



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID 1141/2018

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

Plaintiff

**DOVER FINANCIAL ADVISERS PTY LTD** and another named in the schedule

Defendant

**ORDER**

**JUDGE:** JUSTICE O'BRYAN

**DATE OF ORDER:** 20 December 2019

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. Between around 25 September 2015 and around 30 March 2018 (the **relevant period**), and on each occasion that its authorised representatives provided clients a “Client Protection Policy” in conjunction with, or incorporated into, statements of advice, the first defendant (**Dover**):
  - a. engaged in conduct, in trade or commerce, in connection with the supply of financial services, that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H(1) of the *Corporations Act 2001* (Cth) and s 12DA(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - b. made, in connection with the supply or possible supply of financial services, false or misleading representations concerning the existence, exclusion or effect of a condition, warranty, guarantee, right or remedy in contravention of s 12DB(1)(i) of the ASIC Act,by reason that:
  - c. the Client Protection Policy included a statement to the effect that it set out a number of important consumer protections designed to ensure that every Dover client got the maximum protection available under the law; and



- d. the Client Protection Policy did not ensure that clients received the maximum protection available under the law and, to the contrary, sought to limit and exclude Dover's liability to clients.
2. During the relevant period, the second defendant was knowingly concerned in each of Dover's contraventions of s 12DB(1)(i) of the ASIC Act by reason of the fact that he was responsible for:
  - a. determining the content of the Client Protection Policy;
  - b. approving the content of the Client Protection Policy; and
  - c. requiring Dover's authorised representatives to incorporate the Client Protection Policy into, or provide the Client Protection Policy with, statements of advice provided to clients.

**AND THE COURT ORDERS THAT:**

**Discovery**

3. The defendants be granted leave to reinstate their application for discovery filed on 21 December 2018.
4. By 4.00pm on 24 December 2019, the defendants file and serve:
  - a. a supplementary affidavit in support of their application for discovery; and
  - b. an outline of submissions.
5. By 4.00pm on 31 January 2020, the plaintiff file and serve:
  - a. any affidavits in opposition to the defendants' application for discovery; and
  - b. an outline of submissions.
6. The defendants' application be heard at 10.15am on 3 February 2020.

**Evidence**

7. By 4.00pm on 7 February 2020, the plaintiff file and serve any evidence on which it intends to rely on the question of penalty.
8. By 4.00pm on 6 March 2020, the defendants file and serve any evidence on which they intend to rely on the question of penalty.
9. By 4.00pm on 27 March 2020, the plaintiff file and serve any evidence in reply on which it intends to rely on the question of penalty.



### **Submissions**

10. By 4.00pm on 9 April 2020, the plaintiff file and serve:

- a. a proposed form of final order;
- b. a written outline of submissions in support of its proposed form of order; and
- c. a list of authorities.

11. By 4.00pm on 24 April 2020, the defendants file and serve:

- a. a proposed form of final order;
- b. a written outline of submissions in support of their proposed form of final order;  
and
- c. a list of authorities.

### **Objections to evidence**

12. By 4.00pm on 24 April 2020, each party is to serve on the other a list of any objections to evidence (and brief reasons for the objections).

13. The parties confer with a view to resolving any evidentiary objections and, on or before 15 May 2020, file a joint list of any evidentiary objections which remain unresolved.

### **Court book**

14. By 4.00pm on 1 May 2020, the plaintiff serve on the defendants:

- a. a draft court book index; and
- b. a draft index for the joint book of authorities.

15. By 4.00pm on 8 May 2020, the defendants notify the plaintiff of any additions to the draft court book index and the draft index for the joint book of authorities.

16. By 4.00pm on 15 May 2020, the applicant file and serve:

- a. a copy of the court book in electronic form, which:
  - i. is produced in a text-recognised PDF format;
  - ii. is paginated sequentially throughout;
  - iii. is divided into volumes such that each volume is contained within a single PDF file and the file name of each PDF file is the volume number; and



- iv. each PDF file contains electronic bookmarks to each document in that file; and
  - b. a copy of the joint book of authorities in electronic form, which:
    - i. is produced in a text-recognised PDF format; and
    - ii. contains electronic bookmarks to each authority.
17. Subject to further order of the Court, a document included in the court book:
- a. shall not form part of the evidence at the trial unless specifically tendered and admitted into evidence; and
  - b. shall be treated as tendered and admitted if referred to at the trial (including in written or oral submissions) and no objection is taken.

**Hearing**

- 18. The matter be fixed for hearing as to penalty and other relief at 10.15am on 1 June 2020 on an estimate of one to two days.
- 19. Liberty to apply.
- 20. Costs reserved.

Date that entry is stamped: 20 December 2019

*Sia Lagos*  
Registrar



**Schedule**

No: VID 1141/2018

Federal Court of Australia  
District Registry: Victoria  
Division: General

Second Defendant      **TERRENCE PAUL MCMASTER**