



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID552/2020

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458) and another named in the
schedule
Defendants

ORDER

JUDGE: JUSTICE WHEELAHAN

DATE OF ORDER: 23 July 2021

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

THE COURT NOTES THAT:

- (a) In these declarations and orders, terms which are defined in the Statement of Agreed Facts and Admissions dated 18 December 2020 have the same meaning as they do in that document.
- (b) The Statement of Agreed Facts and Admissions may be inspected by a person pursuant to r 2.32(2)(d) of the *Federal Court Rules 2011* (Cth).

THE COURT DECLARES THAT:

1. The first defendant, BT Funds Management Limited (ACN 002 916 458), by the Account Statements for superannuation products provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 487 occasions during the period September 2014 to August 2017, represented to a customer in trade or commerce that:
 - (a) no ongoing adviser fee was deducted from the customer's account for the period after the request was processed (No Adviser Fee Representations),
which representations were each:



- (b) a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and
 - (c) misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
- 2. The second defendant, Asgard Capital Management Limited (ACN 009 279 592) by the Account Statements for superannuation products provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 487 occasions during the period September 2014 to August 2017, represented to a customer in trade or commerce that:
 - (a) no ongoing adviser fee was deducted from the customer's account for the period after the request was processed (No Adviser Fee Representations),which representations were each:
 - (b) a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and
 - (c) misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
- 3. The second defendant, Asgard Capital Management Limited (ACN 009 279 592), by its conduct in each of:
 - (a) putting in place ineffective processes and systems to cease charging adviser fees to Affected Customers, in that the administrative steps to do so were processed by a third party provider which did not have access to necessary systems;
 - (b) erroneously applying a coding change to the Affected Products, which caused ongoing adviser fees to continue to be included in accounts but under the description of administration or account management fees, thereby making it difficult for the overcharging to be identified by the Affected Customers;
 - (c) having ineffective controls in place to check that ongoing adviser fees were not being charged following a request to remove an adviser from an account, in that



controls only reviewed a sample of customers each month and the form of the review did not pick up the errors;

- (d) retaining until no later than December 2017 ongoing adviser fees to which it had no entitlement;
- (e) providing Affected Customers with account information conveying that the ongoing adviser fees were no longer being charged, when in fact amounts for those fees were being deducted from the Affected Customers' accounts,

breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence, being custodial services provided in respect of each Affected Product, were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

AND THE COURT ORDERS THAT:

1. In respect of the first defendant BT Funds Management Limited's conduct declared to be contraventions of section 12DB(1)(g) of the ASIC Act, BT Funds Management Limited pay a pecuniary penalty in the sum of \$1.5 million, to the Commonwealth of Australia within 14 days of this order.
2. In respect of the second defendant Asgard Capital Management Limited's conduct declared to be contraventions of section 12DB(1)(g) of the ASIC Act, Asgard Capital Management Limited pay a pecuniary penalty in the sum of \$1.5 million, to the Commonwealth of Australia within 14 days of this order.
3. BT Funds Management Limited and Asgard Capital Management Limited shall take all reasonable steps to cause to be published, at their own expense, within 30 days, a notice in the terms set out in **Annexure A** to these orders, in font no less than 10 point, in a readily accessible part of the following web addresses maintained by them:
 - (a) <https://asgard.com.au/>
 - (b) <https://www.bt.com.au/>
 - (c) <http://www.asgard.com.au/about-us/media-centre.jsp>
 - (d) <https://www.bt.com.au/about-bt/media-centre/media-releases/latest-media-releases.html>

and ensure that a link to the notice:



- (e) is identified by text as follows: 'Notice ordered by the Federal Court in a proceeding issued by ASIC against BT and Asgard concerning IDPS and superannuation products.'
 - (f) appears immediately upon access by a person to the home page of the websites;
and
 - (g) is maintained on the web addresses for 180 days from the date of these orders.
4. The defendants pay the plaintiff's costs of and incidental to these proceedings.



ANNEXURE A

Adverse Publicity Notice ordered by the Federal Court of Australia

BT and Asgard's conduct in making misleading representations to customers that adviser fees were no longer being charged, when those fees continued to be deducted from customers' accounts.

On 23 July 2021 Justice Wheelahan of the Federal Court of Australia (in proceeding VID 552 of 2020) ordered BT Funds Management Limited (**BT**) and Asgard Capital Management Limited (**Asgard**) to pay pecuniary penalties of \$1.5M each to the Commonwealth for conduct in relation to five affected products (Asgard Infinity eWRAP Pension Account, Asgard Infinity eWRAP Super Account, Asgard Rollover Service, Asgard Superannuation Account and Asgard Employee Superannuation Account) between September 2014 and August 2017.

The court ordered BT and Asgard each to pay a pecuniary penalty because they were found to have, on at least 487 occasions, between September 2014 and August 2017:

- (a) made false or misleading representations to customers in customer account statements to the effect that no deductions of ongoing adviser fees were being made from customers' accounts after those customers requested to remove their financial advisers from their accounts; and
- (b) engaged in misleading or deceptive conduct by providing customers with account statements which did not show that BT and Asgard were continuing to deduct an ongoing adviser fee from customers' accounts after those customers requested to remove their financial advisers from their accounts.

The court also made declarations that Asgard breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence, were provided efficiently, honestly and fairly, because Asgard:

- (a) put in place ineffective processes and systems to cease charging adviser fees, in that the administrative steps to do so were processed by a third-party provider which did not have access to necessary systems;



- (b) erroneously applied a coding change, which caused ongoing adviser fees to continue to be included in accounts but under the description of administration or account management fees, thereby making it difficult for the overcharging to be identified;
- (c) had ineffective controls in place to check that ongoing adviser fees were not being charged following a request to remove an adviser from an account, in that controls only reviewed a sample of customers each month and the form of the review did not pick up the errors;
- (d) retained until no later than December 2017 ongoing adviser fees to which it was not entitled;
- (e) provided account information conveying that the ongoing adviser fees were no longer being charged, when in fact amounts for those fees were being deducted from customer accounts.

The court found that, between September 2014 and August 2017, a total of 404 customers who had a total of 408 accounts were harmed by BT's and Asgard's conduct on 487 occasions, in circumstances where Asgard benefited from a total of \$130,006 (including interest) in incorrectly charged fees.

Between 2001 to 1 July 2014, a total of 363 customers were harmed by BT's and Asgard's conduct. BT and Asgard benefited from a total of approximately \$500,000 (including interest) in incorrectly charged fees.

Between December 2017 and March 2018 BT and Asgard conducted a remediation program which refunded the inappropriately charged fees referred to above. Those costs were met by the Westpac Group. Westpac Group will pay the penalties and costs awarded against BT and Asgard.

Date that entry is stamped: 23 July 2021.

Sia Lagos

Registrar



Schedule

No: VID552/2020

Federal Court of Australia
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Second Defendant ASGARD CAPITAL MANAGEMENT LIMITED (ACN 009 279
592)