

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investment Commission

Question: BET 84

Topic: Giles Emery

Reference: Hansard page no. 42 - 03 June 2015

Senator: Canavan, Matthew

Question:

Senator CANAVAN: Giles Emery from the misconduct and breach reporting assessment and intelligence branch.

Mr Tanzer: And the letter says?

Senator CANAVAN: I was just establishing whether we have somebody of that name.

Mr Day: That is a staff member in my group.

Senator CANAVAN: He received a complaint on 15 September 2014. The letter says: We have completed our assessment of your report of misconduct which raises concerns about a bankrupt individual managing a corporation while disqualified. ASIC has looked at the alleged misconduct and information you provided—

You conduct your inquiries; I will not quote that in full. It goes on to say: and have determined that we will not take action in this instance.

You said that you were not aware that he was a shadow director, but it seems to me that, at least in this instance, you had received—

Mr Tanzer: That was 2014, I think you said.

Senator CANAVAN: The letter is dated 25 February this year, before the court case was handed down.

Mr Tanzer: The court case was all about—we alleged that he was a shadow director.

Senator CANAVAN: I thought you just said you did not know that he was a shadow director.

Mr Tanzer: We did not know that he was a shadow director before 2011, when we started the action.

Senator CANAVAN: I am sorry, I did not take that as clear. I thought I asked, 'Did you know he was a shadow director before the court case was handed down?'

Mr Tanzer: I am sorry, I missed that.

Senator CANAVAN: You might have misheard me.

Mr Day: It is likely that that letter was in the context of everything else that is going on. Now it may be that it does not indicate that, and if that is the case I think that may be a shortcoming. But clearly, in the context of everything else, in relation to that information at that time, matters were in hand.

Senator CANAVAN: This particular company was 1835 DEVELOPMENT COMPANY Pty Ltd. You received a complaint that he was clearly a person of interest, who was allegedly acting as a director or managing a corporation, and you did not seem to take any action on it. I just want to know why.

Mr Tanzer: I will go back and check, but obviously the court case was complete. We were awaiting judgement in respect of some very serious allegations with respect to Mr Gore. So I imagine that part of our thinking, I assume, was that we were going to wait to see what happened in the judgement before we thought about pursuing something else. But I am happy to check that.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Senator CANAVAN: Could you look at that? I understand what you are saying—you had an action already in train. I do not know what 1835 DEVELOPMENT COMPANY Pty Ltd was getting up to. But I would like to know what inquiries you made to ensure that his operations in that company were not also defrauding customers or investors, and whether people who did not know about Mr Gore or were not aware that there was a Federal Court case pending could potentially continue to be at risk of being defrauded.

Mr Tanzer: We will look into that.

Mr Medcraft: We will take that on notice.

Answer:

BET 84

In December 2014, ASIC received a report of alleged misconduct from a member of the public raising concerns that Mr Gore was managing 1835 Development Company Pty Ltd (ACN 167 206 840) while an undischarged bankrupt.

ASIC reviewed the information provided by the misconduct reporter and made preliminary inquiries into Mr Gore's conduct. ASIC then assessed the material we gathered and consulted with internal specialists on whether ASIC had sufficient grounds to pursue an investigation with a view to a criminal prosecution for the relevant offence provision or managing a corporation while disqualified.

ASIC also considered whether to pursue this allegation in light of our other regulatory actions against Mr Gore in relation to his conduct with respect to other companies, involving illegal fundraising, unlicensed provision of financial services, and misleading and deceptive conduct targeting Australian self-managed superannuation fund investors.

ASIC ultimately determined that there was insufficient evidence available in relation to the allegation that Mr Gore was managing 1835 Development Company Pty Ltd to warrant further action. ASIC exercised our discretion not to take further action in relation to this allegation.

In February 2015, ASIC informed the misconduct reporter we had determined not to take further action in relation to this allegation by telephone and in writing. The ASIC officer, Mr Giles Emery, also discussed with the misconduct reporter that, at that time, ASIC was awaiting the judgment of the Federal Court in the proceedings we had brought against Mr Gore and others in relation to the other matters.

As a result of those proceedings, Mr Gore has received a permanent ban from the financial services industry for being knowingly involved in contraventions of illegal fundraising, unlicensed provision of financials services and misleading and deceptive conduct under sections 727, 911A, and 1041H of the Corporations Act and section 12DA of the ASIC Act.

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Further information about ASIC's successful enforcement action against Mr Gore is contained in ASIC Media Release 15-134MR *Decision in ActiveSuper civil proceedings* available from our website.

ASIC is aware of concerns about Mr Gore's conduct. If members of the public have concerns regarding Mr Gore or further information regarding potential misconduct, we encourage them to lodge a report of misconduct on our website. ASIC undertakes an assessment of every report of misconduct we receive.