



Federal Court of Australia

District Registry: South Australia

Division: General

No: SAD237/2019

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

MOBISUPER PTY LIMITED (ACN 613 581 981) and others named in the schedule

Defendant

ORDER

JUDGE: JUSTICE CHARLESWORTH

DATE OF ORDER: 26 August 2022

WHERE MADE: Adelaide

THE COURT NOTES THAT

- A. The plaintiff (the Australian Securities and Investments Commission) the first defendant (MobiSuper Pty Limited), the second defendant (ZIB Financial Pty Limited) and the fourth defendant (Mr Andrew Richard Grover) have agreed to jointly propose orders to the Court on the basis of the Statement of Agreed Facts and Admissions (SAFA) marked Exhibit P1.
- B. The first defendant and the second defendant undertake to the Court not to pay the pecuniary penalties and costs referred to in paragraphs 4 and 6 of the orders below from funds of members of the MobiSuper Division of the Tidswell Master Superannuation Plan (the Fund).

THE COURT DECLARES THAT:

1. In respect of the telephone calls made on the dates identified in Annexure A (Admitted Calls) by its customer service operators (CSOs) the first defendant provided personal advice within the meaning of s 766B(3) of the *Corporations Act 2001* (Cth) to each of the Consumers referred to in Annexure A, each of whom was a retail client.



2. The first defendant contravened:

- (a) s 946A of the *Corporations Act 2001* (Cth) by failing to provide a Statement of Advice in relation to the provision of personal advice to each of the Consumers, each of whom was a retail client and on each of the dates;
- (b) s 947D of the *Corporations Act 2001* (Cth) by failing to provide a Statement of Advice in accordance with s 947D in relation to the provision of personal advice to each of the Consumers; and
- (c) s 12DB(1)(g) of the *Australian Securities and Investments Commission Act 2001* (Cth):
 - (i) in trade or commerce;
 - (ii) in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services;
 - (iii) by making false or misleading representations to each of the Consumers (on each of the dates) with respect to the price of services, that is, to the effect that Consumers could save fees in the relevant amount by opening an account with the Fund and consolidating or rolling over their superannuation into a Fund account (Fee Saving Representations), where those representations were with respect to a future matter and the first defendant did not have reasonable grounds to make any of those representations.

3. The second defendant ZIB Financial Pty Limited contravened:

- (a) s 961K(2) of the *Corporations Act 2001* (Cth) by reason of it being the responsible licensee for the contravening conduct of certain of its representatives (being the CSOs who conducted the Admitted Calls), who contravened s 961B of the *Corporations Act 2001* (Cth) by failing to act in the best interests of clients in the provision of personal advice to each of the Consumers in the Admitted Calls on each of the dates identified in Annexure A;
- (b) s 961K(2) of the *Corporations Act 2001* (Cth) by reason of it being the responsible licensee for the contravening conduct of certain of its



representatives (being the CSOs who conducted the Admitted Calls), who contravened s 961H of the Act by failing to warn clients in the provision of personal advice to each of the Consumers in the Admitted Calls (where the advice was based on incomplete or inaccurate information relating to the clients' relevant personal circumstances) in accordance with the requirements of s 961H of the *Corporations Act 2001* (Cth), on each of the dates identified in Annexure A;

- (c) s 961L of the *Corporations Act 2001* (Cth) by failing to take reasonable steps to ensure that certain of its representatives (being the CSOs who conducted the Admitted Calls) complied with s 961B and s 961H of the *Corporations Act 2001* (Cth) in the provision of personal advice to each of the Consumers in the Admitted Calls; and
- (d) s 912A(1)(a) of the *Corporations Act 2001* (Cth) by failing to do all things necessary to ensure that the financial services covered by the Australian Financial Services Licence Numbered 482464, provided by the first defendant (including by the CSOs), were provided efficiently, honestly and fairly, in that the second defendant:
 - (i) failed to ensure that no false or misleading representations were made by the CSOs to the Consumers;
 - (ii) failed to ensure that no personal advice was given by the CSOs to the Consumers;
 - (iii) failed to ensure that the CSOs acted in the best interests of the Consumers in relation to the provision of personal advice, in accordance with s 961B of the *Corporations Act 2001* (Cth);
 - (iv) failed to ensure that CSOs provided the warning required by s 961H of the *Corporations Act 2001* (Cth) to the Consumers; and
 - (v) failed to ensure that the first defendant gave to the Consumers Statements of Advice in accordance with s 946A of the *Corporations Act 2001* (Cth) and Statements of Advice meeting the requirements of s 947D of the *Corporations Act 2001* (Cth).



- (e) s 912A(1)(a) of the *Corporations Act 2001* (Cth), by failing to do all things necessary to ensure that the financial services covered by the Australian Financial Services Licence Number 482464, provided by the first defendant (including by the CSOs), were provided efficiently, honestly and fairly, in that during the relevant period the second defendant contravened s 961K(2) and s 961L of the *Corporations Act 2001* (Cth), as declared in sub-paragraphs (a) to (c) above.

THE COURT ORDERS BY CONSENT THAT:

4. On or before 24 October 2022:
- (a) pursuant to s 12GBA(1)(a) of the ASIC Act, the first defendant pay to the Commonwealth of Australia total pecuniary penalties of \$125,000, in respect of the contraventions by the first defendant of s 12DB(1)(g) of the *Australian Securities and Investments Commission Act 2001* (Cth), declared in paragraph 2(c) above;
- (b) pursuant to s 1317G(1E) of the *Corporations Act 2001* (Cth), the second defendant pay to the Commonwealth of Australia total pecuniary penalties of \$125,000, in respect of the contraventions by ZIB of s 961K and s 961L of the Act, declared in paragraphs 3(a), 3(b) and 3(c) above.
5. The originating application, so far as it concerns each of the first defendant, the second defendant and the fourth defendant, is otherwise dismissed.
6. On or before 24 October 2022 the first defendant and the second defendant pay the plaintiff its costs of the claims against them fixed in the sum of \$50,000.
7. Each of the first, second and fourth defendants are to bear their own costs, including the costs of the dismissed claims.

Date that entry is stamped: 29 August 2022


Registrar



ANNEXURE A

Consumer	Indicative date of call
1	23 October 2017
4	26 October 2017
6	26 October 2017
8	23 October 2017
10	18 October 2017
11	18 October 2017
14	21 November 2017



Schedule

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Second Defendant ZIB FINANCIAL PTY LIMITED (ACN 609 197 971)

Third Defendant TIDSWELL FINANCIAL SERVICES LIMITED (ACN 010 810
607)

Fourth Defendant ANDREW RICHARD GROVER