

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 2/03/2021 2:54:14 PM 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:	VID94/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v RETAIL EMPLOYEES SUPERANNUATION PTY LTD (ACN 001 987 739)
Registry:	VICTORIA 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: 2/03/2021 3:49:18 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
Rules 2.2 and 15A.3

ORIGINATING PROCESS

No VID of 2021

**Federal Court of Australia
District Registry: Victoria
Division: General**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

RETAIL EMPLOYEES SUPERANNUATION PTY LTD (ACN 001 987 739)

Defendant

A. DETAILS OF APPLICATION

1. This application is made under s 21 of the *Federal Court of Australia Act 1976* (the **FCA Act**), s 1101B(1)(a)(i) of the *Corporations Act 2001* (the **Corporations Act**) and ss 12GBA, 12GBB, 12GLA(2)(d) and s12GLB of the *Australian Securities and Investments Commission Act 2001* (the **ASIC Act**).
2. The plaintiff (**ASIC**) seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, publication orders and ancillary orders, including costs against the defendant (**REST**).
3. In this Originating Process, terms which are defined in the Concise Statement dated 1 March 2021 (**Concise Statement**) have the same meaning as they do in that document.

B. ORDERS SOUGHT

On the facts stated in the Concise Statement, the Plaintiff seeks the following orders:

4. (**Partial Transfer Representation**) A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act and s 12GBA of the ASIC Act, that between 2 March 2015 and 2 May 2018 (the **Relevant Period**), by the Partial Transfer Representation, REST expressly or impliedly represented that:
 - (a) if Members remained employed by a REST Employer and the REST Employer would continue to make contributions to the Fund, then they could only partially transfer their benefits out of the Fund;

when, in fact:

- (b) REST was required to permit the transfer of the whole of a Member's superannuation balance from the Fund, in accordance with reg 6.33 – 6.34 of the SIS Regs as in force during the Relevant Period;

Filed on behalf of	Australian Securities and Investments Commission, the Applicant		
Prepared by	Savas Miriklis		
Law firm			
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Address for service	Level 7, 120 Collins Street, Melbourne, VIC, 3000		



and thereby:

- (c) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation concerning the existence, exclusion or effect of Member rights in contravention of s 12DB(1)(i) of the ASIC Act;
- (d) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and/or
- (e) engaged in conduct, in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act.

5. (**\$5,000 Representation**) A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act and s 12GBA of the ASIC Act, that in the Relevant Period, by the \$5,000 Representation, REST expressly or impliedly represented that:

- (a) Members who sought to transfer the whole of their benefits from the Fund and remained employed by a REST employer were required to maintain the amount of \$5,000 in their REST account;

when, in fact:

- (b) REST was required to permit the transfer of the whole of a Member's superannuation balance from REST, in accordance with reg 6.33 – 6.34 of the SIS Regs as in force during the Relevant Period. The retention of \$5,000 was not required, and was in any event, inconsistent with the obligations imposed by the SIS Regs, which in fact required REST to facilitate the requested transfer;

and thereby:

- (c) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation concerning the existence, exclusion or effect of Member rights in contravention of s 12DB(1)(i) of the ASIC Act;
- (d) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and/or
- (e) engaged in conduct, in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act.

6. (**Declaration Requirement Representation**) A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act and s 12GBA of the ASIC Act, that in the Relevant Period, by the Declaration Requirement Representation, REST expressly or impliedly represented that:

- (a) Members who sought to transfer the whole of their benefits from the Fund were required to obtain a declaration from their employer:



- (i) that the Member had “choice of fund rights”; and
- (ii) of the date upon which the REST employer ceased making contributions to REST;

as a pre-requisite to that transfer taking place, and that a failure to provide that declaration meant that the request could be refused by REST;

when, in fact:

- (b) the SIS Regs prescribed the information which REST was entitled to request before processing the rollover request. Neither of the declarations (referred to at paragraph 6 (a)(i) or (a)(ii) above) were prescribed information. Accordingly, REST was not entitled to demand the provision of the declarations before completing the requested rollover;

and thereby:

- (c) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation concerning the existence, exclusion or effect of Member rights in contravention of s 12DB(1)(i) of the ASIC Act;
- (d) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and/or
- (e) engaged in conduct, in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act.

7. **(Certificate Requirement Representation)** A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act and s 12GBA of the ASIC Act, that in the Relevant Period by the Certificate Requirement Representation, REST expressly or impliedly represented that:

- (a) Members who sought to transfer the whole of their funds in the Fund were required to obtain:
 - (i) a separation certificate from the Member's employer; or
 - (ii) provide a date of termination;

when, in fact:

- (b) the SIS Regs prescribed the information which REST was entitled to request before processing the rollover request. Neither of the separation certificate nor the date of termination (referred to at paragraphs 7(a)(i) or (a)(ii) above) were prescribed information. Accordingly, REST was not entitled to demand the provision of a separation certificate or date of termination before completing the requested rollover,



and thereby:

- (c) in trade or commerce, in connection with the supply or possible supply of financial services, made a false or misleading representation concerning the existence, exclusion or effect of Member rights in contravention of s 12DB(1)(i) of the ASIC Act;
- (d) in trade or commerce, engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and/or
- (e) engaged in conduct, in relation to a financial product, that was misleading or deceptive or was likely to mislead or deceive in contravention of s 1041H(1) of the Corporations Act.

Pecuniary penalty orders

- 8. An order pursuant to s 12GBB of the ASIC Act that, within 30 days of the order, REST pay such pecuniary penalty as the Court determines appropriate in respect of REST's conduct declared to be contraventions of s 12DB(1)(i) of the ASIC Act.

Publication order

- 9. Consequent upon the making of declarations, an order pursuant to s 12GLA(2)(d) of the ASIC Act that, within 30 days of the order, REST cause to be published:
 - (a) in *The Australian*, the *Australian Financial Review* and one daily newspaper in each State and Territory, on a weekday and the following Saturday; and
 - (b) on its website, for a period of six months,

an advertisement in a form to be agreed or ordered at the conclusion of the proceeding.

Adverse publicity order

- 10. Consequent upon the imposition of fines and/or the making of pecuniary penalty orders, an order pursuant to s 12GLB of the ASIC Act that within 30 days of the order, REST send by email or ordinary post to each current Member and person who was formerly a Member during the Relevant Period a communication in a form to be agreed or ordered at the conclusion of the proceeding.

Other Orders

- 11. An order that REST pay ASIC's costs of and incidental to the proceeding.
- 12. Such further or other orders as to Court considers appropriate.



Date: 2 March 2021

A handwritten signature in blue ink, appearing to read 'Savas Miriklis'.

.....
Savas Miriklis
Signature of plaintiff's legal practitioner

This application will be heard by at
the Federal Court of Australia, 305 William Street, Melbourne, Vic 3000 at
... am/pm on



C NOTICE TO DEFENDANT

TO:

RETAIL EMPLOYEES SUPERANNUATION PTY LTD (ACN 001 987 739)
Level 5, 321 Kent Street
Sydney NSW 2000

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 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.

D. FILING

Date of filing:

.....
Registrar

This originating process is filed by _____ for the Plaintiff.

E. SERVICE

The plaintiff's address for service is Level 7, 120 Collins Street, Melbourne, VIC, 3000.

It is intended to serve a copy of this originating process on the defendant.