

INDEPENDENT FINANCIAL ADVISER

An SMSF investor has taken court action against an insurance company to recover amounts payable to them from a deregistered financial services company connected to a former adviser who was banned by ASIC in 2011.

Three corporations have taken action against QBE Insurance Australia in the Supreme Court of Western Australia in the decision *Young Investment Group Pty v QBE Insurance (Australia) Limited* [2019] WASC 74.

The three corporations include Young Investments Group, Rastus Group, which was the trustee for two superannuation funds known as the TY superannuation fund and BY superannuation fund, and Reid Park Investments, which was a trustee for the Bev Young Investment Trust. Each of the corporations were related to Beverley Lorraine Margetts.

The plaintiffs previously commenced action in the Federal Court against former financial services firm Stripe Capital, its licensee Australian Stockbroking & Advisory Services (ASANDAS) and Todd King, an authorised representative of ASANDAS.

Mr King was permanently banned by ASIC in May 2011 after the regulator found he engaged in misleading and deceptive conduct between July 2007 and June 2008.

The statement of claim by the plaintiffs stated that between June 2007 and June 2008, Stripe Capital bought and sold securities on behalf of Rastus, Young Investments and Reid Park without instructions and bought securities that were not authorised securities including options.

It also stated that without permission Stripe undertook high volume trading of securities in order to effect transactions on which commissions would be earned by Stripe without any or any reasonably commensurate benefit being earned by Rastus, Young Investments and or Reid Park.

The plaintiffs also claimed that Stripe and Mr King made misleading or deceptive representations about a margin loan agreement.

It was also alleged they had suffered millions of dollars in loss and damages as a result of the various breaches.

The Federal Court found ASANDAS liable for \$12,217,841.63 in total, including \$1,343,251.70 owed to Young Investments, \$3,738,047.73 owed to Rastus and \$7,136,542.20 owed to Reid Park.

However, the plaintiffs did not receive any money from ASANDAS prior to the company becoming deregistered, nor did they receive any money from Stripe Capital under the judgment.

The plaintiffs therefore brought action against QBE, which ASANDAS previously held an indemnity policy with, seeking to recover these amounts payable to them.

At the time of the deregistration, ASANDAS had a liability to the plaintiff and also held an insurance contract with QBE which the plaintiffs claimed covered the liability.

QBE sought to rely on two exclusions in its insurance policy including an unauthorised transaction exclusion and the conflict exclusion.

Chief Justice Peter Damien Quinlan found that neither the unauthorised transaction exclusion nor the conflict exclusion applied to claims in the case, and found that plaintiffs entitled to judgment against QBE pursuant to s 601AG of the *Corporations Act 2001 (Cth)* up to the aggregate limit of indemnity of \$10,000,000.