

# Order Entered

No: (P)QUD253/2012

Federal Court of Australia  
District Registry: Queensland  
Division: General

## **TAX PRACTITIONERS BOARD**

Applicant

## **TREVOR JOHN SCHMIERER**

Respondent

## **ORDER**

**JUDGE:** Justice Reeves

**DATE OF ORDER:** 6 September 2012

**WHERE MADE:** Brisbane

### **THE COURT DECLARES THAT:**

1. On 132 separate occasions detailed in Schedule A to this order, between about March 2010 and about October 2011 and in relation to the persons and entities respectively described in Schedule A to this order in respect of the particular occasion, the respondent by providing to persons and entities a service:
  - 1.1. that involved the respondent doing one or more of the following:
    - 1.1.1. giving advice to the person or entity in relation to the person's or entity's income tax affairs;
    - 1.1.2. completing details of the person's or entity's income tax return in preparation for lodgement;
    - 1.1.3. lodging the person's or entity's income tax return with the Commissioner of Taxation;

- 1.1.4. nominating his address as the person's or entity's postal address for the purposes of correspondence from the Commissioner of Taxation;
  - 1.2. for which the respondent charged a fee;
  - 1.3. with knowledge of the matters referred to in sub-paragraphs 1.1 and 1.2 above;
  - 1.4. while the respondent was not a registered tax agent pursuant to the *Tax Agent Services Act 2009* (Cth) (the Act);
  - 1.5. which was not a service relating to a business activity statement; and
  - 1.6. which was not provided as a legal service;
- in each case:
- 1.7. by reason of the matters referred to in sub-paragraphs 1.1 and 1.2 above, provided a service that the person or entity could reasonably be expected to rely upon to satisfy liabilities or obligations, or claim entitlements, that arise, or could arise, under a taxation law; and
  - 1.8. by reason of the matters referred to in sub-paragraphs 1.1 to 1.7 above, supplied a tax agent service in contravention of subsection 50-5(1) of the Act.
2. The respondent, between about April 2010 and about April 2011, by sending, on 3 occasions, emails to persons which:
- 2.1. were not sent in response to a direct enquiry or request by the persons;
  - 2.2. offered services that involved giving advice in relation to liabilities, obligations or entitlements in relation to taxation law;
  - 2.3. did not offer to provide such services free of charge or obligation;
  - 2.4. did not offer the services in relation to a business activity statement or as a legal service; and
  - 2.5. were each sent at a time when the Respondent was not a registered tax agent pursuant to the Act;
- in the case of each email advertised that he would provide a tax agent service and, by doing so whilst he was not registered as a tax agent pursuant to the Act, contravened subsection 50-10(1) of the Act.

**THE COURT ORDERS BY CONSENT THAT:**

3. For a period of 3 years from the date of this order, if he is requested to provide to another person or entity a service relating to one or more of:
  - 3.1. advising another person or entity in relation to their entitlements, liabilities or obligations in relation to an Australian taxation law;

- 3.2. completing for another person or entity a return or statement in relation to an Australian taxation law;
- 3.3. lodging for another person or entity a return or statement in relation to a taxation law with the Australian Taxation Office; or
- 3.4. communicating with the Australian Taxation Office on behalf of the person or entity;

and unless then registered as a tax agent pursuant to the Act, before providing or agreeing to provide the said service, the respondent must inform the person or entity of the matters referred to in paragraphs 1 to 8 in Form A in Schedule B in the Order and, if the person or entity still requests the service be performed by the respondent:

