

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/02/2017 2:38:43 PM 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: NSD2204/2016
File Title: Australian Securities and Investment Commission v Westpac Securities Administration Ltd ACN 000 049 472 & Anor
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 6/02/2017 3:04:36 PM 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.



Amended Concise Statement

(Filed pursuant to the Orders of the Honourable Justice Gleeson made on 2.2.17)

No. 2204 of 2016

Federal Court of Australia

District Registry: NEW SOUTH WALES

Division: GENERAL

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

WESTPAC SECURITIES ADMINISTRATION LIMITED (ACN 000 049 472) AND ANOTHER

Defendants

A. INTRODUCTION

1. The Defendants, Westpac Securities Administration Limited (**WSAL**) and BT Funds Management Limited (**BTFM**), are part of the Westpac Group. They each hold an Australian Financial Services Licence (**AFSL**) and are issuers of superannuation products (**BT Accounts**). Under their respective AFSLs, they are authorised to provide "*financial product advice*" where such advice is "*general advice*" as opposed to "*personal advice*", as those terms are defined in s 766B of the *Corporations Act 2001* (Cth) (**Corporations Act**).
2. ASIC contends that WSAL and BTFM have provided personal financial product advice to existing customers to influence them to 'roll over' their superannuation held other than in their BT Account(s) (**External Account(s)**) into a BT Account. It seeks the declarations, penalties and other relief set out in section D.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

3. Between January 2013 and September 2016, the Westpac Group conducted a series of 'campaigns' which involved contacting existing customers in writing and by phone to offer free of charge to search for any superannuation the person held in any

Filed on behalf of: Australian Securities & Investments Commission, Plaintiff

Prepared by: Nathalie Pietsch, Lawyer, ASIC

Tel (03) 9280 3539 Fax (03) 9280 3545

Email Nathalie.pietsch@asic.gov.au

Address for service Level 7, 120 Collins Street, Melbourne, Vic 3000

Attention: Nathalie Pietsch

External Accounts, offer to roll over amounts held in one or more External Accounts into the person's BT Account, and encourage customers to take up such offers.

4. In the course of 37 such campaigns, many customers were spoken to, and nearly one third of those customers rolled over at least one External Account into a BT Account, and the Westpac Group generated \$646,719,225.51 in additional funds under management (**FUM**).
5. Telephone calls were made to customers with BT Accounts by a team of people employed by the Westpac Group (and whose conduct was attributable to Westpac) and referred to as the "*Super Activation*" telephone unit. For the purpose of conducting calls with customers, Super Activation staff were provided with a document styled as a "*Quality Monitoring Framework*" document (**QM Framework**).
The QM Framework:
 - a. set out a structure to calls with customers aimed at influencing customers to roll over any External Accounts into a BT Account, which structure included (1) a 'Gather' section involving asking the customer questions to gather, uncover, clarify and develop an understanding of the customer's needs, interests, motivations and requirements; (2) a 'Presenting' section to present to the customer based on what the customer said in the 'Gather' section including through linking the customer's motivations back to the product being offered in the campaign; and (3) an 'Objection Handling / Closing' section aimed at overcoming any objections raised by the customer to rolling over their superannuation into their BT Account and using the end of the call to move the customer closer to the sale;
 - b. encouraged staff to use certain sales techniques in the process of calls; such as asking open ended questions to understand what was important to the customer, and set out specific example statements and questions which those staff could use on calls with customers to implement the structures and techniques; and
 - c. set out a scoring system by which a call by staff to a customer could be scored for how closely it followed the QM Framework.
6. The Super Activation staff were trained, encouraged and directed to follow the QM Framework in their calls with customers, including through regular monitoring and reviews of their calls with a 'sales coach', being 'scored' against the QM Framework, being encouraged to follow scripts which followed the structure and techniques set

out in the QM Framework, and having their scores and the amount of FUM which they generated as significant inputs into the calculation of any bonuses.

7. ASIC has reviewed a sample of calls from 2 such campaigns (the **Sample Campaigns**). It contends that in the Sample Campaigns, WSAL and BTFM (through the Super Activation staff following the QM Framework) provided personal advice to customers to roll over their External Accounts into their BT Account and did so regardless of the appropriateness of that advice to the customer and with the primary purpose of generating FUM, thus preferring their own interests to those of their customers.
8. For the purposes of these proceedings, ASIC relies upon calls with 15 customers made in the course of the Sample Campaigns (the **Relevant Customers**). Each of the calls follow a broadly similar pattern. As such, one anonymised example suffices for the purposes of this Concise Statement. ASIC intends to provide the remaining 14 examples in a format which the Court considers most appropriate.
9. One customer (**Mr A**) was a member of a BTFM BT Account. He requested that BTFM conduct a search for External Accounts. On 1 October 2014, a Super Activation staff member (**Mr X**) called Mr A. During that conversation, Mr X stated words to the following effect:
 - a. that he was undertaking a quick courtesy call to see how Mr A was tracking and to go through his superannuation results and potentially save him on fees by bringing his External Accounts over to his BT Account;
 - b. that it made a lot more sense for Mr A to pay only one set of fees, potentially, rather than multiple sets of fees;
 - c. that many BT customers say that they want to consolidate their superannuation funds to save fees;
 - d. that what he could do for Mr A was to help Mr A roll over his External Accounts into his BT Account that day over the phone and that this would save him from having to complete any forms and potentially save him on fees; and
 - e. that once Mr A's External Accounts were rolled over into his BT Account he would start potentially saving on fees.
10. ASIC contends that, for the purposes of s 766B(1) of the Corporations Act, such statements constitute recommendations or statements of opinion intended to

influence Mr A to roll over his External Accounts into his BT Account and, or alternatively, could reasonably be regarded as being intended to have such an influence.

