



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID705/2021

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**BT FUNDS MANAGEMENT LTD (ACN 002 916 458)**

Defendant

**ORDER**

**JUDGE:** JUSTICE BEACH

**DATE OF ORDER:** 8 April 2022

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. The defendant contravened ss 12DA(1) and 12DB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) and s 1041H(1) of the *Corporations Act 2001* (Cth) (Corporations Act):

- (a) during the period from 30 November 2015 to 21 September 2020 in respect of members of the Asgard Fund who held insurance cover under the Asgard Employee Super Account policies held by the defendant in its capacity as the trustee of the Asgard Fund (AESA policies); and
- (b) during the period from 30 November 2015 to 4 December 2020 in respect of members of the Asgard Fund who held insurance cover under the Asgard Personal Protection Plan policies held by the defendant in its capacity as the trustee of the Asgard Fund (APPP policies),

by representing that insurance fees had been properly deducted from the accounts of members who obtained insurance cover under the AESA policies on or after 22 October 2013, or who obtained insurance cover under the APPP policies on or after 1 July 2014, when in fact the insurance fees that were deducted included commissions that were not permitted to be deducted from the member's account.



2. The defendant contravened ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act:

(a) during the period from 30 November 2015 to 21 December 2020 in respect of members of the Asgard Fund who held insurance cover under the AESA policies; and

(b) during the period from 30 November 2015 to 25 August 2021 in respect of members of the Asgard Fund who held insurance cover under the APPP policies,

by representing that insurance fees had been deducted as permitted or required from the accounts of members:

(c) who obtained insurance cover under the AESA or APPP policies before 1 July 2013; and

(d) in respect of whom, after 1 July 2013, the arrangement pursuant to which insurance commissions were paid to a financial adviser was terminated,

when, in fact, following the termination of the arrangement, the insurance fees that were deducted included commissions that were not permitted or were not required to be deducted from the member's account.

3. The defendant contravened ss 12DA(1) and 12DB(1) of the ASIC Act and s 1041H(1) of the Corporations Act during the period from 30 November 2015 to 22 June 2020 in respect of members of the Asgard Fund who:

(a) held insurance cover under the master policies; and

(b) returned a "request to remove a financial adviser from an account" form to the defendant on or after 30 November 2015,

by representing that the insurance fees charged to those members did not include any fee payable to the member's financial adviser, when in fact the systems and processes of the defendant to process "request to remove a financial adviser from an account" forms did not ensure that the fees charged to the account of a person who returned such



a form would be reduced by an amount equivalent to the commissions previously paid to the person's financial adviser in respect of the person's insurance cover.

4. The defendant contravened s 963K of the Corporations Act during the period from 30 November 2015 to 25 August 2021 by giving conflicted remuneration to financial advisers or their advice licensees in respect of insurance cover held by members of the Asgard Fund, being the payment of commissions in respect of insurance cover obtained by members of the Asgard Fund under the master policies, which commission was paid as a percentage of the insurance premium payable in respect of the relevant member.
5. For the avoidance of doubt, the particular members referred to in each declaration are those identified in the relevant schedules to the statement of agreed facts and admissions and the supplementary such statement filed with the Court.
6. By engaging in the conduct giving rise to the contraventions the subject of each of declarations 1 to 4 above, the defendant:
  - (a) contravened s 912A(1)(b) of the Corporations Act by failing to comply with a condition on its licence; and
  - (b) contravened s 912A(1)(c) of the Corporations Act by failing to comply with the financial services laws.

**AND THE COURT ORDERS THAT:**

7. Pursuant to s 12GBA of the ASIC Act (as in force before 13 March 2019) and s 12GBB of the ASIC Act (as in force on and from 13 March 2019) and s 1317G of the Corporations Act, the defendant pay to the Commonwealth of Australia a combined pecuniary penalty in the amount of \$20 million, in respect of:
  - (a) the defendant's contraventions of s 12DB(1) of the ASIC Act referred to in declarations 1 to 3; and
  - (b) the defendant's contraventions of s 963K of the Corporations Act referred to in declaration 4.



8. Pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth), the defendant pay the plaintiff's costs of the proceeding.

Date that entry is stamped: 8 April 2022

*Sia Lagos*  
Registrar