

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/11/2019 9:21:43 AM ACDT 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:	SAD237/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MOBISUPER PTY LIMITED & ORS
Registry:	SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/11/2019 10:21:54 AM ACDT

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

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.



Form NCF1

Concise Statement

No. of 20

Federal Court of Australia

District Registry: SOUTH AUSTRALIA

Division: GENERAL

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MOBISUPER PTY LIMITED (ACN 613 581 981) and others**(according to the attached schedule)**

Defendants

A. PARTIES AND THEIR RELATIONSHIPS

1. At all material times, the First Defendant MobiSuper Pty Limited (**Mobi**), the Second Defendant ZIB Financial Pty Limited (**ZIB**) and the Third Defendant Tidswell Financial Services Ltd (**Tidswell**) each carried on a financial services business in Australia within the meaning of section 911D of the *Corporations Act 2001* (Cth) (**Corporations Act**). Additionally, ZIB and Tidswell held Australian Financial Services Licences (the **ZIB AFS Licence** and the **Tidswell AFS Licence**, respectively), and Tidswell was both a registrable superannuation entity under the *Superannuation Industry (Supervision) Act 1993* (Cth) and the trustee of the Tidswell Master Superannuation Plan (**Tidswell Plan**).
2. Mobi is and was a wholly owned subsidiary of ZIB, and a corporate authorised representative under the ZIB AFS Licence. The Fourth Defendant, Andrew Richard Grover, is and was the controlling mind of Mobi and ZIB.
3. On 22 November 2016, Tidswell and Mobi entered into a Promoter Agreement by which, among other matters:
 - a. Tidswell agreed to establish a new division of the Tidswell Plan known as the MobiSuper Fund (**Fund**);

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

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- b. Mobi, in its capacity as authorised representative of ZIB, was appointed the promoter of the Fund;
 - c. Mobi, as promoter, was to provide certain services to Tidswell, including the general marketing and sales function for promotion of the Fund to prospective members with a view to introducing members to the Fund and, therefore, increasing the funds under management in the Fund.
4. In summary, ASIC contends that, contrary to law:
- a. ZIB and Tidswell failed to do all things necessary to ensure that the financial services, covered by their respective AFS Licences, that were provided in relation to the Fund, were provided efficiently, honestly and fairly (contrary to the Corporations Act);
 - b. Tidswell failed to comply with the conditions of the Tidswell AFS Licence, and to ensure that its representatives complied with financial services laws and were adequately trained (contrary to the Corporations Act);
 - c. in the course of promoting the Fund, Mobi engaged, and Mr Grover was at times involved, in a range of misleading conduct and false or misleading representations (contrary to the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**));
 - d. during telephone calls to consumers, customer service officers employed by Mobi (**CSOs**) gave financial product advice, which was personal advice:
 - i. which the CSOs were not authorised to provide; and
 - ii. which involved contraventions of associated obligations (including the best interest obligations) in Part 7.7A of the Corporations Act, for which ZIB and Tidswell are liable.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

5. Prior to November 2016, Mr Grover approached Tidswell with a proposal to establish and promote a new for-profit superannuation fund. This approach ultimately led to the execution of the Promoter Agreement and the establishment of the Fund as a new division of the Tidswell Plan. Mobi's business model was to promote the Fund by way of advertising to generate leads and providing financial product advice, predominantly by way of outbound telephone calls, that purported to be general advice only (**General Advice Model**). The CSOs, whose conduct is relevant to this proceeding, were not authorised to give 'personal advice' (within the meaning of section 766B(3) of the Corporations Act) under the ZIB AFS Licence, Mobi's authorisation from ZIB or the Tidswell AFS Licence.

