

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/07/2021 11:29:38 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD1220/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MELISSA LOUISE CADDICK & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 5/07/2021 11:29:50 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations

No. NSD 1220 of 2020

IN THE MATTER OF MALIVER PTY LTD

ACN: 164 334 918

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MELISSA LOUISE CADDICK and another

Defendants

Affidavit of:

REDACTED

Address:

REDACTED

Occupation: Financial Adviser

Date: 19 March 2021

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1	Affidavit of REDACTED	1	1

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff

Prepared by (name of person/lawyer) Nicolette Bearup

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A handwritten signature in blue ink, appearing to be 'JP'.

A handwritten signature in blue ink, appearing to be 'Nicolette'.

Document number	Details	Paragraph	Page
2	Exhibit "JEP-1" being a bundle of documents exhibited to this affidavit.	1	2

I, ^{REDACTED} Financial Adviser, of ^{REDACTED} say on oath:

1. Exhibited to me at the time of affirming this affidavit and marked "Exhibit JEP-1" is a bundle of documents, each marked with a Ringtail barcode.

Personal background

2. I am a certified financial adviser and the sole director and owner of ^{REDACTED}. ^{REDACTED} provides financial planning, investment, superannuation and insurance advice services.
3. I studied and received a Bachelor of Education majoring in Mathematics and Science from the Australian Catholic University in 1992. I completed a Diploma of Financial Planning from Deakin University in 1999.

Introduction to Melissa Caddick

4. I met Melissa Caddick (**Ms Caddick**) in or around 2003 when I was employed as the New South Wales Development Manager at Tandem Financial Advice Pty Ltd (**Tandem**). Tandem held an Australian financial services licence (**AFSL**) and was a dealer group owned by ING. I worked at an ING office in the Sydney CBD.
5. A 'dealer group' is a group of authorised representatives licensed to provide financial advice under a single AFSL. At the time of my employment, ING was the holder of three AFSLs and the aim was to consolidate them under Tandem, a single AFSL.
6. My role was to support and develop the businesses that were being brought under Tandem's AFSL. In practice this meant that I coached businesses to improve their processes and procedures. My role was also to assist their business with growth, compliance and overall business development.
7. In this capacity, I had frequent dealings with Wise Financial Services (**Wise**), which was part of the Tandem dealer group. In doing so, I dealt with two of Wise's financial advisors including Ms Caddick. I was aware from my work in the industry that Wise was

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a business which predominantly arranged superannuation for the employees of its corporate clients. Wise became more tailored in their advice as time went on and offering advice to individuals as well as corporate members. I recall being told by my managers at Tandem that Ms Caddick was a shareholder of Wise.

8. In the course of my employment with Tandem, I was required from time to time to view various records held by ING, such as advisors' certification and continuing professional development records. Based on reviewing these records, I understood Ms Caddick, as an employee of Wise, was authorised to give investment, superannuation and insurance advice. I recall that during this time, Ms Caddick worked at an office in St Leonards.
9. I left Tandem in 2004 and worked at RetireInvest for a few months before joining Tyndall Investment Management, where I stayed until 2006.
10. I recall that Ms Caddick told me she was leaving Wise in 2005. She told me she had experienced bullying from senior management at Wise in relation to a proposed sale of the business which Ms Caddick did not agree with.
11. I had infrequent contact with Ms Caddick after she left Wise. I recall that after Wise she worked at a consulting firm called Encore Group and a stockbroking firm called Chancellor Hattersley Lloyd Pty Ltd. I was aware she was working at these two firms because Ms Caddick sent me emails from her work email accounts.
12. In about 2007 or 2008, I bumped into Ms Caddick while she was running with her first husband, [REDACTED] on Victoria Street, Potts Point. We caught up with each other and re-established more regular contact from around that point on.

[REDACTED]

13. I established [REDACTED] in 2008. A copy of [REDACTED] ASIC company extract marked **MAL.0003.0002.0090** is at Tab 1 of Exhibit JEP-1.

14. My husband, [REDACTED] is the General Manager of [REDACTED]. I have previously employed my sister, [REDACTED] to assist with filing and administration duties.

15. [REDACTED] does not currently have any employees. [REDACTED] and I currently work as consultants to [REDACTED] and we take a fee for work provided to the business. When it comes to tasks such as paraplanning, compliance reviews and audits my usual practice is to hire external providers to complete that work.

