

News with Clout

Restructuring Insolvency and Turnarounds

AFSA ON THE RAMPAGE

Advisors to individuals teetering on the edge of the financial abyss need to be aware that the Australian Financial Security Authority ("AFSA") are frowning on measures, which might be politely referred to as preventative.

If the measures breach the *Bankruptcy Act, 1966*, AFSA are going hard as shown by a spate of recently reported prosecutions. Here are some examples of what has transpired.

A Barrister has been sentenced by trying to hide money by various transfers with the funds ending up in the name of a third party. This was discovered by the individual's Bankruptcy Trustee in the course of normal investigations.

Another example is a Bankrupt was prosecuted for selling his half share in the family home to his wife then allegedly gambling the proceeds away. He pleaded guilty to 7 counts of breaching the Act and was sentenced.

There has even been a fellow who it appears inadvertently left a valuable painting and a piano that he had disposed of prior to his bankruptcy out of his Statement of Affairs. There is a place in this statutory document where such items need to be disclosed. The individual had owned the painting for 40 years and had forgotten about it. The piano was apparently an oversight. Incidentally he also left the country briefly without telling or seeking approval from his Trustee.

There has also been an individual who tried to

avoid a debt for just less than \$9,000 by transferring his share of a property to his wife and not telling the Trustee nor disclosing various bank accounts.

Another individual in Tasmania received funds from a marital settlement and withdrew \$55,000 claiming to have gone to Melbourne and drank and gambled it away. He could not prove that (which is an offence anyway) and has been dealt with harshly.

Frankly the net is spread fairly wide in the bankruptcy context. Private Trustees have a positive obligation to report offences under the Bankruptcy Act to AFSA and are required to actively look into the issues. All Trustees' investigation programs are designed to actively facilitate this process. Given the fact that AFSA annually audit a random selection of each Trustee's files this positive obligation is ensured.

What is the message here? AFSA are sick of fragrant breaches of the Bankruptcy Act and are keen to prosecute even smallish transgressions. For those embarking upon ventures that contain some risk it would appear that looking at their structures before the horse has bolted has some merit. Try to remove items late and they run a very big chance of being caught in this rather wide net. Also if the debt is relatively small pay it.

As ever we welcome all your enquiries on restructuring, insolvency and turnarounds!



NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

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