

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

MATTER NO: 03/NSW08

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

WALTER SANTE DINALE
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.

16 September 2008

Panel:

Donald Magarey (Chairman)

David Barnett

Patrick Ponting

Companies Auditors and Liquidators Disciplinary Board
Level 16, 60 Margaret Street, Sydney NSW 2000
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DECISION AND REASONS

1. This is an application by the Australian Securities and Investments Commission ("ASIC") for the Companies Auditors and Liquidators Disciplinary Board ("Board") to cancel the registration of Walter Sante Dinale ("Respondent") as an auditor under s1292 of the *Corporations Act 2001*.
2. The Respondent appeared in person at the hearing which was held on 16 September 2008.
3. ASIC's case relied on the following facts which were established in evidence:
 - (a) The Respondent is a registered company auditor and was therefore required by s1287A of the Corporations Act, 2001 ("the Act") to lodge an annual statement.
 - (b) The Respondent lodged all required statements up to and including that required to be lodged in respect of the 12 months ending 19 July 2005 but has not lodged any statement since that one. Accordingly there are three annual statements (for the years ending 19 July 2006, 2007 and 2008) which have not been lodged.
 - (c) Since mid 2006, ASIC has endeavoured to communicate with the Respondent by correspondence and telephone in an effort to have the Respondent comply with his statutory obligation to lodge these annual statements. We were provided with details of all of ASIC's efforts and we were satisfied that their efforts should have been sufficient for the purpose although in fact they produced no actual result. We believe that ASIC has done all it reasonably could.
 - (d) On 10 October 2007 the Respondent informed an officer of ASIC in a telephone conversation that he was no longer practising as an auditor and would be ceasing his registration. On 24 January 2008 the Respondent informed another officer of ASIC in a telephone conversation that he would attend to lodgement of the forms immediately.
4. The respondent accepted that his failure to comply with his statutory obligation had been established.
5. In all the circumstances, we have determined that we are satisfied that ASIC has established its case that the Respondent has, within the terms of s1292(1)(a)(i), "contravened section 1287A".

6. As to the order we should make as a consequence of our determination, ASIC has submitted that we should cancel the registration of the Respondent as an auditor. In support of that submission ASIC pointed to the time the Respondent has had to comply with his obligations, the opportunities provided to him and his acknowledgement that he no longer practises as an auditor.
7. The Respondent informed the Panel that
 - (a) Until late 2005 he had been a partner with a major firm of accountants. After he left that firm he faced some difficult personal circumstances but he has been able to secure employment since the middle of 2007.
 - (b) The last audit opinion he signed was over three years ago. He has ceased practising as an auditor, he is no longer in the accounting profession and has no intention of going back to work as an auditor.
 - (c) He wished to have a further period of one month so that he could rectify his default by filing the outstanding annual statements and seek his own deregistration.
8. The Respondent has not indicated that he needs continuing registration as an auditor for any purpose other than, for his own benefit, he would prefer not to have his registration cancelled but to attend to his own deregistration. Nevertheless he has ignored for over three years a serious statutory obligation of which he was well aware and this was in spite of all ASIC's efforts to assist him over that period. The Respondent has had every opportunity to comply with his obligations and has told ASIC twice in the last 12 months that he would be cancelling his registration yet has done nothing, even in the last nearly 3 months since he received notice of this application to the Board. In light of the Respondent's long period of default, we are not prepared to accept any assurances about his future actions. He has not been practising as an auditor, has done nothing about keeping up to date and has no intention of returning to practice. We believe that in the public interest we should cancel the Respondent's registration now.
9. For these reasons, on 16 September 2008 we ordered that registration of Walter Sante Dinale as an auditor be cancelled with effect 30 days after this order takes effect.

Donald Magarey
Chairman of the Panel

18 September 2008