- 3.5. to have the person or entity complete and sign Form A at Schedule B in the Order;
  - 3.6. to retain a copy of the form for a period of 3 years; and
  - 3.7. provide any such signed forms to the Tax Practitioners Board within 14 days of its request.
4. For a period of 3 years from the date of this order, the respondent, unless then registered as a tax agent pursuant to the Act, be restrained, whether by his servants, agents, or otherwise howsoever, from offering to:
    - 4.1. give advice to a person or entity in relation to entitlements, liabilities or obligations in relation to an Australian taxation law;
    - 4.2. complete for a person or entity a return or statement in relation to an Australian taxation law;
    - 4.3. lodge for a person or entity a return or statement in relation to a taxation law with the Australian Taxation Office; or
    - 4.4. communicate with the Australian Taxation Office on behalf of the person or entity;unless the offer is accompanied by explicit statements to the effect of each of the matters referred to in paragraphs 1 to 8 in Form A annexed hereto.
  5. The respondent pay one pecuniary penalty of \$35,000 in respect of the 132 separate contraventions of subsection 50-5(1) of the Act.
  6. The respondent pay one pecuniary penalty of \$5,000 in respect of the 3 contraventions of subsection 50-10(1) of the Act.
  7. The respondent pay the pecuniary penalties to the Commissioner of Taxation on behalf of the Commonwealth of Australia, such penalties to be paid as follows:
    - 7.1. \$10,000.00 on or before 6 November 2012;

- 7.2. \$10,000.00 on or before 6 January 2013;
  - 7.3. \$10,000.00 on or before 6 March 2013; and
  - 7.4. the balance on or before 6 May 2013.
8. The respondent pay the costs of the applicant on a party and party basis to be taxed if not agreed.

Date that entry is stamped:

Deputy District Registrar

ENDORSEMENT UNDER RULE 41.06

TO: TREVOR JOHN SCHMIERER

You will be liable to imprisonment, sequestration of property or punishment for contempt if:

- (a) where this order requires you to do an act or thing, you refuse or neglect to do the act or thing within the time specified in the order; or
- (b) where this order requires you to abstain from doing an act or thing, you disobey the order.

**SCHEDULE A**

**TO THE ORDER**

	<i>Taxpayer name</i>	<i>ITR tax year</i>	<i>Date</i>
1.	Daybell, Paul	2009	15/03/2010
2.	Pecoraro, Severine	2009	15/03/2010
3.	Pecoraro, Tony	2009	15/03/2010
4.	Select Automotive Pty Ltd	2009	15/03/2010
5.	Marsden, Warren	2009	19/03/2010
6.	Fig Tree Pocket Development Unit Trust	2009	20/03/2010
7.	Fig Tree Pockets Developments Pty Ltd	2009	20/03/2010
8.	Tabrizi Property Group Pty Ltd	2009	20/03/2010
9.	Pedler, Neil	2009	31/03/2010
10.	Stewart, Nathan	2009	31/03/2010
11.	Land One Solutions Pty Ltd	2009	10/04/2010
12.	Tregenza, Peter	2009	12/04/2010
13.	Tregenza, Mary	2009	17/04/2010
14.	Harwick St Trust	2009	16/04/2010
15.	MLT Secretarial Consultants Pty Ltd	2009	16/04/2010
16.	Tregenza Super Fund	2009	unknown
17.	Flame Control Industries Trust	2009	16/04/2010
18.	Pedler Family Trust	2009	16/04/2010
19.	TPG Trust	2009	16/04/2010
20.	Flame Control Industries Pty Ltd	2009	16/04/2010
21.	Ricardos Shoes Pty Ltd	2009	16/04/2010
22.	SMP Medical Services Pty Ltd	2009	16/04/2010
23.	SMP Medical Services Pty Ltd	2010	03/12/2010
24.	Barden, Derrick	2009	17/04/2010
25.	Brooks, Dawn	2009	17/04/2010
26.	Brooks, Stewart	2009	17/04/2010
27.	McLellan, Tamara	2009	17/04/2010
28.	Odgers, Julia	2009	17/04/2010
29.	Parvez, Seemen	2009	17/04/2010
30.	Sue Horne Enterprises Pty Ltd	2009	29/04/2010
31.	Horne, Susan	2009	01/05/2010
32.	Stewart, Douglas	2009	13/05/2010
33.	Stewart, Kerrie	2009	13/05/2010
34.	Tabrizi, Shakira	2009	13/05/2010
35.	Ainsworth, Wendy	2009	27/07/2010
36.	Rogers, Jennifer	2010	01/08/2010

