

## **ASIC investigates financial planners**

The Australian Securities and Investments Commission has been keeping its lawyers busy over the past fortnight. The regulator has been in and out of court chasing various characters for allegedly failing to behave appropriately as financial advisers.

One of those cases involves Mervyn William Mitchell, a former financial adviser from Tasmania. Mitchell is facing 110 charges laid by the ASIC under the Superannuation Industry (Supervision) Act, the Corporations Act and the Tasmanian Criminal Code.

The charges come after an investigation into Mitchell's professional activities by the ASIC and officers from the fraud division of the Tasmanian police force. It is a case that is being prosecuted by the Commonwealth Director of Public Prosecutions.

The allegations against Mitchell are that he made use of more than \$4.5 million from the super funds and investment funds of 59 clients for his own purposes between July 1995 and May 2003.

Mitchell appeared before the Hobart Magistrate's Court in the past fortnight. He declined to enter a plea and is due to come before the court again on November 11, 2003.

Harold Frederick Moses, however, is a completely different kettle of fish. Moses, a former AMP agent, pleaded guilty in the Sydney District Court to one count of defrauding a former client.

Moses, 37, ran a company called Baxters Holdings Pty Ltd, which had as its stock in trade a superannuation business. An administrator was appointed to that business early in 1998.

The ASIC says in its release on the Moses case that its investigators uncovered Moses' practice of accepted approximately \$318 000 in compulsory super contributions from his client. Those contributions did not find their way into the super funds for which they were intended. Moses did not pass the relevant sum to the AMP and Host-Plus super funds.

Moses pulled the plug on his role as an agent for AMP in 1994 but he continued to get super contributions from the client. The AMP has struck a compensation agreement with Moses' client for the loss suffered as a result of those monies not being remitted at the time they were passed on. Moses will be sentenced on October 3.

The ASIC managed to extract an enforceable undertaking from a Melbourne law firm, Herbert Greer & Rundle, that came to the regulator's attention because of a promotion of a particular investment scheme without the appropriate advisory license.

The investment scheme concerned is agriculture-based.

Anthony Henry May, a lawyer, is also subject to the enforceable undertakings as are two responsible entities of managed investment schemes.

“The enforceable undertaking follows an ASIC investigation into over a thousand letters signed by May, a lawyer employed with the firm, which in ASIC’s view encouraged recipients to invest in schemes operated by the responsible entities,” the ASIC announcement advising of the undertaking states.

The Commission says a number of the letters sent out to prospective investors were on Herbert Geer & Rundle letterhead. Those letters were sent, interestingly, to people already investing in the two schemes, potential investors and some members of the Victorian bar.

“Mr May, W.A. Blue Gum Ltd, Mediterranean Olives Estate Ltd and Herbert Geer & Rundle have denied any contravention of the law but have acknowledged ASIC’s concerns,” the Commission notes. “Under the terms of the enforceable undertaking they have agreed they will not allow any similar letters to be published in the future.”

This article was supplied by Tom Ravlic. Tom Ravlic is a financial journalist who has spent the past seven years covering the accounting profession, accounting and audit standard setting and corporate governance. His work has appeared in various publications including *Business Review Weekly*, *Personal Investment* (now *Personal Investor*), *The Age*, *CFO Magazine*, the *Australian CPA*, the *Company Director Journal* and the newsletters of the internationally renowned Lafferty Group. In addition to his freelance commitment to a wide range of publications, Tom has recently accepted an appointment to be editor of *Chartac Accountancy News*, published by Melbourne-based publisher Crown Content.