



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID126/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

AGM MARKETS PTY LTD (ACN 158 706 766) (IN LIQUIDATION) and others named
in the schedule

Defendants

ORDER

JUDGE: JUSTICE BEACH

DATE OF ORDER: 20 March 2020

WHERE MADE: Melbourne

THE COURT DECLARES THAT:

A. AS AGAINST THE FIRST DEFENDANT

Personal advice

1. Between September 2017 and March 2018, the First Defendant provided personal advice within the meaning of s 766B(3) of the *Corporations Act 2001* (Cth) (Corporations Act) to each client identified by a number in Annexure A.1 to these orders:
 - (a) by making recommendations or addressing statements of opinion, or by providing a report of such a recommendation or statement of opinion, to each client that they should:
 - (i) open, close or keep open a specific contract for difference (CFD) or foreign exchange contract (FX Contract);
 - (ii) open, close, or leave open a CFD or FX Contract position in accordance with indicators on a third party website;
 - (iii) deposit further funds to the client's trading account; or



- (iv) adopt a trading strategy in relation to CFDs or FX Contracts, each of which was intended to influence the identified client in making a decision in relation to an investment in the derivative products offered by the First Defendant;
- (b) on the number of occasions identified for each client in Annexure A.1;
- (c) by making each of the statements or recommendations identified in (a) and (b) in circumstances where:
 - (i) the provider of the financial advice had considered one or more of the clients' objectives, financial situation and needs; or
 - (ii) a reasonable person might have expected the provider to have considered one or more of the matters in (i);
- (d) thereby made the 340 recommendations, or provided the 340 statements of opinion identified in Annexure A.1 when it did not hold an Australian Financial Services Licence (AFSL) for the provision of personal advice, and thereby engaged in 340 contraventions of s 911A(1) of the Corporations Act.

Misleading or deceptive conduct

- 2. Between September 2017 and March 2018, the First Defendant represented to the clients identified in Annexure B.1, and on the number of occasions identified in Annexure B.1, in the columns dealing with:
 - (a) Implied Representations, that:
 - (i) the First Defendant was entitled to provide personal advice to those clients;
 - (ii) it was in the clients' best interests to invest in:
 - (A) derivatives generally; further or alternatively
 - (B) the derivatives recommended by the First Defendant;
 - (iii) the financial product advice that formed the subject of the personal financial advice provided to clients of the First Defendant was appropriate to the client;



- (b) Equities Risk Representations, that investments in equities were relatively more risky than investment in the derivative products offered by the First Defendant;
- (c) Money Risk Representations, that, with regard to funds deposited to the clients' trading accounts:
 - (i) by increasing the amount of money in a client's trading account held with the First Defendant, that client would reduce the level of risk to which they were exposed;
 - (ii) the risk associated with transferring additional funds to a client's trading account would carry an equivalent risk to holding money in an account with an Australian deposit taking institution; and/or
 - (iii) only those funds in a client's trading account used to open a CFD or FX Contract position would be exposed to adverse movement in the price of the asset underlying the relevant position;
- (d) Revenue Representations, that the First Defendant, alternatively the account managers engaged by or on behalf of the First Defendant, earned revenue or income from the clients' trading in derivatives only when a client made a profit from that trading;
- (e) Profit Representations, that there was a reasonable prospect, alternatively it was likely, that clients of the First Defendant would generate, from trading CFDs or FX Contracts:
 - (i) a profit of 10% or more, within a period of time specified by the account manager;
 - (ii) income sufficient for the client's trading to be their main source of income; further or in the alternative
 - (iii) realised profits sufficient to recover realised and unrealised losses suffered by the client from their trading;



- (f) Client Account Representations, that money that clients deposited to their trading accounts:
- (i) would be held in accounts maintained by the First Defendant pursuant to the requirements of Division 2 of Part 7.8 of the Corporations Act, and that the First Defendant was unable to access those accounts; further or in the alternative
 - (ii) was able to be withdrawn in the same manner as money held in a bank account;
- (g) Location Representations, that account managers engaged by or on behalf of the First Defendant were:
- (i) located in Melbourne; further or in the alternative
 - (ii) not based overseas,
- when they called the identified clients,

and thereby engaged, on 1,066 occasions, in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act), and in the case of the representations in paragraph:

- (i) 2(a)(i) above, made 347 false or misleading representations in contravention of s 12DB(1)(e), s 12DB(1)(f) and s 12DB(1)(h) of the ASIC Act;
- (ii) 2(a)(ii) and (iii) above, made 685 false or misleading representations in contravention of s12DB(1)(e) and s12DB(1)(h) of the ASIC Act;
- (iii) 2(b) above, made five false or misleading representations in contravention of s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (iv) 2(c) above, made 16 false or misleading representations in contravention of s 12DB(1)(a), s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (v) 2(e) above, made three false or misleading representations in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act; and



- (vi) 2(f) above, made four false or misleading representations in contravention of s 12DB(1)(e) of the ASIC Act.

Unconscionable conduct – clients

- 3. Between December 2017 and March 2018, the First Defendant by providing financial product advice to, and dealing in financial products with each of the clients identified in Annexure C.1, in circumstances where the First Defendant:
 - (a) engaged in the contraventions in paragraph 2 above;
 - (b) provided financial product advice to the clients:
 - (i) without acting in the best interests of the clients;
 - (ii) in circumstances where it was not reasonable to conclude that the advice was appropriate for those clients; and/or
 - (iii) without giving priority to the clients' interests;
 - (c) provided no, or no adequate, explanation of the operation of or risks associated with the financial products in which it dealt;
 - (d) employed undue influence or pressure or unfair tactics by:
 - (i) placing pressure on clients in lengthy and/or multiple telephone conversations to open additional CFD or FX Contract positions, or to deposit further funds to the clients' trading accounts;
 - (ii) effecting, alternatively having the client effect, transfers of funds to the client's trading from the client's online banking system, while the relevant account manager was remotely connected to the client's computer;
 - (iii) having as a material purpose of remotely connecting to the client's computer the identification of funds that could be deposited to the client's trading account;
 - (iv) receiving financial benefits when the clients incurred financial losses on CFDs and/or FX Contract positions that the First Defendant had advised clients to open;



