to the Walsh Super Fund:

329.1 an "Asset Based Fee" of "0 – 7.5%";

329.2 a "Securities Transactions" fee of "0.25%",

329.3 a "Portfolio Review" fee of \$0 to \$180;

329.4 a "specialised Financial Advice Service" fee of "\$800/hour".

(P & E Fee Representation)

330. The P & E Fee Representation was misleading or deceptive or likely to mislead or deceive because it was confusing and likely to lead to error in:

- 330.1 stating a range of percentages without explaining what the percentage was referable to (such as net or gross assets of the fund or net growth over a particular period);
 - 330.2 not explaining the time or time period in respect of which the percentage was to be applied; and
 - 330.3 not explaining how a determination would be made as to what percentage within the disclosed range would be applied.
331. By reason of the matters referred to in paragraph 330 above, the P & E FSG was defective in that the information about the remuneration to be received by Ostrava Equities:
- 331.1 was not dated as required by s 942C(5) of the Act;
 - 331.2 did not provide the level of detail that a person would reasonably require for the purpose of making a decision whether to acquire financial services from Ostrava Equities as a retail client, as required by s 942C(3) of the Act; and
 - 331.3 was not worded or presented in a clear, concise and effective manner, as required by s 942C(6A).
332. By reason of the matters referred to in paragraphs 329 to 331 above, Ostrava Equities contravened s 942C of the Act by giving clients WP and KE a defective Financial Services Guide.
- B. Prometheus Capital**
333. Prometheus Capital failed to obtain or retain application forms or any other record of consent for the acquisition by shareholders of shares in Prometheus Capital.
- C. Grimm**
334. By engaging in the conduct in paragraphs 314 and 315 above, Grimm:
- 334.1 carried on a financial services business for the provision of managed discretionary account services without holding an Australian financial services licence covering the provision of those services in contravention of s 911A(1) of the Act; and

- 334.2 provided a financial service being a managed discretionary account service that was not authorised by the terms of any authorisation from the holder of an Australian financial services licence in contravention of s 911B(1)(b)(iii) of the Act.
335. By engaging in the conduct in paragraph 321 above, Grimm contravened s 941B of the Act by providing financial services to retail clients without providing a Financial Services Guide.
336. By engaging in the conduct in paragraph 326, Grimm contravened s 961Q of the Act by failing to:
- 336.1 act in the best interests of clients in contravention of s 961B of the Act; and
- 336.2 provide clients with appropriate advice in contravention of s 961G of the Act.
337. Grimm and Ostrava Equities caused funds to be transferred from the SMSF cash management accounts of clients of Ostrava Equities to the Ostrava Fund for the purpose of acquiring shares in CGR and CGO.
338. The shares in CGR or CGO referred to in paragraph 337 were acquired by the Ostrava Fund but not transferred from the Ostrava Fund to clients of Ostrava Equities.
339. Grimm was involved in, permitted, and failed to prevent, the conduct engaged in by Ostrava Equities and Prometheus Capital referred to in paragraphs 314 to 333 and 336 and 338.
340. By reason of the matters referred to in paragraph 334 to 339 above, Grimm:
- 340.1 failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities and Prometheus Capital; and
- 340.2 thereby, contravened s 180(1) of the Act.
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341. On or about 29 October 2015 Grimm and Ash, for and on behalf of Ostrava Equities, Ostrava Asset Management, Ostrava Securities, Ostrava Wealth Management, Beta Pharmacology, Prometheus Capital, Thrive Lending and Trade BTC, executed a funding deed pursuant to which Grimm and Ash warranted that funds to be provided by them to the provisional liquidators in the amount of \$25,000 were not, and were not realised from assets, the subject of any of the claims made by ASIC in this proceeding.
342. On or about 2 November 2015, Equity Capital Partners paid the sum of \$10,000 to the provisional liquidators purportedly in accordance with the terms of the funding deed.
343. On or about 5 November 2015, Equity Capital Partners paid the sum of \$15,000 to the provisional liquidators purportedly in accordance with the terms of the funding deed.
344. On or about 13 November 2015, Grimm represented to the provisional liquidators in an email from Grimm to Mr Wagg of KordaMentha dated 13 November 2015 that shareholders of Equity Capital Partners:
- 344.1 had consented to contributing equity to Equity Capital Partners; and
 - 344.2 were aware that Equity Capital Partners had made a contribution of \$25,000 to the provisional liquidators.
-
345. The funds paid by Equity Capital Partners to the provisional liquidators had been transferred to Equity Capital Partners from the SMSF accounts of clients of Ostrava Equities (being GB Ash & Co, client ML and Walsh) in circumstances where:
- 345.1 the clients had not consented to contributing equity to Equity Capital Partners;
 - 345.2 the clients were not aware that Equity Capital Partners had made a contribution of \$25,000 to the provisional liquidators; and
 - 345.3 the SMSF accounts of the clients are and were assets the subject of claims made by ASIC in this proceeding.
346. By reason of the conduct in paragraphs 341 to 345 above, Grimm:
- 346.1 failed to act in good faith in the best interests of Equity Capital Partners and for a proper purpose and thereby contravened s 181 of the Act; and
 - 346.2 improperly used his position to gain an advantage for himself, Ash, Ostrava Equities, Ostrava Asset Management, Ostrava Securities, Ostrava Wealth Management, Beta Pharmacology, Prometheus Capital, Thrive Lending and Trade BTC and thereby contravened s 182 of the Act.


D. Ash


347. By permitting and failing to prevent Ostrava Equities from engaging in the conduct referred to in paragraphs 314 to 332, Ash:

347.1 failed to exercise her powers and discharge her duties with the degree of care and diligence that a reasonable person would exercise if they were a director of Ostrava Equities; and

347.2 thereby, contravened s 180(1) of the Act.

DATED: 20 June 2016


.....
Signed on behalf of the plaintiff by its lawyer


.....
Signed on behalf of the fourth, fifth and eleventh defendants by their lawyer

SCHEDULE OF PARTIES

VID 201 of 2015

Federal Court of Australia

District Registry: Victoria

Division: General

Fourth Defendant	VANESSA MARIA ASH
Fifth Defendant	BRADLEY JOHN GRIMM
Sixth Defendant	OSTRAVA WEALTH MANAGEMENT PTY LTD
Seventh Defendant	BETA PHARMACOLOGY PTY LTD
Eighth Defendant	PROMETHEUS CAPITAL PTY LTD
Ninth Defendant	THRIVE LENDING PTY LTD
Tenth Defendant	TRADE BTC PTY LTD
Eleventh Defendant	EQUITY CAPITAL PARTNERS HEDGE FUND PTY

