

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/12/2020 9:40:33 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1374/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v SQUIRREL SUPERANNUATION SERVICES PTYLTD ACN 169 366 750
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 23/12/2020 12:19:55 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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 2 Originating process

(rules 2.2 and 15A.3)

No. of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General Division

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

SQUIRREL SUPERANNUATION SERVICES PTY LTD ACN 169 366 750

Defendant

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 12GBA(1), 12GBB(1), and 12GJ(1) of the *Australian Securities and Investment Commission Act 2001* (Cth) (the **ASIC Act**) and sections 21 and 43 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**).

On the facts stated in the supporting Concise Statement, the plaintiff claims:

1. A declaration, pursuant to s **12GBA(1)** of the ASIC Act, that by publishing the Brochure at **Annexure A (Brochure)** in the period March 2015 to July 2018, the Defendant:
 - (a) in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion of the supply or use of financial services, made false or misleading representations that services had performance characteristics or benefits, in contravention of s12DB(1)(e) of the ASIC Act; and

Filed on behalf of	Australian Securities and Investments Commission, Plaintiff		
Prepared by	Susan Donnelly		
Law firm			
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Address for service	Australian Securities and Investments Commission Level 5, 100 Market Street Sydney New South Wales 2000		



(b) in trade or commerce, engaged in conduct that was liable to mislead the public as to the nature, characteristics and suitability for purpose of financial services, in contravention of s 12DF(1) of the ASIC Act,

by representing to the recipients of the Brochure that:

(i) the “*old rule of thumb is that residential property in metropolitan locations doubles in value every 7-10 years and generates a rental return of around 4 – 5% per annum*”;

(ii) if one were to purchase an investment property worth \$800,000 using a 25% deposit from one’s superannuation fund, and taking out a mortgage for the balance (\$600,000), one would obtain:

(1) an average annual return in the form of capital growth of 10%, and hence annual capital growth of \$80,000;

(2) an average annual rental income of 4%, thus \$32,000;

(3) an average total return of \$112,000 (or a total of 14%).


(iii) if one took the “*traditional approach*” of investing \$200,000 in a regular superannuation fund, one would obtain an average annual return of \$14,000 (or 7%), as compared with the average annual return of \$112,000 (or 14%) from taking the approach referred to in the second representation above, and as such, the difference between the two strategies is “*remarkable*”; and

(iv) the costs to manage an investment property through an SMSF are “*surprisingly low*” compared with using a financial planner to select a series of managed investment funds and, in particular, that the annual costs of the former (given an investment property valued at \$800,000) are around \$2,400, whereas the annual costs of the latter (given a managed investment of \$800,000) are around \$8,800.

2. A declaration, pursuant to s21 of the Federal Court Act, that, by publishing the Brochure in the period from March 2015 to July 2018, the Defendant, in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive, contrary to s12DA(1) of the *ASIC Act*, by representing to recipients of the Brochure that:



- (i) the “*old rule of thumb is that residential property in metropolitan locations doubles in value every 7-10 years and generates a rental return of around 4 – 5% per annum*”;
- (ii) if one were to purchase an investment property worth \$800,000 using a 25% deposit from one’s superannuation fund, and taking out a mortgage for the balance (\$600,000), one would obtain:
- (4) an average annual return in the form of capital growth of 10%, and hence annual capital growth of \$80,000;
- (5) an average annual rental income of 4%, thus \$32,000;
- (6) an average total return of \$112,000 (or a total of 14%).
- (iii) if one took the “*traditional approach*” of investing \$200,000 in a regular superannuation fund, one would obtain an average annual return of \$14,000 (or 7%), as compared with the average annual return of \$112,000 (or 14%) from taking the approach referred to in the second representation above, and as such, the difference between the two strategies is “*remarkable*”; and
- (iv) the costs to manage an investment property through an SMSF are “*surprisingly low*” compared with using a financial planner to select a series of managed investment funds and, in particular, that the annual costs of the former (given an investment property valued at \$800,000) are around \$2,400, whereas the annual costs of the latter (given a managed investment of \$800,000) are around \$8,800.
3. An order, pursuant to s 12G(1) of the ASIC Act, that the Defendant pay the Commonwealth a pecuniary penalty.
4. Costs.
5. Such further or other orders as this Honourable Court thinks fit.


