

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: VID379/2022
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
LANTERNE FUND SERVICES PTY LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 6/07/2022 10:00:31 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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.

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Concise Statement

No.



of 2022

Federal Court of Australia
 District Registry: Victoria
 Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
 Plaintiff

LANTERNE FUND SERVICES PTY LIMITED (ACN 098 472 587)
 Defendant

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Lanterne and its business

1. Lanterne Fund Services Pty Limited (**Lanterne**) has held an Australian Financial Services Licence (**AFSL**) since 2004 and has held AFSL No 238198 since 18 May 2018. Lanterne's AFSL relevantly authorises it to provide financial product advice for specified classes of financial products; to deal in specified classes of financial products; and to provide specified custodial or depository services. The AFSL authorises the provision of financial services to wholesale clients.
2. In the period 13 March 2019 to 5 October 2021 (**the Relevant Period**), Lanterne conducted a business of authorising other financial services providers to operate as corporate authorised representatives (**CARs**) or authorised representatives (**ARs**) under its AFSL. In the Relevant Period, Lanterne did not provide financial services directly to clients.
3. Across the Relevant Period between 62 and 69 CARs operated under Lanterne's AFSL, with between approximately 134 and 205 ARs operating under those CARs across the period. The total funds under management of all CARs fluctuated, being approximately \$1.2 billion in March 2021 and \$1.658 billion by the end of the Relevant Period.
4. The businesses of the CARs which operated under Lanterne's AFSL included venture capital funds; managed investment schemes; agricultural advisory services; wholesale funds management services; corporate advisory services; wholesale property funds; digital asset funds; and climate change advisory services. The CARs operated across various industries, including renewable energy; technology; healthcare; real estate, and biotechnology and agriculture.
5. During the Relevant Period, Lanterne had only one full time employee, Peter Cozens, who was also Lanterne's responsible manager and its sole director. During part of the Relevant Period, Lanterne had a second responsible manager, with no direct involvement in its business. From September 2020, Lanterne also had two part time employees, working 9 hours and 3-5 hours per week respectively, whose roles were limited to administrative functions. Prior to that time, Lanterne had only one part time employee, in an administrative function.
6. At all times during the Relevant Period, Pinehurst Investments Pty Ltd, the trustee of the Cozens Family Trust of which Mr Cozens is a beneficiary, held 100% of the shares in Lanterne. Mr Cozens is the sole director and a shareholder of Pinehurst Investments Pty Ltd.
7. Lanterne charged CARs an upfront fee of \$5,000 to become authorised under its AFSL, and ongoing fees of \$3,000 per month.

Filed on behalf of (name & role of party)	The Plaintiff (Australian Securities and Investments Commission)
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Lanterne's processes and systems