- (v) advising clients to open a large number of positions;
- (vi) having initially provided clients with advice to open small positions, subsequently advising those clients to open larger and/or a greater number of positions, thereby increasing the risk to which those clients were exposed;
- (vii) providing advice to clients to leave open positions that had moved adversely to the client, including advising clients that they should invest further funds in the clients' trading accounts in order to avoid open positions being closed;
- (viii) providing advice to clients to engage in trading strategies that:
 - (A) exposed clients to a risk of loss that was materially greater than if they had not adopted that strategy;
 - (B) further or in the alternative, it was not reasonable to conclude were appropriate to the client;
- (ix) advising clients who had already incurred losses to deposit further funds in the client's trading account in order to be able to open further CFD and/or FX Contract positions and thereby recover some or all of those losses;
- (x) having unreasonable impediments or delays to clients withdrawing money from their trading accounts; and/or
- (xi) having unreasonable impediments or delays to clients closing CFD or FX Contract positions,

engaged in conduct in connection with the supply or possible supply of financial services that was in all the circumstances unconscionable, in contravention of s 991A of the Corporations Act and s 12CB of the ASIC Act.

Unconscionable conduct – system

4. From September 2017 until March 2018, the First Defendant, by engaging in a system of conduct or pattern of behaviour by which:



- (a) potential clients came to the First Defendant by registering and providing personal details through online and other electronic advertising, often involving advertising for investment of \$250 in Bitcoin;
- (b) people engaged on behalf of the First Defendant had clients of the First Defendant download software that would allow account managers to remotely view the client's computer, in order to:
 - (i) ascertain how much money the clients had available for transferring to trading accounts; and/or
 - (ii) show the clients what trades they should place,
- (c) people engaged on behalf of the First Defendant engaged in the conduct in 2 above, and in particular made the representations in paragraph 2(g) above;
- (d) the First Defendant sought out, and provided financial product advice in relation to CFDs and FX Contracts to, retail clients having made no, or no adequate, determination as to the appropriateness of providing that financial service to those clients;
- (e) the account managers who provided the financial services to the clients of the First Defendant were trained to use, and used, tactics intended to gain the clients' trust, and to engender a false sense of security;
- (f) the account managers engaged by or on behalf of the First Defendant told, or implied to, the clients of the First Defendant that the account managers were experienced or experts in the provision of financial product advice in relation to CFDs and FX Contracts, when they were not;
- (g) the First Defendant encouraged inexperienced, vulnerable clients with a relatively small amount of funds available to them to open a large number of CFD or FX Contract positions;
- (h) the First Defendant offered commissions and incentives to account managers engaged on its behalf to encourage clients of the First Defendant to deposit money to their trading accounts, which placed the account managers in a direct position of conflict with the clients;



- (i) the purpose, alternatively a significant purpose, of the system of conduct engaged in by the First Defendant was to increase the amount of money that clients of the First Defendant deposited to their trading accounts, and to maximise the amount that those clients lost and the First Defendant thereby gained,

engaged in conduct in connection with the supply or possible supply of financial services in Australia that was in all the circumstances unconscionable, in contravention of s 991A of the Corporations Act and s 12CB(1) of the ASIC Act.

AFSL Contraventions

5. Pursuant to s 1317E of the Corporations Act, the Court declares that, between September 2017 and February 2018 or about that period, by reason of the conduct referred to in paragraphs 1 to 4 above and paragraphs 15 to 26 below:
 - (a) employees or agents of Falcon IC&T Limited (Falcon) and/or IBD Marketing Inc. (IBD) respectively, who provided personal advice to the clients identified in Annexures A.1 and A.2 in their capacity as representatives of the First Defendant:
 - (i) failed to act in the best interests of those clients in contravention of s 961B of the Corporations Act;
 - (ii) provided advice when it was not reasonable to conclude that the advice was appropriate to those clients in contravention of s 961G of the Corporations Act; and/or
 - (iii) failed to give priority to the interests of those clients when they knew, or ought reasonably to have known, that there was a conflict between the interests of the clients and those employees or agents in contravention of s 961J of the Corporations Act; and
 - (b) the First Defendant thereby contravened s 961K(2) of the Corporations Act.
6. Pursuant to s 1317E of the Corporations Act, the Court declares that between September 2017 and February 2018 or about that period, by reason of:
 - (a) the conduct in paragraph 5 above; and



- (b) the conduct of account managers engaged by or on behalf of the Third Defendant and/or the Fifth Defendant, who provided personal advice to the clients identified in Annexure A.2 and A.3, by which conduct those account managers:
- (i) failed to act in the best interests of those clients in contravention of s 961B of the Corporations Act; and/or
 - (ii) provided that advice when it was not reasonable to conclude that the advice was appropriate to those clients in contravention of s 961G of the Corporations Act; and/or
 - (iii) failed to give priority to the interests of those clients when they knew, or ought reasonably to have known, that there was a conflict between the interests of the clients and those employees or agents in contravention of s 961J of the Corporations Act,

the First Defendant failed to take reasonable steps to ensure that its representatives complied with ss 961B, 961G and/or 961J of the Corporations Act, and thereby contravened s 961L of the Corporations Act.