6. Between at least 30 November 2016 and 14 February 2018, in conducting the General Advice Model, Mobi, by its authorised agents or employees, engaged in campaigns to attract more funds under management for the Fund.
7. The campaigns involved advertising through websites with the domain names *findyoursuper.experts.com.au*, *lostsuperheroes.com.au* and *lost-super.com.au*. The viewers of this website advertising were offered an 'obligation-free' search by which to identify their 'lost' superannuation (**Lost Super Search**).
8. The primary function of these advertising campaigns was not to identify lost superannuation, but rather to encourage members of other superannuation funds to join the Fund and transfer the balances of their other superannuation accounts into the Fund. In order for Mobi to obtain results of a search for their superannuation, the consumer was required to first become a member of the Fund or take other additional steps. The search was therefore not obligation-free. Where the consumer's other accounts were closed in the consolidation of superannuation into the Fund, there was a risk of significant adverse consequences, including to the consumer's insurance coverage.
9. When viewers of the website advertising enquired about finding their lost superannuation, they would receive, first, an email confirming that Mobi would contact them and, second, a scripted telephone call from a CSO. Other prospective consumers, who did not interact with the websites set out above but were nevertheless contacted by Mobi in furtherance of the campaigns, were also dealt with by way of a scripted telephone call from a CSO.
10. **Annexure A** lists a number of telephone calls (**Specifically Pleaded Calls**) made by CSOs to consumers (**Consumers**) in furtherance of the campaigns. During such calls, the CSOs:
 - a. focused on explaining to the consumer the benefits of joining the Fund and consolidating any funds that consumer might have in any external superannuation accounts into the Fund, including taking out new insurance through the Fund; and
 - b. made various representations to the consumer.

C. RELIEF SOUGHT FROM THE COURT

11. This is as set out in the originating process.

D. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

Failure to ensure that financial services provided efficiently, honestly and fairly and other general licensee obligations

12. In contravention of section 912A(1)(a) of the Corporations Act, Tidswell and ZIB failed to do all things necessary to ensure that the financial services, covered by their respective AFS Licences, provided in relation to the Fund, were provided efficiently, honestly and fairly by allowing Mobi to conduct, and failing to adequately monitor Mobi's conduct of, the General Advice Model in circumstances where:
 - a. selling superannuation and insurance through telephone calls, which were at times the result of leads generated by website advertisements focused on 'obligation free' searches for 'lost super', and which presented the decision to switch and consolidate superannuation funds as a course of action in the best interests of the particular consumer, carried with it a serious risk that consumers would not adequately understand the consequences of acquiring those new products and disposing of others; and/or
 - b. the General Advice Model, as demonstrated in the relevant Specifically Pleaded Calls, involved inadequate identification and consideration of the personal circumstances of the consumer, and no, or no adequate, consideration of whether it was in the consumer's best interests, in circumstances where the consumer volunteered information, or the CSO enquired, about the consumer's objectives, financial situation and needs, and the provision of adequate personal advice was required.
13. Tidswell additionally contravened sections 912A(1)(b), 912A(1)(ca) and 912A(1)(f) of the Corporations Act.

Provision of personal advice contrary to authority and not in the best interests of consumer

14. Although CSOs purported to provide only general advice to the relevant Consumers, the recommendations and/or statements of opinion given by the CSOs during the Specifically Pleaded Calls to Consumers 1 to 14 amounted to personal advice (within the meaning of section 766B(3) of the Corporations Act), because the CSOs did consider one or more of each Consumer's objectives, financial situation and needs, or a reasonable person might expect them to have done so.
15. Further, in giving personal advice to Consumers 1 to 14, the CSOs:
 - a. in contravention of section 961B of the Corporations Act, did not act in the best interests of the Consumers; and
 - b. in contravention of section 961H of the Corporations Act, failed to warn the Consumers that the advice was, or may be, based on incomplete or inaccurate information.

16. By the CSOs contravening sections 961B and 961H of the Corporations Act, ZIB and Tidswell, each as a responsible licensee in relation to those contraventions, contravened section 961K(2) of that Act. Further, by failing to take reasonable steps to ensure that the CSOs, as representatives of each or both of them, comply with sections 961B and 961H, ZIB and Tidswell contravened section 961L of the Corporations Act.
17. In circumstances where the relevant Specifically Pleaded Calls comprised personal advice, Mobi:
 - a. contravened section 946A of the Corporations Act by failing to give the Consumer a statement of advice; and
 - b. in consequence, did not provide any statement of advice meeting the requirements of section 947D of the Corporations Act, in circumstances where the advice included one or more recommendations that the Consumer dispose of, or reduce, various interests in financial products and instead acquire interests in Mobi-associated financial products.

