

Sleiman And Australian Securities and Investments Commission - [2011] AATA 395

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Administrative Appeals Tribunal

DECISION AND REASONS FOR DECISION [2011] AATA 395

ADMINISTRATIVE APPEALS TRIBUNAL)

) No. 2010/3639

GENERAL ADMINISTRATIVE DIVISION)

Re

JOSEPH SLEIMAN

Applicant

And AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Respondent

DECISION

Tribunal Ms G Ettinger, Senior
Member

Date 7 June 2011

Place Sydney

Decision

The Tribunal affirms the decision of the Australian Securities & Investments Commission to refuse Mr Joseph Sleiman re-registration as a liquidator pursuant to section 1282(2) of the *Corporations Act 2001*.

.....[sgd].....

Ms G Ettinger
Senior Member

CATCHWORDS

Liquidator – registration as liquidator and official liquidator cancelled by CALDB in 2006 – mental illness – period of inability to work – re-application – Applicant has insufficient relevant experience in connection with externally- administered bodies corporate during the relevant period - reviewable decision affirmed.

Corporations Act 2001 (Cth) s 1282(2)

External Administration: Liquidator Registration Regulatory Guideline 186 (RG186)

Re Sleiman and ASIC [2007] AATA 1383

Sleiman v CALDB & Anor (2007) 98 ALD 120

Corporate Affairs Commission v Harvey (liquidator of Timberlands Ltd (in liq)) (1979) 4 ACLR 259

Drake v Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60

Ex parte McDonald Re Partridge and Others [1961] SR NSW 622

Re Allebart Pty Ltd (in liq) and the Companies Act *Re Home Holdings Pty Ltd (in liq) and the Companies Act* [1971] 1 NSWLR 24

Re Lofthouse v ASIC (2004) 82 ALD 481

Shi v Migration Agents Registration Authority (2008) 103 ALD 467

Caines v Australian Securities and Investments Commission [2011] AATA 169

REASONS FOR DECISION

7 June 2011

Ms G Ettinger, Senior
Member

SUMMARY

1. Mr Joseph Sleiman, who is 44 years of age, was registered as a liquidator in 1994, and as an official liquidator in 2002. Both registrations were cancelled by the Companies Auditors

and Liquidators Disciplinary Board, (the Board), in 2006, based on Mr Sleiman's work undertaken as the voluntary administrator for four separate companies between June 2002 and March 2004.

2. Mr Sleiman subsequently spent time with serious mental health problems, and was unable to work. He spent a year or so winding down his practice, Sleiman & Co, and appears to have resumed some work for liquidators in late 2007.

3. Mr Sleiman applied to ASIC for re-registration as a liquidator in December 2009, which was refused because the ASIC delegate held that he did not have the requisite experience in connection with externally-administered bodies corporate, in order to qualify (section 1282 (2) of the *Corporations Act 2001 (Cth)*), (the Act). Mr Sleiman has appealed ASIC's decision to this Tribunal.

4. By way of background I note that there have been two previous decisions of the Tribunal in regard to Mr Sleiman. They have dealt with Mr Sleiman's state of health, and not with certain of the substantive issues which I must decide in this application.

5. ASIC, the Respondent in this matter, has accepted that Mr Sleiman is now well, and able to apply for re-registration. His health was not an issue in the refusal of the re-registration in July 2010, neither was it an issue before this Tribunal.

6. I was however, not satisfied that Mr Sleiman has, in the past five years, had the requisite experience to satisfy the conditions for registration as a liquidator. I was also not satisfied that, in the alternative, he could be conditionally registered with enforceable undertakings. My reasons follow.

BACKGROUND

7. As noted above, Mr Sleiman was registered as a liquidator on 15 February 1994, and on 6 September 2002, he was registered as an official liquidator.

8. As a result of a determination made on 8 June 2006, the Board made an order pursuant to section 1292(2) of the Act. The Registrar of the Board issued a formal Notice of Decision on 18 September 2006 and, by virtue of section 1297(1) of the Act, the cancellation order took effect on that day. The Board ordered that Mr Sleiman's registration as a liquidator be cancelled. The Board determined that Mr Sleiman had failed to carry out or perform adequately and properly the duties or functions required to be carried out or performed by a registered liquidator, within the meaning of section 1292(2)(d)(ii) of the Act. The events with which the Board was concerned took place between 12 June 2002 and 30 March 2004, and concerned the Applicant's conduct of the administration of four companies.

9. Mr Sleiman appealed the decision of the Board to this Tribunal. In *Re Sleiman and ASIC* [2007] AATA 1383, the Tribunal held that he was suffering from a serious mental illness, and that although he was not incapable of managing his affairs, he was not a fit and proper person to be registered as a liquidator.

10. Then on 26 October 2007, the Tribunal, in another decision, *Sleiman v CALDB & Anor* (2007) 98 ALD 120, affirmed the decision of the Board. The Tribunal stated at [36] :

In relation to any reregistration application [the applicant] might make after recovering from his present illness, no inference adverse to him could or should be drawn from his participation in review proceedings in this Tribunal. A determination of the review proceedings solely on the basis of [the applicant's] current medical fitness does not involve any affirmation of the merits of the individual factual findings in the decision under review. Furthermore, the drawing of any future conclusion about the applicant's fitness, where that conclusion takes into account any past findings involved in the decision under review, may be unsound unless it pays proper regard to the nature and extent of the applicant's current illness. That is especially the case where the psychiatric evidence indicates that it is longstanding and is likely to have been present during most, if not all, of the period to which [the Board's] adverse findings, and ASIC's additional allegations, relate.

11. I noted that at the time of cancellation, Mr Sleiman was the principal of Sleiman & Co, and had been since May 2002, (apart from a five month period from November 2003 to April 2004, when he was a principal at Frasers Insolvency Advisory (Syd). Before establishing Sleiman & Co, he had been employed at Armstrong Wily & Co, Chartered Accountants, from 7 September 1998 to 30 April 2002. Following the cancellation of his registration as a liquidator in 2006, Mr Sleiman concluded the business of his practice (Sleiman & Co), and sought treatment for his illness. The Respondent accepts that he is now well, and that his illness does not currently present an impediment to him operating in a professional capacity. I accept that,

12. Mr Sleiman's evidence was that he has recently undertaken a series of casual consultancy contracts of relatively short duration. He told me that he has had trouble obtaining employment.

