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### Details of Filing

Document Lodged: Concise Statement  
File Number: QUD354/2021  
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v  
ULTIQA LIFESTYLE PROMOTIONS LIMITED (IN LIQUIDATION)  
(ACN 096 169 256)  
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 1/11/2021 1:08:56 PM AEST

Registrar

### Important Information

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## CONCISE STATEMENT

FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: QUEENSLAND  
DIVISION: GENERAL

No. QUD of 2021

**IN THE MATTER OF ULTIQA LIFESTYLE PROMOTIONS LIMITED (in Liquidation)**  
**(ACN 096 169 256)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**ULTIQA LIFESTYLE PROMOTIONS LIMITED (in Liquidation) (ACN 096 169 256)**  
Defendant

### A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. In this concise statement, the Act means the *Corporations Act 2001* (Cth), and the Federal Court Act means the *Federal Court of Australia Act 1976* (Cth).
2. This case concerns multiple contraventions of the statutory obligation of an Australian Financial Services Licence (AFSL) holder to ensure its authorised representatives (ARs) provided financial advice in accordance with the duties to act in the best interests of the client, to provide advice appropriate to the client, and to prefer the client's interests over their own.

### Parties

3. During the period 5 October 2017 and 21 March 2019 (**Relevant Period**), the Defendant carried on a financial services business concerning the provision of personal financial product advice to consumers about interests in a time-sharing scheme known as Ultiqa Lifestyle (the **Ultiqa Scheme**). At all times during the Relevant Period the Defendant held an Australian Financial Services Licence (AFSL) and the Ultiqa Scheme was a registered managed investment scheme with ARSN 097 961 174.
4. The Defendant was part of a group of companies known as the Ultiqa Group. Companies within the Ultiqa Group included Ultiqa Lifestyle Points Ltd (ACN 090 475 719) (the **RE**) which was the responsible entity for the Ultiqa Scheme, Ultiqa Developments Pty Ltd (ACN 096 169 274) which was responsible for locating, procuring and transferring property into the Ultiqa Scheme and Ultiqa Management Pty Ltd (ACN 096 169 265) which was appointed by the RE to administer the Ultiqa Scheme and provide other administrative services to companies in the Ultiqa Group.
5. The business model of the Defendant involved the sale of interests in the Ultiqa Scheme to consumers through a network of corporate sales agents which employed individuals as sales consultants. The individual sales consultants were registered as ARs under the Defendant's AFSL.

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### Ultiqa sales process

6. During the Relevant Period, the Defendant used the following sales process to sell interests in the Ultiqa Scheme to consumers including:
  - (a) a marketing consultant would approach consumers at a shopping centre, theme park or similar location and would give the consumers a scratch card. If the consumer scratched three matching symbols on the card, they may be entitled to win a prize. To be eligible for the prize, the consumer was required to be married or living in a couple for a minimum of two years, aged between 28 and 65 years, and have a minimum combined annual income of \$50,000. To receive the prize, the consumer was required to attend a 90-minute sales presentation;
  - (b) upon attendance at the sales office used by the Defendant's ARs, the consumer was required to complete a document called a "Lifestyle Survey". The Lifestyle Survey recorded the consumer's name, age, employment, marital status, address, combined yearly income range, and whether the consumer was a homeowner;
  - (c) the consumer would then be seated with one of the Defendant's ARs, who would obtain information from the consumer about their holiday preferences, including the frequency and approximate cost of the consumer's holidays. This was recorded in a document called a "Holiday Survey". The AR would then give a presentation to the consumer about purchasing interests in the Ultiqa Scheme; and
  - (d) at the conclusion of the presentation, the AR would provide the consumer with a Statement of Advice (SOA) which recommended a purchase of interests in the Ultiqa Scheme.
7. When providing the presentation to consumers, the Defendant required its ARs to follow an approved sales script and to use a document called the "T-sheet". The Defendant did not permit its ARs to change the T-sheet or to depart from the approved sales script. The Defendant also mandated a templated two-page SOA document which its ARs were required to use. The Defendant provided initial and ongoing training to its ARs and used an external company to assist with some of its ongoing compliance obligations.

