



ASIC

Australian Securities & Investments Commission

Our Reference: CCU-14\0006

17 January 2014

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Melbourne VIC 3000

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Senator John Williams
Senator for New South Wales
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Dear Senator Williams

Correspondence from Mrs Angela Sweeney

Thank you for the email dated 6 January 2014 from your office to Mr Robert Rush, Manager – Government Relations of the Australian Securities and Investments Commission (**ASIC**). The email forwarded an email from Mrs Angela Sweeney dated 12 December 2013. Mr Warren Day, the Stakeholder Services Senior Executive Leader, has asked me to respond to you as Mr Day is currently on leave.

Background

ASIC has had extensive dealings with Mrs Sweeney's husband, Mr Phillip Sweeney, since he first raised concerns with us in March 2009. Mr Sweeney's concerns relate to:

- his payout from his defined benefit superannuation fund, now called the AusBev Superannuation Fund (R1004830) (**the Fund**), which he believes was lower than he was entitled,
- the conduct of the Fund's trustee, CCSL Limited (ACN 104 967 964) (AFSL 287084) (**the Trustee**), and
- the conduct of his former employer, now called Foster's Group Pty Ltd (ACN 007 620 886).

Mrs Sweeney's concerns

More recently, Mrs Sweeney has contacted ASIC with concerns about her own dealings with the Trustee about the Fund. Mrs Sweeney claims that she is a beneficiary of the Fund due to her husband's previous membership of the Fund. Mrs Sweeney claims that she is entitled to a survivorship pension from the Fund.

Mrs Sweeney has requested superannuation fund documents, namely old trust deeds, from the Trustee that in her view would confirm her entitlement. We understand that the Trustee does not agree that Mrs Sweeney is a beneficiary of the Fund, and Mrs Sweeney provided to ASIC a copy of a letter from the Trustee declining to provide Fund documents. Mrs Sweeney has asked ASIC to compel the Trustee to provide her with a copy of these documents for the Fund.

ASIC consideration

ASIC assessed Mrs Sweeney's concerns and considered whether Mrs Sweeney was a 'concerned person' for the purposes of the legal provisions that would likely oblige the Trustee to provide Fund documents to Mrs Sweeney. As you may know, to be a 'concerned person' and be entitled to receive certain information relating to the Fund, Mrs Sweeney must be a current member of the Fund, or a member within the last 12 months, or a beneficiary of the Fund.

Based on the information available to ASIC, we determined that Mrs Sweeney is not a beneficiary of the Fund and therefore does not meet the 'concerned person' definition. ASIC's position is that, as Mrs Sweeney is not a concerned person, there has not been a breach of the law by the Trustee declining to provide Fund documents.

We communicated our position to Mrs Sweeney on 13 November 2013 and 10 December 2013 (copies enclosed). We explained that ASIC's position was that a beneficiary, for the purposes of the 'concerned person' definition, is generally a person with an entitlement to receive a payout from a fund. We also provided an example of where a person was likely to be considered a beneficiary. In our view, this includes a person whose entitlement arises from their spouse being a member of the relevant fund and the person has a claim on their spouse's superannuation, for example as a result of rights under a property settlement relating to a family law dispute.

In this regard, we note that Mr Sweeney is no longer a member of the Fund (since having received his payout). We also note that, from the information available to ASIC, Mr Sweeney was not a member of the Fund when the old trust deeds were in force, and we would expect any rights under those trust deeds would not be available to him, and therefore also not available to Mrs Sweeney.

We understand that Mrs Sweeney has sought further clarification as to how ASIC arrived at this position. ASIC's position is set out in our correspondence to her, and we are unable to comment further on this matter. To do so may inappropriately disclose details of our internal specialist and legal advice and operational methods.

ASIC position

ASIC has communicated our position to Mrs Sweeney. We have advised Mrs Sweeney that we do not intend to take any further action and provided her with the details of the Commonwealth Ombudsman. We have encouraged Mrs Sweeney to seek her own legal advice about pursuing any private rights that may be available to her.

From a recent letter, we understand that Mrs Sweeney appears to have since obtained her own legal advice and disputes our position. Mrs Sweeney is able to provide a copy of this advice to ASIC should she wish. We also note that ASIC's decision not to take further action does not preclude Mrs Sweeney from pursuing her own rights. If Mrs Sweeney has legal advice concluding that she is a beneficiary, she should seek further advice about how to enforce any rights she may have as a beneficiary. As you may appreciate, ASIC does not generally act for individuals to enforce their own legal rights, unless we consider this to be in the public interest.

Unfortunately, there is nothing further that we can do to assist Mrs Sweeney in circumstances where there has not been a breach of the law ASIC administers.

Senate Economics References Committee Inquiry into the performance of ASIC
As you may know, Mr Sweeney has lodged a submission to the Senate Economics References Committee Inquiry into the performance of ASIC (Submission 277). This submission also discusses issues surrounding the disclosure of Fund documents.

Please contact Greg Hackett on 03 9280 3530 or greg.hackett@asic.gov.au if you have any questions in relation to this letter.

Yours sincerely



Belinda Taneski
Senior Manager
Misconduct & Breach Reporting