

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/10/2019 9:06:23 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: VID1170/2019
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v RI
ADVICE GROUP PTY LTD & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Dated: 31/10/2019 10:26:39 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. of 2019

Federal Court of Australia
 District Registry: Victoria
 Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

RI ADVICE GROUP PTY LTD (ACN 001 774 125) and Another
 Defendants

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. The second defendant, John Doyle (**Doyle**), was a financial adviser. He was the principal of The Carrington Corporation Pty Ltd (ACN 006 905 317) (**Carrington**). Between 8 May 2013 and 30 June 2016, Doyle and Carrington were authorised representatives of the first defendant (**RI**). At all material times, RI was the holder of Australian Financial Services Licence No. 000238429 (**AFSL**) and a financial services licensee within the meaning of the *Corporations Act 2001* (Cth) (**Act**). RI was also a wholly owned subsidiary of Australia and New Zealand Banking Group Ltd (**ANZ**).

RI's recruitment and initial supervision of Doyle

2. Immediately prior to becoming an authorised representative of RI, Doyle was an authorised representative of a third party AFSL holder (**AFS**). RI targeted Doyle for recruitment. At the time, RI conducted due diligence on Doyle, obtaining a report by AFS on advice given by Doyle. ANZ prepared a due diligence report after reviewing a sample of Doyle's client files. Both reports raised potential concerns about aspects of Doyle's advice and record keeping.
3. On 8 May 2013, RI authorised Doyle to be its authorised representative. The appointment was conditional on Doyle:
 - (a) meeting the conditions of RI's "pre-vetting" policy, which required advisers to submit draft Statements of Advice and relevant supporting documentation for assessment by ANZ's Advice Assurance Team. The policy required that, while an adviser was subject to pre-vetting, the adviser was required to submit all advice for pre-vetting before it was presented to clients; and

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- (b) completing a financial planning knowledge test (**Kaplan test**) within 30 days of authorisation.
4. On 15 July 2013, more than two months after his authorisation, Doyle took the Kaplan test and failed. Doyle did not receive a pass mark in four of the seven modules tested.
 5. RI expected new authorised representatives to pass pre-vetting within three months of authorisation or shortly thereafter. Doyle did not pass pre-vetting for any of his areas of authorisation until 25 August 2014 and did not pass pre-vetting completely until 14 November 2014, more than 18 months after he became an authorised representative of RI.
 6. By 26 August 2013, Doyle had submitted 10 files for pre-vetting, all of which were rejected as deficient. An RI practice development manager, Marie-Aimée Collins, was assigned to assist Doyle with pre-vetting. Doyle continued to submit files to pre-vetting and to receive “not approved” ratings on those files in 2013 and into 2014.
 7. By February 2014, RI engaged a paraplanner, Rebecca Burn, to assist Carrington with preparation of documentation for submission to pre-vetting. Burn worked intensively with Carrington, in a manner that went far beyond assistance provided by RI to any other practice at the time. Eventually, and with significant assistance from Collins and Burn, Doyle passed pre-vetting for various key advice areas.

Problems after pre-vetting

8. In February 2015, RI conducted a review of Doyle’s files. The resulting Advice Quality Report assigned the worst possible rating (a “5”) to the quality of Doyle’s advices. Doyle rejected the Report’s findings. Doyle was put on a remediation program.
9. In June 2015, RI conducted a second review. The resulting report again raised significant concerns and assigned a rating of “N/A (5 Equivalent)” to Doyle’s files. RI engaged another paraplanner to assist Doyle. That paraplanner quickly raised numerous concerns, including about matters such as Doyle’s attitude towards compliance issues and lack of resources.
10. Not long after the new paraplanner was engaged, RI issued a Notice of Termination dated 22 June 2015 in respect of Doyle’s status as an authorised representative of RI. However, the termination was not to come into effect until 21 December 2015 and it was made clear to Doyle that RI would revoke the termination if he took certain steps to improve his advice process.
11. After the Notice of Termination was issued, RI identified numerous further instances of non-compliant practices by Doyle. A third review of Doyle’s files identified problems similar to those identified in previous reviews. On 25 August 2015, RI issued a Suspension Notice to Doyle, which required Doyle to limit his activities to the remediation of existing clients and for any advice he provided to clients to once again go through pre-vetting. The termination date for Doyle’s status as an authorised representative was extended to 30 June 2016. In the meantime, Doyle continued to provide advice to existing clients.

The volume of business written by Doyle

12. RI tracked business written by Doyle, including in weekly reports. RI consistently recorded Doyle as one of its highest revenue earners. An email from an ANZ representative to Doyle and RI dated 8 October 2014 noted that "*Carrington's annual inflow was \$48,085,358, placing the practice as the largest supporter amongst RI advisers nationally.*" Doyle continued to write substantial business even after the issue of the Suspension Notice.
13. The extent of business being written by Doyle whilst subject to pre-vetting (both initially, and then after the issue of the Suspension Notice) indicated that only a limited proportion of his advice was actually being submitted to pre-vetting. ANZ had identified the discrepancy as early as 24 March 2014. After the Suspension Notice was issued, and the pre-vetting requirement resumed, RI staff were made aware of further concerns that Doyle was bypassing the pre-vetting process.

