

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/09/2016 1:59:56 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: Non-Prescribed Pleading
File Number: NSD1679/2016
File Title: Australian Securities and Investments Commission v Vocation Ltd (In Liquidation) ACN 166 631 330 & Ors
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 29/09/2016 1:48:39 PM AEST

Registrar

Important Information

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

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



CONCISE STATEMENT

Federal Court of Australia

No

of 2016

District Registry: New South Wales

Division: General

IN THE MATTER OF VOCATION LTD (IN LIQUIDATION)

ACN: 166 631 330

Australian Securities and Investments Commission

Plaintiff

Vocation Ltd (in liquidation) ACN 166 631 330 and others named in the Schedule

Defendants

Overview

1. During 2014, the First Defendant, (**Vocation**), was a listed public company that provided vocational education and training services to students in Victoria through a number of registered training organisations (**RTOs**), principally BAWM Pty Ltd (**BAWM**) and Aspin Pty Ltd (**Aspin**). The RTOs ran courses which were funded by the Victorian Department of Education and Early Childhood Development (**DEECD**).
2. In September 2014 Vocation raised approximately \$72.5 million from institutional and sophisticated investors pursuant to a placement (**Placement**), relying on a cleansing notice pursuant to s 708A of the Corporations Act (**Cleansing Notice**).
3. By the time Vocation issued the Cleansing Notice, the DEECD had commissioned an independent review of the contractual performance of the RTOs including BAWM and Aspin under funding contracts respectively entered into by each of them with the DEECD, in November 2013, for 2014-2016 (**2014-2016 contracts**). The DEECD had also withheld all payments due to BAWM and Aspin under the 2014-2016 contracts, since 3 July 2014 for

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BAWM and 5 August 2014 for Aspin; and in addition, it had suspended all new enrolments and commencements of students, for BAWM since 24 July 2014 and for Aspin since 5 August 2014 (**DEECD's contractual measures**).

4. ASIC contends that the Cleansing Notice was defective because, as at the time it was issued, Vocation had failed to disclose the extent of funding that had been withheld by the DEECD from Vocation with respect to BAWM and Aspin; and it had failed to disclose that the DEECD had exercised its contractual rights to suspend all new enrolments and commencements by BAWM and Aspin.
5. In the financial year ending 30 June 2014, BAWM and Aspin contributed revenue to Vocation equivalent to more than 70% of the total revenue of Vocation on a pro forma basis. Following the implementation of the DEECD's contractual measures, Vocation became cash flow negative from an operational perspective, but any immediate cash flow implications were subsequently offset by the proceeds of the Placement.
6. At all relevant times Vocation's board included an executive managing director, Mr Mark Hutchinson (**Hutchinson**) and a non-executive chairman, Mr John Dawkins (**Dawkins**). Mr Manvinder Gréwal (**Gréwal**) was the company secretary and CFO of Vocation.

ASX Representations

7. On 25 August 2014, Vocation made an ASX announcement in response to press speculation that was approved by both Hutchinson and Dawkins, (**ASX Announcement**) which included continuing representations to the effect that:
 - a. none of Vocation's entitlements under its RTOs' funding contracts with the DEECD had been suspended other than the withholding of recent payments due under the contracts (**No Suspension Representation**);
 - b. Vocation had reasonable grounds to represent that the withholding by the DEECD of recent payments under Vocation's RTOs' funding contracts was not material to Vocation (**Reasonable Grounds Representation**); and
 - c. Vocation was able to continue to enrol students and deliver vocational education and training and ancillary services under all of its RTOs' funding contracts with the DEECD (**Continuing Representation**).

8. Each of the representations made in the ASX Announcement was misleading or deceptive by reason of: (a) the impact of the DEECD's contractual measures on BAWM's and Aspin's 2014-2016 contracts; (b) Vocation's acknowledgement to the DEECD, on 19 August 2014, that it would reverse \$4.5m in claims that should not have been processed by Aspin with the DEECD (**Aspin Claims Reversal**); and (c) the fact that the aggregate amount withheld by the DEECD as at 25 August 2014 exceeded \$20 million.
9. On 26 August 2014, the DEECD notified Vocation that a proportion of the funds the DEECD had paid to BAWM prior to 3 July 2014 may have to be repaid, any variation of the withholding of funds with respect to BAWM would be premature, and it did not propose to agree to a separate outcome for Aspin.
10. On 28 August 2014, the DEECD confirmed to Vocation that the earlier suspensions of new enrolments and commencements extended to all courses offered by BAWM and Aspin.