13. Mr Sleiman has also applied for re-registration as a liquidator. ASIC's Delegate, who followed the appropriate procedures, and provided the Applicant with an opportunity of being interviewed, and being heard before the decision was made, was ultimately not satisfied as to Mr Sleiman's experience in connection with externally-administered bodies corporate. Having regard to the document, *External Administration: Liquidator Registration* (RG 186), and in particular RG186.19, the Delegate was not satisfied that the Applicant had gained corporate insolvency experience that included dealing with a range of complex matters that typically arise in external administrations at a very senior level for at least the equivalent of three years full time over the last five years.

14. The Delegate found that there was no evidence that the Applicant's experience in the last five years involved complex matters, given the absence of verifying referee's reports for some employers, and the inadequate nature of the remaining referee's reports. The Delegate also decided that the Applicant could not rely on the 11 month period when he was winding down his business at Sleiman & Co as relevant experience, because he was not practising as a liquidator or doing corporate insolvency work during that time. The Delegate also considered that the Applicant's experience with Hammoud & Partners did not involve working as a registered liquidator, and that the experience Mr Sleiman gained there was not of complex matters which directly concerned the external administration of bodies

corporate. The delegate also decided that the Applicant's charge out rates were not consistent with work being undertaken at a very senior level. The Delegate refused to re-register Mr Sleiman as a liquidator pursuant to section 1282 of the Act.

15. Mr P Bates of counsel represented Mr Sleiman at the Tribunal in regard to his appeal from the delegate's decision. There was a large folder of documents before me, the documents as Exhibit R1, and further documents tendered at the hearing to which I shall refer as appropriate. The only person other than Mr Sleiman who gave oral evidence at the hearing was Mr Riad Tayeh, of deVriesTayeh who gave evidence by telephone. Mr Tayeh told me that he is a public liquidator. Mr Sleiman called him in connection with the offer Mr Tayeh made to him to supervise Mr Sleiman should the Tribunal, as an alternative to full registration, agree to re-registration with an enforceable undertaking.

16. Mr Tayeh stated that he would undertake to review all Mr Sleiman's statutory notices and reports to creditors. Mr Tayeh's letter dated 6 April 2011, making that offer, was Exhibit A7 before the Tribunal.

LEGISLATIVE ENVIRONMENT

17. Part 9.2 of the Act is concerned with the registration of auditors and liquidators. A natural person may apply to ASIC under s. 1279(1)(b) for registration as a liquidator.

18. Section 1282(2) deals with registration of auditors pursuant to the Act. Since the amendment to the Act on 31 December 2007, which amended section 1282(2)(b) of the Act, it is as follows:

(2) Subject to this section, where an application for registration as a liquidator is made under section 1279, ASIC must grant the application if:

(a) the applicant:

(ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to ASIC to represent a course of study in accountancy of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or

(iii) has other qualifications and experience that, in the opinion of ASIC, are equivalent to the qualifications mentioned in subparagraph (i) or (ii); and

(b) ASIC is satisfied as to the experience of the applicant in connection with the externally-administered bodies corporate; and

(c) ASIC is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator;

but otherwise ASIC must refuse the application.

19. Where the application is for registration as a liquidator of a specified body corporate, ASIC must register the applicant as a liquidator of that body if it ... *is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the body, having regard to the nature of the property or business of the body and the interests of its creditors and contributories, but otherwise ASIC must refuse the application* (section 1282(3)).

20. Once registered either as a liquidator or as a liquidator of a specified body, registration remains in force until cancelled by either ASIC or by the CALDB, or until the liquidator dies (sections 1282(8) and (9)(a) and (b)). Once a person is a *registered liquidator*, ASIC may register him or her as an official liquidator (section 1283(1)). A liquidator exercises extensive powers in the course of his or her work (section 477 of the Act).

21. The Full Court of the Supreme Court of New South Wales in *Ex parte McDonald Re Partridge and Others* [1961] SR NSW 622 (Evatt CJ, Herron and Sugerman JJ) explained a liquidator's duties:

The liquidator's principal duties, speaking generally, are to take possession of and protect the assets, to make lists of contributories and creditors, to have disputed cases adjudicated upon, to realize the assets and to apply the proceeds in due course of administration amongst the creditors and contributories. (page 629)

22. These duties were explored further by Marks J in *Corporate Affairs Commission v Harvey (liquidator of Timberlands Ltd (in liq))* (1979) 4 ACLR 259:

The duties of the liquidator need to be clearly understood. Fundamentally, he must administer the estate strictly in accordance with the duties and obligations specifically imposed on him by the Companies Act and its Rules. It is obvious that everything (sic) to be done in a competent administration is not and cannot be specifically prescribed. Preserving the assets, giving proper attention to the administration, acting with due despatch and ensuring adequate knowledge and understanding of the affairs of the companies are matters of common sense. If there is a difficulty at any stage of the administration then it is the clear duty of the liquidator to inform the court and take directions. (page 281)

23. These are duties common to all liquidators but Street J, as he then was, considered the special position of a court appointed liquidator, and so of an official liquidator in a winding up in insolvency in *Re Allebart Pty Ltd (in liq) and the Companies Act Re Home Holdings Pty Ltd (in liq) and the Companies Act* [1971] 1 NSWLR 24:

... When it is ordered that a company be wound up on the ground that of inability to pay debts, the Court appoints an official liquidator to take administrative control of the company's

affairs and to investigate the past history of the company itself and those associated with it. A court winding up involves more than a mere realization of the assets and distribution of proceeds. The official liquidator is an officer of the Court, and as such he has public responsibilities to investigate past activities connected with the company, and, in appropriate cases, to initiate such further proceedings, civil or criminal, connected therewith as the circumstances may dictate. It is his duty to discover not only breaches of the [Companies Act](#), but also conduct falling short of the requisite standards of commercial morality. In every instance the winding up of an insolvent company pursuant to an order of the Court is attended with these obligations resting upon the official liquidator. The due course of such a winding up involves his taking such steps in relation thereto as are necessary to discharge the duties and obligations resting upon him.

