

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/06/2022 2:47:04 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Concise Statement
File Number:	QUD426/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v TYSON ROBERT SCHOLZ
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 13/06/2022 9:29:25 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.

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.

Concise Statement



No. QUD 426 of 2021

Federal Court of Australia

District Registry: Queensland

Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

and

TYSON ROBERT SCHOLZ

Defendant

Introduction:

1. These proceedings concern the defendant, from at least early 2020 ~~23 February 2021~~, carrying on a financial services business by providing financial product advice in relation to trading in fully paid ordinary shares that are traded on the Australian Securities Exchange (**ASX**), without holding an Australian Financial Services Licence (**AFSL**), contrary to s 911A of the *Corporations Act 2001* (Cth) (**Act**).
2. ASIC alleges that from:
 - a) at least early 2020, the defendant used an account he held with the social media platform "Instagram" to make posts and "stories" (being posts viewable for only 24 hours) in which he made recommendations and gave statements of opinion that were intended to influence people viewing his Instagram posts and stories to purchase shares in certain companies listed on the ASX;
 - b) at least 14 April 2020, the defendant charged people fees to attend seminars held by him, virtually or in-person, marketed as an introductory educational seminar on the subject of share trading called "Stage 1", in which he made recommendations and gave statements of opinion that were intended to influence those people to purchase certain shares in companies listed on the ASX; and
 - c) at least 27 January ~~23 February~~ 2021, the defendant charged people subscription fees to gain access to private online forums administered by him on which he made recommendations and gave statements of opinion that were intended to influence those people to purchase certain shares in companies listed on the ASX. The defendant named this service "the Black Wolf Channel" which subscribers were able to access using an app called "Discord". Discord is a social media platform on which users may

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communicate by ~~making voice calls or video calls or~~ sending text messages and other media in private chats or as part of a "community" of users.

3. The defendant advertised the private online forums referred to in paragraph 2 ~~the Black Wolf Channel~~ at Stage 1 trading seminars and on ~~social media platforms, such as~~ Instagram.

Important Facts giving rise to the claim:

4. The defendant has never held an AFSL or been the authorised representative of an AFSL holder.
5. From at least July 2020, the defendant promoted (and charged attendees \$500 to attend) a presentation marketed as a seminar on the subject of share trading, later named "Stage 1".
6. From ~~about 24 October~~ at least around November 2020 ~~until about 16 November 2024~~, the defendant:
- a. ~~promoted~~ began to promote three "ASX Stock Market Courses", in terms named "Stage 1", "Stage 2" and "Stage 3" (**the Packages**);
 - b. charged \$500 and \$1,500 for the Stage 1 and Stage 3 packages respectively, and marketed them as introductory and advanced educational seminars on the subject of share trading (**Seminars**); and
 - c. charged \$1,000 for the Stage 2 package, which was one-year's access to the Black Wolf Channel (**the Stage 2 - Black Wolf Channel Service**).
7. ~~In the period February 2021 until about 16 November 2024,~~ From at least July 2020, the defendant promoted one or more of the Stages in the Packages on Instagram using an account he holds with that platform and on which he can be identified by the unique identifiers of "tyson_scholz" or later as "asxwolf_ts" (Instagram Account). As at 12 October 2021, the Instagram Account was called "asxwolf_tx" and had approximately 21,900 "followers".
8. The defendant also promoted the Stage 2 - Black Wolf Channel Service at the Seminars and through Instagram stories he posted using his Instagram Account.
9. The Stage 2 - Black Wolf Channel Service was promoted on Instagram as amongst other things, "Wolf Channel, 12 Months mentorship program with lots of cutting edge additions" and "Charts, Research, CFD's, ASX- Stocks in Play and Live chats about markets. We have some amazing people in the group both international and local traders/brokers changing the way we trade".
10. Between ~~26 October~~ 19 March 2020 and 4 August 2021, the defendant ~~has~~ received at least \$1,156,500 from customers subscribing to one or more of the Packages. Transaction descriptions such as "ASX course", "stock trading course", "trade course", "ASX groupchat", "ASX class", "ASX workshop", "ASX training", "stock lesson", "trading webinar", "trading seminar", "webinar shares", "stock market webinar", "stocks webinar", "trading mentor group", "stocks group chat", "Wolf mentorship program", "12 mth subscription", "Stage 2 wolf mentors", "ASX Channel" and "mentorship asx," or similar descriptions, and (or) an individual's name or other identifier, such as an Instagram handle, appear against deposits of \$500, \$1,000 and \$1,500 made into bank accounts held in the name of, or controlled by, the defendant.

Instagram

11. From at least early 2020, the defendant used his Instagram Account to make posts and stories, in which he made recommendations and gave statements of opinion that were intended to influence people viewing his Instagram posts and stories to purchase shares in certain companies listed on the ASX. From time to time, the defendant charged individuals \$500 for a 'tip' (or a recommendation and/or statement of opinion), via his Instagram Account, intended to influence those people to purchase certain shares in companies listed on the ASX.

Stage 1 seminar

12. From at least 14 April 2020, the defendant charged people a fee to attend a seminar held by him, virtually or in-person, marketed as an introductory educational seminar on the subject of share trading called "Stage 1", in which he made recommendations and gave statements of opinion that were intended to influence those people to purchase certain shares in companies listed on the ASX.
13. Between 19 March 2020 and 4 August 2021, the defendant received approximately \$43,000 paid in \$500 amounts, from individuals with transaction descriptions such as "ASX course", "stock trading course", "trade course", "Asx groupchat", "asx" and "mentorship asx" and their name. These \$500 amounts are payments made by persons to the defendant in respect of the financial services business carried on by the defendant without an AFSL.