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16. Initially [REDACTED] was operating under the AFSL of Patron Financial Services Pty Ltd (**Patron**) as a corporate authorised representative.
17. My company operated in this way until 2013 which is when [REDACTED] applied for and obtained its own AFSL [REDACTED] AFSL number [REDACTED]. A copy of an ASIC extract dated 12 October 2020 showing the details of [REDACTED]'s AFSL marked **MAL.0003.0002.0045** is at Tab 2 of Exhibit JEP-1.
18. [REDACTED] permits it to provide investment, insurance, superannuation and direct equities advice.
19. [REDACTED] has never appointed anyone as an 'authorised representatives' to provide services on its behalf under its AFSL. Neither Barry or I has allowed anyone to provide any services on behalf of [REDACTED] other than to the extent noted above in paragraph 15.
20. After starting [REDACTED], I corresponded with Ms Caddick primarily by way of email, from the address [REDACTED], to the addresses [REDACTED].

[REDACTED] dealings with Ms Caddick

21. From around 2009 onwards, I arranged insurance for Ms Caddick and members of her family at her request.
22. Ms Caddick's good friend [REDACTED] owned a business called [REDACTED] located at [REDACTED]. I was offered space from [REDACTED] for [REDACTED] in the same part of the building. I saw Ms Caddick infrequently – a couple of times in a couple of years – at [REDACTED] space when she visited [REDACTED] and his wife [REDACTED]. I understood that [REDACTED] was employed by [REDACTED] and was also a friend of Ms Caddick. It was on one of these occasions that she first asked me to arrange insurance for her through my new [REDACTED] business.
23. In May 2009, Ms Caddick approached me to arrange personal insurance for her and husband at the time [REDACTED] included life, total permanent disability and trauma cover. I recall that Ms Caddick was seeking to replace her previous personal insurance with ING.
24. Later in 2009, Ms Caddick asked me to assist her brother, Adam Grimley (**Mr Grimley**) with his insurance. Ms Caddick had previously arranged an ING income

protection insurance policy for Mr Grimley when she was at Wise. After Ms Caddick left Wise she did not work in financial advice for a period of time. It was during this period that Ms Caddick contacted me and asked me to take over Mr Grimley's insurance policy.

25. Ms Caddick drafted a transfer of adviser letter to ING which transfers the servicing rights from one advisor's dealer group to another. It was a way of linking me to the insurance policy as an adviser and authorising me to speak to the insurer about the policy. It also meant the associated income generated by the policy, such as commissions, could go to [REDACTED]. I understood she arranged for Mr Grimley to sign the letter and then it was sent to me. Once I received the signed letter, I emailed it to ING.
26. Mr Grimley was in Singapore at the time and had fallen and broken a bone. I assisted Mr Grimley in making an income protection claim under which he received payment for six to nine months. On 10 November 2009, I sent an email to Ms Caddick in relation to Mr Grimley's income protection claim. Copies of the email and its attachments marked **MAL.2004.0001.0080**, **MAL.2004.0001.0081**, **MAL.2004.0001.0082** and **MAL.2004.0001.0086** are at Tabs 3 to 6 of Exhibit JEP-1, respectively.
27. I recall that in or around 2012, Ms Caddick separated from her first husband, [REDACTED]. I provided advice to Ms Caddick about the implications of the separation in relation to their insurance policies. At the time, Ms Caddick and Mr Caddick were joint trustees of a self-managed super fund (**SMSF**) called the Caddick Family Trust Superannuation Fund. I recall that we also discussed removing Mr Caddick as a trustee and the possible appointment of a corporate trustee. A copy of a calendar reminder marked **MAL.2005.0001.0003** is at Tab 7 of Exhibit JEP-1.
28. On 9 April 2014, I provided a Statement of Advice to Ms Caddick and her second husband, Anthony Koletti (**Mr Koletti**), in relation to their life insurance, total and permanent disability cover, and trauma policies. A copy of the Statement of Advice marked **MAL.2003.0001.6215** is at Tab 8 of Exhibit JEP-1.
29. There are presently three insurance policies owned by Ms Caddick or the Caddick Family Trust Superannuation Fund which were arranged by [REDACTED] as follows:
- (a) an Asteron Life Complete insurance policy owned by Ms Caddick which commenced on 5 June 2014. A copy of the certificate of currency dated 11 January 2021 marked **MAL.1078.0002.0008** is at Tab 9 of Exhibit JEP-1;

- (b) an Asteron Life Complete insurance policy owned by the Caddick Family Trust Superannuation Fund which commenced on 5 June 2014. A copy of the certificate of currency dated 11 January 2021 marked **MAL.1078.0002.0006** is at Tab 10 of Exhibit JEP-1; and
- (c) an Asteron Life Complete insurance policy owned by Ms Caddick and insuring Mr Koletti which commenced on 9 April 2014. A copy of the certificate of currency dated 11 January 2021 marked **MAL.1078.0002.0004** is at Tab 11 of Exhibit JEP-1.

