



Tuesday 15 January 2008

08-08

SYDNEY LIQUIDATOR SUSPENDED

The Companies Auditors and Liquidators Disciplinary Board (the Board or the CALDB) has suspended Mr Richard Albarran's registration as a liquidator for nine months. The suspension follows Mr Albarran's written notification to the Administrative Appeals Tribunal (AAT) requesting his application for a review of the CALDB decision to suspend his registration be withdrawn. The effect of that notification is that the AAT has dismissed Mr Albarran's review application without proceeding to review the Board's decision.

Mr Albarran's suspension commences on 16 March 2008 in order to enable him to resign from all his existing appointments and to enable replacement external administrators to be appointed with minimum disruption to creditors.

Following an application by ASIC, the Board suspended Mr Albarran's registration after finding he failed to carry out or perform adequately and properly duties or functions required of a registered liquidator under Australian law. The Board's orders were stayed pending Mr Albarran's appeal to the AAT.

Specifically, the Board found that in circumstances where he and members of his firm (Hall Chadwick) were prohibited by professional standards from accepting an appointment as administrator of Formula Engineering Pty Limited (Formula) – due to a prior professional relationship that his firm had with Formula – Mr Albarran participated in separate arrangements with sole practitioner, Mr Andrew Ashton, and Mr James Smiles, then of Smiles, Poulos & Associates, whereby Mr Albarran and persons from his firm performed functions of an administrator or administrator of a deed of company arrangement. Those functions had been outsourced to Hall Chadwick by Messrs Ashton and Smiles during the respective periods when each of them was the appointed external administrator of Formula.

The Board stated that 'a reasonably competent practitioner would know not to and would not accept an engagement to perform by means of a contrivance functions which he was prohibited from performing as an appointed administrator', and further, that Mr Albarran 'has committed breaches of professional obligations which show a significant lack of appreciation of the purpose and scope of accepted standards of professional conduct relating to independence and objectivity.'

ASIC's application to the CALDB regarding Mr Albarran reflected the importance placed by ASIC on professional independence for both the integrity of financial markets and protection of creditors. Recent amendments to the Corporations Act address these issues by now requiring administrators, and liquidators in a voluntary liquidation, to send to creditors with the notice of the first meeting, a declaration concerning any 'relevant relationships' or indemnities. The Insolvency Practitioners Association recently re-issued its Code of Professional Practice for Insolvency Professionals which also now addresses in detail independence, integrity, objectivity and impartiality.

The CALDB is an independent statutory body given functions and powers under the Corporations Act. The Board's disciplinary responsibilities pursuant to the Act are intended to provide an incentive to registered auditors and liquidators to maintain high professional standards. The Board also has a public protective and educative role by virtue of its jurisdiction to cancel or suspend the registration of an auditor or liquidator.

Background

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| 6 January 2005 | ASIC files the CALDB application |
| 20 July 2005 | Mr Albarran files summons in High Court challenging constitutionality of the CALDB. Also seeks a stay of the CALDB proceedings pending outcome of High Court constitutional challenge to the CALDB. |
| 15 August 2005 | High Court dismisses summons filed on 20 July 2005, remits the proceeding to the Federal Court and refuses stay of the CALDB proceedings. |
| 3 May 2006 | The CALDB hands down decision suspending Mr Albarran's registration as liquidator for nine months. |
| 8 May 2006 | Mr Albarran files at the AAT application for review of the CALDB decision. Also files an application for stay of the CALDB's decision pending outcome of review application. |
| 16 May 2006 | AAT grants stay of the CALDB decision until review application is determined by the AAT. |
| 19 May 2006 | The Full Federal Court dismisses the application and upholds the CALDB's constitutionality (MR 06-161 refers). |
| 15 June 2006 | Mr Albarran applies for special leave to appeal from the Full Federal Court judgement of 19 May 2005. |
| 29 September 2006 | Crennan & Heydon JJ of High Court grant application for special leave. |
| 24 May 2007 | High Court unanimously dismisses constitutional challenge to the CALDB (MR 07-143). |
| 19 December 2007 | Mr Albarran lodged written notification at the AAT requesting that his application for review of the CALDB decision to suspend his registration as a liquidator for nine months be withdrawn. |
| 20 December 2007 | AAT officially notifies ASIC by letter of this date that Mr Albarran's application for review was finalised by being dismissed on 19 December 2007. |
| 15 January 2008 | Notice of CALDB's decision is given to Mr Albarran, suspension to commence 60 days from this day. |

16 March 2008

Mr Albarran's nine month period of suspension commences.

For further information contact:

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