ASIC should be liable to Sterling victims for failure to act

Dozens of elderly Australians are the latest victims of the failings of Australia's corporate regulator. In around 2015, the Sterling First group began raising funds from retirees who wanted to downsize their home, convincing them to pay a lump sum of $250,000-$300,000 as upfront rent for the rest of their lives. The company did not disclose the risks of what was in fact a convoluted managed investment scheme. When Sterling collapsed into administration in 2019, more than 100 elderly tenant "investors" had lost millions in life savings and now face eviction from their homes.

Some of the more than 100 elderly victims of the Sterling First collapse protesting outside the Perth Supreme Court on 1 June. The Court's narrowly-defined ruling against them means they all face eviction and financial ruin from a scam run by financial predators already known to ASIC. Photo: Screenshot

Consumer advocate and founder of the Banking and Finance Consumers Support Association, Denise Brailey, has demanded the corporate regulator, the Australian Securities and Investments Commission (ASIC) make a $26 million fund available to compensate investors misled by Sterling's schemes. ASIC was extremely slow to act on Sterling, and evidently ignored obvious red flags, including that leading figures in the scandal have been involved in similar disasters in which investors lost hundreds of millions of dollars, or have previously been bankrupted by failed property investment schemes.

A director and founder of Sterling First, Ray Jones, was discharged from bankruptcy in 2015. He was a key figure in the 1990s Geneva Finance scandal, whereby Geneva financed struggling farmers who sold their properties to the Rural Property Trust and then leased their land back, receiving some cash and Geneva-funded property trust units. Investors in the scheme, who faced $30 million in losses, had bought debentures (unbacked bonds) from Geneva Finance, unaware they were investing in what the 21 January 1991 *Australian Financial Review* reported was the "rickety corporate empire" of Ray Jones, who chaired both Geneva and the Rural Property Trust. The Australian Securities Commission (later ASIC) quietly dropped charges against Jones and other directors in 1995, claiming there was not a realistic prospect of conviction.

Sterling First director Simon Bell was a key figure in the disastrous property development Ponzi scheme Westpoint, which collapsed into receivership in 2006 with total losses of $388 million, of which less than half was recovered for investors. Denise Brailey reports ASIC was first alerted to Westpoint's activities in 2001, but the regulator did not commence court action to stop Westpoint until 2005, shortly before the company collapsed. KPMG came under fire as Westpoint's auditor, and for its former association with a Westpoint director, paying ASIC $60 million to settle compensation claims against KPMG in 2011, far short of the $200 million ASIC originally sought.[1] Bell was a leading figure of another failed managed investment scheme which involved retirement village projects, wound up by ASIC in 2009 with little or no funds left for investors. The 22 September 2009 *Sydney Morning Herald* reported Bell had poured $40 million into the scheme. Shockingly, ASIC outsourced a recent inquiry into the role of directors of Sterling First—which would include former Westpoint director Simon Bell—to the same Westpoint auditor KPMG (at a cost of $440,000)!

The 7 April 2006 AFR reported the Westpoint disaster was strongly reminiscent of dozens of other property collapses, particularly in the 1980s, where the "regulator was late on the scene". Over a decade later, nothing had changed—the Financial Services Royal Commission's 2018 Interim Report criticised ASIC, which it said "rarely went to court to seek public denunciation of and punishment for misconduct", and "[w]hen misconduct was revealed, it either went unpunished or the consequences did not meet the seriousness of what had been done".

ABC reported on 26 November 2020 that the first complaint to ASIC about

Sterling was made in 2016, but

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Denise Brailey reports official complaints were made as early as 2015. On 17 December 2020, former senior advisor to ASIC and high court barrister Niall Coburn reported that Western Australia's Department of Commerce had raised red flags to ASIC in early 2017; however ASIC took eight months to issue only limited "stop orders" which Sterling sidestepped, accelerating its scheme to entice millions more from elderly people. In 2017 Sterling had $417,000 under management, which grew to approximately $15 million in 2018. Coburn writes it appeared that "ASIC failed to act when it had sufficient information and was too slow to stop a predicted calamitous situation occurring".[2]

ASIC's consistent failure to act to prevent or punish misconduct now appears to have escalated to actually enabling it. ASIC Chair James Shipton was formerly a managing director and Head of Government Affairs at Goldman Sachs when it was central to the massive corruption scandal which stole billions of dollars from Malaysia's sovereign wealth fund. In April 2021, an investigation by Anthony Klan revealed an independent review into allegations of corruption against Shipton and ASIC had been secretly doctored by the Treasury, hiding critical findings which revealed Shipton had effectively written KPMG a taxpayer-funded blank cheque to provide his personal taxation services. Klan reported Shipton and deputy chairman Daniel Crennan personally received $200,000 in illegal benefits, but the Treasury announced the review had "cleared" Shipton of wrongdoing.[3]

So far, ASIC's only disciplinary action regarding Sterling has been initiated against Robert Marie, formerly a state manager at Macquarie Bank and Director of Wealth Management and Insurance at Bankwest, and his company, Theta Asset Management, the responsible entity for the Sterling Income Trust managed investment scheme and a "cornerstone partner" of the Sterling First Group. Yet belated ASIC legal action is no help to the pensioners who were ruined by Sterling because of ASIC's failure to stop discredited financial schemers preying on new victims. They are facing eviction now! Treasurer Josh Frydenberg should accept responsibility for ASIC's failings and agree to Denise Brailey's demand for a compensation fund so the elderly victims can stay in their homes.

By Melissa Harrison, Australian Alert Service 2 June 2021

Footnotes

1. Adam Schwab, "Westpoint paper trail snares KPMG", (crikey.com. au), 18 Aug. 2009.
2. Niall Coburn, "ASIC slow off the mark as retirees lose millions in Managed Investment Scheme", (thomsonreuters.com), 17 Dec. 2020.
3. Anthony Klan, "Findings into ASIC corruption secretly deleted by Treasury", (theklaxon.com.au), 22 Apr. 2021.