Misleading conduct and false or misleading representations

18. By publishing the websites set out above, Mobi engaged in conduct in relation to financial services that was liable to mislead the public contrary to section 12DF of the ASIC Act. Mr Grover, as the person who approved the content and publication of the websites, was knowingly concerned in Mobi's contraventions.
19. Certain of the Specifically Pleaded Calls also contained false or misleading representations contrary to sections 12DB(1)(g) and 12DB(1)(a) of the ASIC Act as to, respectively:
 - a. the Consumer's likely savings on fees (including in some cases by reference to a specific dollar amount) (**Fee saving representation**); and
 - b. the equivalence between insurance cover already held by the Consumer linked to an external superannuation account and that offered under one or more policies of insurance offered by Mobi (**Equivalent insurance cover representation**).
20. Mobi, through the CSOs, engaged in the conduct set out in the preceding paragraph.

E. ALLEGED HARM

21. The statutory provisions contravened contain important consumer protections. At the least, their contravention gave rise to a risk that the consumers may be worse off financially by transferring their superannuation (including through

higher fees) and cancelling and taking on new policies of insurance (which may have involved higher premiums and/or a different scope and standard of cover).

Date: 6 November 2019


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CONRAD GRAY

Lawyer, ASIC

For and on behalf of the Australian Securities and Investments Commission

ANNEXURE A – Specifically Pleaded Calls

No.	Approx. date of call	Consumer	CSO	Personal advice provided	False or misleading representation(s)
1.	23 October 2017	Consumer 1	JR	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
2.	26 October 2017	Consumer 2	EL	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
3.	22 October 2017	Consumer 3	GF	Yes	<ul style="list-style-type: none"> • Equivalent insurance cover representation
4.	26 October 2017	Consumer 4	NS	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
5.	25 October 2017	Consumer 5	GF	Yes	<ul style="list-style-type: none"> • Equivalent insurance cover representation
6.	26 October 2017	Consumer 6	MZ	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
7.	25 October 2017	Consumer 7	HB	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
8.	23 October 2017	Consumer 8	MS	Yes	<ul style="list-style-type: none"> • Fee saving representation
9.	29 October 2017	Consumer 9	ZS	Yes	<ul style="list-style-type: none"> • Equivalent insurance cover representation
10.	18 October 2017	Consumer 10	JV	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
11.	18 October 2017	Consumer 11	NS	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation
12.	14 November 2017	Consumer 12	MS	Yes	–
13.	8 November 2017	Consumer 13	KK	Yes	<ul style="list-style-type: none"> • Equivalent insurance cover representation
14.	21 November 2017	Consumer 14	NS	Yes	<ul style="list-style-type: none"> • Fee saving representation • Equivalent insurance cover representation

No.	Approx. date of call	Consumer	CSO	Personal advice provided	False or misleading representation(s)
15.	12 May 2017	Consumer 15	PL	–	• Equivalent insurance cover representation
16.	20 & 24 July 2017	Consumer 16	JR	–	• Fee saving representation

Certificate of lawyer

I, Conrad Gray, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation.

Date: 6 November 2019

A handwritten signature in blue ink, appearing to read 'Conrad Gray', is written over a horizontal line.

Signed by Conrad Gray

Lawyer for the Plaintiff

SCHEDULE OF PARTIES

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MOBISUPER PTY LIMITED (ACN 613 581 981)

First Defendant

ZIB FINANCIAL PTY LIMITED (ACN 609 197 971)

Second Defendant

TIDSWELL FINANCIAL SERVICES LTD (ACN 010 810 607)

Third Defendant

ANDREW RICHARD GROVER

Fourth Defendant