7. By the conduct described in paragraphs 5 and 6 above, and paragraphs 15 to 26 below, the First Defendant failed to take reasonable steps to ensure that its representatives complied with financial services laws, namely ss 961B, 961G, 961J and/or 1041H of the Corporations Act and/or ss 12CB, 12DA and 12DB of the ASIC Act, and thereby contravened s 912A(1)(ca) of the Corporations Act.
8. From September 2017 to February 2018 or about that period, the First Defendant, by reason of the conduct described in paragraphs 1 to 7 above, failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.
9. From September 2017 to February 2018 or about that period, by reason of the conduct described in paragraphs 5 and 6 above, the First Defendant failed to have in place adequate arrangements for the management of conflicts of interest that arose in relation to activities undertaken by it and its representatives in the provision of the



financial services as part of its financial services business, and the financial services business of its representatives, and thereby contravened s 912A(1)(aa) of the Corporations Act.

10. From September 2017 to February 2018 or about that period, by reason of the conduct described in paragraphs 1 to 9 above, the First Defendant failed to have available adequate resources to provide the financial services covered by its AFSL and to carry out supervisory arrangements, in contravention of s 912A(1)(d) of the Corporations Act.
11. From September 2017 to February 2018 or about that period, by reason of the conduct described in paragraphs 5 and 6, the First Defendant failed to ensure that its representatives were adequately trained and were competent to provide financial services under the AFSL, in contravention of s 912A(1)(f) of the Corporations Act.
12. The First Defendant failed to give to the clients identified in Annexure A.1, and by reason of paragraph 14 below, the clients identified in Annexures A.2 and A.3, who were retail clients, statements of advice when the First Defendant provided personal advice to those clients, in contravention of s 946A(1) of the Corporations Act.
13. Between September 2017 and February 2018, or about that period by each of the First Defendant's contraventions of:
 - (a) section 911A of the Corporations Act as described in paragraph 1 above;
 - (b) section 1041H of the Corporations Act as described in paragraph 2 above;
 - (c) section 12DA of the ASIC Act as described in paragraph 2 above;
 - (d) section 12DB of the ASIC Act as described in paragraph 2 above;
 - (e) section 991A of the Corporations Act as described in paragraphs 3 and 4 above;
 - (f) section 12CB of the ASIC Act as described in paragraphs 3 and 4 above;
 - (g) section 961K(2) of the Corporations Act as described in paragraph 5 above;
 - (h) section 961L of the Corporations Act as described in paragraph 6 above;



- (i) section 912A(1)(ca) of the Corporations Act as described in paragraph 7 above;
 - (j) section 912A(1)(a) of the Corporations Act as described in paragraph 8 above;
 - (k) section 912A(1)(aa) of the Corporations Act as described in paragraph 9 above;
 - (l) section 912A(1)(d) of the Corporations Act as described in paragraph 10 above;
 - (m) section 912A(1)(f) of the Corporations Act as described in paragraph 11 above;
 - (n) section 946A(1) of the Corporations Act as described in paragraph 12 above;
- the First Defendant failed to comply with the financial services law in contravention of s 912A(1)(c) of the Corporations Act.

Responsibility for conduct of the Third and Fifth Defendants

14. In the case of the conduct of:
- (a) the Third Defendant from December 2017 to February 2018 referred to in paragraphs 15 to 21 below;
 - (b) the Fifth Defendant, from November 2017 to February 2018 referred to in paragraphs 22 to 26 below,

was conduct carried out on behalf of the First Defendant within the meaning of s 769B(1) of the Corporations Act and s 12GH(2) of the ASIC Act.

B. AS AGAINST OR CONCERNING THE CONDUCT OF OF THE THIRD DEFENDANT

Personal advice

15. Between September 2017 and April 2018, the Third Defendant, and by reason of the matters in paragraph 14 above the First Defendant, provided personal advice within the meaning of s 766B(3) of the Corporations Act to each client identified by a number in Annexure A.2 to these orders:



- (a) by making recommendations or addressing statements of opinion, or by providing a report of such a recommendation or statement of opinion, to each client that they should:
 - (i) open, close or keep open a specific CFD or FX Contract;
 - (ii) open, close, or leave open a CFD or FX Contract position in accordance with indicators on a third party website;
 - (iii) deposit further funds to the client's trading account; or
 - (iv) adopt a trading strategy in relation to CFDs or FX Contracts,each of which was intended to influence the identified client in making a decision in relation to an investment in the derivative products offered by the Third Defendant;
- (b) on the number of occasions identified for each client in Annexure A.2;
- (c) by making each of the statements or recommendations identified in (a) and (b) in circumstances where:
 - (i) the provider of the financial advice had considered one or more of the clients' objectives, financial situation and needs; or
 - (ii) a reasonable person might have expected the provider to have considered one or more of the matters in (i);
- (d) thereby made the 358 recommendations, or provided the 358 statements of opinion identified in Annexure A.2 when neither held an AFSL for the provision of personal advice, and thereby engaged in 358 contraventions of s 911A(1) of the Corporations Act.

Misleading or deceptive conduct

16. Between September 2017 and April 2018, the Third Defendant, and by reason of the matters in paragraph 14 above the First Defendant, represented to the clients identified in Annexure B.2, and on the number of occasions identified in Annexure B.2, in the columns dealing with:

- (a) Implied Representations, that:



- (i) the Third Defendant was entitled to provide personal advice to those clients;
 - (ii) it was in the clients' best interests to invest in:
 - (A) derivatives generally; further or alternatively
 - (B) the derivatives recommended by the Third Defendant;
 - (iii) the financial product advice that formed the subject of the personal financial advice provided to clients of the Third Defendant was appropriate to the client;
- (b) Money Risk Representations, that, with regard to funds deposited to the clients' trading accounts:
- (i) by increasing the amount of money in a client's trading account held with the Third Defendant, that client would reduce the level of risk to which they were exposed;
 - (ii) the risk associated with transferring additional funds to a client's trading account would carry an equivalent risk to holding money in an account with an Australian deposit taking institution; and/or
 - (iii) only those funds in a client's trading account used to open a CFD or FX Contract position would be exposed to adverse movement in the price of the asset underlying the relevant position;
- (c) Revenue Representations, that the Third Defendant, alternatively the account managers engaged by or on behalf of the Third Defendant, earned revenue or income from the clients' trading in derivatives only when a client made a profit from that trading;
- (d) Profit Representations, that there was a reasonable prospect, alternatively it was likely, that clients of the Third Defendant would generate, from trading CFDs or FX Contracts:
- (i) a profit of 10% or more, within a period of time specified by the account manager;