Stage 2 - the Black Wolf Channel Service

14. The defendant controlled who was granted access to the Stage 2 - Black Wolf Channel Service.
15. When communicating to subscribers to the Stage 2 - Black Wolf Channel Service the defendant used the unique identifier:
 - a. "WOLF", when communicating in group chats; and
 - b. "ASX WOLF PIT", when communicating in private one-on-one chats.
16. From at least January 2021 the defendant administered ~~the following~~ private communication forums on Discord as part of the Stage 2 - Black Wolf Channel Service, such as the following:
 - a. "Black Wolf Chat Channel – General Stock Chat – Charts";
 - b. "Black Wolf Chat Channel – General Stock Chat – Suggestions and Feedback";
 - c. Black Wolf Chat Channel – Stocks in Play";
 - d. "Black Wolf Chat Channel – Specific Stocks – SRJ Only";
 - e. "Black Wolf Chat Channel – Specific Stocks – Sil6 Only"; ~~and~~
 - f. "Black Wolf Chat Channel – Specific Stocks – JDR Only";
 - g. "Black Wolf Chat Channel – Specific Stocks – MGU Only";
 - h. "Black Wolf Chat Channel – Specific Stocks – KSS Only";
 - i. "Black Wolf Chat Channel – Specific Stocks – AHI-only";
 - j. "Black Wolf Chat Channel – Specific Stocks – RGI Only";
 - k. "Black Wolf Chat Channel – General Chat-Banter"; and
 - l. "Black Wolf Chat Channel – General Chat".
17. From at least ~~23 February~~ 27 January 2021, the defendant made recommendations and gave statements of opinion to people who had subscribed to the Stage 2 - Black Wolf Channel Service that were intended to influence those persons to purchase certain shares in companies of a specific listed on the ASX-listed entity by recommending that subscribers purchase those shares.
- ~~18. The defendant has never held an AFSL or been the authorised representative of an AFSL holder.~~
18. The defendant received approximately ~~\$446,000~~ \$460,000, paid in \$1,000 amounts, from subscribers to the Stage 2 - Black Wolf Channel Service. These \$1,000 amounts are payments made by persons to the defendant in respect of the financial services business carried on by the defendant without an AFSL.

Causes of action advanced and Relief sought from Court

19. ~~A declaration, pursuant to s. 21 of the *Federal Court of Australia Act 1976*, that the defendant breached s. 911A of the Act by carrying on a financial services business in this jurisdiction (being Australia) without holding an AFSL, being a business of providing recommendations or statements of opinion about the purchase of shares, in return for payments of money or other benefits (**Business**).~~
19. An order pursuant to s. 1101B(4) or s. 1324(1) of the Act that the defendant, by himself, and his servants, agents or employees, be restrained from:
- promoting or carrying on a business of providing recommendations or statements of opinion about the purchase of certain shares, in return for payments of money or other benefits (**Business**) ~~the Business~~;
 - doing any act in furtherance of or in connection with the Business;
 - receiving, soliciting, transferring or disposing of monies provided to the defendant whether directly or through any of the defendant's authorised agents, servants and/or representatives as part of the Business;
 - directly or indirectly carrying on a financial services business in Australia in contravention of s. 911A of the Act; and
 - providing financial product advice within the meaning of s 766B(1) of the Act.

Primary legal grounds for relief sought

20. Section 911A of the Act provides that a person "who carries on a financial services business" in Australia must hold an AFSL.
21. The term "financial services business" is defined in s. 761A to mean "a business of providing financial services". The term "financial service" is said (by s. 761A) to have the meaning given by Division 4 (ss. 766A-766H).
22. By s. 766A(1)(a) a person provides a financial service if they "provide financial product advice".
23. By s. 766B(1) "financial product advice" means "a recommendation or a statement of opinion" or a report of either of those things that is "intended to influence a person...in making a decision about a particular financial product" or class of financial products, or interest in such products.
24. The general definition of "financial product" is set out in s. 763A and by subsection (1) means a facility through which a person:
- makes a financial investment;
 - manages financial risk; and
 - makes non-cash payments.
25. A "financial investment" is defined in s. 763B. One of the examples given in Note 1 to that provision is a person paying money to a company for the issue of shares to the person.
26. By the defendant recommending or giving a statement of opinion which was intended to influence a person or persons to purchase shares, the defendant thereby gave "financial product advice" and for that reason also "provid[ed] financial services".
27. The defendant's conduct, and the payments to him, show indicia of a "business", such as "system, repetition and continuity" and the making of profit.

Harm Suffered

28. The defendant has engaged in a contravention of the Act which exists for the protection of investors.
29. The ~~subscribers~~ individuals who paid the defendant for 'tips' on Instagram, to attendance at the Stage 1 seminar and (or) Stage 2 - Black Wolf Channel Service access, as well as any individuals who purchased shares in ASX listed companies based on the defendant's recommendations or statements of opinion, did not have these

protections. ~~The~~ Any amounts paid by those ~~subscribers~~ individuals is harm suffered by them. The public interest supports orders condemning the defendant's breach and preventing further unlawful conduct.

Certificate of lawyer

I ~~Hugh Copley~~ Anna Ross 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 pleading.

Date: ~~22 February~~ 10 June 2022

A handwritten signature in blue ink, appearing to be 'AR', is written above a horizontal dotted line.

Signed by ~~Hugh Copley~~ Anna Ross

Lawyer for the Plaintiff