Continuous Disclosure and Placement contraventions

11. The nature and extent of the impact of the DEECD's contractual measures on Vocation and the Aspin Claims Reversal (**Withholding and Suspension Information**) was not generally available in the period between 28 August 2014 and 18 September 2014 (**Relevant Period**).
12. If the Withholding and Suspension Information had been generally available in the Relevant Period it would be likely to influence persons who commonly invest in securities in deciding whether to acquire or dispose of shares in Vocation, given: (a) the extent of the reliance by Vocation on the receipt of government funding; (b) the quantum of both the funds withheld by the DEECD and the Aspin Claims Reversal, as a proportion of revenue generated by the businesses operated by Vocation; and (c) the effect of the DEECD's contractual measures and the Aspin Reversal on the operational cash flow and reputation of Vocation.
13. Contrary to their continuous disclosure obligations, each of Vocation, Hutchinson, and Dawkins had knowledge of, but failed to notify, the ASX of the Withholding and Suspension Information at any time in the Relevant Period.
14. On 10 September 2014, Vocation represented, in its responses to a due diligence questionnaire which Hutchinson and Gréwal signed and provided to UBS AG Australia (**DDQ**), by that time the proposed sole underwriter of the Placement, that:

- a. the focus of the DEECD's concerns was the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin (**School Leavers Representation**);
 - b. the loss of revenue to Vocation from suspensions in enrolments in courses offered by BAWM and Aspin had been offset by enrolling students in qualifications offered by Vocation's other Victorian RTOs (**Offsetting Representation**); and
 - c. the DEECD had indicated to Vocation a willingness to pay a substantial portion of the currently withheld funds within 7 to 14 days (**Expedited Payment Representation**).
15. Each of the representations made in the DDQ was misleading and deceptive in that the DEECD's concerns were not limited to the extent to which school leavers were undertaking particular courses offered by BAWM and Aspin; suspensions in enrolments had not been offset by enrolling students in courses offered by its other Victorian RTOs; and the DEECD had not indicated to Vocation a willingness to pay a substantial portion of the currently withheld funds within 7 to 14 days.
16. On 16 September 2014, Gréwal provided the Cleansing Notice, approved by Hutchinson and Dawkins, to the ASX. The Cleansing Notice was defective because it failed to disclose the Withholding and Suspension Information and incorrectly represented that Vocation had complied with its obligations under s 674 of the Corporations Act, and in the alternative, incorrectly represented that there was no excluded information for the purposes of ss 708A(7) and (8) of the Corporations Act.

Causes of action advanced and relief sought by ASIC

17. By reason of the matters alleged above, ASIC contends that:
- a. Vocation made representations in relation to its securities that were misleading or deceptive or likely to mislead or deceive investors and potential investors in its securities in contravention of s 1041H of the Corporations Act;
 - b. Vocation failed to notify the ASX of information that was not generally available and that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of its securities in contravention of s 674(2) of the Corporations Act;

- c. Hutchinson and Dawkins aided and abetted or by their acts or omissions were directly or indirectly knowingly concerned in the failure of Vocation to disclose the Withholding and Suspension Information at any time during the Relevant Period to the ASX in contravention of s 674(2A) of the Corporations Act; and
 - d. Vocation provided the ASX with a defective notice pursuant to s 708A(5) of the Corporations Act that it was aware was defective and failed to provide the ASX with a notice within a reasonable time setting out the information necessary to correct the defect in contravention of s 708A(9) of the Corporations Act.
18. Further, ASIC contends that Hutchinson, Gréwal and Dawkins failed to discharge each of their duties to Vocation with the requisite degree of care and diligence that a reasonable person in his position would exercise and thereby contravened s 180 of the Corporations Act, as more specifically identified in the Originating Process, by:
- a. each authorising or otherwise approving the making of the representations as alleged in the Originating Process and thereby causing or otherwise permitting Vocation to contravene s 1041H of the Corporations Act;
 - b. Hutchinson and Dawkins causing or otherwise permitting Vocation to fail to disclose the Withholding and Suspension Information to the ASX during the Relevant Period and thereby contravene s 674(2) of the Corporations Act;
 - c. each authorising or otherwise approving or procuring the provision of an uncorrected defective s 708A(5) notice to the ASX and thereby caused or otherwise permitted Vocation to contravene s 708A(9) of the Corporations Act.
19. ASIC seeks leave to proceed against Vocation in liquidation for declarations of contravention and seeks declarations of contravention, civil penalties and disqualification orders against each of Hutchinson, Dawkins and Gréwal.

Date: 28 September 2016

Signed by



Kim Turner
Plaintiff's legal practitioner

Schedule

Federal Court of Australia

No.

of 2016

District Registry: New South Wales

Division: General

IN THE MATTER OF VOCATION LIMITED (IN LIQUIDATION)

ACN: 166 631 330

DefendantsSecond Defendant: **Mark Hutchinson**Third Defendant: **John Dawkins**Fourth Defendant: **Manvinder Gréwal**

Date: 28 September 2016