- (ii) income sufficient for the client's trading to be their main source of income; further or in the alternative
- (iii) realised profits sufficient to recover realised and unrealised losses suffered by the client from their trading;
- (e) Client Account Representations, that money that clients deposited to their trading accounts:
 - (i) would be held in accounts maintained by the First Defendant pursuant to the requirements of Division 2 of Part 7.8 of the Corporations Act, and that the Third Defendant was unable to access those accounts; further or in the alternative
 - (ii) was able to be withdrawn in the same manner as money held in a bank account;
- (f) Location Representations, that account managers engaged by or on behalf of the Third Defendant were:
 - (i) located in Melbourne; further or in the alternative
 - (ii) not based overseas,when they called the identified clients;
- (g) Plan Representations, that account managers engaged by or on behalf of the Third Defendant would:
 - (i) create an investment plan for clients of the Third Defendant, the intention or purpose of which was to increase the clients' profits from their trading with the Third Defendant, and/or minimise the risk of the client suffering losses; and
 - (ii) guide the clients to implement that plan;
- (h) Loss Recovery Representations, that positions that had moved against the client represented only a temporary loss, and that it was likely, alternatively there was a reasonable prospect, that such positions would become profitable;



(i) Regulation Representations, that the Third Defendant was licensed by the Plaintiff,

and thereby engaged, on 1,207 occasions, in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act, and in the case of the representations in paragraph:

- (i) 16(a)(i) above, made 363 false or misleading representations in contravention of s 12DB(1)(e), s 12DB(1)(f) and s 12DB(1)(h) of the ASIC Act;
- (ii) 16(a)(ii) and (iii) above, made 716 false or misleading representations in contravention of s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (iii) 16(b) above, made 31 false or misleading representations in contravention of s 12DB(1)(a), s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (iv) 16(d) above, made 21 false or misleading representations in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act;
- (v) 16(e) above, made 13 false or misleading representations in contravention of s 12DB(1)(e) of the ASIC Act;
- (vi) 16(g) above, made 19 false or misleading representations in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act;
- (vii) 16(h) above, made 15 false or misleading representations in contravention of s 12DB(1)(e) of the ASIC Act; and
- (viii) 16(i) above, made 4 false or misleading representations in contravention of s 12DB(1)(a) and s 12DB(1)(e) of the ASIC Act.

17. In or about February 2018, the Third Defendant published, or caused to be published, on the internet, in such a way as to make it available to be viewed by members of the public in Australia an advertisement that:

- (a) was an advertisement for a product titled “Bitcoin Trader” (Bitcoin Ad);
- (b) was styled as a news article with the heading “The Biggest Deal in Shark Tank History, That Can make you rich in just 7 days (seriously)”;



- (c) purported to recount an episode of the Channel 10 television program Shark Tank in which two people attempted to sell a business idea for a “bitcoin trading platform” to the venture capitalists that host the program (who are described for the purposes of the program as “the Sharks”);
- (d) attributed to:
 - (i) the Sharks various positive comments about Bitcoin Trader, including their experiences using Bitcoin Trader;
 - (ii) Steve Baxter, one of the Sharks, the statement that he was prepared to invest \$2.5 million for 20% of the “company” Bitcoin Trader; and
 - (iii) the authors of the purported article their experience of using Bitcoin Trader, including that “the platform charges a commission of 2% on profits a user generates and you need to make a deposit of \$250 to get started. That money will be your initial investment, which the trading software uses to trade”;
- (e) included what purported to be testimonials for Bitcoin Trader from:
 - (i) cast members of Shark Tank; and
 - (ii) people who were purported to have used Bitcoin Trader;
- (f) stated that Bitcoin Trader:
 - (i) was an automated Bitcoin trading platform;
 - (ii) traded Bitcoin by the application of an automated trading algorithm;
- (g) included instructions for how to invest in Bitcoin Trader, which included:
 - (i) a “screenshot” of a webpage which is branded with the logo of the Third Defendant; and
 - (ii) instructions as to how deposit funds to a trading account held with the Third Defendant;
- (h) stated that by opening a trading account with the Third Defendant:
 - (i) Bitcoin Trader would buy or sell interests in Bitcoin for the client; and
 - (ii) would not be purchasing CFDs or FX Contracts that referenced Bitcoin,



and thereby:

- (A) engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act; and
- (B) made a false or misleading representation in contravention of s 12DB(1)(c) and s 12DB(1)(d) of the ASIC Act.

Unconscionable conduct – clients

18. Between October 2017 and March 2018, the Third Defendant, and by reason of the matters in paragraph 14 above the First Defendant, by providing financial product advice to, and dealing in financial products with each of the clients identified in Annexure C.2, in circumstances where the Third Defendant:
- (a) engaged in the contraventions in paragraph 16 above;
 - (b) provided financial product advice to the clients:
 - (i) without acting in the best interests of the clients;
 - (ii) in circumstances where it was not reasonable to conclude that the advice was appropriate for those clients; and/or
 - (iii) without giving priority to the clients' interests;
 - (c) provided no, or no adequate, explanation of the operation of or risks associated with the financial products in which it dealt;
 - (d) employed undue influence or pressure or unfair tactics by:
 - (i) placing pressure on clients in lengthy and/or multiple telephone conversations to open additional CFDs or FX Contract positions, or to deposit further funds to the clients' trading accounts;
 - (ii) effecting, alternatively having the client effect, transfers of funds to the client's trading from the client's online banking system, while the relevant account manager was remotely connected to the client's computer;



