

**Report of committee convened to make a disciplinary decision about  
Mitchell Warren Ball, a registered liquidator**

**Committee members**

Christine Croft, Michael Brereton and Leon Zwier

**Decision**

Under s40-55(1)(f)<sup>1</sup> conditions be imposed on the registration of Mitchell Warren Ball in the following terms:

- The registered liquidator must not, until 1 December 2020, consent to be appointed as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller.
- The registered liquidator must not, until 1 December 2020, act as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller other than in respect of an appointment made prior to the date on which this condition is imposed.
- For the period from 1 December 2020 until 1 December 2022, the registered liquidator must not consent to be appointed, and must not act, as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller unless on a joint, or joint and several basis, with another registered liquidator who is not subject to any condition that restricts the circumstances in which that person may consent to be appointed, and act, as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller.
- The registered liquidator must, by 20 December 2019 and at six monthly intervals thereafter until 20 December 2021, provide ASIC with a report setting out the status of each of his appointments, including the steps which the registered liquidator expects, in relation to each such appointment, to be completed in the following six months. Where a step is not completed within the expected time frame, the registered liquidator must, when next reporting to ASIC under this condition, provide an explanation of the reason why the step was not completed within that time frame. The costs incurred in compliance with this condition must not be recovered from the entities the subject of the registered liquidator's reports.

Under s40-55(1)(h) ASIC publish this report.

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<sup>1</sup> Unless otherwise specified, references to sections are references to sections of the *Insolvency Practice Schedule (Corporations)*, which is Schedule 2 of the *Corporations Act 2001* (Cth) (the Act). Schedule 2 has effect because of s600K of the Act.

## **Reasons for decision**

### **ASIC's concerns**

1. Following a review by ASIC of several external administrations to which Mr Ball was appointed as liquidator, ASIC sent Mr Ball a *Notice to Explain Why Liquidator Registration Should Continue*, issued under s 40-40(1) (the Show-cause Notice). The Show-cause Notice states that ASIC believed that Mr Ball:
  - (a) had contravened a provision of the Act (s40-40(1)(f));
  - (b) had failed to carry out adequately and properly the duties of a liquidator and other duties or functions that a registered liquidator is required to carry out under a law of the Commonwealth or of a State or Territory, or the general law (s40-40(1)(l)); and
  - (c) is not a fit and proper person (s40-40(1)(m)).
2. The Show-Cause Notice set out that ASIC's belief was based on a review of Mr Ball's conduct as the external administrator of five companies, being:
  - (a) ACN 147 962 052 Pty Ltd, formerly G S & L McArdle Pty Ltd (McArdle);
  - (b) A.C.N. 065 270 153 Pty Ltd, formerly D. Camilleri Bobcat Excavations & Landscaping Pty Ltd (Camilleri);
  - (c) ACN 168 411 130 Pty Ltd, formerly Liquidion Consulting Pty Ltd (Liquidion);
  - (d) A.C.N. 605 650 182 Pty Ltd, formerly Liquidion Bookkeeping Pty Ltd then ABC Bookkeeping & Admin Pty Ltd (ABC Bookkeeping); and
  - (e) A.C.N. 604 867 521 Pty Ltd, formerly Acacia Grove Boarding Kennels Pty Ltd then ABC Boarding Kennels Pty Ltd (ABC Boarding Kennels),and Mr Ball's conduct as a registered liquidator generally.
3. Schedule B to the Show-cause Notice detailed 27 areas of concern in relation to Mr Ball's conduct.
4. Following submissions provided by Mr Ball to ASIC, ASIC notified Mr Ball that it accepted Mr Ball's explanations for seven of the 27 areas of concern, but was not satisfied with the explanations provided for 20 of the 27 areas of concern.
5. ASIC referred the conduct of Mr Ball to this committee.

### **Mr Ball's response**

6. Mr Ball acknowledged and accepted the correctness of almost all of the concerns considered by the committee. By way of example, Mr Ball accepted, that he:
  - (a) failed to adequately supervise his staff;
  - (b) failed to adequately investigate the affairs of the subject entity;
  - (c) failed to close a bank account of the company to which he was appointed and then failed to investigate post appointment transactions;

- (d) failed to obtain the books and records and failed to request ASIC assistance; and
  - (e) failed to lodge documents with ASIC.
7. Mr Ball accepted that his conduct was wrong. He gave evidence, supported by expert opinion, of a number of personal matters which, he submitted, affected him at the relevant time. The committee has no reason to doubt Mr Ball's evidence and submissions with respect to these matters. As Mr Ball also submitted, however, these matters provide the context in which his failings occurred, but are not a proper or reasonable justification for them.
8. Mr Ball also gave evidence about a number of professional issues that affected his performance, including competing demands on his time and staffing issues. While the committee also has no reason to doubt Mr Ball's evidence and submissions about these matters, they do not justify Mr Ball's shortcomings particularly, as was conceded by Mr Ball, some of the factors affecting his performance were within his control.

