

Tell us what happened:

March 2008

██████████ was forced into court appointed liquidation due to a dispute between directors and shareholders (the company was not in financial difficulty). The liquidation process was instigated by director, ██████████ ██████████ and ██████████ lawyers recommended ██████████ to liquidate.

The liquidator did not communicate the process and often did not respond to email or telephone enquiries. The liquidator did not advise cost of liquidation prior to proceeding or provide a scope of work or time line.

We were not advised that the liquidation was a two-part process of provisional liquidation and liquidation.

The only information the liquidator provided to us at the outset was a sheet of hourly charge out rates and after repeated requests an estimate of costs on the 18 August 2008 which we found out subsequently was only for the provisional liquidation and did not include disbursements.

July 2008

The Liquidator has not maximised return to shareholders

██████████ had made no sales, had no projects in progress or employees. The only major asset of ██████████ was a display house which was located on leased land. We advised the liquidator that we believed the asset to be valued somewhere between \$200,000 and \$400,000 and that we wished to bid on the asset.

Despite the liquidator having obtained a valuation for the display house of between \$100,000 and \$150,000 the liquidator engaged ██████████ to provide an on line auction for the display house at somewhere between 9% and 15% commission charge when a real estate agent or alternative on-line auction provider could have been engaged for somewhere between 1.5 to 3% commission. We confirmed that the market value for conducting on line auction for such a display house is 1.5% from EBay. (See Annexures E and F).

The liquidator proceeded with an expensive, uncompetitive and ineffectual sales campaign (estimated cost \$80,000) to achieve offers at around \$100,000 from third parties.

The liquidator confirmed that the only reasonable offers came from the two directors and a third party whom we had contacted directly and advised of the sale, i.e. parties who were already interested without embarking on the sales campaign. (See Annexure D).

This sales campaign was totally ineffectual, expensive and extensively delayed

the liquidation process.

August 2008

The liquidator has not concluded the process in a timely manner nor adhered to conditions of sale of asset

As previously stated, the liquidator proceeded with an expensive sales/marketing and auction campaign rather than simply asking the two directors for their highest bids. This extensively delayed the liquidation process and incurred unnecessary costs.

The condition of bidding for the company asset provided by [REDACTED] who were engaged by the liquidator clearly stated that the display house needed to be moved from land leased by [REDACTED] by August 31 2008 so that the liquidation could be finalised or that the purchaser had to enter into a commercial agreement with the landlord for an extension of time. (See *Annexure A*).

After 31 August 2008 the liquidator permitted the new owner of the asset, [REDACTED] [REDACTED] (also Director of [REDACTED]), to have a third party occupy the premises yet not take over the bond or lease in accordance with conditions of sale.

August 2008 – July 2009

The liquidator appears to be favouring the other director of the company [REDACTED] by permitting him to maintain the asset on leased site delaying the finalisation of the liquidation and being contrary to the conditions of sale provided by [REDACTED] who were engaged and instructed by the liquidator.

After making queries in May 2009 as to why the liquidation had not been finalised the liquidator finally provided a written undertaking (*see Annexure B and Annexure B(2)*) that the new owners of the asset would take over the bond and the liquidation would be finalised. This was as a result of us advising [REDACTED] [REDACTED] Representative of IPA of our concerns. The liquidators reported to [REDACTED] that the display house would be moved by the end of June 2009 and that the administration of the liquidation would be finalised in July 2009. (*See Annexure C*). This has not happened and we have emailed the liquidator twice asking why but, to date, we have not received any response.

The liquidator appears to be favouring the purchaser of the asset, [REDACTED] [REDACTED], also director of [REDACTED] who forced the company into liquidation and whose solicitors recommended [REDACTED] to liquidate the company.

Other comments:

We liquidated two companies, [REDACTED] and [REDACTED] both in a similar situation with the same shareholders (the two parties in dispute).

[REDACTED] was liquidated by agreement by shareholders by an independent accountant and cost shareholders \$900 and took three weeks while the cost of [REDACTED] court appointed liquidation has cost to date \$140,000 (estimated), started in May 2008 and is still not resolved.

We believe the inefficiencies in the court appointed liquidation process can be attributed to:

1. Solicitors actively encouraging court appointed liquidation process as a means to resolve a dispute even if the company is not in financial difficulty without any obligation to advise clients as to the accurate cost and length of time of the process and with the knowledge that solicitor fees will be paid during the liquidation process. This encourages collusion between solicitors and liquidators to maximise their profit.
2. Liquidators engaged on a non-competitive basis with no obligation to define a scope of work and time line, or competitive fee proposal and under no obligation to proceed only with work which is only required to maximise return to shareholders or statutory obligations.
3. The liquidator's stated objective of maximising return to shareholders being in direct conflict with their own company objectives of maximising income to the liquidator.
4. The liquidator being in a position to increase costs to shareholders if shareholders object to the Court to liquidator's remuneration claimed.
5. The Court being in no position to make a detailed assessment of whether the liquidator's claim for fees is reasonable without detailed information from the shareholders which the liquidator is in a position to actively discourage.