

SYDNEY INSOLVENCY NEWS

Real Journalism, Real People and Real-time Commentary on Sydney's Insolvency Scene

Monday, 23 March 2015

Did Wily jump before AFSA pushed?

IN early February, Sydney-based insolvency practitioner **Andrew Wily** was required to front at a meeting with the **Australian Financial Security Authority (AFSA)**.

The bankruptcy regulator had formed a three member committee under section 155(H) of the Bankruptcy Act to consider terminating Wily's registration as a trustee in bankruptcy.



Andrew Wily hooked up and laughing.
Photo courtesy: Andrewwily.com.au

Section 155(H) (1) allows for the involuntary termination of a bankruptcy trustee's registration. It empowers the Inspector-General to demand from the trustee a written explanation justifying why they should continue to be registered.

If the trustee's response either does not satisfy the Inspector-General, or is not forthcoming within a reasonable time frame, then under the Act, the Inspector-General must convene a committee "to consider whether the trustee should continue to be registered."

The reasons why the regulator might consider involuntary termination are numerous. If a trustee is incapacitated by illness or convicted of a crime then section 155(H) can be applied. If the regulator believes the trustee has failed to carry out their duties properly or exercise their powers in a suitable fashion then a demand under 155(H) can be issued. There is no suggestion that any of the above are the reason why AFSA was contemplating rescinding Wily's registration. On that point both Wily and AFSA are mute.

Whatever the reason, it was sufficiently serious for AFSA to form the committee comprising the Inspector-General, another public servant and a registered trustee with no conflict of interest. Under the Act the registered trustee must be chosen by the **Australian Recovery Insolvency and Turnaround Association (ARITA)**.

SiN understands a trustee travelled from interstate to join the committee. It should not be inferred though that there isn't a trustee in NSW who doesn't have a conflict when it comes to the head of **armstrongWily**, who, as it turned out, arrived at the meeting accompanied by his lieutenant **Paul Fury**, another armstrongWily staffer and an alternate proposal.

In fact, before the 155 (H) committee could be formally convened, Wily offered to voluntarily surrender his registration. Effectively he invoked section 155(G) of the Act, which says: "A person who is a registered trustee may give the Inspector-General a written request that the person cease to be registered as a trustee." And judging by its press release - issued 11 days after SiN broke the story of Wily's

Search for

Ad | Business Focus

SiN Files

June 2016 (1)
 May 2016 (6)
 April 2016 (1)
 March 2016 (7)
 February 2016 (6)
 December 2015 (4)
 November 2015 (7)
 October 2015 (6)
 September 2015 (8)
 August 2015 (4)
 July 2015 (10)
 June 2015 (6)
 May 2015 (2)
 March 2015 (5)
 February 2015 (5)
 January 2015 (1)
 December 2014 (2)
 November 2014 (2)
 October 2014 (5)
 September 2014 (1)
 August 2014 (4)
 July 2014 (3)
 June 2014 (2)
 May 2014 (1)
 April 2014 (3)
 December 2013 (2)
 November 2013 (1)
 October 2013 (2)
 September 2013 (2)
 August 2013 (2)
 July 2013 (4)
 May 2013 (2)
 April 2013 (4)
 March 2013 (7)
 February 2013 (2)

resignation - AFSA has accepted.

"It presently is anticipated that the Inspector-General will accept Mr Wily's request to cease to be registered shortly after 30 May 2015. In the interim, Mr Wily is not accepting new appointments," AFSA said on February 24, 2015.

All very well. But what about the issues that prompted the Inspector-General to contemplate involuntary termination of Wily's registration under 155(H) in the first place?

AFSA has not explained what caused it to initiate the Section 155(H) demand. According to Wily, staff from AFSA have been installed in his offices since last year, monitoring his appointments, "drinking my coffee and tea, eating my chocolate biscuits".

But a technical, administrative breach involving 251 bankrupt estates that was committed mistakenly by an armstrongWily staffer ended as a win for Wily against the Official Receiver in the Federal Circuit Court on February 27, 2015.