- (iii) having as a material purpose of remotely connecting to the client's computer the identification of funds that could be deposited to the client's trading account;
- (iv) receiving financial benefits when the clients incurred financial losses on CFDs and/or FX Contract positions that the Third Defendant had advised clients to open;
- (v) advising clients to open a large number of positions;
- (vi) having initially provided clients with advice to open small positions, subsequently advising those clients to open larger and/or a greater number of positions, thereby increasing the risk to which those clients were exposed;
- (vii) providing advice to clients to leave open positions that had moved adversely to the client, including advising clients that they should invest further funds in the clients' trading accounts in order to avoid open positions being closed;
- (viii) providing advice to clients to engage in trading strategies that:
 - (A) exposed clients to a risk of loss that was materially greater than if they had not adopted that strategy;
 - (B) further or in the alternative, it was not reasonable to conclude were appropriate to the client;
- (ix) advising clients who had already incurred losses to deposit further funds in the client's trading account in order to be able to open further CFD and/or FX Contract positions and thereby recover some or all of those losses;
- (x) having unreasonable impediments or delays to clients withdrawing money from their trading accounts; and/or
- (xi) having unreasonable impediments or delays to clients closing CFD or FX Contract positions,



engaged in conduct in connection with the supply or possible supply of financial services that was in all the circumstances unconscionable, in contravention of in the case of the First Defendant s 991A of the Corporations Act, and in the case of the First and Third Defendants s 12CB of the ASIC Act.

Unconscionable conduct – system

19. From September 2017 until March 2018, the Third Defendant, and by reason of the matters in paragraph 14 above the First Defendant, by engaging in a system of conduct or pattern of behaviour by which:
- (a) potential clients came to the Third Defendant by registering and providing personal details through online and other electronic advertising, often involving advertising for investment of \$250 in Bitcoin;
 - (b) people engaged on behalf of the Third Defendant had clients with the Third Defendant download software that would allow account managers to remotely view the client's computer, in order to:
 - (i) ascertain how much money the clients had available for transferring to trading accounts; and / or
 - (ii) show the clients what trades they should place,
 - (c) people engaged on behalf of the Third Defendant engaged in the conduct in paragraph 16 above, and in particular made the representations in paragraphs 16(f) and (i) above;
 - (d) the Third Defendant sought out, and provided financial product advice in relation to CFDs and FX Contracts to, retail clients having made no, or no adequate, determination as to the appropriateness of providing those financial services to those clients;
 - (e) the account managers who provided the financial services to the clients of the Third Defendant were trained to use, and used, tactics intended to gain the clients' trust, and to engender a false sense of security;
 - (f) the account managers engaged by or on behalf of the Third Defendant told, or implied to, the clients of the Third Defendant that the account managers were



experienced or experts in the provision of financial product advice regarding CFDs and FX Contracts, when they were not;

- (g) the Third Defendant encouraged inexperienced, vulnerable clients with a relatively small amount of funds available to open a large number of CFD or FX Contract positions;
- (h) the Third Defendant offered commissions and incentives to account managers engaged on its behalf to encourage clients of the Third Defendant to deposit money to their trading accounts, which placed the account managers in a direct position of conflict with the clients;
- (i) the purpose, alternatively a significant purpose, of the system of conduct engaged in by the Third Defendant was to increase the amount of money that clients of the Third Defendant deposited to their trading accounts, and to maximise the amount that those clients lost and the Third Defendant thereby gained,

engaged in conduct in connection with the supply or possible supply of financial services in Australia that was in all the circumstances unconscionable in contravention of, in the case of the First Defendant s 991A of the Corporations Act, and in the case of the First and Third Defendants s 12CB(1) of the ASIC Act.

Authorised representative contravention

- 20. The Third Defendant authorised:
 - (a) IBD; or
 - (b) persons engaged by IBD, without the written consent of the First Defendant, to provide financial services on its behalf, being the provision of financial product advice, in contravention of s 916B(2A) of the Corporations Act.
- 21. Pursuant to s 1317E of the Corporations Act, the Court declares that, between September 2017 and February 2018 or about that period, by reason of the conduct referred to in paragraphs 15 to 19 above:



- (a) employees or agents of IBD, who provided personal advice to the clients identified in Annexure A.2 in their capacity as agents of the Third Defendant within the meaning of s 769B(1) of the Corporations Act:
 - (i) failed to act in the best interests of those clients in contravention of s 961B of the Corporations Act;
 - (ii) provided advice when it was not reasonable to conclude that the advice was appropriate to those clients in contravention of s 961G of the Corporations Act; and/or
 - (iii) failed to give priority to the interests of those clients when they knew, or ought reasonably to have known, that there was a conflict between the interests of the clients and those employees or agents in contravention of s 961J of the Corporations Act; and
- (b) the Third Defendant thereby engaged in 358 contraventions of s 961Q(1) of the Corporations Act.

C. AS AGAINST OR CONCERNING THE CONDUCT OF THE FIFTH DEFENDANT

Personal advice

22. Between September 2017 and April 2018, the Fifth Defendant, and by reason of the matters in paragraph 14 above the First Defendant, provided personal advice within the meaning of s 766B(3) of the Corporations Act to each client identified by a number in Annexure A.3 to these orders:

- (a) by making recommendations or addressing statements of opinion, or by providing a report of such a recommendation or statement of opinion, to each client that they should:
 - (i) open, close or keep open a specific CFD or FX Contract;
 - (ii) open, close, or leave open a CFD or FX Contract position in accordance with indicators on a third party website;
 - (iii) deposit further funds to the client's trading account; or
 - (iv) adopt a trading strategy in relation to CFDs or FX Contracts,



each of which was intended to influence the identified client in making a decision in relation to an investment in the derivative products offered by the Fifth Defendant;

- (b) on the number of occasions identified for each client in Annexure A.3;
- (c) by making each of the statements or recommendations identified in (a) and (b) in circumstances where:
 - (i) the provider of the financial advice had considered one or more of the clients' objectives, financial situation and needs; or
 - (ii) a reasonable person might have expected the provider to have considered one or more of the matters in (i);
- (d) made the 793 recommendations, or provided the 793 statements of opinion identified in Annexure A.3 when neither held an AFSL for the provision of personal advice, and thereby engaged in 793 contraventions of s 911A(1) of the Corporations Act.

