

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



CARTER AND AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION [2020] AATA 809

Administrative Appeals Tribunal, Deputy Pres. Boyle, 3 April 2020

An application for an extension of time to lodge a review of the decision to disqualify the applicant from managing a corporation for four years

Key words: Disqualification, Australia, Managing a Corporation, Fundraising

1. The applicant was the director of various companies which carried on businesses of fundraising by way of telemarketing, primarily for charities. These companies operated as the trustee of the Voiceworks 2 Trust (the Trust).
2. Legislation was introduced in 2008 which prohibited the making of a call to a person who had registered on the 'do not call list'. The applicant was a director of companies that were not registered charities and thus were prevented from calling people on the do not call list.
3. The Trust and the charities entered into an arrangement by which the names and telephone numbers owned by the Trust was transferred to the charities, and the Trust then made the telemarketing calls 'on behalf of the charities'. The charities were to pay for the data transferred to them by the Trust on an instalment basis using the funds generated by the telemarketing activities.
4. The various charities terminated their arrangements with the Trust in the year ended 30 June 2010, and the Trust ceased carrying on business. Around \$65 million which had been included in the Trust's assessable income for that financial year for data transfer to charities and telemarketing services was not paid as at 30 June 2009. These unpaid amounts were written off.
5. The applicant received a private ruling subject to conditions from the Australian Taxation Office (ATO) that the amount written off by the Trust was a deduction under s 25-35 of the *Income Tax Assessment Act 1997* (Cth) (ITAA).
6. In May 2009 various companies of which the applicant was a director and the relevant charities were audited by the ATO. That audit took around 12 months to complete. The audit concluded that the writing off of the invoices was not in accordance with the tax law and that invoices for the unpaid portions would have to be issued. The consequent ATO assessments were contested, but before the applicant's objection could be heard, he was declared

bankrupt, the companies were wound up and a notice was issued under s 206F(1)(b)(i) of the *Corporations Act* requiring the applicant to demonstrate why he should not be disqualified from managing a corporation. He was disqualified from managing a corporation for a period of four years and then sought a review of that decision.

7. In this proceeding, he sought an extension of time to make an application for that review. There was a dispute about service of the notice of the disqualification order that started the time for a review application to be made. The Tribunal found that the applicant's delay was just under twelve months. The applicant gave as his reason for the delay that his solicitor's advice was that the review period had yet to be commenced, as he was awaiting a full court decision in another related issue. The Tribunal accepted that this mistaken belief was the reason for the delay and was a reasonable explanation. There was some reasonable prospect of success, and no demonstrated significant prejudice in an extension of time being granted.

IMPLICATIONS



Given that three years of the disqualification had passed, and a further hearing will take some time, it is not clear from the judgment what the reasons for the further proceedings are precisely. The sums involved will also be a surprise to some people.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/cth/AATA/2020/809.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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