Advice in respect of structured products

14. Whilst an authorised representative of RI, Doyle advised numerous clients to invest in complicated 'structured' products (**Structured Products**), which relevantly included the Macquarie Flexi 100 Trust products issued on or around 30 November 2013 and 30 June 2015 (**Macquarie Product**) and the Instreet Masti Series 36 & 38 products issued on or around 30 June 2014 (**Instreet Product**). Doyle gave that advice notwithstanding that, on 17 June 2013, ANZ declined to provide approval for Doyle to recommend the Instreet Product to clients and had only conditionally approved recommendations of the Macquarie Product. RI was aware of Doyle having recommended Structured Products to clients.
15. There were at least 53 clients whom Doyle relevantly advised to invest in Structured Products. Those clients included the eight clients identified in the Schedule to the originating process (**Sample Clients**). Each Sample Client was a retail client within the meaning of the Act. The Sample Clients were not sophisticated investors. Most of them were older clients looking to plan and prepare for their retirement.
16. The process by which Doyle came to recommend Structured Products to the Sample Clients was deficient in numerous respects. In contravention of s 961B of the Act, Doyle adopted a 'cookie cutter' approach to the advice, without properly identifying or taking into account each client's goals and objectives, personal circumstances, and risk profile. Relatedly:
 - (a) in contravention of s 961G of the Act, Doyle's advice to the Sample Clients could not reasonably be concluded to have been appropriate to the Sample Clients, had Doyle satisfied his duty under s 961B. The advice, for example, (i) did not adequately take into account the Sample Clients' risk profiles (which in most cases favoured a conservative investment approach); (ii) misapprehended the extent of tax benefits to the Sample Clients (which in most cases were limited by virtue of the investments being made through superannuation funds); and (iii) otherwise did not adequately take into account limitations that were inherent in the Structured Products as investments;

- (b) Doyle contravened s 961H by giving advice based on incomplete information about the Sample Client's financial situation and needs, and in some instances, based on inaccurate information about the client's level of risk tolerance, which level had been misstated by Doyle; and
 - (c) Doyle contravened s 961J, in that Doyle was subject to a conflict of interest by reason of receiving upfront and ongoing commissions in respect of the Sample Clients' investments in the Structured Products, and Doyle did not give priority to the Sample Clients' interests in recommending investment in the Products.
17. Furthermore, in 2016 Doyle communicated with Sample Clients who were invested in the Instreet Product, recommending that they retain their investments in that Product. Doyle made such recommendations to avoid repaying RI amounts associated with remediating clients who chose not to retain the investment. In making such recommendations without any appropriate process and out of self-interest, Doyle contravened ss 961B and 961J.

B. THE RELIEF SOUGHT FROM THE COURT

18. The plaintiff (**ASIC**) seeks as against RI, in terms more precisely set out in the originating process:
- (a) declarations pursuant to s 1317E of the Act that, in contravention of s 961L of the Act, RI failed to take reasonable steps at various times during the period 1 November 2013 to 30 June 2016 (**Relevant Period**) to ensure that Doyle complied with each of ss 961B, 961G, 961H and 961J of the Act;
 - (b) declarations pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) that at various times during the Relevant Period, in contravention of:
 - (i) s 912A(1)(a) of the Act, RI failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly;
 - (ii) s 912A(1)(c) of the Act, RI failed to comply with the financial services laws (being s 961L of the Act);
 - (iii) s 912A(1)(ca) of the Act, RI failed to take reasonable steps to ensure that its representatives complied with the financial services laws (being ss 961B, 961G, 961H and 961J of the Act);
 - (c) orders pursuant to s 1317G of the Act that RI pay pecuniary penalties in respect of its contraventions of s 961L of the Act in such amount as the Court considers appropriate; and
 - (d) orders pursuant to s 1101B of the Act in respect of compliance and remediation.
19. As against Doyle, ASIC seeks:

- (a) declarations pursuant to s 1317E of the Act that, in respect of each occasion on which Doyle advised Sample Clients to invest in Structured Products during the Relevant Period, Doyle contravened each of ss 961B, 961G, 961H and 961J of the Act, and thereby contravened s 961Q of the Act;
- (b) orders pursuant to s 1317G of the Act that Doyle pay pecuniary penalties in respect of his contraventions of s 961Q of the Act in such amount as the Court considers appropriate.

C. THE PRIMARY LEGAL GROUNDS UPON WHICH RELIEF IS SOUGHT

20. During the Relevant Period, in contravention of s 961L, RI failed to take reasonable steps to ensure that Doyle complied with ss 961B, 961G, 961H and 961J, in that at all times during the Relevant Period:
- (a) RI knew, or ought to have known, that there was a substantial risk that Doyle was not complying with one or more of ss 961B, 961G, 961H and 961J, including by reason of the matters set out in paragraphs 2 to 15 above; and
 - (b) RI did not take reasonable steps to address that risk. Insofar as RI subjected Doyle's advice to pre-vetting, Doyle regularly bypassed this requirement, as RI knew or ought to have known. Insofar as RI provided paraplanning and other assistance to Doyle, this was largely to enable him to pass the "pre-vetting" stage, without ensuring that Doyle's compliance would be sustained, in the longer run, without that assistance. RI took too long to issue the Suspension Notice and to terminate Doyle's authorisation as its authorised representative. RI knew, or ought to have known, of Doyle repeatedly recommending Structured Products to clients and thereby earning commissions. All the while, notwithstanding the known risks, RI permitted Doyle to advise clients extensively.
21. RI's failure to comply with s 961L gave rise to consequential contraventions of s 912A(1)(c) and (ca) of the Act. Its conduct also contravened s 912A(1)(a) of the Act. Given all of the contraventions, compliance and remediation orders under s 1101B are sought to prevent like future contraventions and ensure Doyle's clients are remediated.
22. In respect of each instance in which advice regarding Structured Products was given to a Sample Client, by reason of the matters set out in paragraphs 14 to 17 above, Doyle contravened each of ss 961B, 961G, 961H and 961J of the Act, and thereby contravened s 961Q of the Act.

Date: 31 October 2019



Signed by Nick Kelton

Solicitor for the Australian Securities and Investments Commission