



Professional Conduct Tribunal – 11 December 2013

Member failed to observe a proper standard of professional care, skill or competence – Ian Lawrence Struthers CA of New South Wales

The Tribunal found a case established that Struthers was liable to disciplinary action in accordance with:

1. By-law 40(a), in that as a registered liquidator under the Corporations Act 2001 (Cth) (the Act) or corresponding previous legislation since 11 February 1983 and as a registered Official Liquidator since 10 November 1986, Struthers failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties, in that:
 - a. as a result of its review (Review) of Struthers' external administrations (as part of the Australian Securities and Investments Commission's (ASIC) Liquidator Compliance Program) ASIC has formed the view in relation to his conduct of external administrations the subject of the Review that he failed to carry out or perform adequately and properly the duties of a liquidator and/or any of the duties or functions required by an Australian law to be carried out or performed by a registered liquidator in that he:
 - i. with respect to remuneration, in relation to:
 1. 16 external administrations, did not provide remuneration reports to creditors as required under section 449E(7) and in 13 of those external administrations, he drew a total of \$120,500 (GST exclusive). As a result, the remuneration in question was not validly determined as required under section 449E(1) of the Act;
 2. 1 external administration, provided creditors with a remuneration report that did not include the cost associated with each major task as required under section 449E(7)(a)(iii). The remuneration report only provided total remuneration claimed. As a result, the remuneration in question of \$10,000 was not validly determined as required under section 449E(1) of the Act;
 3. 2 external administrations, drew remuneration exceeding the \$5,000 maximum (per external administration) allowed under section 499(3A) of the Act. In those 2 external administrations, he had overdrawn a total of \$12,000; and
 4. 2 external administrations, provided creditors with a remuneration report that did not include the costs associated with each major task as required under section 499(7)(a)(iii). In those 2 external administrations, he had drawn a total of \$14,000. As a result, the remuneration in question was not validly fixed as required under section 499(3) of the Act;
 - ii. with respect to lodgement of accounts in relation to 20 external administrations, may have breached section 1308(2) and/or 1308(4) by having lodged liquidator's accounts (Forms 524) pursuant to section 539 of the Act that were not accurate. All Forms 524 recorded nil receipts and payments when Struthers had in fact received and paid out monies in each of those external administrations;
 - iii. with respect to the liquidator's general account in relation to 20 external administrations, failed to open an account to be known as the liquidator's general account as required by Regulation 5.6.06(1)(a) of the Corporations Regulations. As a result, monies on account of remuneration due to Struthers totalling \$144,800 were banked into his "office working account" and not paid into a "liquidator's general account" for each of the 20 external administrations;
 - iv. with respect to reporting to ASIC failed:
 1. to lodge 22 Forms 524 (Account of Receipts and Payments) pursuant to sections 438E, 445J and 539 of the Act in respect of 11 external administrations;

2. to lodge as required by Regulations 5.6.27(3) and 5.6.27(7)(a) of the Corporations Regulations, 21 minutes of meetings of creditors held pursuant to section 497 of the Act in respect of 21 external administrations;
 3. to lodge as required by Regulations 5.6.27 and (7)(b) of the Corporations Regulations, 5 minutes of meetings of creditors held pursuant to sections 436E and 439A of the Act in respect of 3 external administrations;
 4. to lodge 13 notices to creditors pursuant to section 497(2)(c) of the Act in respect of 13 external administrations;
 5. to comply with the requirement to either hold an annual meeting of creditors and members or lodge an annual report with ASIC pursuant to section 508(1)(b)(ii) of the Act, 23 section 508(1)(b)(ii) reports with ASIC, in respect of 23 external administrations; and
 6. to lodge reports pursuant to section 533 of the Act in respect of 30 external administrations;
- b. ASIC notes that since ASIC communicated to Struthers its views he, as at 10 December 2012, had taken a number of steps in relation to the external administrations as set out in paragraph 2.4.2 of his enforceable undertaking dated 20 February 2013 (EU);
- c. Struthers:
- i. acknowledged that ASIC's views set out in subparagraph (a) above and paragraph 2.4.1 of the EU are reasonably held; and
 - ii. in doing so, admitted that in respect of his conduct of the 45 external administrations the subject of the Review, he failed to carry out or perform adequately and properly the duties of a liquidator and/or any of the duties or functions required by an Australian law to be carried out or performed by a registered liquidator;
- d. as a consequence of the matters set out in subparagraphs (a) to (c) above, on 12 February 2013 Struthers gave several enforceable undertakings, including that:
- i. he will, within a period of 3 months from the date of acceptance by ASIC of the EU, submit pursuant to section 1290 of the Act, a duly completed Form 905A accompanied by the prescribed fee of \$36, requesting ASIC to cancel his registration as a liquidator;
 - ii. he will, within a period of 3 months from the date of acceptance by ASIC of the EU, file applications in the Supreme Court of New South Wales and Federal Court of Australia, Sydney Registry, to be replaced as external administrator of all external administrations of which he is the appointed external administrator and which will not have been finalised within that 3 month period;
 - iii. he will not re-apply for registration as a liquidator for a period of at least 3 years after cancellation of his registration referred to in subparagraph (d)(i) above;
 - iv. he will not, after cancellation of his registration as a liquidator, ever perform any duty or function which requires the person performing such duty or function to be registered as a liquidator under the Act unless he is registered as a liquidator under the Act;
 - v. he will not, in the event that he amalgamates or merges his practice with an insolvency practitioner or a firm of insolvency practitioners, perform any work in relation to the external administrations referred to in subparagraph (d)(ii) above where he was replaced as the appointed external administrator; and
2. By-law 40(ea), in that on 12 February 2013 Struthers gave or entered into an enforceable undertaking to ASIC (which undertaking was not an undertaking in respect of procedural matters in respect of or in the course of the conduct of proceedings or an investigation by ASIC); and
 3. By-law 40(j), in that Struthers' acts, omissions and defaults as set out in paragraphs 1 and 2 above bring, or are likely to bring, discredit on him, the Institute and/or the profession of accountancy.

The decisions of the Tribunal were that the allegations contained in the Notice of Disciplinary Action have been established. The Tribunal decided that Struthers receive a reprimand. In reaching this decision the Tribunal was mindful that no third parties were affected by Struthers' omissions. The Tribunal also took into account Struthers' previous good record as an insolvency practitioner. On the other hand, the Tribunal was concerned by the lack of formal quality control

procedures, as is required by the Accounting Professional and Ethical Standards Board, in Struthers' practice. The Tribunal also decided that notification of the Tribunal's decisions be given to the Australian Securities and Investments Commission and that Struthers be required to pay a contribution of \$2,400 plus GST towards the costs of the disciplinary action.

Professional Conduct Tribunal
The Institute of Chartered Accountants Australia

11 December 2013