The foregoing observations are general in character. I make them for the purpose of disposing of the suggestion that the mere making of arrangements in respect of the claims of creditors is sufficient to foreshorten the winding up by the Court of an insolvent company. The official liquidator must be permitted to complete his investigations and consideration of these wider aspects before a stay would be granted. (pages 26-27)

24. An administrator, receiver, manager and liquidator is each regarded as an officer of a company for the purposes of Part 2D.1 of Chapter 2D. In general terms, an officer must exercise his or her powers and discharge any duties in good faith in the best interests of the corporation and for a proper purpose (section 181(1)).

APPLICATION OF EXTERNAL ADMINISTRATION: LIQUIDATOR REGISTRATION REGULATORY GUIDELINE 186 (RG186 or THE GUIDELINES)

25. Guidelines have been developed in various areas of the law, and must be taken into account by decision makers such as ASIC and this Tribunal, where those guidelines do not conflict with the relevant legislation. ([Drake v Minister for Immigration and Ethnic Affairs](#) (1979) 2 ALD 60, [Re Lofthouse v ASIC](#) (2004) 82 ALD 481).

26. In [Drake v Minister for Immigration and Ethnic Affairs](#) (1979) 2 ALD 60 at [69] , Bowen CJ and Deane J stated relevantly:

In a matter such as the present where it was permissible for the decision-maker to take relevant government policy into account in making his decision, but where the Tribunal is not under a statutory duty to regard itself as being bound by that policy, the Tribunal is entitled to treat such government policy as a relevant factor in the determination of an application for review of that decision. It would be contrary to common sense to preclude the Tribunal, in its review of a decision, from paying any regard to what was a relevant and proper factor in the making of the decision itself. If the original decision-maker has properly paid regard to some general government policy in reaching his decision, the existence of that policy will plainly be a relevant factor for the Tribunal to take into account in reviewing the decision. On the other hand, the Tribunal is not, in the absence of specific statutory provision, entitled to abdicate its

function of determining whether the decision made was, on the material before the Tribunal, the correct or preferable one in favour of a function of merely determining whether the decision made conformed with whatever the relevant general government policy might be.

27. Guidelines assist, but do not replace legislation in the Tribunal's task to make the correct or preferable decision in the determination of each matter before it. Notwithstanding the amendment to section 1282(2) in 2007, I am satisfied that RG186, may be applied in this case, although I am mindful that it is simply a guideline, and that it should not be applied uncritically.

28. I reject the argument Mr Bates put, without giving any reasons, that RG186 serves only to assess first time applicants for registration as liquidators, and find that it is also applicable to re-registration of liquidators.

29. Mr Bates has also submitted that the Delegate applied RG186 too *strictly* in coming to his decision not to re-register Mr Sleiman. I have noted the submission, but am charged with making the correct or preferable decision, and applying RG186 appropriately. In doing so, I am mindful that since RG186 was published, the ambit of section 1282(2)(b) has, as Mr Bates correctly points out, been broadened, from requiring experience in winding up bodies corporate, to experience in connection with externally-administered bodies corporate. I am satisfied that because RG186 may be applied with some discretion, it is possible to accommodate consideration of that broader range of experience in the context of assessing the capacity of a person to perform the duties of a registered liquidator.

ISSUE BEFORE THE TRIBUNAL

30. The issue which I have to decide is whether I am satisfied that Mr Sleiman has the relevant experience in connection with externally-administered bodies corporate in order to be registered as a liquidator pursuant to section 1282(2) of the Act.

31. In relation to the other subsections of 1282(2); I am satisfied that Mr Sleiman holds satisfactory tertiary qualifications to be registered as a liquidator. I also accept the submissions of both parties that Mr Sleiman is a fit and proper person to hold the office of liquidator, and that as far as any health issues are concerned, they do not presently impact upon his fitness and capability to resume work as a liquidator. In doing so, I have relied on the submissions of the parties, and the medical opinions of Drs D Bell, C McMahon and J Corish which were in the T-documents before me.

32. In order to come to the correct or preferable decision about whether Mr Sleiman can be registered as a liquidator, I must apply the relevant sections of the Act, and RG186, mindful that section 1282(2) of the Act was amended on 31 December 2007.

33. The Guidelines were issued in 2005, and based on a narrower wording of section 1282(2)(b) of the Act, which referred to the *winding up of bodies corporate*, now broadened by reference in section 1282(2)(b) to *in connection with externally-administered bodies corporate* (legislation amended on 31 December 2007). The Guidelines continue however, to be relevant.

34. I note further there was no disagreement between the parties that the relevant period under consideration is the five years from December 2004 leading up to the application for re-registration dated 9 December 2009.

35. I am mindful that pursuant to *Shi V Migration Agents Registration Authority* (2008) 103 ALD 467, the Tribunal can take into account all relevant experience Mr Sleiman has obtained to the date of my decision.

36. I noted that Mr Bates of counsel who appeared for Mr Sleiman urged upon me that if I was not satisfied that Mr Sleiman could be registered unconditionally, then the Applicant would be prepared to enter into an enforceable undertaking for a period of 12 months.

MR SLEIMAN'S EVIDENCE

37. Mr Sleiman gave evidence at the Tribunal about his experiences since the cancellation of his registration as a liquidator in 2006. He says that he spent the second half of 2006 concluding the business of his practice (Sleiman & Co), and seeking treatment for his illness. Both from the Applicant's Statement (Exhibit A1), and his oral evidence, I learned that since that time, and since his health has returned, he has applied for numerous positions, and has held short term positions since he recommenced work in 2007. His evidence was however, that he has been *largely unsuccessful in obtaining paid employment or consultancies in the liquidation industry since December 2009*. Mr Sleiman has disclosed that in order to support himself, he has obtained various casual customer service positions, mainly in Bunnings, as well as working casually as a caretaker for a commercial building.

