



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID181/2020

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Applicant

**COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124**

Respondent

**ORDER**

**JUDGE:** JUSTICE MURPHY

**DATE OF ORDER:** 22 October 2020

**WHERE MADE:** Melbourne

**FOR THE PURPOSES OF THIS ORDER:**

- (a) '20 January 2017 CLI' means the credit limit increase of \$8000, from \$27,100 to \$35,100, applied by CBA to the Harris Credit Contract on 20 January 2017;
- (b) 'Application' means the pre-filled application form, completed and submitted to CBA by Harris in early 2017, by which Harris applied to take- up CBA's invitation to Harris apply to increase his credit card limit from \$27,100 to \$35,100;
- (c) 'Assessment' means the assessment of whether the Harris Credit Contract would be unsuitable if CBA increased the credit limit of that contract (as per the Application) as conducted by CBA prior to its provision of the 20 January 2017 CLI;
- (d) 'CBA' means Commonwealth Bank of Australia ACN 123 123 124;
- (e) 'CBA credit card' means Harris' CBA credit card which was referable to the Harris Credit Contract;
- (f) 'CLI' means credit limit increase;
- (g) 'CLI invitation' means the letter from CBA to Harris of 1 December 2016 inviting him to apply to increase his credit card limit on the Harris Credit Contract from \$27,100 to \$35,100;
- (h) 'Harris' means Mr David Harris;



- (i) 'Harris Credit Contract' means the credit contract between CBA and Harris by which Harris had a CBA credit card;
- (j) 'Problem Gambler Notification' means the notification given by Harris to CBA on 21 October 2016 that:
  - (i) Harris considered himself to have a gambling problem;
  - (ii) Harris' requirements and objectives in relation to the CLI included that he wished to cease being a problem gambler before accepting any CLI invitation; and
  - (iii) Harris was using the Harris Credit Contract for gambling expenses, of which CBA was also aware.

**THE COURT DECLARES THAT:**

1. In respect of the Harris Credit Contract, CBA contravened s 130(1) of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) by, before making the Assessment and in the circumstances of the Problem Gambler Notification:
  - (a) failing to comply with s 130(1)(a) of the NCCP Act by failing to make reasonable inquiries of Harris' requirements and objectives in relation to the Harris Credit Contract, namely:
    - (i) reasonable inquiries as to whether Harris still considered himself to no longer be a problem gambler; and
    - (ii) such other inquiries as were reasonably required further to information arising from the inquiries referred to in the subparagraph above; and
  - (b) failing to comply with s 130(1)(c) of the NCCP Act by failing to take reasonable steps to verify Harris' financial situation, namely:
    - (i) reasonable steps to verify whether Harris was still using his CBA credit card to pay for gambling expenses, and the extent to which he was doing so and had done so since the Problem Gambler Notification; and



- (ii) such other steps to verify Harris' financial situation as were reasonably required further to information arising out of the verifications referred to in the subparagraph above.
2. In respect of the Harris Credit Contract, CBA contravened s 128(d) of the NCCP Act in that before providing the 20 January 2017 CLI to Harris, CBA failed to make the inquiries and verifications as required by s 130(1) of the NCCP Act as respectively detailed in declarations 1(a) and (b) above.
3. In respect of the Harris Credit Contract, CBA contravened s 131(1) of the NCCP Act by failing to assess the Harris Credit Contract as unsuitable if the 20 January 2017 CLI was made as it was likely that the Harris Credit Contract with the CLI would not meet Harris' requirements or objectives which were to cease being a problem gambler before accepting any CLI invitation (noting that Harris continued to have a gambling problem at the time of the Assessment).
4. In respect of the Harris Credit Contract, CBA contravened s 133(1) of the NCCP Act by subsequently providing the 20 January 2017 CLI to Harris in circumstances where the Harris Credit Contract with the 20 January 2017 CLI was unsuitable as it is likely that it would not meet Harris' requirements or objectives as set out in declaration 3 above.
5. By each of the contraventions referred to in declarations 1 to 4 above, CBA contravened s 47(1)(d) of the NCCP Act.

**THE COURT ORDERS THAT:**

1. Within 30 days of the order, CBA pay to the Commonwealth of Australia a pecuniary penalty of \$150,000 in respect of CBA's conduct declared to be contraventions of:
  - (a) s 130(1) of the NCCP Act, as referred to in declaration 1 above;
  - (b) s 128(d) of the NCCP Act, as referred to in declaration 2 above;
  - (c) s 131(1) of the NCCP Act, as referred to in declaration 3 above; and
  - (d) s 133(1) of the NCCP Act, as referred to in declaration 4 above.
2. The Defendant pay the Plaintiff's costs of and incidental to the proceeding.



Date that entry is stamped: 22 October 2020

*Sia Lagos*  
Registrar