### Advice to consumers

8. During the Relevant Period, the Defendant provided financial product advice through its ARs to the six pairs of consumers listed at Schedule 1 to this Concise Statement (the **Pleaded Consumers**). Schedule 1 lists the name of the consumers, the date the advice was provided by the Defendant's ARs, the type of interest in the Ultiqa Scheme recommended in the SOA, the name of the AR who provided the SOA to the consumer and the location where the advice was provided. The provision of advice to the Pleaded Consumers was carried out generally in accordance with the sales process described at paragraphs 6 and 7 above.
9. Prior to providing advice to the Pleaded Consumers, the Defendant's ARs:
  - (a) did not ensure that the consumers were aware of the type of product being recommended, that it was a financial product, that personal advice was being provided and of the limited

scope of the advice;

- (b) did not identify the relevant personal circumstances of the consumers sufficient to enable recommending a financial product, including the consumers' income and expenses, assets and liabilities, employment status, personal and financial goals, objectives and needs, risk profile, and whether any changes were anticipated in their personal circumstances within the timeframe of the proposed financial product;
  - (c) did not investigate alternative products or strategies that may meet the consumers' circumstances, goals, objectives and needs; and
  - (d) based their recommendations on only basic information about the consumers which was not sufficient to reasonably recommend a financial product to the consumers.
10. As a result of the failure to carry out the actions in paragraph 9 above, the Defendant's ARs did not act in the best interests of the Pleded Consumers, in contravention of section 961B of the Act.
11. The advice provided was not appropriate to the Pleded Consumers because:
- (a) the recommended investment of purchase of interests in the Ultiqa Scheme was inappropriate for the personal circumstances and risk profiles of the Pleded Consumers;
  - (b) for five of the Pleded Consumers, the advice increased the level of borrowing which was not appropriately addressed or recorded in the SOA;
  - (c) the Pleded Consumers were not provided with an adequate explanation or warning of the risks associated with the investment so as to be in a position to make an informed decision about the recommendations relevant to alternative strategies. These risks included:
    - (i) the absence of a secondary market for interests in the Ultiqa Scheme and the effect of this upon the consumers' personal circumstances (both now and in the future);
    - (ii) the difficulties that may be faced with booking and obtaining holiday accommodation specific to the consumers' personal circumstances (both now and in the future); and
    - (iii) where relevant, the increased risk associated with borrowing resulting from the advice.
12. As a result of the matters in paragraph 11 above, the advice provided by the Defendant's ARs was not appropriate to the Pleded Consumers, in contravention of section 961G of the Act.
13. A commission was payable to the Defendant's ARs if the consumers acted on the advice and purchased interests in the Ultiqa Scheme. Therefore, there was a conflict between the interests of the Defendant's ARs and the interests of the Pleded Consumers. For the reasons at paragraphs 9 and 11 above, the Defendant's ARs did not act in the best interests of the Pleded Consumers and provided advice which was not appropriate to the Pleded Consumers.
14. As a result of the matters in paragraph 13 above, in providing advice to Pleded Consumers the Defendant's ARs failed to give priority to the interests of the Pleded Consumers over their own

interests, in contravention of section 961J of the Act.

15. During the Relevant Period the Defendant did not carry out the following steps to ensure personal financial product advice was provided by its ARs in compliance with sections 961B, 961G and 961J of the Act including:
- (a) providing the ARs with documentation concerning the appropriate procedures to be followed for the provision of advice;
  - (b) providing the ARs with appropriate documentation to enable the objectives, needs, risk profile and relevant personal circumstances of the consumers to be obtained;
  - (c) providing appropriate training to the ARs concerning the provision of advice;
  - (d) providing appropriate monitoring and supervision of the ARs whilst providing advice; and
  - (e) carrying out relevant auditing following the provision of advice.
16. As a result of the matters in paragraph 15 above, the Defendant did not take reasonable steps to ensure that its ARs complied with sections 961B, 961G and 961J of the Act, in contravention of section 961L of the Act.