37.	Gardner, Richard	2010	04/08/2010
38.	Borsht, Benjamin	2010	12/08/2010
39.	Powe, Sonya	2010	20/08/2010
40.	Powe, Sonya	2011	08/08/2011
41.	Powe, John	2010	20/08/2010
42.	Powe, John	2011	08/08/2011
43.	Tabrizi, Kevin	2010	20/08/2010
44.	Ballinger, Kylie	2010	23/08/2010
45.	Tabrizi, Kayhan	2010	27/08/2010
46.	Cope, David	2010	02/09/2010
47.	Horne, Cameron	2010	02/09/2010
48.	Ballinger, Jeffrey	2010	10/09/2010
49.	Web Data Services Pty Ltd	2010	14/09/2010
50.	Strike, Leanda	2010	18/09/2010
51.	Strike, Peter	2010	18/09/2010
52.	Whitehead, Angus	2010	21/09/2010
53.	Horne, Jeffrey	2010	29/09/2010
54.	Baldwin, Corey	2010	01/10/2010
55.	Gorbacz, Colleen	2010	01/10/2010
56.	Healey, Stephen	2010	01/10/2010
57.	Marshall, Kathryn	2010	01/10/2010
58.	Swider, Steve	2010	06/10/2010
59.	Ainsworth, Brendan	2010	07/10/2010
60.	Ainsworth, Wendy	2010	07/10/2010
61.	Parmaklis, Yianni	2010	13/10/2010
62.	Parmaklis, Yianni	2011	29/09/2011
63.	Boyd, Andrew	2010	14/10/2010
64.	Parmaklis, Elli	2010	14/10/2010
65.	Parmaklis, Elli	2011	07/10/2011
66.	Parmaklis, Elli	2011	07/10/2011
67.	Dent, Michael	2009	15/10/2010
68.	Bryzak, Benjamin	2010	20/10/2010
69.	Desmond, Harriett	2010	20/10/2010
70.	Michelmores, Shawn	2010	21/10/2010
71.	Papavasiliou, Domna	2010	22/10/2010
72.	McNeil, Jason	2010	26/10/2010
73.	Ratnam, Aneesh	2010	unknown
74.	Ratnam, Ashwin	2010	unknown
75.	KR Ratnam and YVM Sundram Partnership	2010	unknown
76.	Marsden, Marie	2010	05/11/2010

77.	Child, Madam Andrew	2010	09/11/2010
78.	Child, Melissa	2010	09/11/2010
79.	Cuttriss, Christine	2010	04/12/2010
80.	Cuttriss, Craig	2010	04/12/2010
81.	Cuttriss, Nicholas	2010	04/12/2010
82.	Choobandnejad, Elaheh	2010	01/01/2011
83.	Momenzadeh, Sirous	2010	01/01/2011
84.	Cuttriss, Stephen	2010	28/01/2011
85.	K Ratnam and Y Sundram Medical Pty Ltd	2010	11/02/2011
86.	K Ratnam and Y Sundram Medical Pty Ltd	2011	unknown
87.	Locan Pty Ltd ata Ratnam Family Trust	2010	11/02/2011
88.	Andrew Child Family Trust	2010	11/02/2011
89.	Bloomin Homewares Trust	2010	11/02/2011
90.	C & C Cuttriss Family Trust	2010	11/02/2011
91.	Drelgold Pty Ltd	2010	11/02/2011
92.	EDY Trust	2010	11/02/2011
93.	P J & J Trust	2010	11/02/2011
94.	Poolschool Trust	2010	11/02/2011
95.	Ryco 24/7 Trust	2010	11/02/2011
96.	Kaima Engineering Pty Ltd	2010	11/02/2011
97.	Resource Engineers Pty Ltd	2010	11/02/2011
98.	Tiny Teeth Pty Ltd	2010	11/02/2011
99.	Urban Air & Electrical Pty Ltd	2010	11/02/2011
100.	Mahony, Corinna	2010	16/02/2011
101.	Mahony, Mervyn	2010	16/02/2011
102.	Pronk, Diana	2010	16/02/2011
103.	Graefe, Julie	2010	18/02/2011
104.	Addae, Louisa	2010	08/03/2011
105.	Addae-Bosomprah, Hansel	2010	08/03/2011
106.	Walker, Vikki	2010	12/03/2011
107.	McCaffery, Kevin	2010	12/04/2011
108.	Ratnam, Ruban (Kamala)	2010	15/04/2011
109.	Ratnam (Sundram), Yvonne	2010	15/04/2011
110.	SPR Horses Pty Ltd	2010	29/04/2011
111.	Pro Dredging & Marine Consultants Pty Ltd	2010	28/06/2011
112.	SPR Horses Pty Ltd	2010	29/04/2011
113.	Lovering, Julie	2010	09/05/2011
114.	Treur, Linda	2010	17/05/2011
115.	McCaffery, Ruth	2010	24/05/2011
116.	Hunter, Catherine	2010	26/05/2011

