



Institute of Actuaries of Australia

Disciplinary Proceedings against Mr Anthony Richard Lewis

Determination of Tribunal 12.02

Investigating Sub-Committee 1003 ("ISC 1003") was appointed by the Convenor of the Professional Conduct Committee ("PCC") to assess a Complaint made by the Chief Executive Officer of the Institute against Mr Anthony Richard Lewis ("Respondent") relating to the Respondent having been made a bankrupt and failing to notify the Institute of such event. In the course of its investigation, other matters came to the attention of ISC 1003 and the Convenor of the PCC directed ISC 1003 to investigate those other matters.

On 6 February 2012, ISC 1003 determined that there was a *prima facie* case of Actionable Conduct (as defined in Rule 3.2(d) of the Scheme) having been committed by the Respondent and prepared a report pursuant to Rule 6.1(a) of the Scheme for the Tribunal. The Convenor of the PCC then provided a copy to the Convenor of the Tribunal Panel who, in turn, established Professional Conduct Tribunal 12.02 to determine the matter. The Tribunal issued its Final Report on 30 November 2012.

1. It is the determination of the Tribunal that:

- (a) The Respondent has engaged in Actionable Conduct in breach of Rule 3.2(a)(iii) of the Disciplinary Scheme, namely conduct likely to bring discredit upon the Institute or the profession of Actuary, in that he, whilst a Member of the Institute, became insolvent under administration as defined in the Corporations Act 2001 (Cth). Noting that, whilst it would have been an appropriate penalty that the Respondent be suspended (pursuant to Rule 6.4(a)(iv)(B) of the Disciplinary Scheme) from membership of the Institute for the period of his bankruptcy, the Respondent was no longer a bankrupt and accordingly the Tribunal determined not to impose a penalty in relation to this Charge.
- (b) The Respondent has engaged in Actionable Conduct in breach of Rule 3.3 of the Disciplinary Scheme, namely unsatisfactory professional conduct (being negligent and persistent misconduct under Rule 3.2(c)(ii) of the Disciplinary Scheme), in failing to notify the Institute of his becoming a bankrupt in accordance with Rule 3.3 of the Disciplinary Scheme. The Tribunal determined that the penalty for this breach is that the Respondent be reprimanded (pursuant to Rule 6.4(a)(iv)(A) of the Disciplinary Scheme).
- (c) The Respondent has engaged in Actionable Conduct in breach of Rule 3.2(a)(iii) of the Disciplinary Scheme, namely conduct likely to bring discredit on the Institute or the profession of Actuary, in that, as Managing Director and majority shareholder of Lewis Securities Ltd ("LSL"), he failed to act professionally in exercising his considerable control over LSL's investment portfolio and investment decisions which in turn materially contributed to the failure of the company. The Tribunal determined that the penalty for this breach is that the Respondent be reprimanded (pursuant to Rule 6.4(a)(iv)(A) of the Disciplinary Scheme).



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- (d) The Respondent has engaged in Actionable Conduct in breach of Rule 3.2(c)(i) of the Disciplinary Scheme, namely unsatisfactory professional conduct (being conduct in connection with the provision of Professional Services that falls short of the standard of competence and diligence that a member of the public is entitled to reasonably expect of a Member or an Actuary) in that, in his dealings in his capacity as Executor of his deceased aunt's estate, he:
- (i) failed to manage a conflict of interest by investing funds held in trust, pending probate, in his own company (LSL);
 - (ii) failed to consult or notify other beneficiaries of the estate before investing funds from the estate in his own company which, while possibly not illegal, was unethical; and
 - (iii) placed his own interests ahead of the interests of the beneficiaries of the estate in investing funds from the estate in his own company.

The Tribunal determined that the penalty for this breach is that the Respondent be suspended (pursuant to Rule 6.4(a)(iv)(B) of the Disciplinary Scheme) from membership of the Institute for a period of one year.

- (e) The Respondent has engaged in Actionable Conduct in breach of Rule 3.2(b)(i) of the Disciplinary Scheme, namely professional misconduct (being conduct occurring in connection with the provision of Professional Services that involves a substantial or persistent failure to reach or maintain a reasonable standard of competence or diligence) by:
- (i) causing or permitting LSL to make misleading representations to the effect that the company invested in fixed interest securities;
 - (ii) without prior disclosure to all investors, causing or permitting the company to enter into a number of high risk and non-diversified investments which materially contributed to investors sustaining substantial losses; and
 - (iii) failing to comply with disclosure requirements under the Corporations Act 2001 (Cth).

The Tribunal determined that the penalty for this breach is that the Respondent be suspended (pursuant to Rule 6.4(a)(iv)(B) of the Disciplinary Scheme) from membership of the Institute for a period of three years.



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- (f) The Respondent has engaged in Actionable Conduct in breach of Rule 3.2(c)(i) of the Disciplinary Scheme, namely unsatisfactory professional conduct (being conduct in connection with the provision of Professional Services that falls short of the standard of competence and diligence that a member of the public is entitled to reasonably expect of a Member or an Actuary) by failing to hold sufficient assets to cover personal guarantees given by him for loans made to LSL, the penalty for which is that the Respondent be suspended (pursuant to Rule 6.4(a)(iv)(B) of the Disciplinary Scheme) from membership of the Institute for a period of six months.
2. It is the determination of the Tribunal that the periods of suspension set out in paragraphs 1(d), 1(e) and 1(f) above are to run concurrently and, subject to any, if any, contrary operation of the Rules of the Disciplinary Scheme, are to commence 28 days after the date of its Final Report (namely, 28 days after 30 November 2012).

5 December 2012