

Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Public hearing: 28 February 2020

Question No: 001

Reference: Hansard page 11

Question:

Are there any precedents, in terms of contravening sections 671B(1) and 1308(2) of the Corporations Act? Are there other examples of this that you could point the committee to?

Answer:

ASIC has collated data from sentences since April 2013 where at least one of the charges was for a contravention of s 671B(1) or s 1308(2) of the *Corporations Act 2001* as set out below:.

This is set out in the table below.

| No | Decision Date | Offence | Decision |
|----|------------------|---|---|
| 1 | 19 April 2013 | s1308(2) Corporations Act 2001 (1 count) | The defendant pleaded guilty to one count of lodging a false statement with ASIC. The defendant was convicted and released subject to a recognizance order, without security, and requiring the defendant to be of good behaviour for 18 months. |
| 2 | 6 August 2013 | s184(2) Corporations Act 2001 (3 counts) s1308(2) Corporations Act 2001 (1 count) s1307(1) Corporations Act 2001 (1 count) | The defendant was sentenced to four years jail with a non-parole period of two years. The court also ordered the defendant to repay \$3.7 million to a number of investors. |
| 3 | 20 December 2013 | s1041G(1) Corporations Act 2001 (5 counts) s1308(2) Corporations Act 2001 (2 counts) s301(2) Crimes Act 1900 (NSW) (1 count) s300(2) Crimes Act 1900 (NSW) (1 count) | The defendant was jailed for 3 years and 3 months with a minimum period of 18 months. In October 2011, the defendant pleaded guilty to one count of using a false instrument and five counts of dishonest conduct in relation to providing a financial service. In addition, one charge of using a false instrument, three charges of dishonest conduct and two charges of making false statements to ASIC were taken into account in the sentencing of the defendant. |
| 4 | 17 April 2014 | s74 Crimes Act (VIC) 1958 (3 counts) s83(1)(A) Crimes Act (VIC) 1958 (2 counts) s1308(2) Corporations Act 2001 (1 count) s82 Crimes Act (VIC) 1958 (1 count) | The defendant was sentenced to six-and-a-half years in jail, with a minimum 3 and a half years to serve before being eligible for parole. |

| | | | |
|----|-------------------|---|--|
| 5 | 16 December 2014 | s606 Corporations Act 2001 (3 counts) | The defendant was fined \$25,000 for breaching section 606 and \$15,000 for breaching section 671B. |
| | | s671B Corporations Act 2001 (3 counts) | |
| 6 | 14 September 2017 | s1308(2) Corporations Act 2001 (3 counts) | The defendant was placed on a good behaviour bond of \$850 for a twelve-month period, without recording a conviction. |
| 7 | 19 November 2018 | s1308(2) Corporations Act 2001 (3 counts) | The defendant was convicted for knowingly making a false statement in a document submitted to ASIC and was fined \$3,000. |
| 8 | 19 November 2018 | s1308(2) Corporations Act 2001 (2 counts) | The defendant was sentenced but released on condition of good behaviour for three years, with a \$5000 bond. |
| | 6 November 2017 | s911A Corporations Act 2001 (2 counts) | |
| 9 | 19 November 2018 | s1308(2) Corporations Act 2001 (2 counts) | The defendant was sentenced to three months' imprisonment, to be released immediately. The defendant was released on condition of good behaviour for three years with a \$2000 bond. |
| | 6 November 2017 | s911A Corporations Act 2001 (2 counts) | |
| 10 | 7 November 2018 | s1308(2) Corporations Act 2001 (2 counts) | The defendant was sentenced to an overall term of two years imprisonment, with a minimum period of one year in custody. |

In most instances, the defendant was found guilty (or pleaded guilty) to multiple offences and, often, the sentence handed down did not apportion part of the sentence to each contravention.

As seen from the table above, sentences imposed can vary, depending on the facts underpinning the alleged contravention and the court's views of those facts.