**Why is Mr Ball's conduct of concern?**

9. Although it is not necessary, given Mr Ball's acknowledgements, to set out his conduct in detail, the committee notes the following concerning features of the liquidations the subject of ASIC's concerns:
- (a) three matters, McArdle, Camillieri and Liquidion, were referred to Mr Ball on the same day, 6 May 2015, by a former colleague who, in turn, sourced the matters from the same referrer;
  - (b) while McArdle, Camillieri and Liquidion were said to be unrelated, in each case, shortly before the appointment of Mr Ball as liquidator to each company, forms were lodged with ASIC purporting to show that the director(s) of each entity resigned, up to approximately two years before the forms were lodged with ASIC;
  - (c) at the same time forms were lodged with ASIC purporting to show that a new director had been appointed to each of McArdle, Camillieri and Liquidion, up to approximately two years before the forms were lodged with ASIC;
  - (d) the 6 May 2015 referral to Mr Ball in relation to McArdle, Camillieri and Liquidion noted that the "[r]eferrer [had] installed the same jump-on director on all [companies]";
  - (e) two matters, ABC Bookkeeping and ABC Boarding Kennels, were referred to Mr Ball on 21 June 2016, by the same initial referrer as the first three liquidations and again, in each case, there was evidence to suggest the appointment of "jump-on directors";
  - (f) each of the liquidations was accepted by Mr Ball for a fee significantly below the actual cost of the matter, such that Mr Ball delegated the conduct of the matter to junior staff and spent as little time as possible working on the matter;
  - (g) despite the suspicious circumstances of each of the liquidations, Mr Ball failed to ensure that a proper investigation was conducted - Mr Ball did not adequately investigate the circumstances of the appointment of the "jump-on directors" to the entities, or why the appointment of the "jump-on directors" appears to have been backdated, and did not adequately investigate the resignation of the previous directors, or the conduct of the referrer; and

- (h) despite the suspicious circumstances of each of the liquidations, Mr Ball failed to adequately report the matters identified to ASIC.
10. Mr Ball acknowledged that, although he did not intentionally do so, his actions either potentially facilitated, or could have facilitated, illegal phoenix activity. As such, his actions could have undermined the integrity of insolvency practitioners as a profession.
11. Based on Mr Ball's acknowledgements and the material provided by ASIC, the committee is satisfied that Mr Ball failed to adequately and properly carry out the duties of a liquidator in respect of each of the liquidations identified by ASIC in the Show-Cause Notice, and that he contravened provisions of the Act.

**What are Mr Ball's current circumstances?**

12. Mr Ball appeared before the committee as contrite and chastened. He explained the changes that he has made with respect to the operation of the corporate insolvency team of Sampson Prentice Ball Pty Ltd t/as BPS Recovery to address his failings and improve the performance of his firm. These changes include:
- (a) more frequent management meetings;
  - (b) improved office procedures, such as replacing its paper based check-list procedures with an electronic system which allows for improved assignment and monitoring of tasks, including an alert system;
  - (c) the commencement of monthly staff training sessions; and
  - (d) the use of third party consultants to assist with human resources and professional development, as well as to conduct compliance reviews.
13. Mr Ball indicated that, more recently, BPS Recovery had initiated a practice of weekly file reviews and that it would be retaining a further external consultant to conduct independent compliance reviews. Mr Ball also stated that he had made a conscious decision to cut certain referrers from his practice and that he no longer accepted appointments at the rates agreed in respect of the liquidations the subject of ASIC's concerns.

**What decision should be made?**

14. The committee is mindful of the improvements made by Mr Ball to the operations of BPS Recovery and the changes to his personal circumstances. The committee also notes the numerous character references relied upon by Mr Ball, which both attest to his personal circumstances and support the continuation of his registration as a liquidator. However, Mr Ball's conduct was serious and well below the standard expected of a registered liquidator. It was not an isolated event. Rather, it involved an ongoing failure to both adequately and properly perform the duties of a liquidator, including failing to supervise his staff.
15. Mr Ball's conduct warrants action being taken against him. Indeed, but for Mr Ball's particular circumstances, the contrition he demonstrated and the strength of the character references provided to the committee, such action would have included cancellation of his registration. This is particularly so given the possibility, acknowledged by Mr Ball, that his conduct could have facilitated unlawful phoenix activity.
16. However, having regard to Mr Ball's evidence and submissions, including his acceptance of his shortcomings, the supporting expert evidence provided by

Mr Ball and the steps taken to prevent a reoccurrence of past failings, the committee has decided not to cancel Mr Ball's registration as a liquidator. Instead, the committee has decided, both as a reminder to Mr Ball and to insolvency practitioners generally of the need to all times to adequately and properly perform the duties of a liquidator and supervise staff and to comply with the Act, that:

- (a) Under s40-55(1)(f) the following conditions be imposed on Mr Ball:
- (i) The registered liquidator must not, until 1 December 2020, consent to be appointed as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller.
  - (ii) The registered liquidator must not, until 1 December 2020, act as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller other than in respect of an appointment made prior to the date on which this condition is imposed.
  - (iii) For the period from 1 December 2020 until 1 December 2022, the registered liquidator must not consent to be appointed, and must not act, as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller unless on a joint, or joint and several basis, with another registered liquidator who is not subject to any condition that restricts the circumstances in which that person may consent to be appointed, and act, as an administrator of a compromise or arrangement approved under Part 5.1 of the *Corporations Act 2001*, external administrator, receiver, receiver and manager, or managing controller.
  - (iv) The registered liquidator must, by 20 December 2019 and at six monthly intervals thereafter until 20 December 2021, provide ASIC with a report setting out the status of each of his appointments, including the steps which the registered liquidator expects, in relation to each such appointment, to be completed in the following six months. Where a step is not completed within the expected time frame, the registered liquidator must, when next reporting to ASIC under this condition, provide an explanation of the reason why the step was not completed within that time frame. The costs incurred in compliance with this condition must not be recovered from the entities the subject of the registered liquidator's reports.
- (b) Under s40-55(1)(h) ASIC should publish this report.

Signed: CCroft  
Christine Croft, a delegate of ASIC

Date: 25/11/19

Signed: Michael Brereton  
Michael Brereton, a registered liquidator chosen by Australian Restructuring  
Insolvency and Turnaround Association ACN 002 472 362

Date: 22/11/2019

Signed:   
Leon Zwier, an appointee of the Minister

Date: 22-11-2017

The decision of the committee is taken to be made on the last date on which a member of the committee signs a copy of this report.