8. Prior to an entity becoming a CAR under Lanterne's AFSL, Lanterne conducted no discernible due diligence on the CAR and only limited due diligence on the entity's directors. The due diligence typically involved Mr Cozens interviewing a representative of the prospective CAR, and Lanterne obtaining copies of identification documents and two business references and conducting an ITSA bankruptcy check and police checks. The due diligence process was not documented.
9. When an entity became a CAR under Lanterne's AFSL, the CAR was required to execute an agreement with Lanterne which outlined the terms of the appointment and annexed a copy of Lanterne's AFSL (**Agreement**). Under the Agreement CARs were able, with the written consent of Lanterne, to nominate individuals as ARs. Each CAR was provided a largely identical copy of the Agreement. The Agreement contained limited guidance about CARs' or ARs' obligations under the financial services laws and was not tailored to the CAR's particular business or industry.
10. Lanterne did not have a formal or documented risk management system. It did not have any systems or processes in place to enable it to identify and assess the various risks it faced, nor controls or other measures to manage and mitigate those risks.
11. Lanterne had one compliance procedures manual (**Compliance Manual**). The Compliance Manual did not reflect Lanterne's business of authorising CARs and ARs, and it contained limited information about the regulatory and compliance obligations of CARs and ARs.
12. Only Mr Cozens acted as Lanterne's responsible manager in the Relevant Period. Mr Cozens did not have sufficient, or in many cases any, experience in the businesses and industries in which Lanterne's CARs and ARs operated. Mr Cozens also acted as a responsible manager for other entities during the Relevant Period. Lanterne did not have any processes for ensuring it had an adequate number of suitably qualified responsible managers to oversee the financial services businesses operated by Lanterne or its CARs and ARs, or to ensure that those responsible managers remained appropriately qualified.
13. Lanterne did not offer or provide training to its CARs or ARs. Lanterne did not require its CARs or ARs to provide to it verification of, or information about, the training undertaken by its ARs. Lanterne did not maintain any records of training undertaken by its ARs.
14. Pursuant to the Agreement, each month each CAR was required to provide written confirmation to Lanterne about certain matters relating to risk and compliance, and to attest that the CAR had met their obligations under the Agreement. In the confirmation, the CARs were required to report to Lanterne any "exceptions" to compliance with their obligations.
15. From time to time, Mr Cozens conducted informal meetings with representatives of CARs and ARs. No minutes or notes were taken of the meetings. Lanterne did not conduct any other audits of CARs or ARs, or any other supervision or oversight of the ARs and CARs. Lanterne was reliant on CARs self-reporting to Lanterne.
16. Until September 2020, Lanterne maintained its records using a paper filing system, and had limited technological resources. Lanterne had no internal IT capability and did not outsource its IT function.

B. THE RELIEF SOUGHT FROM THE COURT

17. The plaintiff seeks the relief set out in the accompanying originating process.

C. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

18. As the holder of an AFSL, at all material times, Lanterne has been subject to the obligations of an Australian financial services licensee under s 912A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).
19. **Risk management:** To comply with the obligation under s 912A(1)(h) to have adequate risk management systems, a financial services licensee in the position of Lanterne should have a risk management system which identifies and evaluates risks faced by its business, including the risks of non-compliance with financial services laws and the risks relating to its ARs and CARs. The risk

management system should include a documented risk management framework describing how the licensee manages risk, together with risk management tools such as a risk matrix of key risks, and an incident management process. The licensee's risk management system should integrate a compliance management system to identify, evaluate and respond to regulatory risks, which is regularly reviewed.

20. A licensee in the position of Lanterne should implement and monitor controls designed to manage and mitigate the identified risks. A licensee should regularly review and if necessary, update its analysis of risks. It should have regular independent oversight of its risk management systems.
21. During the Relevant Period, Lanterne:
 - (a) failed to identify and assess the risks faced by its business, including the risks relating to its ARs and CARs;
 - (b) failed to document any identification or assessment of the risks faced by its business, including by failing to have a risk management framework and basic risk management tools;
 - (c) relied on initial due diligence of directors of potential CARs, and monthly compliance self-assessments by the CARs, to monitor the CARs and ARs and identify risks associated with their conduct;
 - (d) failed to have an adequate compliance management system having regard to the nature, scale and complexity of its business and instead relied on a Compliance Manual which was out of date, inapplicable to Lanterne's business, and omitted regulatory and compliance obligations of CARs, ARs and itself as licensee;
 - (e) failed to have any employees or officers with appropriate risk management expertise and failed to engage external consultants with risk management expertise for the purpose of risk management;
 - (f) failed to have any independent oversight or monitoring of its risk management systems; and
 - (g) otherwise failed to have systems, processes or controls to manage or mitigate risks, including failing to have an incident management process.
22. In these ways, Lanterne breached its obligation to have adequate risk management systems, and thereby contravened s 912A(1)(h) of the Corporations Act.
23. **Maintain competence to provide financial services:** To comply with the obligation under s 912A(1)(e) to maintain competence to provide financial services, a financial services licensee in the position of Lanterne should have sufficient responsible managers with the skills and experience in the financial services offered by its CARs and ARs and across the industries and businesses in which they operate, with sufficient time to effectively conduct their role. A licensee should have documented and implemented processes for assessing its responsible managers and for ensuring they remain appropriately qualified, including taking account of changes to the business over time.
24. During the Relevant Period, Lanterne:
 - (a) failed to have responsible managers with sufficient time to effectively conduct their roles, and failed to have a sufficient number of responsible managers with appropriate expertise for the businesses operated by Lanterne and its CARs; and
 - (b) failed to have any processes for ensuring it had appropriately qualified responsible managers.
25. In these ways, Lanterne breached its obligation to maintain competence to provide the financial services authorised by its AFSL and thereby contravened s 912A(1)(e) of the Corporations Act.
26. **Adequate training:** To comply with the obligation under s 912A(1)(f) to ensure its representatives are adequately trained and are competent to provide the financial services, a financial services licensee in the position of Lanterne should establish a training and competency program and