38. In order to come to the correct or preferable decision regarding whether Mr Sleiman has the requisite relevant experience to be registered as a liquidator, I have taken into account his evidence, both written and oral, and the submissions of the parties.

39. I have first noted that Mr Sleiman filed various documents relating to his experience as a liquidator and associated work as follows:

- 'Summary of Major Administrations' provided to ASIC on 9 December 2009;
- 'Summary of Employment History for the Past 10 Years', dated 6 April 2010;
- 'Summary of Other Corporate Insolvency Experience' provided to ASIC on 20 July 2010;
- 'Summary of Non Insolvency Corporate Management Experience' provided 20 July 2010.

40. I noted also a letter from Khourys & Associates, dated 20 April 2010, whose letterhead indicates they are involved in accounting, taxation and company audits. In the letter they offered Mr Sleiman employment commencing 25 June 2010, initially assisting directors in an insolvency consultative/advisory role in the practice. Mr Khoury also made reference to Mr Sleiman's upcoming application for re-registration as a liquidator.

41. In order to consider Mr Sleiman's application, I next considered the application of the Guidelines.

THE GUIDELINES RG186.19

42. I have noted that RG 186.19 sets out the tests for corporate insolvency experience.

[186.19] We will only be satisfied that you have adequate corporate insolvency experience if:

(a) you have worked in corporate insolvency for at least the equivalent of 5 years full-time over the last 10 years;

(b) substantially all of your corporate insolvency experience has involved work on external administrations:

(i) under the supervision of a registered liquidator in Australia; or

...

(d) your corporate insolvency experience includes a broad range of external administrations, of which 2 must be:

(i) court liquidations or creditors' voluntary liquidations under Ch 5; and

*Note: We require this experience because of s1282(2)
(b).*

(ii) administrations under Part 5.3A;

(e) your corporate insolvency experience has been gained at a very senior level for at least the equivalent of 3 years full-time over the last 5 years;

(f) your corporate insolvency experience at a very senior level includes dealing with a range of complex matters that typically arise in external administrations, and

(g) over the course of gaining your corporate insolvency experience, you have demonstrated:

(i) skill and diligence; and

(ii) sound judgment in complex matters while working at a very senior level.

43. In order to assess whether Mr Sleiman has adequate corporate insolvency experience, and in the application of RG186.19, I am mindful that RG186.19(e) and (f) are probably the most contentious.

44. RG186.19(e), states that *your corporate insolvency experience has been gained at a very senior level for at least the equivalent of 3 years full-time over the last 5 years.*

45. RG186.54 describes the requisite level of experience which amounts to *very senior*, as including not only the position of the person in the hierarchy of an external administration business, but the complexity of the work performed.

46. RG 186.54 and 186.55 go on to examine senior level external administration experience, and give examples of complex matters.

[186.54] For paragraphs (e) and (g)(ii) of RG 186.19, your external administration experience will have been at a very senior level if:

(a) you were a principal or at the level immediately below that of principal;

Note: For the definition of principal, see 'Key terms'.

(b) you reported directly to the relevant external administrator; and

(c) you:

(i) formed opinions and made recommendations to the external administrator about the financial and potential legal position of the body corporate;

(ii) were directly involved in planning and managing on behalf of the external administrator the conduct of the external administration;

(iii) prepared draft reports to creditors on behalf of the external administrator;

(iv) instructed solicitors and evaluated legal advice as directed by the external administrator; and

(v) supervised staff who reported through you to the external administrator, and had responsibility for allocating other resources.

This list is not exhaustive.

47. RG186.19(f), states that *your corporate insolvency experience at a very senior level includes dealing with a range of complex matters that typically arise in external administrations.*

48. RG 186.55 sets out examples of matters that may be complex. Voluntary liquidations are not considered in this context because they are not a form of insolvent external administration, and do not require a liquidator to be registered unless the company being wound up is a public company (RG186.52).

[186.55] For paragraphs (f) and (g)(ii) of RG 186.19, examples of external administration matters that may be complex include:

(a) trading-on a business with a view to selling it as a going concern;

(b) investigations into insolvent trading, voidable transactions or breach of directors' duties;

(c) large litigation matters;

(d) public examinations; and

(e) external administrations that concern listed companies, large-scale social or environmental issues, or matters concerning government policy.

'Summary of Major Administrations'

49. I have considered Mr Sleiman's document, 'Summary of Major Administrations' of companies in liquidation in the context of the legislation and RG186. The list included:

- Castech Pty Ltd
- Boutique Resorts Management Pty Ltd
- Liquid Visions Pty Ltd
- Tituvu Pty Ltd
- Blanc sur Blanc
- Bytenet Pty Ltd
- Bank of Credit & Commerce Hong Kong Ltd

50. In the document 'Summary of Major Administrations', Mr Sleiman described himself as a senior manager in relation to each of the abovenamed companies. He described each assignment in relation to those companies as complex. He also described in some detail what tasks he had carried out.

51. I noted that Bytenet Pty Ltd was in 1997, and the majority were undertaken in 2002, all well before Mr Sleiman had his registration as a liquidator cancelled, and before the relevant five year period under consideration here, being December 2004 to December 2009. The tasks undertaken outside the relevant period do not qualify, and do not assist with Mr Sleiman's re-registration as a liquidator.

'Summary of Experience at a Very Senior Level in Complex Matters'

52. I noted from the document 'Summary of Experience at a Very Senior Level in Complex Matters', that 12 of the 13 liquidations listed in that document took place between 2004 and 2006, December 2004 being the relevant date for the commencement of the five year period under consideration. The remaining liquidation, Property Services Training Company Ltd, took place under the supervision of Mr John Morgan, from July to September 2009.

