



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD209/2021

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Applicant

MEMBO FINANCE PTY LIMITED and another named in the schedule

First Respondent

ORDER

JUDGE: JUSTICE YATES

DATE OF ORDER: 23 February 2023

WHERE MADE: Sydney

THE COURT DECLARES THAT:

1. During the period 3 March 2020 to 16 December 2020, Membo Finance Pty Ltd (**Membo**) contravened s 72(4) of the National Credit Code (being Sch 1 to the *National Consumer Credit Protection Act 2009* (Cth) (**Act**)) (**Code**) on 38 occasions by failing in each case to give a notice in accordance with s 72(4) and s 72(5) of the Code in response to a hardship notice within the meaning of s 72(1) of the Code (**Hardship Notice**) given to Membo as credit provider by a debtor (**Declaration 1**).
2. Richmond Group Financial Service Pty Ltd (**RGFS**) contravened s 72(4) of the Code on 38 occasions by being involved in the contraventions the subject of Declaration 1 (**Declaration 2**).
3. During the period 13 March 2019 to 16 December 2020, Membo by its conduct and its failures set out in subparagraphs (a) to (g) below contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo's Australian credit licence (Number 428415) (**Membo's credit licence**) were engaged in efficiently, honestly and fairly, in that during the said period Membo:
 - (a) had a practice of failing to inform debtors with whom Membo had a credit contract, and guarantors of such contracts, of Membo's policies and processes in respect of financial hardship or of the hardship processes under the Code;



- (b) had a practice of failing to advise debtors who gave Hardship Notices to Membo of Membo's policies and processes in respect of financial hardship or of the hardship processes under the Code;
- (c) failed to give to debtors, in response to a Hardship Notice, a notice in accordance with ss 72(4) and 72(5) of the Code on each of the occasions the subject of the declaration in Order 1;
- (d) on at least 10 occasions required debtors who gave a Hardship Notice to Membo to provide supporting documentation to Membo within 48 hours or less, in circumstances where s 72(2) of the Code allows a debtor who gives a Hardship Notice and who is required by the credit provider to provide relevant information a period of 21 days in which to provide the information. On 7 of those 10 occasions, Membo advised the debtor that if the required supporting documentation was not provided within the time requested, Membo would assume that the debtor had the ability to pay (and, by implication, that the Hardship Notice was not pressed) and would resume collection activity;
- (e) on at least 11 occasions failed to consider Hardship Notices given by debtors of Membo, or to give those debtors notices in accordance with ss 72(4) and 72(5) of the Code, prior to making inquiries of the guarantor under the relevant credit contract and ascertaining that the guarantor was unable to meet the obligations under their guarantee contract;
- (f) following receipt of a Hardship Notice on or about 31 March 2020 from a debtor, SV:
 - (i) advised SV that in normal circumstances it was not possible to hold loans for more than 30 days when there was a hardship process under both Membo's hardship policy and the Code which, properly implemented, would allow that outcome in an appropriate case;
 - (ii) collected payments from SV during assessment of the Hardship Notice that were greater than interim arrangements that had been agreed between Membo and SV;
- (g) failed to have in place systems and processes to ensure that the conduct in subparagraphs (a)-(f) did not occur (**Declaration 3**).



4. RGFS contravened s 47(1)(a) of the Act by being involved in the contravention the subject of Declaration 3 (**Declaration 4**).
5. During the period 13 March 2019 to 28 August 2020, Membo contravened s 47(1)(g) of the Act by failing to ensure that its representatives were adequately trained, and were competent, to engage in the credit activities authorised by Membo's credit licence, in that during the said period, systems and practices were in operation whereby:
 - (a) representatives of Membo who had failed and/or not completed financial hardship and other training were allowed to act in customer facing roles; and
 - (b) representatives of Membo were provided with a training document being a 'Hardship Training Guide' that misstated the threshold requirements for a debtor to give a Hardship Notice pursuant to s 72(1) of the Code (**Declaration 5**).
6. RGFS contravened s 47(1)(g) of the Act by being involved in the contravention the subject of Declaration 5 (**Declaration 6**).
7. During the period 15 December 2017 to 8 August 2020, Membo contravened s 87(2) of the Code on 75 occasions on which s 87 of the Code applied by failing in each case to give to the debtor, and any guarantor, a notice complying with s 87(2) of the Code, within 14 days of a first direct debit default occurring (**Declaration 7**).
8. During the period 15 December 2017 to 12 March 2019, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo's credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:
 - (a) on 52 occasions on which s 87 of the Code applied, failed to give to the debtor, and any guarantor, a notice complying with s 87(2) of the Code, within 14 days of a first direct debit default occurring; and
 - (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 8**).
9. During the period 13 March 2019 to 8 August 2020, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities



authorised by Membo's credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:

