

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/03/2017 9:57:24 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: VID238/2017
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
WEALTH & RISK MANAGEMENT PTY LTD & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 14/03/2017 9:59:33 AM AEDT

Registrar

Important Information

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

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

CONCISE STATEMENT

No.



Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF WEALTH & RISK MANAGEMENT PTY LTD (ACN 161 722 514)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

WEALTH & RISK MANAGEMENT PTY LTD (ACN 161 722 514) AND OTHERS

Defendants

A. IMPORTANT FACTS GIVING RISE TO THE CLAIMS

- 1. Wealth & Risk Management Pty Ltd (ACN 161 722 514) (WRM) holds an Australian Financial Services Licence (AFSL) relevantly permitting it to advise retail clients about and deal in life risk insurance and superannuation products and authorises advisers (WRM AR), who are generally employed by WRM's corporate authorised representative Yes FP Pty Ltd (ACN 607 165 159) (Yes FP).
2. The WRM ARs purport to provide personal financial advice to retail clients referred to WRM ARs by JECA Holdings Pty Ltd (ACN 609 298 820) (JECA) (trading as 'Yes FS') via JECA's website yesfs.com.au (the Yes FS Website). Each of WRM, Yes FP, and JECA are owned by Joshua Fuoco (Fuoco), who was also a director of each of those companies at all relevant times until his disqualification on 13 May 2016.
3. Since on or about 1 December 2015 and continuing JECA has used 'GoogleAdwords' to attract people to the Yes FS Website who have a poor credit history or standing and are in need of a loan or 'fast cash', and represented to them both in internet advertisements and on the Yes FS Website variously that:
(a) JECA provides credit and/or personal loans;
(b) JECA offers 'fast cash', 'cash now' and cash payments within 24 to 72 hours of receipt of an Application Form;
(c) JECA is an Australian Credit Licence holder or an authorised credit representative of an Australian Credit Licencee (ACL),
(together the Representations).
4. Contrary to the Representations JECA does not provide credit or personal loans, it does not provide any cash within 24 to 72 hours of receiving an Application Form and is not an ACL or an authorised credit representative of an ACL.

Filed on behalf of: Australian Securities & Investments Commission, Plaintiff
Prepared by: Nathalie Pietsch, Litigation Counsel, ASIC
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Attention: Nathalie Pietsch

5. People accessing the Yes FS Website searching for a loan or fast cash (or both) (**Cash Applicants**) are required to submit an online application form (**Application Form**) which requires the Cash Applicant to provide personal circumstances, including 'loan amount required' or 'amount requested'.
6. Those Cash Applicants who are employed, earn a minimum of \$30,000 to \$40,000 and have a superannuation fund, are contacted by Customer Services Officers, many of whom are employed by JECA, (**CSO**) who make recommendations or express statements of opinion that are intended to influence Cash Applicants to switch their superannuation and purchase or replace insurances as described below, in circumstances where the CSO is not a representative of WRM and JECA does not hold an AFSL nor is it a WRM AR.
7. The terms and conditions of the offer of 'Fast Cash' are not apparent from the Yes FS website. In particular, the Yes FS Website, has at all material times failed to disclose that:
 - (a) to be eligible to receive a cash payment from Yes FS a Cash Applicant must agree to:
 - (i) receive and implement financial advice from a WRM AR;
 - (ii) replace their existing superannuation fund with a retail fund recommended by a WRM AR;
 - (iii) purchase or switch Life, Total Permanent Disability (**TPD**) and/or Income Protection (**IP**) Insurance policies (usually all three) on the advice of an WRM AR;
 - (iv) a fee for advice being charged to the Cash Applicant's superannuation fund; and
 - (v) annual insurance premiums being charged against the superannuation;
 - (b) WRM receives upfront insurance commissions from the insurance provider on the insurance(s) purchased by the Cash Applicant.
 - (c) WRM in turns pays the insurance commissions to JECA pursuant to their Referral Agreement.
 - (d) The Yes FS offer of cash is in fact an offer to rebate to the Cash Applicant part of the commissions paid to JECA which typically takes in excess of 8 weeks from the time of submitting the Application Form.
 - (e) Emergency funding payable under any Emergency Debt Relief Agreement (**EDRA**) is subject to insurance pre-approval, often less than \$2,000 and is typically more than two weeks of submitting the Application Form.
8. To proceed further in the process, the Cash Applicant is required to sign and return a Cash Rebate Agreement (**CRA**) and EDRA (if applicable) to JECA. The CRA provides (among other things) that the offer of cash will involve (among other things) a financial planning consultation and the preparation of a basic financial plan (limited to superannuation and insurances) and that if the Cash Applicant does not accept the personal financial insurance advice, JECA is under no obligation to continue to offer the cash rebate.
9. At the time Cash Applicants are required to sign the CRA and/or the EDRA, they typically have not received the Limited Statement of Advice (**LSOA**), the details of the new superannuation fund and insurance to be purchased and the details of the services they are to receive in exchange for the one-off fee charged to their superannuation fund by WRM.
10. After the Cash Applicants have returned the CRA, and provided additional information via a Client Questionnaire or Client Data Collection Form and spoken with a WRM AR,