53. Mr Sleiman is shown in the document as the supervising liquidator in 10 of the 13 liquidations listed there. I have noted that of those 10 liquidations, six were voluntary administration liquidations which of course have a very different status when considering complexities, and experience required by the liquidator. I note further that in order to carry out voluntary administrations, the liquidator need not be registered. Voluntary liquidations are not considered a form of insolvent external administration, and they accordingly do not contribute to the *experience at a senior level in complex matters* which Mr Sleiman requires in order to be re-registered.

54. One liquidation, Locnere Pty Ltd, undertaken in 2006, was an official liquidation, and was within the relevant period, (December 2004 – December 2009). Mr Sleiman was supervised by other liquidators in regard to the remaining three companies in 2006, including Mr J Morgan (2009), who was also a referee for Mr Sleiman.

55. The other three were liquidations, all of which were in the relevant period. The time reported was:

- April to September 2006 for Locnere Pty Ltd; official liquidation (Mr Sleiman's practice).
- June 2005 to September 2006 for Goldstar Formworks Pty Ltd; Mr Sleiman does not record any liquidations for 2005 in his 'Summary of Employment History for the Past 10 Years'. However, he is likely to have been in his own practice at that time.
- September 2004 to September 2006 for Oni Group Pty Ltd; (Mr Sleiman's practice).

'Summary of Employment History for the Past 10 Years'

56. In order to further assess Mr Sleiman's experience in relation to *experience in connection with externally-administered bodies corporate*, I considered the document 'Summary of Employment History for the Past 10 Years'. Mr Sleiman has listed nine employers during the period given in the document, being 1998 – 2009, with two periods where he was the principal of Sleiman and Co, carrying out external administrations, and one period, October 2006 – October 2007 during which he says he was engaged in litigation and submissions to the AAT. He gives estimates in that document of the time spent in external administrations. I have considered each below.

Armstrong Wily & Co, September 1998 – April 2002

57. I noted that for between September 1998 and April 2002 Mr Sleiman worked as a manager and senior manager for Armstrong Wily & Co under the supervision of Mr Wily, and that Mr Sleiman was involved in corporate external administrations. That period precedes the qualifying period for this registration which is December 2004 – December 2009, and can therefore not be taken into account.

Sleiman & Co, May 2002 – November 2003

58. Mr Sleiman worked as the principal of Sleiman & Co between May 2002 to November 2003. He says he was the principal and engaged in external administrations during that period. That period precedes the qualifying period for this registration which is December 2004 – December 2009, and can therefore not be taken into account.

Frasers Insolvency Advisory (Syd), November 2003 - April 2004

59. From November 2003 to April 2004 Mr Sleiman worked for Frasers Insolvency Advisory (Syd). He says that he spent a period of four months, and 100 percent of his time there engaged in corporate external administrations. That period precedes the qualifying period for this registration which is December 2004 – December 2009, and can therefore not be taken into account.

Sleiman & Co, April 2004 - October 2006

60. From April 2004 to October 2006, Mr Sleiman again operated as Sleiman & Co. The final months of operating his practice were in wind-down mode before the cancellation of his registration as a liquidator on 12 September 2006. I have already noted that Mr Sleiman then had a period of illness during which he was not able to work.

61. Mr Sleiman states in the document that he was vested with the most senior level of responsibility, and was dealing with corporate external administrations. The period to be counted here is December 2004 to September 2006, approximately one year and nine months. Mr Sleiman urges me to consider that as two years and four months equivalent due to this long working hours. I reject that argument on the basis that professional people often work long hours and that they cannot therefore be converted in the manner Mr Bates proposed. I accept that one year and nine months can be counted towards the time required for the Applicant's re-registration.

Sleiman & Co, October 2006 – October 2007

62. Mr Sleiman states that he was involved in litigation and submissions to the AAT. That cannot be classified as the work of a registered liquidator. Mr Sleiman was not registered as a liquidator during this period, and his claim of a year involved in work towards his registration cannot be sustained.

Hammoud Partners & Ors, 2007/2008 & 2009

63. There were three periods, comprising five months in 2007/2008, nine months in 2008 /2009, and two months in 2009 during which Mr Sleiman worked for Hammoud Partners & Ors.

64. However in the document, 'Summary of Other Corporate Insolvency Experience' Mr Sleiman has indicated that between November 2007 and March 2008, he spent a month assisting a client with preparation of a 'Report as to Affairs' and completion of insolvency forms.

65. Between August 2008 and April 2009 Mr Sleiman says he spent two months during which he carried out consulting work assisting clients with insolvency issues which was directly related to the functions of a liquidator. In December 2008 he spent time preparing an affidavit for Peter Ngan in relation to an external corporate insolvency administration.

66. In October 2009 Mr Sleiman says he again spent a month with Hammoud Partners, on a consulting assignment to assist a client with a personal insolvency issue.

67. In Mr Sleiman's document, I note he has calculated 16 months as experience in insolvency and three months as *equivalent years experience* pursuant to RG186.19(e). I am mindful that Mr Hammoud is not a registered liquidator, and that Mr Sleiman was not registered during that period. It is unclear how that time could be counted for purposes of Mr Sleiman's re-registration if Mr Sleiman was not supervised by a registered liquidator and carrying out complex work of the type discussed in RG186. I do not take that time into account.

Stuart Ariff Insolvency Administrators - one month in 2008

68. Mr Sleiman said that he worked at Stuart Ariff at a very senior manager level for one month in corporate external administration in 2008. Mr Sleiman can count one month in relation to that work.

SV Partners – two months in 2009

69. Mr Sleiman says he worked at SV Partners in a very senior position for two months in 2009, supervised by Mr Stephen Hathway. I am satisfied that he can count two months towards the time he requires for his re-registration.

Rodgers Reidy – two months in 2009

70. In 2009, Mr Sleiman worked at Rodgers Reidy for two months, supervised by Mr John Morgan. I am satisfied that he can count two months towards the time he requires for his re-registration.