- (a) on 23 occasions on which s 87 of the Code applied, failed to give to the debtor, and any guarantor, a notice complying with s 87(2) of the Code, within 14 days of a first direct debit default occurring; and
 - (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 9**).
10. During the period 18 May 2018 to 20 December 2019, Membo contravened s 88(1) of the Code on 59 occasions by commencing (by its agent and representative RGFS) enforcement proceedings against a debtor before the expiry of 30 days after Membo gave the debtor, and any guarantor, a default notice complying with s 88 of the Code, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default (**Declaration 10**).
11. During the period 18 May 2018 to 12 March 2019, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo's credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:
 - (a) on 37 occasions, by its agent and representative RGFS began enforcement proceedings against a debtor before the expiry of 30 days after Membo gave the debtor, and any guarantor, a default notice complying with s 88 of the Code, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default; and
 - (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 11**).
12. During the period 13 March 2019 to 20 December 2019, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo's credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:
 - (a) on 22 occasions, by its agent and representative RGFS began enforcement proceedings against a debtor before the expiry of 30 days after Membo gave the debtor, and any guarantor, a default notice complying with s 88 of the



- Code, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default; and
- (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 12**).
13. During the period 11 May 2018 to 12 March 2019, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo’s credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:
- (a) by its agent and representative RGFS, brought court proceedings against a total of 263 debtors and guarantors in a jurisdiction other than that prescribed by reg 36 of the *National Consumer Credit Protection Regulations 2010* (Cth) (**Regulations**); and
 - (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 13**).
14. During the period 13 March 2019 to 12 March 2020, Membo contravened s 47(1)(a) of the Act by failing to do all things necessary to ensure that the credit activities authorised by Membo’s credit licence were engaged in efficiently, honestly and fairly, in that during the said period Membo:
- (a) by its agent and representative RGFS, brought court proceedings against a total of 256 debtors and guarantors in a jurisdiction other than that prescribed by reg 36 of the Regulations; and
 - (b) failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 14**).
15. During the period 11 May 2018 to 12 March 2019, Membo contravened s 47(1)(e) of the Act by failing to take reasonable steps to ensure that its credit representative, RGFS, complied with the credit legislation, in that during the said period:
- (a) RGFS began brought court proceedings against a total of 263 debtors and guarantors in a jurisdiction other than that prescribed by reg 36 of the Regulations; and
 - (b) Membo failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 15**).



16. During the period 13 March 2019 to 12 March 2020, Membo contravened s 47(1)(e) of the Act by failing to take reasonable steps to ensure that its credit representative, RGFS, complied with the credit legislation, in that during the said period:
- (a) RGFS brought court proceedings against a total of 256 debtors and guarantors in a jurisdiction other than that prescribed by reg 36 of the Regulations; and
 - (b) Membo failed to have in place systems and processes to ensure that the conduct in subparagraph (a) did not occur (**Declaration 16**).

THE COURT ORDERS THAT:

17. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$1,500,000 in respect of Membo's contraventions of s 72(4) of the Code the subject of Declaration 1.
18. Pursuant to s 167(2) of the Act, RGFS pay to the Commonwealth of Australia a pecuniary penalty of \$1,500,000 in respect of RGFS's contraventions of s 72(4) of the Code the subject of Declaration 2.
19. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$1,200,000 in respect of Membo's contravention of s 47(1)(a) of the Act the subject of Declaration 3.
20. Pursuant to s 167(2) of the Act, RGFS pay to the Commonwealth of Australia a pecuniary penalty of \$1,200,000 in respect of RGFS's contravention of s 47(1)(a) of the Act the subject of Declaration 4.
21. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$100,000 in respect of Membo's contravention of s 47(1)(g) of the Act the subject of Declaration 5.
22. Pursuant to s 167(2) of the Act, RGFS pay to the Commonwealth of Australia a pecuniary penalty of \$100,000 in respect of RGFS's contravention of s 47(1)(g) of the Act the subject of Declaration 6.
23. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$30,000 in respect of Membo's contravention of s 47(1)(a) of the Act the subject of Declaration 9.



24. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$75,000 in respect of Membo's contravention of s 47(1)(a) of the Act the subject of Declaration 12.
25. Pursuant to s 167(2) of the Act, Membo pay to the Commonwealth of Australia a pecuniary penalty of \$300,000 in respect of Membo's contravention of s 47(1)(a) of the Act the subject of Declaration 14.
26. Pursuant to s 177 of the Act, Membo and RGFS discontinue such of the enforcement proceedings against debtors that:
 - (a) are listed in Schedule K to the Amended Further Concise Statement filed on 8 June 2022, being enforcement proceedings that were commenced before the expiry of 30 days after Membo gave the debtor, and any guarantor, a default notice complying with s 88 of the Code, allowing the debtor a period of at least 30 days from the date of the notice to remedy the default; and
 - (b) at the date of these orders, remain on foot.
27. Pursuant to s 177 of the Act, Membo and RGFS discontinue such of the enforcement proceedings against debtors or guarantors that:
 - (a) are listed in Schedule L to the Amended Further Concise Statement filed on 8 June 2022, being enforcement proceedings that were commenced in a jurisdiction other than the jurisdiction required by reg 36 of the Regulations; and
 - (b) at the date of these orders, remain on foot.

The respondents pay the costs of the applicant.

Date that entry is stamped: 23 February 2023


Registrar



Schedule

No: NSD209/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Respondent RICHMOND GROUP FINANCIAL SERVICES PTY LIMITED