## **B. THE RELIEF SOUGHT FROM THE COURT**

17. The Plaintiff seeks the relief set out in the originating process.

## **C. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT**

18. By section 961L of the Act, an AFSL holder must take reasonable steps to ensure that its ARs comply with sections 961B, 961G and 961J of the Act. The matters set out in paragraphs 8 to 16 above amount to contraventions of section 961L by the Defendant's failure to take reasonable steps to ensure its ARs:
- (a) acted in the best interests of its clients in relation to advice provided to those clients, in compliance with section 961B of the Act;
  - (b) only provided advice to its clients if it would be reasonable to conclude that the advice was appropriate to those clients in compliance with section 961G of the Act; and
  - (c) where there was a conflict between the interests of the clients and the interests of the AR or the Defendant, to give priority to the clients' interests when giving the advice, in compliance with section 961J of the Act.
19. By section 1317E(3) of the Act, section 961L was a civil penalty provision at all times during the Relevant Period.
20. By section 912(1)(a) of the Act, an AFSL holder must do all things necessary to ensure that the financial services covered by the AFSL are engaged in efficiently, honestly and fairly. By reason of the matters set out in paragraphs 8 to 16 above, the Defendant contravened section 912A(1)(a) of the Act.

21. By section 912(1)(c) of the Act, an AFSL holder must comply with the financial services laws. Section 961L and 912(1)(a) are financial services laws. Accordingly, by its contraventions of these sections, the Defendant also contravened section 912(1)(c) of the Act.
22. By section 912(1)(ca) of the Act, an AFSL holder must take reasonable steps to ensure that its representatives comply with financial services laws. Sections 961B, 961G and 961J of the Act are financial services laws. By reason of the matters set out at paragraphs 8 to 16 above, the Defendant failed to take reasonable steps to ensure its ARs complied with sections 961B, 961G and 961J, and thereby contravened section 912(1)(ca) of the Act.
23. By section 1101B of the Act and/or section 21 of the Federal Court Act, the Court has a broad power to make declarations as to contraventions of the Act. Accordingly, the Court may make declarations as to the contraventions of sections 912A(1)(a), 912A(1)(c) and 912A(1)(ca) of the Act by the Defendant.
24. By section 1317E of the Act, the Court must make a declaration if it is satisfied that a person has contravened a civil penalty provision, and by section 1317G of the Act, the Court may order a person to pay a pecuniary penalty for contravening a civil penalty provision. Accordingly, the Court may make declarations and order payment of a penalty in relation to the contraventions of section 961L of the Act by the Defendant as set out above.
25. By sections 1101B and 1324 of the Act, the Court may grant injunctions on such terms as it considers appropriate in relation to contraventions of the Act. Accordingly, the Court may restrain the Defendant from further contravention of those provisions of the Act. The Court may also restrain, for a period it sees fit, the Defendant from engaging in financial services business.

**D. THE ALLEGED HARM SUFFERED**

26. By the Defendant's contravention of section 961L of the Act, its ARs provided advice to the Pledged Consumers to purchase a financial product in circumstances where they had failed to meet the best interests obligation in section 961B and where the advice was not appropriate to the client as required by section 961G. The Pledged Consumers suffered harm because they purchased a financial product based on advice which was not appropriate to them. The Plaintiff does not seek relief in these proceedings in respect to this harm.

**CERTIFICATE OF LAWYER**

27. I, Hugh Copley, 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 in the statement.

Date: 28 October 2021



Signed by Hugh Copley  
Solicitor for the Plaintiff

This Concise Statement was prepared by Mr S.J. Cleary and Mr S.E. Seefeld of Counsel

## SCHEDULE 1

TABLE OF PLEADED CONSUMERS AND ADVICE PROVIDED

No	(a) Consumer name	(b) Date advice given	(c) Type of interest advised	(d) Price of interest	(e) AR name and number	(f) Sales Office Location
■	████████████████████	████████	████████	██████	████████ ██████	██████
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