

**IN THE MATTER** of an Application by the Australian Securities and Investments Commission (ASIC) to the Companies Auditors and Liquidators Disciplinary Board pursuant to section 1292(7) of the Corporations Act 2001

**MATTER NO: 01/NSW13**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Applicant

**JOESPH MANGRAVITI**  
Respondent

**DECISION** of the Board to exercise its powers under section 1292(7) of the Corporations Act. This decision is lodged with ASIC under section 1296(1)(b) of the Corporations Act.

**10 April 2013**

Panel:

Howard Insall SC (Chairman)

Bruce Gleeson (Accounting Member)

Karen O'Flynn (Business Member)

Companies Auditors and Liquidators Disciplinary Board  
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## DECISION AND REASONS

1. This is an application by the Australian Securities and Investments Commission ("ASIC") to the Companies Auditors and Liquidators Disciplinary Board ("the Board") seeking to cancel the registration of Joseph Mangraviti ("the Respondent") pursuant to s 1292 of the Corporations Act 2001 ("the Act"). The application is based upon an allegation that the Respondent is an undischarged bankrupt and, as such, is disqualified from managing corporations. The Board is therefore requested to cancel the registration as required by s 1292(7) of the Act.
2. The Application was lodged with the Board on 14 January 2013.
3. The hearing was held on 3 April 2013. Ms Kristina Penny appeared for ASIC. The Respondent appeared in person.
4. The Application contained a Statement of Facts, supported by documentary evidence. That evidence was tendered and admitted without objection. It established the following matters:
  - (a) The Respondent is a registered auditor under Part 9.2 of the Act, having been originally registered under the Companies (NSW) Code on 13 April 1983;
  - (b) The Respondent was made bankrupt, pursuant to a debtor's petition, on 6 December 2010;
  - (c) On 29 August 2011, ASIC notified the Respondent that ASIC intended to make an application to have his registration cancelled under s 1292(7)(a) on the basis that he was an undischarged bankrupt and, thus, a person disqualified from managing corporations under Part 2D.6 of the Act. The Respondent was invited to file a notice of ceasing to practise as an auditor, to avoid the necessity of proceedings before the Board;
  - (d) On 7 August 2012, Ms Sharon Rodgers, a representative of ASIC, telephoned the Respondent. In that conversation (as confirmed in a letter sent by the Respondent to ASIC on the same day), the Respondent stated that he had been made bankrupt as a result of a personal guarantee, not in connection with his profession as a Public Accountant or Registered Company Auditor, and that it was his intention to have his bankruptcy annulled prior to discharge. He stated that this was the reason for not wanting his registration as an auditor cancelled;
  - (e) On 28 August 2012, ASIC responded to the Respondent's letter of 7 August 2012 stating that it may be some time "before the issue of

your bankruptcy is discharged” and that ASIC was, thus, not in a position to defer the application before the Board.

5. Four months elapsed between the communication referred to in 4(e) and the filing of the Application with the Board
6. Mr Mangraviti tendered certain correspondence at the hearing and adduced oral evidence from a witness, Mr Marc Galler, a Director of Armstrong Wily, Mr Mangraviti’s Trustee in Bankruptcy. The evidence was to the following effect:
  - (a) On about 7 March 2013, Mr Mangraviti contacted his Trustee regarding entering into a composition pursuant to s 73 of the Bankruptcy Act;
  - (b) The delay in Mr Mangraviti proceeding with the composition was brought about by a number of deaths in Mr Mangraviti’s family;
  - (c) As at 7 March, Mr Galler intended to proceed with the necessary paper work for the composition;
  - (d) Mr Galler estimated, in giving his evidence at the hearing on 3 April, that the creditors’ meeting would be convened within the next three weeks and that at such meeting, there would either be an approval or a rejection;
  - (e) Mr Galler’s view was that in the event that the composition were to be accepted, the bankruptcy would be annulled instantaneously;
  - (f) It appeared to Mr Galler that the bankruptcy creditors did not result from Mr Mangraviti’s actions as a Chartered Accountant or Auditor.
7. It was not in issue that, as at the date of the hearing, the Respondent remained an undischarged bankrupt.
8. Ms Penny for ASIC submitted that Mr Mangraviti, being an undischarged bankrupt, was a person disqualified from managing corporations under Part 2D.6, because of the effect of s 206B(3) of the Act. She submitted that once the fact had been established to the Board’s satisfaction that Mr Mangraviti was an undischarged bankrupt, the Board had no discretion but to cancel Mr Mangraviti’s registration under s 1292(7) of the Act.
9. Mr Mangraviti submitted that the Board should refuse to exercise its power to cancel his registration in view of the matters set out in paragraph 6 above. He submitted that, in effect, the Board should cut red tape because he may be in a position in three weeks where his bankruptcy would be annulled. If the Board cancelled his registration, he would then have to reapply to be registered as an auditor.

