

MFS case: \$2bn lost, 217 breaches, but watchdog failed to growl

The Australian, June 17, 2017 - ANTHONY KLAN, Journalist, Sydney

In the autumn of 2007, only months before the global financial crisis, 70-year-old Robert Lentin walked into the Melbourne CBD offices of a financial planner with \$300,000 in his superannuation account.

The planner encouraged Mr Lentin, a former chartered accountant, to set up a self-managed superannuation fund — and to invest his money in about 10 financial products.

Every one of those products has either since failed or suffered huge losses, leaving Mr Lentin, who is in retirement, with just half his investment.

Among the “investments” were \$23,000 in the Gold Coast-based MFS Group and \$24,000 in the Prime Retirement and Aged Care Property Trust.

Both paid financial planners handsome commissions of up to 8 per cent for every dollar they directed to the funds.

Both also collapsed spectacularly soon after: MFS taking with it \$2 billion worth of funds from tens of thousands of investors, and Prime Trust \$560 million invested by 8000 people.

The Supreme Court of Queensland last week found directors of MFS had breached 217 laws and illegally shifted \$147.5m of investor funds, then forged and backdated documents to cover up the crimes.

In the case of Prime Trust, the Australian Securities & Investments Commission took action against founder Bill Lewski — and its chairman at the time, former federal health minister Michael Wooldridge — on the grounds they allegedly signed off on a \$33m payment to Lewski before the group collapsed.

Despite the enormous sums of money involved, criminal charges have never been laid in either case.

With Prime Trust, ASIC’s case was ultimately thrown out — and directorship bans on Lewski and Wooldridge were reversed — because it failed to launch proceedings within a six-year statute of limitations.

That failure by ASIC was the “primary cause for the complexities” in the proceeding as the court could not rely on events that had occurred more than six years earlier.

With MFS, despite the enormity of wrongdoing, and a seven-year court battle, the court could do nothing other than issue fines: ASIC had failed to take any criminal legal action.

“I can’t understand the time it takes them to do anything,” Mr Lentin told *The Weekend Australian*. “And then even after all this time there are no criminal proceedings against any of them.”

Lawyer and former senior ASIC investigator Niall Coburn is equally disgusted by the failure of the corporate regulator to take appropriate action, which he says sends a green light for those considering malfeasance.

“It is truly remarkable that ASIC failed to take any criminal action in the case of MFS, and fumbled so badly with Prime Trust,” Mr Coburn says.

“Given the dishonesty of directors it appears astonishing that ASIC brought civil penalty proceedings rather than criminal actions.”

ASIC chairman Greg Medcraft declined several requests to be interviewed for this article.

Following an announcement of the judgment in the MFS case, ASIC commissioner John Price argued the regulator had not pursued criminal actions because it considered it did not have sufficient evidence.

But judge James Douglas's findings place those claims in an entirely different light: there were 217 breaches of the Corporations Act.

What's more, even after losing \$2bn of investors' money, the judge found, the directors continued to display "no contrition".

Last week ASIC published a statement commending itself on the action it had taken against MFS.

Justice Douglas endorsed ASIC's view that legal requirements "were flagrantly ignored" and that the penalties "should reflect the complete disregard which these defendants had to their duties under the Corporations Act", the statement said.

Mr Price said: "The substantial disqualifications from managing corporations and pecuniary penalties imposed by the court reflect the seriousness with which courts view abuses by directors and senior managers of corporations who occupy positions of substantial trust in the investment community. To say the least, the court's judgment demonstrates that this trust was most seriously abused in this case."

Four former MFS directors have been ordered to collectively repay \$615m for the fraudulent transfer of the \$147.5m of investor funds. But penalties for the directors included fines of up to a maximum of just \$650,000 and periods banning them from acting as company directors ranging from five years to life.

The case, again, is in ASIC's court. The only party that can take action to pursue those directors for the mooted \$615m is ASIC.

In his judgment on MFS, Justice Douglas found the executives had "flagrantly ignored" the law.

"The insouciant attitude of the defendants to this misuse of money intended to be used for (MFS) investors beggars belief," Justice Douglas said.

Mr Lentin says he is equally baffled. "It's amazing it took so long for ASIC to do anything regarding MFS, and then we hear they are pressing no charges despite over 200 breaches of the corporations law," he said.

"I'm 77 and I could really use that money."
