

MEDIA RELEASE

12 November 2013

CALDB CANCELS THE REGISTRATION OF VICTORIAN LIQUIDATOR

The Companies Auditors and Liquidators Disciplinary Board (“CALDB”) has ordered the cancellation of the registration as a liquidator of Mr Avitus Thomas Fernandez who practises in Melbourne.

The CALDB made this order on an application to the Board by the Australian Securities and Investments Commission (“ASIC”).

On that application, ASIC alleged that Mr Fernandez was appointed administrator of companies in the Willmott Forest group on 6 September 2010, shortly after receivers and managers had been appointed. ASIC alleged that Mr Fernandez received a payment of \$200,000 on account of costs and expenses, from a Willmott Forests bank account which was part of the secured property to which the receivers and managers were entitled, but failed to disclose or deliver up the amount to the receivers and managers.

ASIC also alleged that Mr Fernandez failed to disclose the existence of the \$200,000 payment to replacement administrators, after Mr Fernandez was replaced as administrator on 26 October 2010, and despite being expressly asked by the replacement administrators whether he held any Willmott Forest Group property.

ASIC also alleged that Mr Fernandez failed to disclose the existence of the \$200,000 payment in any of the three “Declarations of Independence, Relevant Relationships and Indemnities” which he prepared on 7th, 17th and 28th September 2010 and sent to creditors.

CALDB found that the allegations were made out.

CALDB found that Mr Fernandez retained and failed to disclose to various different parties the existence of the funds in circumstances where he either had no belief that he was entitled to act this way, or any belief which he had was irrational. Whilst dishonesty was not alleged, CALDB found Mr Fernandez’s conduct to be inexplicable, unacceptable and inconsistent with the expertise, judgment, insight, care and diligence required of a registered liquidator.

CALDB concluded that Mr Fernandez had failed to carry out or perform adequately and properly duties or functions of an administrator and was not a fit and proper person to remain registered as a liquidator and ordered that his registration be cancelled.

In ordering that Mr Fernandez's registration be cancelled, CALDB took into account the fact that Mr Fernandez had been the subject of a previous application to the Board in 2005, at which it was found that Mr Fernandez's conduct, in failing to lodge numerous statutory forms over a period of about ten years, revealed a pattern of continuous failure to perform straightforward statutory obligations and that Mr Fernandez had failed to carry out or perform adequately and properly the duties of a liquidator.

A copy of the CALDB's decision and reasons is published on the CALDB website (www.caldb.gov.au).

The CALDB is an independent statutory body with powers under the Corporations Act to cancel or suspend the registration of auditors and liquidators. The Board's powers are directed to the maintenance of proper professional standards on the part of registered auditors and liquidators.

For further information contact:

Gary Hoare

Registrar

Companies Auditors and Liquidators Disciplinary Board

Telephone: 02 9911 2970

Website: www.caldb.gov.au