Signature
plaintiff's legal practitioner



This application will be heard by
at *am/*pm on

B. NOTICE TO DEFENDANT (IF ANY)

TO: Squirrel Superannuation Services Pty Ltd
L2, 53 Berry Street
North Sydney NSW 2060

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



C. FILING

Date of filing:

.....
Registrar

This originating process is filed by Susan Donnelly for the plaintiff.

D. SERVICE

The plaintiff's address for service is L2, 53 Berry Street, North Sydney NSW 2060.

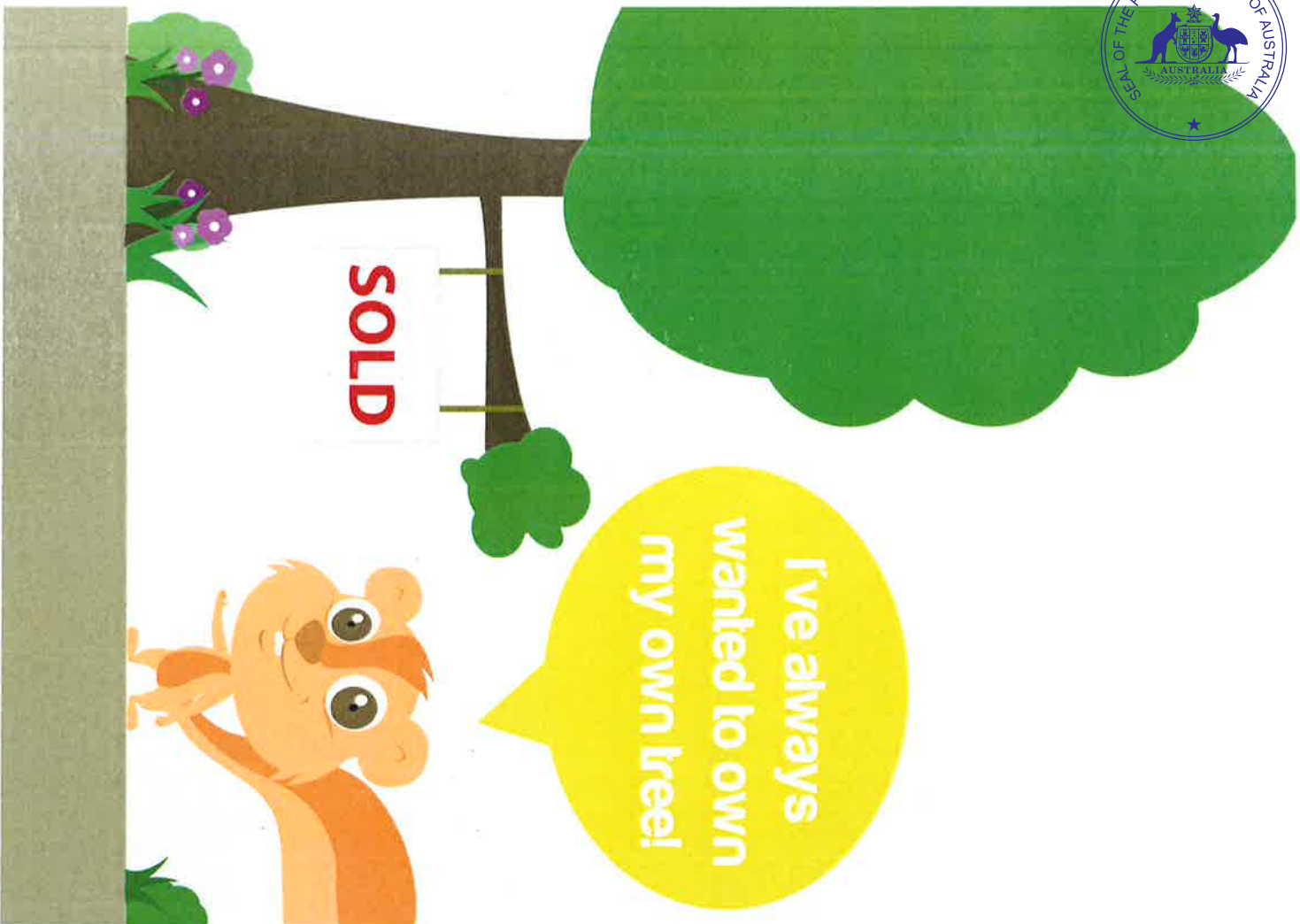
It is intended to serve a copy of this originating process on each defendant and on any person listed below:

Squirrel Superannuation Services Pty Ltd



**How buying
established residential
property can super
charge your
superannuation?**





How buying established residential property can super charge your superannuation

Australians love property – there is something about owning an investment we can touch, feel and see that makes it real. Buying and holding an apartment or house has delivered significant long-term capital growth and regular rental income for thousands of people.

The old rule of thumb is that residential property in metropolitan locations doubles in value every 7 – 10 years and generates a rental return of around 4–5% per annum. Importantly these returns are based on the total value of the property purchased, not the equity you hold in it.

Consider the numbers; if you were to purchase an investment property using a 25% deposit from your super, your super fund then takes a mortgage for the balance:

Self Managed Super Fund – residential property	
Starting Assets of Fund:	\$200,000
Borrowed to purchase property	\$600,000
Value of Fund Assets	\$800,000
Ave Annual Return (capital growth 10%)	\$80,000
Ave Annual Rental Income (4%)	\$32,000
Ave Total Return*	\$112,000

* Indication only. Ave Total Return is gross and excludes costs like property management, smsf administration, loan repayments.

The difference between the above strategy and the traditional approach below is remarkable. It's an example of how important the power of leverage is to achieving long-term financial security.

Regular Superannuation Fund	
Assets of Fund:	\$200,000
Ave Annual Return (7%):	\$14,000



Understanding fees

Believe it or not, the costs to manage an investment property are surprisingly low compared to using a financial planner to select a series of managed investment funds.

The key difference is a property manager receives a percentage of your rental income while a financial planner takes a percentage of your total portfolio whether your investment increases or even when it goes backwards.

	Investment Property [#]	Managed Investment [*]
Value of Investment	\$800,000	\$800,000
Management Fees	\$2,400	\$8,800

Notes:

- [#] - Fees based on annual rental income of \$40,000 (5%) and property mgmt cost of 6% of rental.
- ^{*} - Fees based on Financial Planner charging 1.1% of total investment.
- ^v - The above comparison excludes other costs like rates, insurance for property and C/M/R for managed investments, it compares the costs of professional managers.

If you took the \$6,400 difference and each year invested in a term deposit (4% return compounding annually), by retirement in 30 years you would have an extra \$379,701.

Lower (or no) Tax

While you are accumulating, any capital gains made within superannuation are taxed at just 10%, in addition any rental income your super fund receives is taxed at 15% – much lower than outside of your SMSF.

Now here are the best bits. Once you start drawing a pension (not the government aged pension) from your SMSF the tax rate on all income and capital gains is ZERO for the pension account. In other words if you were to sell your investment property once in pension phase you would pay zero capital gains tax and all rental income you receive can also be tax free.

Why haven't you been told about this?

In Australia, financial planning is controlled by the big four banks and life insurers. Typically financial planners are licensed by subsidiaries of these institutions commonly called 'dealer groups'. The majority of these dealer groups are run at a loss and used (even referred to internally) as distribution channels for the parent company's products and services. There profit is achieved when planners sell or advise their clients to buy more of the institution's products e.g.: super funds, wrap accounts, managed investments and insurance.