11. Mr X made such statements in circumstances where he had: (1) asked Mr A for the main reason that he requested BTFM to look into his superannuation, and was told that Mr A was retiring; (2) asked Mr A what he personally saw as the main benefits of bringing all of his superannuation into the one account, and Mr A told him that it was saving on fees and making his accounts easier to manage; (3) asked Mr A whether saving on fees was the most important factor to him, and Mr A told him that it was.
12. ASIC contends that Mr X made the above statements in circumstances where he had considered (and, or alternatively, a reasonable person might expect him to have considered) one or more of Mr A's personal objectives, financial situation or needs (i.e., that Mr A was retiring, wanted to make his accounts easier to manage, and that the most important thing to him was saving on fees - rather than, for example, other objectives such as seeking the best performing fund or maintaining superannuation insurance coverage), and as such Mr X gave Mr A personal advice for the purposes of s 766B(3) of the Corporations Act.

C. RELIEF SOUGHT FROM THE COURT

13. ASIC seeks declarations to the effect that WSAL and BTFM's conduct involved:
 - a. breaches of conditions of WSAL and BTFM's respective AFSLs by providing personal advice in contravention of s 912A(1)(b) of the Corporations Act;
 - b. the provision of personal advice without providing a statement of advice, in contravention of s 946A of the Corporations Act;
 - b.c. contraventions of s 961K of the Corporations Act, by reason of a failure by relevant staff to act in the best interests of clients in contravention of s 961B(1) of the Corporations Act;
 - e.d. a failure to ensure that financial services were provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the Corporations Act; and
 - d.e. a failure to comply with financial services laws, in contravention of s 912A(1)(c) of the Corporations Act.

14. Pursuant to s 1317G(1E), ASIC seeks orders that WSAL and BTFM pay a pecuniary penalty in an amount that the Court considers appropriate in respect of contraventions of s 961K of the Corporations Act.

15. Costs.

D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

16. Relief is sought in relation to s 912A(1)(b) on the grounds that the Super Activation staff (on behalf of either WSAL or BTFM) provided the client with financial product advice being personal advice for the purposes of s 766B(3) of the Corporations Act, where WSAL and BTFM were only authorised to provide general advice pursuant to their AFSLs.

17. Relief is sought in relation to s 946A of the Corporations Act on the grounds that such personal financial product advice was provided without the provision of a Statement of Advice.

~~17.~~18. Relief is sought in relation to s 961K(2) of the Corporations Act on the grounds that the Super Activation staff (on behalf of either WSAL or BTFM) failed to act in the best interests of the customer for the purposes of s961B(1) in relation to the provision of personal advice, including by failing to take steps including but not limited to:

- a. adequately identifying the objectives, financial situation and needs of the customer;
- b. conducting a reasonable investigation or reasonable inquiries into the financial products that might achieve the customer's objectives; and
- c. ensuring they were not advising the customer to withdraw from or roll out of External Accounts which were better suited to the customer.

~~18.~~19. Relief is sought in relation to s 912A(1)(a) of the Corporations Act on the grounds that WSAL and BTFM adopted and implemented the QM Framework through training, encouraging and directing staff to follow that framework in the manner described at paragraph 6 above, in circumstances where they:

- a. adopted a structure and approach to calls that was liable to lead to the Super Activation staff: (1) providing personal advice to customers to rollover their External Accounts into their BT Account; and (2) without taking steps of the type set out above at paragraph ~~17~~18;

- b. did so regardless of the appropriateness of the BT Account to the customer, including whether that step involved them rolling out of one or more External Accounts which were better suited to the customer than their BT Account;
- c. did so for the primary purpose of generating FUM for the Westpac Group and thereby preferring their own interests and the interests of the Westpac Group in generating FUM to those of its customers,

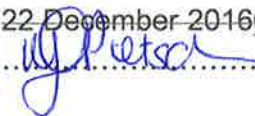
and, in the premises, failed to do all things necessary to ensure that the financial services covered by the licence were provided efficiently, honestly and fairly.

19.20. Relief is sought in relation to s 912A(1)(c) of the Corporations Act on the grounds that WSAL and BTFM contravened the Corporations Act provisions set out above.

E. ALLEGED HARM

20.21. The Defendants' conduct created the risk that clients were influenced by either WSAL or BTFM to roll out of one or more External Accounts which were better suited to the customer's personal objectives, financial situation and needs than their BT account, in circumstances where the customer's circumstances were purportedly being taken into account, and, or alternatively, a reasonable person might expect they were being taken into account.

Date: ~~22 December 2016~~ February 2017


.....

Nathalie Pietsch
Lawyer, ASIC

For and on behalf of the Australian Securities and Investments Commission

Certificate of lawyer

I, Nathalie Pietsch, certify to the Court that, in relation to the statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~22-December-2016~~ February 2017



Signed by Nathalie Pietsch

Lawyer for the Plaintiff