In November 2014 Wily surrendered a number of appointments after **Korda Mentha**, the liquidators of **Timbercorp**, applied to the Federal Court to have him replaced as trustee in bankruptcy of banned financial adviser **Peter Holt**.

Korda Mentha also sought Wily's removal as trustee in bankruptcy of 10 clients of advisory firm **Holt Norman** and one of its ex-directors, **Craig Baker**. Further it sought an inquiry into Wily's conduct as Holt's trustee.

In **EXCLUSIVE: Wily relinquishes bankruptcy ticket** the Sydney-based insolvency specialist denied his decision to quit bankruptcy had anything to do with the Timbercorp liquidator's efforts to instigate an inquiry into his conduct.

Wily told SiN he had undertaken substantial investigations, identified potential causes of action and approached the Timbercorp liquidators about the possibility of funding recoveries. Wily said that the liquidators' lawyers then examined his files before using the information gained to bolster their application to have him replaced.

There is no suggestion Wily's explanation for consenting to the Korda Mentha application last year is illegitimate. He told SiN it made sense for the trustee to be Melbourne-based given Peter Holt and many of the other Holt Norman-related bankrupts are based there.

HNAB, an action group formed by more than 100 former clients of Holt Norman who lost money investing in Timbercorp's agri-investment schemes told SiN that Wily never responded to its correspondence while he was Peter Holt's trustee.

Wily said he could not recall receiving any specific correspondence but told SiN he would check the file. He did not provide a response by time of writing.

An **HNAB** member, **Susan Henry**, told a Senate inquiry that a "fake debt bankruptcy fraud ring" was operating to defeat creditors' valid claims.

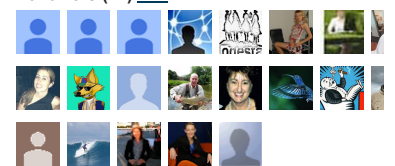
On February 20, four days before announcing that Wily had surrendered his ticket, AFSA issued a public appeal for information relating to "fraud by individuals through the creation of fictitious creditors, false caveats and mortgages used in personal insolvency agreements and bankruptcy administrations from 2010 until 2013.

"AFSA is working together with the Australian Federal Police (**AFP**) on several investigations in Melbourne involving such behaviour and it anticipates there may be more information about similar behaviour that the public may be able to

December 2012 (4)
November 2012 (5)
September 2012 (4)
August 2012 (4)
July 2012 (3)
June 2012 (1)
May 2012 (4)
April 2012 (2)
January 2012 (2)
December 2011 (7)
November 2011 (5)
October 2011 (6)
September 2011 (3)
July 2011 (2)
May 2011 (1)

SiN Followers

Followers (41) [Next](#)



[Follow](#)

provide."

SiN's sources however say the issue that motivated AFSA to consider terminating Wily's registration has nothing to do with the Timbercorp matter so the timing of the announcements appears coincidental.

AFSA's decision however doesn't end the tribulations. Wily remains a registered and official liquidator and a member of ARITA.

Given ARITA supplied the trustee who was to sit on the 155(H) committee, the insolvency practitioners' professional body now knows it has a member who was summoned to answer why he shouldn't be stripped of his bankruptcy ticket but who subsequently was allowed to relinquish his registration voluntarily.

It's likely that ARITA has sought legal opinion to ensure the state of affairs AFSA's choice has brought about doesn't inadvertently clash with some element of its own principles, codes and guidelines.

[Email SiN](#)

Posted by Peter Gosnell at [11:00 am](#)

Labels: [AFSA](#), [Andrew Wily](#), [ARITA](#), [Korda Mentha](#), [Paul Fury](#), [Timbercorp](#)

No comments:

Post a Comment

Thank you for your comment. It will be assessed for suitability as soon as possible.



Enter comment

[Newer Post](#)

[Home](#)

[Older Post](#)

Subscribe to: [Post Comments \(Atom\)](#)