

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: 05/NSW08

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

HENDRIK WAMSTEKER
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 Hendrik Wamsteker ("Respondent") as an auditor under s1292 of the *Corporations Act 2001*.
2. The Respondent did not attend 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 is 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 20 January 2005 but has not lodged any statement since that one. Accordingly there are three annual statements (for the years ending 20 January 2006, 2007 and 2008) which have not been lodged.
 - (c) Since early 2006, ASIC has endeavoured to communicate with the Respondent by correspondence, telephone and email 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 and virtually no response at all. We believe that ASIC has done all it reasonably could.
4. 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".
5. As to the order we should make as a consequence of our determination, we have had no communication from the Respondent and therefore no explanation, reason or excuse proffered for his failure to lodge annual statements. In addition to that:
 - (a) With one exception, the Respondent did not respond to any of ASIC's efforts to communicate with him and has not responded to the Board even after receiving notice of this application.
 - (b) The one exception occurred in March 2007. On 28 March 2007, David Mirtschin, an officer of ASIC, sent the Respondent by email (at his

place of employment) a copy of a letter which ASIC was that day sending to the Respondent at his place of employment and to his home address, dealing with and seeking to get the Respondent to rectify his failure. On the same day, the Respondent replied to ASIC's email saying that he was retiring from the profession at the end of the month and did not intend continuing his registration.

6. That is the only communication received by ASIC or the Board from the Respondent. We believe we can accept that explanation as the reason why the Respondent has taken no action but it is not an adequate excuse for failure to file his outstanding annual statements. The Respondent has ignored a serious statutory obligation of a registered company auditor - an obligation of which he was well aware and which ASIC took all reasonable steps to assist him to fulfil. On his own admission, he was 18 months ago on the point of retiring from practice and had no intention of continuing his registration as an auditor.
7. In all the circumstances, we believe that we should order the cancellation of the Respondent's registration.
8. For these reasons, on 16 September 2008 we ordered that registration of Hendrik Wamsteker as an auditor be cancelled with effect 30 days after this order takes effect.

Donald Magarey
Chairman of the Panel

18 September 2008