



## **Professional Conduct Tribunal – 13 November 2013**

### **Member failed to observe a proper standard of professional care, skill or competence – Geoffrey Stewart Turner FCA of New South Wales**

The Tribunal found a case established that Turner 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 he 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 the review by the Australian Securities and Investments Commission (ASIC) into his conduct of 60 external administrations, as set out in paragraph 2.3 of the Enforceable Undertaking given by Turner on 20 September 2012 (EU), ASIC has formed the view 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. failed to comply with sections 539, 438E and 445J of the Act in relation to the lodgement of Forms 524 – Presentation of Accounts and Statement by failing to lodge with ASIC over 1,023 Forms 524 in respect of the 60 external administrations;
    - ii. failed to comply with the requirement to hold an annual meeting of creditors and members or lodge a report with ASIC pursuant to section 508 of the Act in respect of over 500 meetings relating to 55 external administrations;
    - iii. failed to lodge reports required pursuant to section 533 of the Act in respect of 31 external administrations;
    - iv. failed to validly fix or determine remuneration pursuant to sections 449E(1) and 499(3) of the Act in respect of 5 external administrations;
    - v. failed to comply with sections 436DA and 506A of the Act by failing to make a declaration of relevant relationships and declaration of indemnities in respect of 5 external administrations;
    - vi. failed to comply with Corporations Regulation 5.6.06 by use of the firm's general trust account to bank receipts and payments for 1 external administration;
    - vii. failed to comply with Corporations Regulation 5.6.27(1), (3) and (7) by failing to draw up, sign and lodge minutes of meetings of creditors;
    - viii. failed to have adequate human resources to properly service appointments as external administrator and conduct ongoing supervision and training of staff which is a consideration set out in paragraph 20 of Regulatory Guide 186 "External Administration: Liquidator registration" (RG 186);
    - ix. failed to have appropriate operational procedures and manuals for conducting external administrations which is a consideration set out in paragraph 20 of RG 186; and
    - x. unnecessarily delayed in the finalisation of the 60 external administrations;
  - b. as a consequence of the matters set out in subparagraph (a) above Turner:
    - i. acknowledged that ASIC's views as set out in paragraph 2.4.1 of the EU (and as recorded in subparagraph (a) above) are reasonably held; and
    - ii. in doing so, admitted that in respect of his conduct of the 60 external administrations 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;

- c. as a consequence of the matters set out in subparagraphs (a) and (b) above, on 20 September 2012 Turner gave several enforceable undertakings, including that:
  - i. within 7 days after acceptance by ASIC of the EU, he will 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 not ever re-apply for registration as a liquidator;
  - iii. 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; and
  - iv. he will provide all documents and information requested by ASIC from time to time for the purpose of assessing his compliance with the terms of the EU; and/or
2. By-law 40(ea), in that on 20 September 2012 Turner 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/or
3. By-law 40(d), in that on or before 16 May 2012 Turner pleaded guilty to a charge in connection with a failure to respond to a Fair Trading request to appear and answer questions regarding his duties as a liquidator of Southern Districts Radio Cabs Co-operative Limited; and/or
4. By-law 40(j), in that Turner's acts, omissions and defaults as set out in paragraphs 1 and/or 2 and/or 3 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 Turner's certificate of public practice be cancelled and that he be required to pay \$2,400 plus GST towards the costs of the disciplinary action.

**Professional Conduct Tribunal**  
**The Institute of Chartered Accountants Australia**

13 November 2013