117.	Investing for Future Pty Ltd	2010	01/06/2011
118.	Investing for Future Company Pty Ltd	2009	01/06/2011
119.	Janke, Bruce	2011	03/08/2011
120.	Janke, Patricia	2011	03/08/2011
121.	Ainsworth, Brendan	2011	About Sept 2011
122.	Ainsworth, Wendy	2011	About Sept 2011
123.	Ainsworth, Brendan	2009	08/09/2011
124.	Statewide Contracting Qld Pty Ltd	2010	16/09/2011
125.	Baldwin, Corey	2011	unknown
126.	Gorbacz, Colleen	2011	22/09/2011
127.	QAM Property Services Pty Ltd	2010	27/09/2011
128.	Papavasiliou, Domna	2011	29/09/2011
129.	Dipadees Trust	2011	05/10/2011
130.	Property Trust	2011	05/10/2011
131.	Sint Nikolaas Property Trust	2011	05/10/2011
132.	Boyd, Andrew	2011	07/10/2011

**SCHEDULE B**

**TO THE ORDER**

**FORM A**

I, [*print full name*] .....,  
having requested Trevor John Schmierer to provide a service (i) to me / (ii) to the entity named  
..... [*delete whichever inapplicable*]

relating to one or more of the following services:

- (a) giving advice concerning entitlements, liabilities or obligations that arise or could arise under a taxation law;
- (b) completing a return or statement in relation to a taxation law;
- (c) lodging a return or statement in relation to a taxation law with the Australian Taxation Office;  
or
- (d) communicating with the Australian Taxation Office on my / its behalf;

and having been informed that:

- 1. he is not a registered tax agent;
- 2. he may not have the educational qualifications to be a registered tax agent and could only finally ascertain whether he is eligible in terms of those qualifications to be registered if he were to apply to the Tax Practitioners Board for registration as a tax agent;
- 3. he may not have the relevant experience as required by the *Tax Agent Services Regulations 2009* (Cth) to become a registered tax agent;
- 4. he may not be a fit and proper person to be a registered agent so as to be able to provide a service relating to one or more of items (a), (b), (c) or (d) above for a fee or other reward;
- 5. a person or entity should seek assistance from a registered tax agent for matters that relate to such services or for such services;
- 6. he does not wish to receive, and will not accept, any fee, benefit or reward of any kind for providing such a service;
- 7. he is likely to be contravening the *Tax Agent Services Act 2009* (Cth) if he receives a fee, benefit or reward for providing such a service; and
- 8. he is required by order of the Federal Court of Australia to inform me of these matters;

still request him to provide the service.

SIGNED..... DATE.....

.....  
*print full address*