process which documents the skills and competencies required by its ARs to provide the authorised financial services, and includes a needs analysis which assesses each AR against the documented required skills and competencies. The licensee should develop and implement training programs, whether in house or externally, which address the identified skills and competency needs, and which ensure those skills and competencies are maintained and kept up to date. A licensee should maintain a record of training and assess the effectiveness of the training at least annually.

27. During the Relevant Period, Lanterne:
- (a) failed to assess the skill and competency requirements of representatives of its CARs or ARs, and failed to take any or adequate steps to address those requirements;
 - (b) failed to provide or arrange any or adequate training, professional development or other instructional programs for its CARs and ARs; and
 - (c) relied only on the monthly self-assessment compliance reports to satisfy itself that ARs had undertaken training, and did not request, obtain or inspect CARs' or ARs' training records or other evidence of relevant training.
28. In these ways, Lanterne breached its obligation to ensure that its representatives were adequately trained and competent to provide the financial services covered by its AFSL, and thereby contravened s 912A(1)(f) of the Corporations Act.
29. **Reasonable steps to ensure representatives comply with financial services laws:** To comply with the obligation under s 912A(1)(ca) to take reasonable steps to ensure that its representatives comply with the financial services laws, a financial services licensee in the position of Lanterne should have an effective and documented process for background checks and due diligence of representatives of prospective CARs and ARs. The licensee should conduct ongoing checks of its appointed ARs, to ensure they remain appropriate. The licensee should provide clear guidance and instructions to its CARs and ARs about their compliance with the financial services laws. It should design and implement an effective system for monitoring and supervising its CARs and ARs through a program of reviews and audits following a prescribed methodology. The frequency of audits should depend upon the risk assessment of each CAR and AR, with higher risk CARs and ARs reviewed and audited more frequently. A licensee should also have a system for responding to negative audit findings, events and breaches, which should include preparing a rectification plan where necessary. Performance against any rectification plan should be monitored by an independent specialist.
30. A licensee in the position of Lanterne should also have processes in place to ensure its employees are complying with the financial services laws, including regular reviews, performance reviews and reports to management and the board identifying deficiencies and recommendations for remediation. Management and the responsible managers should also be monitored and supervised, ideally by the board of directors or an independent party.
31. During the Relevant Period, Lanterne:
- (a) failed to have a documented and rigorous due diligence and background check process for prospective CARs and ARs, and failed to conduct ongoing checks to ensure ARs remained appropriate;
 - (b) failed to provide clear and practical guidance to CARs and ARs about the nature, extent and discharge of their obligations under the financial services laws;
 - (c) failed to have a systematic and documented audit process, and failed to conduct regular audits of the CARs and ARs;
 - (d) failed to document the matters the subject of Cozens' informal discussions with the CARs and ARs;
 - (e) relied on pro forma monthly compliance self-assessments by the CARs to monitor the CARs and ARs and identify risks associated with their conduct;