Here is an example of the fees a Sydney based Dealer Group owned by a major bank charges a client with \$500,000 in their superannuation:

Amount in Super: \$500,000

Type of Fee	Amount
Admin Fee - Wrap Account	\$1,700.00*
Super Admin Fee	\$250.00
Investment Fee	\$2,711.67
Adviser Fee	\$5,500.00
TOTAL FEES PER ANNUM	\$10,161.66

^{*}Admin Fee – Wrap Account is based on investments in group products, this fee increases by 10% where fund is invested in managed funds not owned by this particular institution.

Amazing!

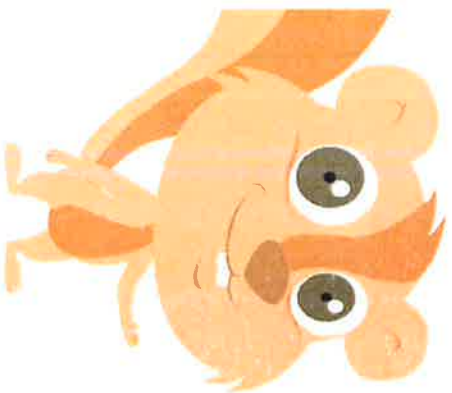


Squirrel is here to help

Traditionally there were lots of steps and mountains of paperwork required to set up a Self Managed Super Fund (SMSF), especially one that borrows to purchase a property, that's why the big banks and financial planners have got away with charging enormous fees on your money for years.

At Squirrel we've developed brilliant technology to take the pain (and paperwork) out of setting up and managing your own SMSF.

And you won't believe how easy we've made it.



It's natural if you feel a bit nervous about how much work is involved in running your own super fund and a little worried that you might make a few mistakes getting started. Don't worry – we're here to help!

Make a great decision and take control of your superannuation. Visit www.squirrelsuper.com.au or call 1300 500 499 and book a 15 minute phone consultation to see if SMSF might be right for you.

FAQS

What are the risks?

Like any type of investment, buying an investment property in super carries risks. For example, bad tenants, interest rate movement, extended periods of vacancy and natural disasters can all affect the performance of the investment. Essentially many of the same risks encountered when purchasing outside of the superannuation system.

Is residential property guaranteed to increase in value?

No. It is true that property has historically increased in value, especially over the long term however, like all investments there is no guarantee it will continue. A major driver of property growth is supply and demand; therefore if you believe what you buy will be in demand for both renters and purchasers – it's a good bet it will continue to increase in value and generate income.

What type of property can I purchase?

We can assist you to purchase just about any established residential or commercial property in Australia.

Can you recommend a particular property to purchase?

Squirrel is independent and don't make property recommendations. We suggest that you conduct your own research as if you were purchasing a home to live in. We provide free access to comprehensive property research through our partnership with RP data so you can arm yourself with quality information to make an informed purchasing decision.

DISCLAIMER

This publication has been prepared by Squirrel Superannuation Services Pty Ltd ABN 57 749 566 750 A/ST, number 4627461 Tax Practitioner, board number 28661561 and reflects our understanding of existing legislation, proposed legislation, rulings etc as at the date of issue (February 2015). In some cases the information has been provided to us by third parties. While it is believed the information is accurate and reliable, this is not guaranteed in any way. Any advice in this publication is of a general nature only and has not been tailored to your personal circumstances. Please seek personal advice prior to acting on this information.

I have an existing investment property – can I transfer that into my super?

Unfortunately no. This would breach superannuation legislation concerning to related party transactions. This extends to family members, for example you couldn't purchase a property from a member of your family.

Can I live in the property?

Not until you have retired. After meeting a condition of release, being fully retired and a few other steps you can transfer the property from your SMSF and live in it.

Who is responsible for rates, insurance, maintenance, strata fees?

As your super fund would 'own' the property it is responsible for outgoings and these costs are paid by your fund's bank account.

Who pays stamp duty, conveyancing fees on purchase?

As with ongoing costs, your super fund pays for these costs.

I own my own business including the office / factory it operates from – can my super buy the building?

Yes – commercial property is one of the few exceptions to the related party rules. This can be an attractive method to free cash in your business and provide a tax effective way to pay down the debt on your commercial property. Remember that superannuation contributions for the self employed are tax deductible.



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www.squirrelsUPER.com.au