

MEDIA RELEASE

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CALDB CANCELS THE REGISTRATION OF NSW LIQUIDATOR

The Companies Auditors and Liquidators Disciplinary Board (“CALDB”) has ordered the cancellation of the registration as a liquidator of Mr Pino Fiorentino, who practises in Sydney.

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

Mr Fiorentino was appointed as a joint liquidator of ERB International Pty Ltd (“ERB”) in April 2008 with Mr William James Hamilton.

ASIC alleged, in substance, that prior to the liquidation, Mr Fiorentino had been contacted by a director of ERB, Mr Ali Hammoud, regarding whether it was possible for ERB to transfer its business to a related third party and proceed to liquidation, leaving ERB with debts including a debt owed to the Office of State Revenue (“OSR”), which ERB could not pay. ASIC alleged that Mr Fiorentino and Mr Hammoud consulted a barrister who advised that this was not possible unless the sale of assets was for a proper commercial value.

ASIC alleged that, notwithstanding this advice, ERB proceeded to transfer its assets for no cash consideration to a related third party controlled by ERB’s directors (“BWI”) and shortly thereafter, went into liquidation, with outstanding debts, including the OSR debt. Mr Fiorentino had the primary day-to-day control of the liquidation, and was actively involved over the following year. In January 2009, Mr Fiorentino executed a Deed of Settlement and Release with ERB’s directors and BWI, which prevented further action against them, and which meant that the unsecured creditors of ERB (including the OSR) would receive no payment of their debts under the liquidation.

ERB was ultimately deregistered in 2010. The sum of \$536,929.15 was realised during the liquidation, (substantially from tax and other refunds). The majority of this was applied as liquidators' remuneration and out of pocket expenses. The unsecured creditors received no payment.

ASIC alleged that over the course of the liquidation, Mr Fiorentino failed to carry out or perform adequately and properly his duties as a liquidator.

A Panel of CALDB decided that it was satisfied that Mr Fiorentino had failed to carry out or perform adequately and properly his duties as a liquidator. Amongst other things, the Panel was satisfied that Mr Fiorentino:

- (a) failed properly to investigate the affairs of ERB including the sale of its assets to BWI as an uncommercial transaction and/or a related party transaction;

- (b) entered into the Deed of Settlement and Release with BWI and the directors, giving up claims against them, without properly assessing the relevant issues and without obtaining legal advice;
- (c) failed to provide notice of creditors' meetings to persons who were, or appeared to be, creditors of ERB;
- (d) accepted invalid proxies to vote at a creditors meeting and, in doing so, used his position dishonestly with the intention of directly gaining an advantage for himself, namely approval of his remuneration without the need to go to court;
- (e) failed to act in good faith in the best interests of ERB when, as liquidator of ERB, he actively sought to undermine a claim by the OSR to recover its debt from BWI under grouping provisions and when he advised and gave assistance to BWI in defending the OSR claim;
- (f) failed to provide adequate reports to creditors.

CALDB found that Mr Fiorentino's failings were significant and extensive. They involved a number of different aspects of the liquidation of ERB and involved dishonest use of position, failure to act in good faith in the best interests of ERB and its creditors, lack of competence and failure to comply with statutory provisions. The serious and extensive nature of the failings was such as to warrant cancellation of Mr Fiorentino's registration.

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:

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