10. Mr Mangraviti further submitted that an auditor does not take part in the management of Corporations under Part 2D.6 of the Corporations Act.
11. When asked how the Board could have any discretion in view of the express words of s 1292(7), Mr Mangraviti submitted, in effect, that s 1292 must be read as giving the Board the power to decline to exercise its power in circumstances such as the present, so as to avoid him going through all the rigmarole of reapplying for registration and where the effect of approval of the composition would be to avoid his bankruptcy *ab initio*. He submitted that the composition procedure under s 73 of the Bankruptcy Act was like an appeal process, where there was no time limit for appeal and, in effect, the status quo concerning his registration should be maintained pending the creditors' meeting.
12. The powers of the Board under s 1292 vary in their nature. For example, s 1292(1) provides that the Board "*may, if it is satisfied on an application by ASIC ... for a person who is registered as an auditor to be dealt with under this section that ... the person has ... contravened s 324DB ... by order, cancel, or suspend for a specified period, the registration of the person as an auditor*" (emphasis added).
13. In contrast, s 1292(7) and (8) provide:
 

“(7) The Board *must*, if it is satisfied on an application by ASIC or APRA for a prescribed person to be dealt with under this section:

  - (a) that the person is disqualified from managing corporations under Part 2D.6; or
  - (b) that the person is incapable, because of mental infirmity, of managing his or her affairs;

by order, cancel each prescribed registration of the person.  
[emphasis added]

(8) In subsection (7) and in this subsection:

*prescribed person* means a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate.

*prescribed registration*, in relation to a prescribed person, means a registration of the person as an auditor, as a liquidator or as the liquidator of a specified body corporate.”
14. In our view, the effect of these provisions is that if we are satisfied, on this Application, that Mr Mangraviti is a person who is disqualified from managing corporations under Part 2D.6, we have no discretion, but must cancel Mr Mangraviti's registration.

15. We have no doubt that Mr Mangraviti is a person who is disqualified from managing corporations under Part 2D.6. Part 2D.6 provides, in s 206B(3):

“(3) A person is disqualified from managing corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.”
16. It was conceded, at the hearing, that Mr Mangraviti remained an undischarged bankrupt. The inexorable effect of the fact that Mr Mangraviti is an undischarged bankrupt is that he is a person who is disqualified from managing corporations under Part 2D.6. The conditions set out in s 1292(7) are thus satisfied in this case. We are satisfied, on an application brought by ASIC for Mr Mangraviti to be dealt with under s 1292(7), that he is a person who is disqualified from managing corporations under Part 2D.6 of the Act.
17. It is not to the point, as submitted by Mr Mangraviti, that an auditor does not necessarily take part in the management of Corporations. There is certainly no basis for the view (which may have been implicit in that submission) that s 1292(7) is only intended to apply to persons who manage corporations under Part 2D.6, and are disqualified from doing so. The effect of s 1292(7) is that if the Board is satisfied that a registered auditor is, by reason of the provisions of Part 2D.6, disqualified from managing corporations (regardless of whether he or she can or does so in fact), the Board must cancel registration. The mandatory nature of s 1292(7) is confirmed by the terms of s 1296(1) of the Act.
18. In the circumstances, we do not need to address the question whether annulment of Mr Mangraviti’s bankruptcy is imminent and/or whether or not such annulment would operate *ab initio* (although no authorities were provided to the Board in support of the latter proposition). We do not need to form a view about these matters because, even if made out, they are irrelevant in the circumstances.
19. We believe that it is implicit in the choice of the word “must” in s 1292(7) (in contradistinction to the word “may” provisions such as s 1292(1)), that the legislature took the view that the status of being disqualified from managing corporations under Part 2D.6 is a very significant reason for cancelling the registration of an auditor, and a reason warranting cancellation by the Board forthwith. We believe this view mandates that applications on this ground ought to be brought to the Board promptly, so that the Board can give proper effect to what we perceive to be the legislature’s concern.

20. In all the circumstances, and for the above reasons, on 3 April 2013, we ordered that the registration of Joseph Mangraviti as an auditor be cancelled.

Howard Insall SC  
Chairman of the Panel

10 April 2013