Misleading or deceptive conduct

23. Between September 2017 and April 2018, the Fifth Defendant, and by reason of the matters in paragraph 14 above the First Defendant, represented to the clients identified in Annexure B.3, and on the number of occasions identified in Annexure B.3, in the columns dealing with:

- (a) Implied Representations, that:
 - (i) the Fifth Defendant was entitled to provide personal advice to those clients;
 - (ii) it was in the clients' best interests to invest in:
 - (A) derivatives generally; further or alternatively
 - (B) the derivatives recommended by the Fifth Defendant;
 - (iii) the financial product advice that formed the subject of the personal financial advice provided to clients of the Fifth Defendant was appropriate to the client;



- (b) Equities Risk Representations, that investments in equities were relatively more risky than investment in the derivative products offered by the Fifth Defendant;
- (c) Analysis Representations, that positions the account managers recommended a client open in accordance with Signal Provider Statements were consistent with identified market trends sourced from a third party;
- (d) Money Risk Representations, that, with regard to funds deposited to the clients' trading accounts:
 - (i) by increasing the amount of money in a client's trading account held with the Fifth Defendant, that client would reduce the level of risk to which they were exposed;
 - (ii) the risk associated with transferring additional funds to a client's trading account would carry an equivalent risk to holding money in an account with an Australian deposit taking institution; and/or
 - (iii) only those funds in a client's trading account used to open a CFD or FX Contract position would be exposed to adverse movement in the price of the asset underlying the relevant position;
- (e) Revenue Representations, that the Fifth Defendant, alternatively the account managers engaged by or on behalf of the Fifth Defendant, earned revenue or income from the clients' trading in derivatives only when a client made a profit from that trading;
- (f) Profit Representations, that there was a reasonable prospect, alternatively it was likely, that clients of the Fifth Defendant would generate, from trading CFDs or FX Contracts:
 - (i) a profit of 10% or more, within a period of time specified by the account manager;
 - (ii) income sufficient for the client's trading to be their main source of income; further or in the alternative



- (iii) realised profits sufficient to recover realised and unrealised losses suffered by the client from their trading;
- (g) Client Account Representations, that money that clients deposited to their trading accounts:
 - (i) would be held in accounts maintained by the First Defendant pursuant to the requirements of Division 2 of Part 7.8 of the Corporations Act, and that the Fifth Defendant was unable to access those accounts; further or in the alternative
 - (ii) was able to be withdrawn in the same manner as money held in a bank account,
- (h) Plan Representations, that account managers engaged by or on behalf of the Fifth Defendant would:
 - (i) create an investment plan for clients of the Fifth Defendant, the intention or purpose of which was to increase the clients' profits from their trading with the Fifth Defendant, and/or minimise the risk of the client suffering losses;
 - (ii) select trading signals provided to the Fifth Defendant by a third party known as "Trading Central" to provide to the Fifth Defendant's clients that were consistent with the achievement of that plan; and
 - (iii) guide the clients to implement that plan;
- (i) Regulation Representations, that:
 - (i) the Fifth Defendant was one of:
 - (A) only four; and/or
 - (B) the largest,

Entities that was entitled to provide financial advice in relation to derivatives in Australia; and
 - (ii) an Australian authority recorded calls made by account managers engaged by or on behalf of the Fifth Defendant,



and thereby engaged, on 2,492 occasions, in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act, and in the case of the representations in paragraph:

- (i) 23(a)(i) above, made 796 false or misleading representations in contravention of s 12DB(1)(e), s 12DB(1)(f) and s 12DB(1)(h) of the ASIC Act;
- (ii) 23(a)(ii) and (iii) above, made 1487 false or misleading representations in contravention of s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (iii) 23(b) above, made a false or misleading representation in contravention of s 12DB(1)(e) and s 12DB(1)(h) of the ASIC Act;
- (iv) 23(c) above, made a false or misleading representation in contravention of s 12DB(1)(a) of the ASIC Act;
- (v) 23(d) above, made 38 false or misleading representations in contravention of s 12DB(1)(a), s12DB(1)(e) and s12DB(1)(h) of the ASIC Act;
- (vi) 23(f) above, made 22 false or misleading representations in contravention of s 12DB(1)(a) and s12DB(1)(e) of the ASIC Act;
- (vii) 23(g) above, made 8 false or misleading representations in contravention of s 12DB(1)(e) of the ASIC Act;
- (viii) 23(h) above, made 12 false or misleading representations in contravention of s 12DB(1)(a) and s12DB(1)(e) of the ASIC Act; and
- (ix) 23(i) above, made 11 false or misleading representations in contravention of s 12DB(1)(e) of the ASIC Act.

Unconscionable conduct – clients

24. Between October 2017 and May 2018, the Fifth Defendant, and by reason of the matters in paragraph 14 above the First Defendant, by providing financial product advice to, and dealing in financial products with each of the clients identified in Annexure C.3, in circumstances where the Fifth Defendant:

- (a) engaged in the contraventions in paragraph 23 above;



