

Determination

Case number: 540505

27 March 2019

1 Determination overview

1.1 Complaint

The financial firm conducted an advice review and remediation process in relation to personal financial advice provided by its advisers to the complainants during the period 16 February 2012 and 17 February 2017. The parties agree the advice was not suitable for the complainants.

However, the complainants are concerned the financial firm's \$14,500 offer of compensation is not fair and reasonable in the circumstances. The complainants say the financial firm has not considered interest costs incurred on their home equity loan in its compensation offer. The financial firm says the interest costs have been included in the compensation offer.

1.2 Issues and key findings

Was the outcome of the financial firm's remediation fair?

The financial firm's remediation outcome was not fair as the double geared investment strategy was not appropriate nor in the best interests for the entire period the complainants were its clients.

What compensation should be paid to the complainants?

Inappropriate advice was the cause of loss. The advisers would have avoided losses suffered by the complainants had advice been provided to fully unwind the double geared strategy on 27 February 2012.

1.3 Determination

This determination is in favour of the complainants. The financial firm must, within 28 days of the complainants' acceptance of the determination:

- pay \$38,835.28 compensation to the complainants with interest
- refund adviser fees with interest

2 Reasons for determination

2.1 Was the outcome of the financial firm's remediation fair?

The financial firm assessed the advice as being unsuitable

The financial firm identified seven instances of advice provided by its advisers during the period 27 February 2012 and 17 February 2017. The subject matter of each instance of advice was a double geared investment strategy that had been in place since October 2007 because of advice provided by Mr H while he was an adviser of another financial services provider.

Broadly, the financial firm assessed the double geared investment strategy was appropriate for the complainants, but the underlying asset allocation was not appropriate as it didn't match the complainants' growth risk profiles.

The complainants' representative says the double geared investment strategy was inappropriate for the entire period the complainants were the financial firm's clients (the relevant period).

The complainants were in a negative equity position during the relevant period

I have reviewed the financial firm's information. It supports that the complainants were in a negative equity position as at 27 February 2012.

Item	Value
Portfolio valuation	\$26,520
Margin loan balance	\$24,166
Investment loan balance	\$101,169
Negative equity position	\$98,815

The complainants remained in a negative equity position at all times during the relevant period.

Further, the Loan to Value Ratio (LVR) of the margin loan and the underlying portfolio often exceeded 90%. This meant that even a small adverse movement in the market value of the underlying investment assets would result in margin calls. Information provided to me shows the complainants received a number of margin calls throughout the relevant period.

The financial firm's assessment was unfair

I am satisfied the financial firm's assessment of the advice was not fair. The complainants' double geared investment strategy was inappropriate throughout the entire relevant period.

The complainants' \$98,815 negative equity position as at 27 February 2012 was unlikely to ever improve to a positive position, especially where the margin loan LVR either exceeded or was near 90%.

The LVRs were also at such high levels that the complainants were always at risk of margin calls.

The appropriate advice would have been to unwind the double geared strategy on 27 February 2012.

2.2 What compensation should be paid to the complainants?

The inappropriate advice was a cause of the loss

I find that, had the advisers provided appropriate advice in respect to the unwinding of the double geared strategy, the complainants would have avoided further losses. The inappropriate advice was a cause of the complainants' loss.

I find that had the strategy been wound up on 27 February 2012, the complainants would have been left with a \$96,419.13 investment loan debt that they would have needed to continue to service. This means the interest costs on this amount would have been incurred even if they received appropriate advice. This must be factored into the loss calculation.

It is fair the financial firm pay \$38,835.28 compensation to the complainants

Australian Financial Complaints Authority's (AFCA's) loss calculation specialist has calculated the complainants' loss as:

Actual Scenario 20/2/2012 to 16/1/2017	
<u>Contributions</u>	
Net equity at start	\$ (96,419.13)
Margin Loan repayments and margin calls	\$2,200.00
ANZ Equity Manager Loan Repayments	\$31,234.75
Contributions to investment	\$9,000.00
ANZ Equity Loan balance at 27 February 2017	\$99,811.73

Actual Scenario 20/2/2012 to 16/1/2017	
Margin Loan balance at 27 February 2018	\$40,777.33
Total	\$86,604.68
<u>Benefits</u>	
Portfolio Value @ 27/2/2017	\$47,769.40
Total	\$47,769.40
Benefits Less Contribution (loss)	\$(38,835.28)

The calculation has been exchanged with the parties.

It is fair the financial firm pay \$38,835.28 compensation to the complainants.

The financial firm must refund adviser fees received during the relevant period

I also consider it fair the financial firm refund adviser fees paid by the complainants to it and its advisers. It is unfair that the financial firm and its advisers have the benefit of the fees received in circumstances where the financial advice provided was not appropriate nor in the best interests of the clients.

Interest must be paid

It is fair to award interest on the compensation amount and the refunded adviser fees equal to the change in the consumer price index for the period 16 February 2012 to the date of payment.

3 Supporting information

3.1 The determination is made under Financial Ombudsman (FOS) Terms of Reference

AFCA has commenced managing disputes previously lodged with FOS.

This determination is made under FOS Terms of Reference but has adopted the following terminology for consistency with AFCA. In this determination the AFCA terms have the same meaning as the FOS terms defined in paragraph 20.1 and Schedule 1, 2 & 3 of the FOS Terms of Reference.

FOS definitions	AFCA term
applicant	complainant
financial services provider	financial firm
dispute	complaint
claim	claim

3.2 Process

I have decided this dispute based on what I consider is fair in all the circumstances and have had regard to:

- the relevant law
- good industry practice
- codes of practice and
- previous decisions of AFCA and its predecessor schemes (though I'm not bound by these).

In making this determination I have considered the entire file, including all communications with the parties not specifically referred to in these reasons.

I am satisfied the documents I have relied on in making this decision have been exchanged between the parties. As a result, I consider the parties are aware of the issues to be considered and the submissions and evidence relevant to those issues.

This dispute has been expedited to a determination. No recommendation was issued.

The financial firm has waived the temporal jurisdictional limit.