Bentleys Corporate Recovery Pty Ltd – two weeks in 2009

71. In 2009, Mr Sleiman worked at Bentleys Corporate Recovery Pty Ltd for two weeks supervised by Mr John Morgan. Given Mr Sleiman's description of his work under the supervision of Mr Morgan, I do not find that the work he carried out for Mr Morgan was of sufficient complexity or seniority or indeed length of time to suffice for his re-registration.

Submissions regarding Calculation of Times Worked

72. It is of relevance to calculate the time Mr Sleiman has worked as a liquidator because in order to be re-registered, section 1282(2) of the Act, states that ASIC (and therefore this Tribunal), must grant the application for registration as an auditor if satisfied as to the experience of the Applicant in connection with externally-administered bodies corporate, (provided all the other conditions are met). Further, pursuant to RG186, adequate corporate insolvency experience is considered, amongst other criteria, as the applicant for registration

having worked in corporate insolvency for at least the equivalent of five years full-time over the previous ten years, and the corporate insolvency experience has been gained at a very senior level for at least the equivalent of three years full-time over the previous five years.

73. Mr Bates argued that, as indicated in the table headed 'Summary of Employment History for the Past 10 Years', the actual times worked were far in excess of the actual months and years. This was because he submitted, Mr Sleiman worked long hours. I do not accept that argument as it is well known that people in responsible managerial positions work long hours which cannot be converted in the way Mr Bates has proposed.

74. In coming to a conclusion regarding Mr Sleiman's situation, I have considered all the documents and evidence he has provided.

75. As noted above, in consideration of the application of RG198.19, and based on the document 'Summary of Employment History for the Past 10 Years', I have considered Mr Sleiman's experience in connection with externally-administered bodies corporate. I am satisfied that approximately two years can be counted towards the time required by Mr Sleiman for re-registration. That satisfies neither the test for five years work in corporate insolvency full-time over the last 10 years, nor having gained corporate insolvency experience at a very senior level for three years full-time over the last five years (RG186.19(a) and (e)).

'Summary of Non Insolvency Corporate Management Experience'

76. The abovenamed document listed September to 31 October 2006 as time spent winding down Sleiman & Co, a month and a week working at Bunnings Warehouse Artarmon in the banking section of the administration office, and a month and a week at Hammoud Partners where Mr Sleiman says he was employed as a tax accountant.

77. Mr Sleiman has also submitted that during certain periods between November 2006 and October 2007, work he undertook included drafting submissions to the AAT in relation to external administrations, and drafting of submissions to Treasury which should count towards time spent in senior engagements as a liquidator. In regard to the latter, I note that Exhibit A2 is a letter and submission regarding amendments to Part 5.4 and 5.5 of the Act from Mr Sleiman to an officer of the Corporations & Financial Services Division of the Commonwealth Treasury dated 18 September 2006. This was followed by a further submission on Part 5.3A of the Act dated 30 January 2006 (Exhibit A3). On 16 October 2006, the Manager of the Governance & Insolvency Unit, Corporations & Financial Services Division replied to Mr Sleiman thanking him for his submissions, and informing him that the matters he raised would be taken into account in developing an insolvency reform package for the Government's consideration.

78. I am mindful that contributions such as submissions to legislators which assist with regulation of the profession are valuable, but I am unable to consider that work as requisite experience in connection with externally-administered bodies corporate.

79. The work listed in the abovenamed document cannot be considered towards Mr Sleiman's requirements for re-registration as a liquidator.

'Summary of Other Corporate Insolvency Experience'

80. Mr Sleiman also produced the abovenamed document in which he described his experience preparing submissions to the AAT, his work at Hammoud Partners, and at Bunnings Warehouse. They have been discussed in other parts of these Reasons for Decision. I note in particular that Mr Sleiman's work at Bunnings cannot be counted towards his re-registration requirements, neither when he worked as a tax accountant.

REFEREES

81. I am mindful that ASIC has published a guide for referees in regard to liquidator registration. The document informs that referees' reports are used to help decide whether the Applicant for admission as a liquidator has the personal capacities, particularly adequate corporate insolvency experience to be capable of performing the duties of a registered liquidator, and whether the person is a fit and proper person to hold such office. Referees' reports may also be used to verify information provided by the Applicant. In particular, referees who have directly supervised an applicant's corporate insolvency work are expected to provide detailed responses to questions to some 12 categories of competencies detailed in the guide.

82. Mr Sleiman has provided references, and in order to properly assess his corporate insolvency experience, I have considered those references in juxtaposition with the guide for referees.

83. Relevant referees included:

Mr Riad Tayeh, (dated 2 December 2009), registered official liquidator and partner at deVriesTayeh, who wrote stating that he had known Mr Sleiman since 1997 when he was Mr Sleiman's manager at Ferrier Hodgson. He stated that Mr Sleiman had then been employed as a senior insolvency accountant, and that he had supervised Mr Sleiman from April 1997 – February 1998. He stated that Mr Sleiman was responsible for several external administrations all of which were completed competently; further that he undertook his work diligently and professionally. Mr Tayeh stated that he had not been involved in matters with Mr Sleiman since 1998.

He wrote a further similar letter dated 9 February 2010 stating that in his opinion Mr Sleiman has adequate knowledge and other skills and qualities to perform the duties of a registered liquidator. Mr Tayeh also gave evidence at the hearing and offered to supervise Mr Sleiman to review all reports for Mr Sleiman with regard to receivership, voluntary administration and the execution of deeds of company arrangements.

I am mindful of, and agree with the Respondent's submission that experience in 1998 is too long ago to be of assistance in regard to Mr Sleiman's current application for re-registration. I am mindful that the qualities which Mr Tayeh addresses in his letter of reference are relevant, but that my primary concern in this matter is whether Mr Sleiman has the relevant experience with *externally-administered bodies corporate*, and for what period. I accordingly accord Mr Tayeh's reference limited weight.