they receive a LSOA that mostly follow a template. They almost invariably recommend that the client replaces one superannuation product with another, and purchases life, TPD and IP insurance policies and pay the premiums out of the super fund, in circumstances where:

- (a) the premiums totalled on average approximately X% of the Cash Applicant's employer annual contributions;
 - (b) the implementation of the advice coupled with the advice fee would cause a significant immediate reduction to the Cash Applicant's superannuation balance (on average approximately a X% reduction).
11. The LSOAs also routinely omitted any or adequate consideration of:
- (a) the advantages and disadvantages of the Cash Applicant remaining with any existing insurer (at a higher coverage level or otherwise), compared with moving to a new insurer;
 - (b) the fact the client has any objective related to seeking 'fast cash' or a loan and that insurance commissions will be rebated to them to meet this objective;
 - (c) the cash rebate, including the amount of the rebate and how the client should use the cash rebate to better their financial position;
 - (d) advice on debt management, despite debt management routinely being identified by Cash Applicants as a matter on which advice is sought; and
 - (e) the identification of any conflicts of interests.
12. After the Cash Applicant has authorised the WRM AR to implement the advice, the Cash Applicant is informed that in order to receive the rebate they must sign and return a Deed of Undertaking and Agreement between Yes FP and the Cash Applicant (**the Yes FP Deed**) or a second CRA between JECA and the Cash Applicant that provided (among other things) that the Cash Applicant would have to repay the rebate if the Cash Applicant changed or cancelled the insurance policies within a certain period (typically 12 to 36 months).
13. After the advice (and any amended advice) was implemented:
- (a) the Cash Applicant's superannuation provider deducted from the Cash Applicant's superannuation advice fee which it paid to WRM or Yes FP, as well as the initial insurance premiums which it paid to the insurance provider;
 - (b) the insurance provider paid the upfront commissions to WRM or Yes FP;
 - (c) WRM or Yes FP (as the case may be) paid JECA pursuant to a Referral Agreement an amount equal to the upfront commissions and a percentage of the advice fee; and
 - (d) JECA paid the Cash Applicant the cash rebate, less any amount paid under an EDRA.
14. In the circumstances described above, on numerous occasions since December 2015, and on each occasion referred to in Annexure A, WRM ARs have provided advice that is, not in the best interests of the Cash Applicant, inappropriate and conflicted (**the WRM AR Contraventions**).
15. Further, at all material times, WRM's internal written policies which relate to legal and regulatory compliance and risk management (**Compliance Policies**) have not been updated to reflect the actual business of WRM, not been updated to reflect the Future of Financial Advice' reforms introduced as Division 2 of Part 7.7A of the Act effective 1

July 2013 (**FOFA Reforms**), not made adequate provision for training and failed to adequately identify conflicts of interest and how they will be managed. Also, Compliance Policies have not been enforced.