- (b) provided financial product advice to the clients:
 - (i) without acting in the best interests of the clients;
 - (ii) in circumstances where it was not reasonable to conclude that the advice was appropriate for those clients; and/or
 - (iii) without giving priority to the clients' interests;
- (c) provided no, or no adequate, explanation of the operation of or risks associated with the financial products in which they dealt;
- (d) employed undue influence or pressure or unfair tactics by:
 - (i) placing pressure on clients in lengthy and/or multiple telephone conversations to open additional CFD or FX Contract positions, or to deposit further funds to the clients' trading accounts;
 - (ii) receiving financial benefits when the clients incurred financial losses on CFDs and/or FX Contract positions that the Fifth Defendant had advised clients to open;
 - (iii) advising clients to open a large number of positions;
 - (iv) having initially provided clients with advice to open small positions, subsequently advising those clients to open larger and/or a greater number of positions, thereby increasing the risk to which those clients were exposed;
 - (v) providing advice to clients to leave open positions that had moved adversely to the client, including advising clients that they should invest further funds in the clients' trading accounts in order to avoid open positions being closed;
 - (vi) providing advice to clients to engage in trading strategies that:
 - (A) exposed clients to a risk of loss that was materially greater than if they had not adopted that strategy;
 - (B) further or in the alternative, it was not reasonable to conclude were appropriate to the client;



- (vii) advising clients who had already incurred losses to deposit further funds in the client's trading account in order to be able to open further CFD and/or FX Contract positions and thereby recover some or all of those losses;
- (viii) having unreasonable impediments or delays to clients withdrawing money from their trading accounts; and/or
- (ix) having unreasonable impediments or delays to clients closing CFD or FX Contract positions,

engaged in conduct in connection with the supply or possible supply of financial services that was in all the circumstances unconscionable, in contravention of in the case of the First Defendant s 991A of the Corporations Act, and in the case of the First and Fifth Defendants s 12CB of the ASIC Act.

Unconscionable conduct – system

25. From September 2017 until March 2018, or about that period, the Fifth Defendant, and by reason of the matters in paragraph 14 above the First Defendant, by engaging in a system of conduct or pattern of behaviour by which:
- (a) potential clients came to the Fifth Defendant by registering and providing personal details through online and other electronic advertising, often involving advertising for investment of \$250 in Bitcoin;
 - (b) people engaged on behalf of the Fifth Defendant engaged in the conduct in paragraph 23 above, and in particular made the representations in paragraph 23(i) above;
 - (c) the Fifth Defendant sought out, and provided financial product advice in relation to CFDs and FX Contracts to, retail clients having made no, or no adequate, determination as to the appropriateness of providing that financial service to those clients;
 - (d) the account managers who provided the financial services to the clients of the Fifth Defendant were trained to use, and used, tactics intended to gain the clients' trust, and to engender a false sense of security;



- (e) the account managers engaged by or on behalf of the Fifth Defendant told, or implied to, the clients of the Fifth Defendant that the account managers were experienced or experts in the provision of financial product advice regarding CFDs and FX Contracts, when they were not;
- (f) the Fifth Defendant encouraged inexperienced, vulnerable clients with a relatively small amount of funds available to open a large number of CFD or FX Contract positions;
- (g) the purpose, alternatively a significant purpose, of the system of conduct engaged in by the Fifth Defendant was to increase the amount of money that clients of the Fifth Defendant deposited to their trading accounts, and to maximise the amount that those clients lost and the Fifth Defendant thereby gained,

engaged in conduct in connection with the supply or possible supply of financial services in Australia that was in all the circumstances unconscionable, in contravention of, in the case of the First Defendant s 991A of the Corporations Act, and in the case of the First and Fifth Defendants s 12CB(1) of the ASIC Act.

Authorised representative contraventions

26. Pursuant to s 1317E of the Corporations Act, the Court declares that, between September 2017 and February 2018 or about that period, by reason of the conduct referred to in paragraphs 22 and 25 above:

- (a) employees or agents of the Fifth Defendant, who provided personal advice to the clients identified in Annexure A.3 in their capacity as agents of the Fifth Defendant within the meaning of s 769B(1) of the Corporations Act:
 - (i) failed to act in the best interests of those clients in contravention of s 961B of the Corporations Act;
 - (ii) provided advice when it was not reasonable to conclude that the advice was appropriate to those clients in contravention of section 961G of the Corporations Act; and/or
 - (iii) failed to give priority to the interests of those clients when they knew, or ought reasonably to have known, that there was a conflict between the



interests of the clients and those employees or agents in contravention of s 961J of the Corporations Act; and

(b) the Fifth Defendant thereby engaged in 793 contraventions of s 961Q(1) of the Corporations Act.

27. The Fifth Defendant, from about October 2017 to February 2018, in carrying on a financial services business or providing financial services in this jurisdiction used a restricted expression in relation to that financial service, namely “financial advisor”, when it did not satisfy the requirements under s 923C(1)(c) of the Corporations Act, and thereby contravened s 923C(1) of the Corporations Act.

AND THE COURT ORDERS THAT:

28. By 4.00 pm on 15 May 2020, the Plaintiff file and serve any evidence on which it intends to rely at the hearing on penalty and other relief.

29. By 4.00 pm on 12 June 2020, the First, Third and Fifth Defendants file and serve any evidence on which they intend to rely at the hearing on penalty and other relief.

30. By 4.00 pm on 26 June 2020, the Plaintiff file and serve any evidence in reply and any submissions on which it intends to rely at the hearing on penalty and other relief.

31. By 4.00 pm on 10 July 2020, the First, Third and Fifth Defendants file and serve any submissions on which they intend to rely at the hearing on penalty and other relief.

32. By 4.00 pm on 24 July 2020, the Plaintiff file any submissions in reply on which it intends to rely at the hearing on penalty and other relief.