Mr Stewart Levitt, partner of Selby Levitt, lawyers, wrote in support of Mr Sleiman's registration as an official liquidator in a letter dated 7 August 2002. That was in support of

the appointment as an official liquidator which Mr Sleiman received in 2002. Mr Levitt stated that he had known Mr Sleiman professionally since 1998 and acted for him at Armstrong Wily & Co.

I am mindful of, and agree with the Respondent's submission that experience in 1998 is too long ago to be of assistance in regard to Mr Sleiman's current application for re-registration.

Mr Mark Webeck, chairman of partners of Michell Sillar, lawyers, wrote on 6 June 2002 in support of Mr Sleiman's application as an official liquidator, and echoed Mr Levitt's sentiments regarding his suitability. That related similarly to knowledge of his work in 1998.

I am mindful of, and agree with the Respondent's submission that experience in 1998 is too long ago to be of relevance in regard to Mr Sleiman's current application for re-registration.

Mr Darren Bowles of Bowles Lawyers wrote on 9 December 2009 in support of Mr Sleiman whom he said he had known professionally between September 2001 and September 2006. He praised Mr Sleiman's experience and expertise in the area of insolvency and reconstruction. I have not been informed of the extent of Mr Bowles' association with Mr Sleiman. All I can say is that the reference relates to the relevant period. I can thus only accord it little weight in my decision making process.

Mr Andrew Wily of Armstrong Wily & Co wrote a letter dated 22 May 2002 stating that Mr Sleiman had been employed by his firm from 7 September 1998 to 30 April 2002.

Ms Mitchelmore submitted that Mr Wily's letter simply stated the dates on which Mr Sleiman had been employed, with no word about the work he had done, neither any appraisal of it.

I have noted from other documents that between September 1998 and April 2002 Mr Sleiman worked as a manager and senior manager for Armstrong Wily & Co under the supervision of Mr Wily, and that Mr Sleiman was involved in corporate external administrations. That period precedes the qualifying period for this registration which is December 2004 – December 2009, and can therefore not be taken into account. I find the reference to be of limited value.

Mr Hassan Hammoud of Hammoud Partners, whose letterhead indicated they are accountants, tax specialists and business advisors, wrote on 3 February 2010 that he had known Mr Sleiman professionally since 2003. He stated that Mr Sleiman had provided specialist insolvency and reconstruction services to some of his clients, and felt that Mr Sleiman had conducted his business in a very ethical and professional manner.

Ms Mitchelmore submitted that Mr Hammoud's reference was of limited value because he had provided no dates, and little detail about the work Mr Sleiman did for him. I agreed as far as the reference was concerned.

Further Mr Hammoud is not a registered liquidator, and the time at Hammoud Partners does not count towards the time required for Mr Sleiman's re-registration.

Mr Stuart Ariff wrote a letter of support for Mr Sleiman dated 15 November 2010 (Exhibit A4). He referred to having been a registered official liquidator, and stated that he had known

Mr Sleiman for over 15 years. He stated that Mr Sleiman had worked at Stuart Ariff Insolvency Administrators in or around September 2008, indicating that he was involved at the most senior level below that of a partner, and had reported to him. Mr Ariff indicated that Mr Sleiman was responsible for finalising several external administrations competently. The time spent with Mr Ariff is extremely short.

Further, I am mindful of Ms Mitchelmore's submission that the official ASIC records indicate that the Board imposed a life ban on Mr Ariff some years ago. I am concerned that Mr Sleiman would have relied upon such a person to be a referee, and am concerned with the lack of insight he showed in his reply to questioning about Mr Ariff, and the reasons why he had tendered such a reference. I noted he said that it was simply to show he had worked for Mr Ariff. I find no value in such a reference.

Mr John Morgan, a registered and official liquidator, wrote in support of Mr Sleiman on 8 December 2010 (Exhibit A5). He stated that he had known Mr Sleiman since about July 2009 when he had initially employed his services as a contractor, to assist in the finalisation of old and asset less administration, renewing a number of voidable transactions, and investigations into a larger administration, reporting to Mr Morgan. Mr Morgan stated that Mr Sleiman had finalised several external administrations quickly and successfully.

Mr Sleiman agreed in cross-examination that the matters dealt with at Mr Morgan's practice encompassed limited issues and were procedural. I noted that they were also aged, and not current. I do not find that the work Mr Sleiman carried out for Mr Morgan was of sufficient complexity or seniority to suffice for his re-registration. His reference is accordingly of limited value.

Mr Timothy Heesh, director of SV Partners, wrote in support of Mr Sleiman in a letter dated 23 June 2009. He confirmed that Mr Sleiman had been employed as a manager at SV Partners (NSW) between 4 May and 23 June 2009, and that the work volumes over that time were insufficient to justify the continuation of Mr Sleiman's employment. He stated that due to the limited period of Mr Sleiman's engagement, he was not in a position to gain significant insights into Mr Sleiman's capabilities, but stated that the limited assignments he undertook were satisfactory.

I am mindful of the Respondent's submission, and agree that the reference does not give an indication of the nature and complexity of the work Mr Sleiman undertook at SV Partners. The time spent there was also extremely short, and the reference is of limited value.

Conclusion regarding Referees

84. In as far as they wrote details at all, the referees have all stated that Mr Sleiman worked diligently and successfully. Unfortunately some references were rather old, and related to Mr Sleiman's original application to be registered as an auditor in 2002. They are not of relevance to the present application.
85. Most of the referees did not give details of the work Mr Sleiman had undertaken for them. Perhaps, that is because he has only worked for short periods since his return to work after the cancellation of his registration in 2006, and following the recovery of his health in approximately 2007. However it is not of assistance in verifying the actual work or its complexity in the relevant period.

Further, I note that Mr Hammoud is not a registered liquidator and that Mr Ariff has been banned for life.

86. In summary, the referees reports were of little assistance to me in determining Mr Sleiman's application.

Other Material

87. Mr Sleiman also sought to rely in the current review application on an ASIC publication, *'How to apply for registration as a liquidator'*, Information Sheet 0034, Kit issued in September 2005 (Exhibit A6).