16. At all material times WRM provided insufficient training on legal and regulatory obligations to which WRM ARs may be subject and provided no external training sessions on compliance with the FOFA Reforms and maintained inadequate training systems and records. Moreover, WRM has not conducted regular and substantive compliance reviews of WRM ARs.
17. At all material times WRM provided WRM ARs with template SOAs that caused or was likely to lead to LSOA omitting the matters referred to in 11 and a Financial Services Guide which template did not include clear disclosure of fees and commissions, the details of WRM's compensation arrangements, and any actual or perceived conflicts of interests.
18. WRM, Yes FP and JECA target people in financial difficulty seeking credit and take advantage of their comparatively weak bargaining position to generate fees and commissions for the defendants by providing misleading information about the nature of the JECA and WRM offering, by providing inappropriate and conflicted advice that was not in their best interest and by utilizing unfair tactics.

B. SUMMARY OF RELIEF SOUGHT FROM THE COURT

19. ASIC seeks declarations to the effect that:
 - (a) WRM has at all times since 1 December 2015 contravened s 961L of the *Corporations Act 2001* (Cth) (the **Act**) by failing to take reasonable steps to ensure that WRM ARs complied with ss 961B, 961G and 961J of the Act.
 - (b) WRM has since 1 December 2015 contravened s 912A(1) of the Act;
 - (c) JECA has since 1 December 2015 contravened s 911A of the Act or alternatively s 911B, by reason of having carried on a financial services business in this jurisdiction without holding an AFSL or otherwise being authorised by an AFSL holder;
 - (d) JECA contravened s1041H of the Act and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**), by in trade or commerce, engaging in conduct in relation to a financial service that is misleading or deceptive or likely to mislead or deceive by making the Representations;
 - (e) WRM, JECA and Yes FP contravened s12CB of the ASIC Act by engaging in conduct in trade or commerce in connection with the supply or possible supply of financial services to a person that was in all the circumstances unconscionable.
20. ASIC also seeks:
 - (a) permanent injunctions pursuant to ss1101B(1) and 1324(1) of the Act restraining WRM, Yes FP and JECA from carrying on a financial services business or providing financial product advice or in any way holding out themselves as doing so;
 - (b) that a pecuniary penalty be imposed against WRM in respect of the contravention of s 961L of the Act.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

21. **WRM AR Contraventions:** In respect of the provision of advice to the Cash Applicants in Annexure A, each of the named WRM ARs did not act in the best interests of their clients, in breach of s 961B of the Act; and the advice each of them provided to the Cash Applicants was not appropriate to those clients, in breach of s 961G of the Act; and the WRM AR failed to give priority to the Cash Applicants, in breach of s 961J of the Act.
22. **WRM's AFSL obligations:** By reason of the matters referred to in paragraphs 14 to 17 above, at all times since 1 November 2015, in contravention of:
- (a) s 961L of the Act, WRM failed to take reasonable steps to ensure that WRM ARs complied with ss 961B, 961G and s 961J of the Act;
 - (b) s 912A(1) of the Act WRM has not:
 - (i) done all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly; and
 - (ii) has not taken reasonable steps to ensure that its representatives comply with the financial services laws.
23. **Misleading or deceptive conduct:** JECA engaged in conduct, in relation to a financial product or a financial service conduct that was misleading or deceptive, or likely to mislead or deceive in contravention of s 1041H of the Act and s 12DA of the ASIC Act by making the Representations.
24. **Carrying on an unlicensed financial services business:** JECA has since 1 December 2015 contravened s 911A or alternatively s 911B of the Act, by reason of having carried on a financial services business in this jurisdiction without holding an AFSL or otherwise being authorised by an AFSL holder.
25. **Unconscionable Conduct:** WRM, Yes FP and JECA in trade or commerce by their conduct summarised at paragraph 18 above engaged in conduct in relation to the supply or possible supply of financial services that was in all the circumstances unconscionable in contravention of s12CB of the ASIC Act.

D. ALLEGED DETRIMENT

26. The WRM AR Contraventions caused financial detriment to the Cash Applicants by reason of immediate and significant reduction in the Cash Applicants' superannuation balance and ongoing insurance premiums being charged to their superannuation accounts in circumstances where the advice was, not in their best interest, inappropriate and conflicted.

Date: 2 March 2017


 Signed by Nathalie Pietsch

Solicitor for the Australian Securities and Investments Commission