- (f) failed to record or follow up any exceptions noted in the compliance self-assessments; and
 - (g) failed to conduct regular, or any, performance reviews of its employees and Cozens.
32. In these ways, Lanterne breached its obligation to take reasonable steps to ensure its representatives complied with the financial services laws, and thereby contravened s 912A(1)(ca) of the Corporations Act.
33. **Resources:** To comply with the obligation under s 912A(1)(d) to have available adequate resources to provide the financial services covered by the licence and to carry out supervisory arrangements, a financial services licensee in the position of Lanterne should, in relation to human resources, have systems and processes to ensure it understands its human resource needs, and implement a plan to fulfill those needs, which is regularly reviewed. A licensee in the position of Lanterne requires human resources covering its basic functions of risk and compliance (particularly to supervise and monitor ARs); IT functions; financial management; and human resources. Absent internal capability, a licensee should obtain third party specialist support. A licensee should have a documented performance management system, a staff training and development program, and a plan to deal with the loss of key persons.
34. In relation to technological resources, a licensee in the position of Lanterne should document a technology resourcing plan based on an assessment of its hardware and software needs; undertake a security assessment, including cyber security and develop and implement a response to that assessment; develop and implement a disaster recovery plan; acquire and install necessary hardware and software relevant to its business operations and its number of employees; and regularly review its IT requirements to ensure the resources remain adequate and up to date and that systems are appropriately upgraded.
35. In relation to financial resources, a licensee should have processes in place to ensure it meets the solvency and positive net assets test, cash needs requirements and audit requirements. It should consider financial risk in its risk management system, and assess the financial resources needed for it to provide the financial services covered by its licence and carry out supervisory arrangements.
36. During the Relevant Period, Lanterne:
- (a) failed to have adequately trained and skilled compliance and risk management personnel, (particularly to undertake audits and reviews of ARs and CARs), any human resources capability, adequate information technology capability, or adequate financial management capability having regard to the nature and scale of its business; failed to have a human resources plan or process to establish and maintain the adequacy of Lanterne's human resources; failed to have staff training, development plans or reviews; and failed to have plans for the temporary or permanent absence of Mr Cozens;
 - (b) failed to have a technology resourcing plan or up to date disaster recovery plan; relied on outdated back up processes; failed to update its hardware and software to meet the needs of a business of its nature, scale and risk profile; relied on paper files and failed to use a suitable software system in its monitoring and supervision of ARs and CARs; and failed to have information technology capabilities (whether internal or via a third party); and
 - (c) failed to consider and assess the financial resources it required to provide the financial services covered by its licence and carry out supervisory arrangements.
37. In these ways, Lanterne breached its obligation to have available adequate resources to provide the financial services covered by its AFSL, and thereby contravened s 912A(1)(d) of the Corporations Act.
38. **Provide financial services efficiently, honestly, fairly:** By reason of the matters alleged in paragraphs 21, 24, 27, 31 and 36 above, Lanterne breached its obligation to do all things necessary to ensure the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

39. **Contravention of civil penalty provision:** At all times on and from 13 March 2019, a person contravened s 912A(5A) of the Corporations Act if the person contravened s 912A(1)(a), (ca), (d), (e), (f) or (h). Lanterne accordingly contravened s 912A(5A) of the Corporations Act. On and from 13 March 2019, s 912A(5A) has been a civil penalty provision for the purpose of s 1317E of the Corporations Act.

D. THE HARM SUFFERED AND PROFITS EARNED FROM THE CONDUCT

40. As a result of the matters referred to above, Lanterne put the ultimate clients of its ARs and CARs at risk of harm in relation to the financial services provided to them by the ARs and CARs under Lanterne's AFSL. Lanterne benefited by receipt of fees from its CARs, without applying those fees to ensure the financial services provided under its licence were provided in accordance with the financial services laws.

Certificate of lawyer

I **Georgina Thomas** 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 concise statement.

Date: 6 July 2022



Signed by Georgina Thomas
Lawyer for the Plaintiff