Membership of Professional Associations and Continuing Professional Development

88. I have noted by way of completeness that Mr Sleiman told me he had previously been a full member of the Insolvency Practitioners' Association, but that there were currently members who would not nominate him to be a member.
89. He also told me that his CPA membership was current. Mr Sleiman gave evidence that in relation to the CPA, Continuing Professional Development was compulsory, but that this did not apply to insolvency.
90. In reply to questioning from Ms Mitchelmore, Mr Sleiman said that he did not think he needed to undertake a course offered by the Insolvency Practitioners' Association, and was not inclined to do it once his registration as a liquidator had been cancelled.
91. Mr Sleiman was also asked about the insolvency practitioners' IPA Code of Professional Practice. In reply to questioning, he said that he knew the document was updated regularly, but I find he did not know that it had been updated in January 2011, essential I would have thought for his re-registration.
92. It was of note and relevance that Mr Sleiman, when referred to the Accounting Professional & Ethical Standards Board, APES 330, Insolvency Services, issued September 2009 and in circulation since that time, with implementation on 1 April 2010, did not know it had replaced the APS7 on 1 April 2010.
93. Mr Sleiman said that he read the AAR website approximately once a week. Ms Mitchemore asked him if he considered determining the priority of charges regarding property as part of his work to which he replied in the affirmative. He agreed that changes in legislation in that area were important to his work, yet I was satisfied from his answers to questions that he had not kept up with the relevant changes to which Ms Mitchelmore referred.
94. In summary, notwithstanding Mr Sleiman's submissions that he kept up with the profession through his CPD, and reading, it was disappointing that he did not know of changes (e.g. to the APESB APES 330 Insolvency Services, and amendments to legislation), which had been in place for sometime.

ENFORCEABLE UNDERTAKING

95. Mr Sleiman called Mr Riad Tayeh, a registered liquidator to give telephone evidence. His letter dated 6 April 2011, the day of the hearing, offering to supervise Mr Sleiman was Exhibit A7. I have already noted above that Mr Tayeh stated he was prepared to review all reports for Mr Sleiman with regard to receivership, voluntary administration and the execution of deeds of company arrangements. He said that he proposed to review documents by email initially, followed by discussion with Mr Sleiman. He agreed he would be available at short notice, and that as he had not previously undertaken such supervisory work, he had not yet calculated the basis for billing.

96. Mr Bates submitted that in *Caines v Australian Securities and Investments Commission* [2011] AATA 169, the Tribunal had reduced a banning order with the provision that the Applicant undertake, and satisfactorily complete appropriate education addressing issues of conflict of interest and disclosure requirements under the Act. The Tribunal had also ordered that for a period of 12 months following the date of the lifting of the banning order, the Applicant's work would be subject to supervision. He submitted that supervision could be applied similarly to Mr Sleiman if he were to be re-registered.

97. Ms Mitchelmore submitted that enforceable undertakings were appropriate in circumstances where ASIC is in a position to discuss a registered professional resigning, so that no action would be taken would be taken by ASIC. She submitted that it was not appropriate in Mr Sleiman's situation, and should not be contemplated.

98. I am mindful that the situation in relation to Mr Caines was quite different from that of Mr Sleiman. I preferred the submissions of the Respondent, and do not agree that Mr Sleiman should be registered conditionally.

CONCLUSIONS REGARDING MR SLEIMAN'S RELEVANT EXPERIENCE FOR RE-REGISTRATION

99. In coming to a conclusion regarding Mr Sleiman's application for re-registration, I must take into account the requirements of section 1282 of the Act, noting that the only contentious issue is whether I am satisfied that Mr Sleiman has the relevant experience in connection with externally-administered bodies corporate in order to be registered as a liquidator pursuant to section 1282(2). In addition, I have had to consider RG186, in particular RG186.19(e), (f) and (g).

100. I note that Mr Sleiman was ill and unable to work for approximately a year from October 2006 to the end of 2007. However, I have already indicated elsewhere that in regard to his qualifications and other criteria, such as his health, there are no present issues.

101. I have considered his evidence and the documents he put before the Tribunal with regard to his experience with externally-administered bodies corporate. I have dealt with them in detail above, and find that in applying the legislation and RG186, he is unable to meet either the test for five years full-time in the last 10 years, or corporate insolvency experience three years full-time over the last five years. Unfortunately Mr Sleiman has only had short term assignments since he recommenced work in 2007. I could not find more than

approximately two years of relevant experience in the work he has carried out between December 2004 and December 2009.

102. However on consideration of the documents and other evidence Mr Sleiman has put before me, and even taking into account the period from December 2009 to the present (*Shi*), he simply cannot meet three years full-time in corporate insolvency in the last five years, which are the tests in RG18619.

103. Mr Sleiman's work at Bunnings, and as a caretaker for a commercial building are not relevant to re-registration as an auditor.

104. Of course there is discretion which can be exercised. Accordingly, I also take into account Mr Sleiman's lack of currency with updates in standards which he demonstrated in replies in cross-examination by Ms Mitchelmore, and the rather inadequate references he provided. Unfortunately they mitigate against re-registration.

105. I am satisfied from the evidence before me that Mr Sleiman has not met the requirements of the legislation in order to be registered as a liquidator, in particular, that he has not had the requisite experience in connection with externally-administered bodies corporate pursuant to section 1282(2)(b) of the Act.

DECISION

106. The Tribunal affirms the decision of the Australian Securities & Investments Commission to refuse Mr Joseph Sleiman reregistration as a liquidator pursuant to section 1282(2) of the *Corporations Act 2001*.

I certify that the 106 preceding paragraphs are a true copy of the reasons for the decision herein of Ms G Ettinger, Senior Member

Signed:[sgd].....
Associate

Date of Hearing 6 April 2011

Date of Decision 7 June 2011

Counsel for the Applicant Mr P Bates

Solicitor for the Applicant Ms M Bechara, Bechara Company Lawyers

Counsel for the Respondent Ms A Mitchelmore

Solicitor for the Respondent Ms A Rees, ASIC

