

**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(2) of the Corporations Act 2001

**MATTER NO: 01/QLD11**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Applicant

**DAVID MARK ANDERSON**  
Respondent

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

**7 July 2011**

Panel:

Howard Insall SC (Chairman)

David Barnett

Philip Jefferson

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 seeking to cancel the registration of David Mark Anderson ("the Respondent") pursuant to s 1292 of the Corporations Act 2001 ("the Act"). The application is based upon an alleged failure by the Respondent to lodge an annual statement as required by s1288 of the Act.
2. The Respondent appeared in person at the hearing, which was held on 24 June 2011.
3. When the matter was called on for hearing on that day, the Respondent applied for an adjournment of the hearing. The substance of the Respondent's submissions appeared to be that the application should be adjourned pending determination of other proceedings which ASIC had commenced against the Respondent, seeking to recover \$147.5m. The Respondent submitted:
  - (a) That the other proceedings had not progressed as speedily as he had hoped and this had affected his ability to devote his attention to the present hearing;
  - (b) That there would be no detriment caused by an adjournment because he had not accepted any appointments for some time;
  - (c) That he could not lodge his statement due to his inability to obtain insurance;
  - (d) That he believed that he would be in a position, after completion of the other proceedings, to put forward submissions concerning ASIC's behaviour, which would have a bearing upon the outcome of the present application, although he could not do so at the present time.
4. In the course of his submissions, the Respondent conceded that he had not lodged his annual statement.
5. In response to the Panel's inquiry as to why he had not made an application for adjournment until the day of the hearing, the Respondent submitted that he did not think that he could have made a written submission which would have been sufficiently clear, that the present proceedings had "crept up" on him, and that he had, for some time, been trying to put ASIC to the test on anything and this meant that he was not seeking to avoid the present hearing "on a tangential matter".
6. ASIC opposed the application for an adjournment.

7. We refused the Respondents' application for an adjournment because we did not consider that he had established a sufficient basis for such an adjournment. He failed to identify what conduct on the part of ASIC was either wrongful or inappropriate in a way which was relevant to the present proceedings and he adduced no evidence to support his criticisms of ASIC. To the extent that the Respondent relied upon his inability to devote himself to the present matter, we do not believe that this was a basis for adjourning the matter. The Respondent provided no sufficient explanation for not having made his application for adjournment until the morning of the hearing.
8. Accordingly, the hearing proceeded. ASIC tendered evidence, without objection, which established the following matters:
  - (a) The Respondent is a registered liquidator and, thus, was required to lodge an annual statement pursuant to s 1288 of the Act;
  - (b) The due date for the lodgement of his 2010 annual statement was 26 September 2010;
  - (c) The Respondent did not lodge any such annual statement by 26 September 2010 nor has he lodged it at any time since;
  - (d) ASIC sent letters to the Respondent reminding him of the requirement to lodge the 2010 statement on or about 21 August 2010, 10 October 2010, 10 November 2010, and 9 December 2010;
  - (e) An ASIC representative rang the Respondent's mobile phone on 6<sup>th</sup> December 2010 and 8<sup>th</sup> December 2010, leaving messages for the Respondent to return the call, but the Respondent did not do so.
9. As indicated above, the Respondent conceded that he had not lodged the annual statement. He adduced no evidence at the hearing.
10. In the circumstances, we are satisfied, in accordance with s 1292 (2)(a)(i) of the Act, that the Respondent has contravened s 1288 of the Act.
11. In relation to whether any order should be made under s 1292(2), ASIC submitted that it was appropriate to cancel the Respondent's registration, having regard to the admitted failure to lodge the statement, the length of time during which the statement had been outstanding, the repeated notifications provided to the Respondent and his lack of response.
12. The Respondent opposed cancellation. He submitted that there had been no suggestion that he had acted as a registered liquidator in any way improperly and that he was prepared to give an undertaking not to accept any formal appointments "until the matter was resolved".
13. In substance, he appeared to be reinvigorating his adjournment application. His submissions involved an assumption that he would be able, at some

future time, to agitate his complaints about ASIC's conduct in connection with the present application, and, in the meantime, no harm would be done because he would undertake not to accept formal appointments. This approach was misconceived. As already indicated, the Respondent's application for an adjournment was refused. He was required to deal with ASIC's application on this hearing. He did not adduce any evidence or put forward any meaningful basis for opposing the order sought by ASIC.

14. We consider it appropriate that the Respondent's registration be cancelled. The plain fact of the matter is that despite having had ample opportunity to lodge his annual statement, he has chosen not to do so and apparently has no present intention of doing so. The requirement to lodge an annual statement is a serious statutory obligation and an important element in the regime under which the registration of liquidators is controlled. The requirement cannot be obviated by an undertaking not to accept formal appointments. The assertions made by the Respondent concerning the actions of ASIC in other proceedings were barely articulated and were not supported by any evidence. We do not consider that there is any reason why we should refuse to make the orders sought by ASIC. We note that if the Respondent is willing and able to satisfy and comply with the requirements of the Act, there would appear to be nothing stopping him from reapplying for registration in the future.
15. For these reasons, on 24 June 2011, we ordered that the registration of David Mark Anderson as a liquidator be cancelled. We have determined that this order should come into effect 30 days after the day on which notice of the decision is given to the Respondent.

Howard Insall SC  
Chairman of the Panel

7 July 2011