

update

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Friday Facts: Liquidator banned for ten years

In the recent Supreme Court of Victoria case of Australian Securities Commission (“ASIC”) v Robert John Edge (“Mr Edge”) [2007] VSC 170, Justice Dodds-Streeton inquired into the conduct of Mr Edge, a registered liquidator after ASIC brought proceedings against him under Section 536 of the Corporations Act (Cth) (the “Act”).

Section 536 of the Act provides that where it appears to the Court or to ASIC that a liquidator is not faithfully performing his or her duties or is not observing the requirements of the Court or the Act, the Court may enquire into the conduct of the liquidator and take such action as it thinks fit.

In the case of Mr Edge, ASIC requested the Court to enquire into his conduct as liquidator of 21 companies and administrator of 3 companies.

ASIC contended that Mr Edge had breached approximately 30 different provisions of the Act including:

- Drawing remuneration from the assets of the companies without obtaining any, or any valid approval;
- Destroying or causing to be destroyed, the books and records of numerous companies prior to their deregistration and without obtaining the creditor’s approval or ASIC’s consent;
- Failing to maintain adequate and proper records of documents including deeds of company arrangement he lodged or alleged to have lodged with ASIC;
- Failing to lodge approximately 130 forms, reports and documents of different types

with ASIC as required by applicable legislation;

- Failing to hold final meetings of creditors and failing to lodge final accounts in relation to a considerable number of companies;
- Failing to lodge and file reports of possible breaches by directors of companies to which he was appointed;
- Consistently and inappropriately delegating his duties and functions as a liquidator or administrator to his associate who was inadequately qualified, instructed and supervised;
- Accepting an appointment as the voluntary administrator of a company for an improper circumstance when the company was neither insolvent or likely to become so at some future time in order to assist the director (with whom he had a personal relationship) to resolve a matrimonial dispute.
- Failing to disclose his previous dealings and personal relationship with the director;
- Exaggerating time sheets for an administration.

Counsel for Mr Edge conceded that he had failed to do a number of things but argued

that they were inadvertent actions. They also asserted that some of the actions were not breaches of duty under the Act but rather were failures to conform to best practice.

Justice Dodds-Streeton was not prepared to accept the arguments advanced by Mr Edge’s counsel, stating that in her opinion the evidence established that for a period of some years Mr Edge had repeatedly contravened the Act and that there was a “chronic and widespread failure” to comply with statutory requirements. Her Honour concluded that she was satisfied that his conduct warranted his removal from office for a period of ten years.

This case demonstrates the importance of liquidators and administrators ensuring they carefully conduct their practices to ensure they comply with requirements of the Act.

For more information

For more information, please contact:

- Mary Nemeth, Partner on
03 9321 7810 or 0400 627 048
mmemeth@rigbycooke.com.au

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