



HIGH COURT OF AUSTRALIA

Public Information Officer

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TRAVEL COMPENSATION FUND v ROBERT TAMBREE trading as R Tambree and Associates, PHILLIP ROSEBY trading as PJ Roseby & Co, RENEE JULIE FRY, TREVOR FRY AND ROBYN JOAN FRY

Illegality on the part of a travel agent who had lost her licence did not prevent the Travel Compensation Fund from succeeding in its claim for damages against an accountant and an auditor who had engaged in misleading or deceptive conduct, the High Court of Australia held today.

Under a national scheme for regulation of travel agents, a compensation fund reimburses people who suffer loss through an act or omission of a travel agent. Under the New South Wales *Travel Agents Act*, all travel agents must be licensed and a condition of a licence is that the licensee be a participant in the Travel Compensation Fund (TCF). Continued eligibility depends on financial viability so agents are required periodically to submit audited financial statements.

Renee Fry's Parramatta travel agency, The Travel Shop International, specialising in travel to Fiji and Bali, opened in early 1997. She was a participant in the TCF and obtained an agent's licence. Her father, Trevor Fry, looked after the accounts. The firm's financial statements for 1996-97 and 1997-98 were prepared by Mr Tambree, and audited by Mr Roseby and submitted to the TCF. The travel agency collapsed in 1999 after the TCF conducted a field audit in response to complaints from creditors. The financial statements had failed to disclose substantial liabilities and reported a net profit. By 30 June 1998, the firm owed Metro Travel, a wholesaler of airline tickets, \$152,615, but a net profit of \$8,337 was reported. In February 1999 Ms Fry wrote to the TCF to resign from the scheme, but she continued to trade without a licence until the Department of Fair Trading changed the locks two months later. The TCF arranged for another agency to take over all bookings and paid \$143,050 to claimants, with most of the losses accrued between February and April 1999.

The TCF began proceedings in the NSW Supreme Court, seeking recovery of the money it had paid out. Justice Robert Austin held that Mr Tambree failed to meet the standard of care required of an accountant, Mr Roseby's conduct amounted to negligent misrepresentation, and there was a causal connection between their conduct and the TCF's losses. He held that the TCF's reliance on the financial statements was reasonable. Mr Tambree and Mr Roseby appealed. They denied their conduct caused the TCF's losses as most of the TCF claim related to when Ms Fry was trading illegally. The Court of Appeal held that Mr Tambree and Mr Roseby owed the TCF a duty of care and breaching that duty caused the TCF's losses. However, it held that the illegal trading broke the causal connection as Ms Fry's conduct was not a normal occurrence so the TCF could not recover the compensation payout from Mr Tambree or Mr Roseby, apart from \$13,320 for consumers who made payments for holidays while Ms Fry was still licensed. The TCF appealed to the High Court.

The Court unanimously allowed the appeal. It held that the illegal trading did not sever causation. The Court held that the very purpose of the scheme is to protect the public against loss resulting from dealing with defaulting agents. Such default commonly results from financial failure which may lead to some form of illegality while businesses try to trade their way out of difficulty. The TCF required information about the financial position of agents to protect it from the risk of paying compensation to customers of agents who lost their licence. That was the kind of risk against which the TCF sought to protect itself by obtaining audited financial statements from agents.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*