

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: 12/NSW08

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Applicant

MICHAEL JOHN KANE
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.

24 February 2009

Panel:

David Castle (Chairman)

David Barnett

Patrick Burroughs

Companies Auditors and Liquidators Disciplinary Board
Level 16, 60 Margaret Street, Sydney NSW 2000
Tel: (02) 9911 2970
Fax: (02) 9911 2975

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 Michael John Kane ("Respondent") as an auditor under s1292 of the *Corporations Act 2001*.
2. The Respondent appeared in person at the hearing which was held on 24 February 2009.
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 10 April 2007 but has not lodged any statement since that one. Accordingly there is one annual statement (for the year ending 10 April 2008) which has not been lodged.
 - (c) Since mid 2008, 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. At the hearing the Respondent admitted that he had received all relevant documents from ASIC and the Board.
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 and the opportunities provided for him to do so. 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.

7. The Respondent has informed the Panel that
 - (d) He was sorry for his failure to comply with the requirement to lodge the annual statement and had made the effort to attend the hearing and make submissions about extenuating circumstances.
 - (e) He has faced some difficult health circumstances within his family over the last few years which have delayed him attending to complying with the requirement to lodge an annual statement.
 - (f) He continues to be in practice and is involved with doing work for a number of clients where registration as an auditor is necessary.
 - (g) He undertook to lodge the overdue annual statement forthwith and had the completed statement available for lodgement.
 - (h) He undertook to lodge future annual statements by the due date for lodgement.
8. In all the circumstances, we believe that we should order an appropriate suspension of the Respondent's registration.
9. For these reasons, on 24 February 2009 we ordered that registration of Michael John Kane as an auditor be suspended for a period of one month or until such time as he had lodged his outstanding annual statement and notice of change of address with, and such lodgements had been received and accepted by, ASIC, whichever is the longer, with effect 30 days after this order takes effect.

David Castle
Chairman of the Panel

24 February 2009