Maliver

30. I recall having discussions with Ms Caddick around 2009 during which she mentioned that she wanted to start her own advice business. On one occasion, Ms Caddick told me that she did not want to provide insurance advice, because she wanted to focus on investment advice. On another occasion Ms Caddick told me that she was *"looking to help high net worth clients, and just invest in a few stocks"*. But beyond that, I did not have any insight into the business she was setting up.
31. During this time, she would often talk about her own investments. I recall a conversation in which Ms Caddick said that she and her husband at the time, Anthony Caddick, had taken a \$500,000.00 loan from Macquarie Bank for the purposes of putting it into Macquarie Bank stocks.
32. Sometime after Ms Caddick and [REDACTED] separated in 2012, and when she was living in the Sydney suburb of Kensington, I recall having a conversation with Ms Caddick in which she told me that she would name her advice business 'Maliver', saying words to the effect of, *"it's a combination of our names: Melissa, [REDACTED] and [REDACTED]"*. I understood her reference to [REDACTED] to be a reference to [REDACTED], not her second husband Mr Koletti, but with the benefit of hindsight, I may have been incorrect.

Correspondence with Ms Caddick in 2013

33. On 21 June 2013, I sent an email to Ms Caddick stating that:

As of 1st July 2013, I will no longer be licenced by our current Financial Services Licence provider, [REDACTED] rather I will operate under [REDACTED] new AFSL. [REDACTED] AFSL number as issued by ASIC is [REDACTED]

A copy of this email chain and attachment marked **MAL.1078.0001.0003** and **MAL.1078.0001.0004** are at Tabs 12 and 13 of Exhibit JEP-1, respectively.

34. On 2 July 2013, I sent Ms Caddick a copy of the Financial Services Guide (**FSG**) that I had developed for [REDACTED]. As Ms Caddick was a client of [REDACTED], I understood that I was obliged to share the document with her. When a financial advice business comes under a new AFSL, the business has to advise all its clients of the change. This is to ensure they are aware of, for example, how to find the business, make a complaint, and are aware of any material changes such as a change in licence number, services or fees. A copy of this email chain and the attached FSG marked **MAL.2002.0001.0016** and **MAL.2002.0001.0018** are at Tabs 14 and 15 of Exhibit JEP-1, respectively.

Request to operate under [REDACTED] AFSL

35. Between 2011 and 2013, Ms Caddick and I infrequently discussed applying for an AFSL. I had initially started the application process for [REDACTED] in or around 2011 but delayed the submission until 2013 due to family commitments.
36. I also recall speaking to Ms Caddick about how I had subsequently applied to ASIC for [REDACTED] to get its own AFSL and how we had completed all the documents for the application by ourselves. Based on this experience, I recall urging Ms Caddick to also apply for an AFSL by herself rather than using an external consultant.
37. In or around July 2013, I had a telephone conversation with Ms Caddick in which Ms Caddick asked if I would permit her to operate under [REDACTED] AFSL. I recall that we exchanged words to the following effect:
- Ms Caddick said: *"Would you consider having me under your licence?"*
- I said: *"Let me talk to Barry, I will think about it."*
38. After the phone call, I spoke to my husband about the conversation. He said words to the effect, *"No bloody way"* and *"We discussed this and this wasn't our intention"*. I agreed with him.
39. On or about one day after the phone call, I called Ms Caddick and we had a conversation during which I explained that I was not going to authorise or permit her to provide financial services on behalf of [REDACTED]. I recall saying words to the following effect:

- (a) *"We don't want any risk. Having advisors doing whatever they want under our licence is a risk and I never wanted that."*
- (b) *"I never wanted to start a dealer group and I didn't want the responsibility of supervision of other advisers."*
40. And I recall that Ms Caddick responded by saying words to the effect: *"That's okay, no hard feelings. I understand and I will get my own AFSL"*.
41. I have not, at any time, given Ms Caddick – or Maliver Pty Limited (**Maliver**) – permission to operate under REDACTED. I did not have any further discussions with Ms Caddick in relation to her request to operate under REDACTED REDACTED AFSL.
42. Before an AFSL-holder can appoint an authorised representative, they have to ensure the person is a proper person by conducting reference, police and bankruptcy checks. They also need to ensure the person has completed the required educational courses and training. These things need to be done just to start the process. I never conducted any of these checks or inquiries in relation to Ms Caddick because I never permitted either Ms Caddick or Maliver to become an authorised representative of REDACTED.
43. ASIC initiated a Financial Adviser Register (**Register**) in or about March 2015. I registered as a financial adviser shortly thereafter and some months later I called Ms Caddick to ask why she wasn't on the Register. I recall that Ms Caddick replied with words to the effect, *"I'm getting to it"*. I did not have any subsequent conversations with Ms Caddick regarding the Register.

Client referrals

44. I have never had a formal referral agreement with Ms Caddick. On occasion, I would receive client referrals from Ms Caddick for the purposes of arranging insurance. They were typically clients of Maliver. In some cases, Ms Caddick would share details about the potential client's SMSF arrangements with me.
45. Upon receiving client referrals from Ms Caddick, my usual practice was to complete a client profile in order to understand the client's circumstances and requirements, and to then provide a Statement of Advice setting out my recommendations. If the client decided to proceed, I would undertake the process of securing the recommended

insurance policy for them. It was my usual practice to complete this process independently and I did not share the client's application with Ms Caddick.

46. My impression was that, when Ms Caddick referred clients of Maliver, she was the adviser of the client's SMSF. I formed this impression based on the fact that she had access to the ABN, TFN and bank account details of the SMSF. I also understood that she knew the trustees and sometimes she was a trustee herself. This understanding was based on various conversations I had with clients in the course of giving advice, in which I would explain that I required their SMSF details in order to arrange insurance, and they would say words to the effect of, "*Speak to Melissa*". In some cases, Ms Caddick would also require the payment authority for the insurance premium which was being paid for with SMSF funds. Ms Caddick had to keep a record of such a transaction in the client file for the SMSF accountant to check because every transaction involving SMSF funds has to be justified for compliance purposes.
47. As a result, if the client elected to proceed with the recommended insurances, I would forward the relevant policy documents to Ms Caddick for the purposes of her maintaining complete records for her clients. This is the same process that I would ordinarily follow when I receive a referral from an accountant, as they would need those documents.

48. Ms Caddick referred the following people to REDACTED

(a) REDACTED;

(b) Mr Koletti;

48.3. Mr Grimley;

(d) REDACTED

(e)

(f)

(g)


(h)

(i) REDACTED

49. Below I set out some examples of my email correspondence with Ms Caddick about these referrals as well my correspondence with some of the individuals listed above.

- (a) On 29 September 2014, I received an email from Ms Caddick referring [REDACTED] [REDACTED] for the purposes of arranging life insurance and income protection policies. A copy of this email marked **MAL.1018.0002.0049** is at Tab 16 of Exhibit JEP-1.
- (b) On 30 April 2015, I received an email from Ms Caddick in which she told me that she wished to refer [REDACTED] to me. A copy of this email marked **MAL.1018.0001.0097** is at Tab 17 of Exhibit JEP-1.
- (c) On 20 June 2016, I received an email from [REDACTED] on behalf of Ms Caddick asking for life insurance policy statements/certificates for [REDACTED], [REDACTED]. A copy of this email marked **MAL.1078.0003.0012** is at Tab 18 of Exhibit JEP-1.
- (d) On 20 November 2017, I exchanged emails with Ms Caddick and [REDACTED] requested information to assist me in securing insurance for [REDACTED]. A copy of this email marked **MAL.1018.0002.0017** is at Tab 19 of Exhibit JEP-1.
- (e) On 7 September 2018, I received an email from [REDACTED] in which she stated that she had *“decided not to take my query any further.”* A copy of this email marked **MAL.1078.0001.0001** is at Tab 20 of Exhibit JEP-1.

Sworn / Affirmed by the deponent)
 at Sydney)
 in the State of New South Wales)
 on 19 March 2021)
 Before me:)



 Signature of deponent



 Signature of witness
 Name: Nathalie Jones
~~Click here to insert capacity of witness~~ 
 Qualification: Solicitor
 Address: 100 Market Street, Sydney NSW 2000