33. The matter be listed for hearing on penalty and other relief on a date to be fixed on an estimate of 2 days.

34. There be a case management hearing fixed for 9.30 am on 7 August 2020.

35. Costs are reserved.

36. Liberty to apply.

Date that entry is stamped: 20 March 2020



Sia Lagos
Registrar



Schedule

No: VID126/2018

Federal Court of Australia

District Registry: Victoria

Division: General

Third Defendant	OT MARKETS PTY LTD (ACN 621 714 181) (IN LIQUIDATION)
Fifth Defendant	OZIFIN TECH PTY LTD (ACN 618 038 396) (IN LIQUIDATION)
Sixth Defendant	AUTHENTICATE PTY LTD (ACN 600 573 233)



Annexure A.1

Client	Advice Statements
AGM1	42
AGM2	27
AGM3	13
AGM4	3
AGM5	67
AGM6	3
AGM7	38
AGM8	11
AGM9	47
AGM10	73
AGM11	8
AGM12	2
AGM13	2
AGM14	3
AGM15	1
TOTAL	340



Annexure A.2

Client	Advice Statements
OT1	13
OT2	20
OT3	22
OT4	12
OT5	2
OT6	82
OT7	54
OT8	53
OT9	17
OT10	25
OT11	5
OT12	35
OT13	10
OT14	3
OT15	5
TOTAL	358



Annexure A.3

Client	Advice Statements
OF1	50
OF2	45
OF3	25
OF4	162
OF5	15
OF6	2
OF7	196
OF8	149
OF9	66
OF10	21
OF11	13
OF12	49
TOTAL	793



Annexure B.1

Client	Representation											
	Equities Risk	Money Risk	Revenue	Profit	Client Account	Location	TOTAL (excluding implied)	Implied - Best Interests	Implied - Appropriate Advice	Implied - Personal Advice	TOTAL (implied)	TOTAL (including implied)
AGM1	3	1	0	2	0	0	6	45	42	46	133	139
AGM2	1	1	0	0	0	0	2	28	27	28	83	85
AGM3	0	2	1	0	0	1	4	13	13	13	39	43
AGM4	0	3	0	0	0	0	3	3	3	3	9	12
AGM5	0	3	2	0	1	1	7	67	67	67	201	208
AGM6	0	0	0	0	0	0	0	3	3	3	9	9
AGM7	0	4	0	1	0	0	5	38	38	38	114	119
AGM8	0	0	0	0	0	0	0	11	11	11	33	33
AGM9	0	1	0	0	0	0	1	47	47	47	141	142
AGM10	0	0	0	0	3	1	4	73	73	74	220	224
AGM11	0	0	0	0	0	0	0	8	8	8	24	24
AGM12	0	0	0	0	0	0	0	2	2	2	6	6
AGM13	0	0	0	0	0	0	0	2	2	2	6	6
AGM14	0	0	0	0	0	0	0	3	3	3	9	9
AGM15	1	1	0	0	0	0	2	2	1	2	5	7
TOTAL	5	16	3	3	4	3	34	345	340	347	1032	1066



Annexure B.2

Client	Representation													
	Money Risk	Revenue	Profit	Client Account	Plan	Loss Recovery	Location	Regulation	TOTAL (excluding implied)	Implied - Best Interests	Implied - Appropriate Advice	Implied - Personal Advice	TOTAL (implied)	TOTAL (including implied)
OT1	2	1	0	0	0	0	1	1	5	13	13	13	39	44
OT2	5	0	2	1	0	0	1	1	10	20	20	20	60	70
OT3	0	0	0	0	1	2	0	0	3	22	22	23	67	70
OT4	6	2	1	2	5	4	1	0	21	12	12	13	37	58
OT5	0	0	0	0	0	0	0	0	0	2	2	2	6	6
OT6	1	1	4	2	3	2	0	0	13	82	82	82	246	259
OT7	3	1	3	1	2	1	0	0	11	54	54	55	163	174
OT8	2	3	9	2	1	3	0	0	20	53	53	54	160	180
OT9	5	0	0	0	0	0	1	0	6	17	17	17	51	57
OT10	3	2	0	1	0	1	0	0	7	25	25	25	75	82
OT11	0	0	0	0	0	0	0	0	0	5	5	5	15	15
OT12	2	2	1	2	7	1	2	0	17	35	35	36	106	123
OT13	1	0	0	1	0	1	2	2	7	10	10	10	30	37
OT14	0	2	0	0	0	0	0	0	2	3	3	3	9	11
OT15	1	2	1	1	0	0	1	0	6	5	5	5	15	21
TOTAL	31	16	21	13	19	15	9	4	128	358	358	363	1079	1207



Annexure B.3

Client	Representation													
	Equities Risk	Analysis	Money Risk	Revenue	Profit	Client Account	Plan	Regulation	TOTAL (excluding implied)	Implied - Best Interests	Implied - Appropriate Advice	Implied - Personal Advice	TOTAL (implied)	TOTAL (including implied)
OF1	0	0	3	4	1	0	1	0	9	50	50	51	151	160
OF2	0	0	8	0	2	2	0	1	13	45	45	45	135	148
OF3	0	1	4	0	0	0	0	0	5	25	25	25	75	80
OF4	0	0	7	0	0	0	0	1	8	162	162	162	486	494
OF5	0	0	1	2	2	1	0	3	9	15	15	15	45	54
OF6	0	0	2	0	1	0	0	0	3	2	2	2	6	9
OF7	0	0	3	0	0	0	0	0	3	196	196	196	588	591
OF8	0	0	0	3	3	1	4	4	15	149	149	149	447	462
OF9	0	0	2	4	2	1	1	1	11	66	66	66	198	209
OF10	0	0	5	1	5	1	1	1	14	21	21	22	64	78
OF11	0	0	0	0	0	0	0	0	0	13	13	13	39	39
OF12	1	0	3	2	6	2	5	0	19	50	49	50	149	168
TOTAL	1	1	38	16	22	8	12	11	109	794	793	796	2383	2492



Annexure C.1

Individual clients in respect of whom the First Defendant engaged in unconscionable conduct:

- AGM1;
- AGM5;
- AGM7; and
- AGM10.



Annexure C.2

Individual clients in respect of whom the Third Defendant engaged in unconscionable conduct:

- OT3;
- OT4;
- OT6;
- OT7;
- OT8;
- OT12;
- OT13; and
- OT15.



Annexure C.3

Individual clients in respect of whom the Fifth Defendant engaged in unconscionable conduct:

- OF1;
- OF2;
- OF3;
- OF4;
- OF5;
- OF8;
- OF9;
- OF10; and
- OF12.