


**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 165

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Secretary
Senate Select Committee on
Superannuation and Financial Services
Parliament House
CANBERRA ACT 2600

Attachments
not authorised for publication.

Dear Sir,

**RE: D. W. & I. M. TAPPING PTY LTD (IN LIQUIDATION) acn 051
859 682**

I refer to the submission of Mr Woods Liquidator of the above mentioned Company.

Rather than just look at other mortgage schemes, I submit, that a thorough investigation is warranted, in particular the conduct of the organization entrusted with regulating Corporations, the ASIC.

1. ADVICE FROM MR BROWN ASIC OFFICER DIT MORTGAGE FUND COMPLIED WITH CORPORATIONS LAW

The ASIC first investigated D. W. & I. M. Tapping Pty Ltd (in liquidation) acn 051 859 682 herein after referred to as "DIT" in August 1993, when its legal officer advised me that DIT complied with the Corporations Law and that it could continue to operate as it had done previously.

On 27th August 1993, ASIC legal officer Mr Bruce Brown confirmed his advice in writing. [A]

2. COMMONWEALTH OMBUDSMAN AFFIRMS ILLEGAL DISSEMINATION OF FEDERAL POLICE CLASSIFIED INFORMATION FROM WITHIN ASIC

On or about January 1996, unbeknown to my fellow director or I, officers of the ASIC obtained highly sensitive, speculative and confidential information from the Australian Federal Police Intel data basin respect of Directors of Coal River Processing (Tas) Pty Ltd, herein after referred to as "CRP" a Company which had obtained monies from DIT investors.['B']

That highly classified, speculative and sensitive and confidential information obtained from the Australian Federal Police Intel data base was then disseminated to actual and potential associates of CRP and its directors claim caused the CRP to lose a \$6mil contract which caused the Company to go into liquidation.

Directors did not become aware of this fact until June 1997 when they cited the Commonwealth Ombudsman's report verifying the above mentioned events.

3. TASMANIAN TRUSTEES REFUSE TO RETURN FUNDS INVESTED BY DIT LAWYER HIRED TO GET FUNDS BACK NEGLIGENT FAILS TO CARRY OUT INSTRUCTIONS

In addition, we returned \$50,000 to an investor whose funds we had invested with a local Trustee Company Tasmanian Trustees.

DIT was experiencing difficulties in redeeming funds invested with Tasmanian Trustees in the sum of \$150,000 and instructed a Sydney solicitor Mr Hugh Barry to recover those funds.

Mr Barry provided negligent advice, on which directors relied and as a consequence of which further monies were invested and lost.

Complaints of professional misconduct have been lodged with the Law Society of N.S.W. September 1999 and the Law Society of Tasmania November 1999.

The Law Society of N.S.W. is reviewing the matter, whilst the Law Society of Tasmania apart from the initial correspondence advising me that they would investigate the matter have not done anything to date.

4. ASIC TELLS DIRECTORS PREVIOUS ADVICE(1993) WRONG EVENTUALLY A RUN ON DIT FUND

The ASIC carried out 3 further investigations, on 30th May 1997, 1st August 1997 and 7th October 1997 in the affairs of DIT at which time directors were examined on oath.

The ASIC advised directors that Mr Brown's advice was wrong and stopped the DIT from advertising for funds, which had the effect of preventing DIT from being able to return funds to those investors who wanted to redeem their investment.

Subsequently a number of investors sought return of their funds and directors sought to refinance existing mortgages.

5. ASIC ADVISES DIT TO APPOINT AN ADMINISTRATOR

During this time the ASIC was fully informed of the difficulties and on their advice the directors sought to appoint an administrator.

Prior to the appointment of the Administrator the ASIC engaged a "Independent Expert" Mr Woods on 13th October 1998 to investigate DIT.

6. IN THE MEANTIME ASIC APPOINT "INDEPENDENT EXPERT" TO INVESTIGATE DID FUND

On 16th October 1998 Mr Woods the "Independent Expert" submitted a report to the ASIC which was factually false, and made his recommendation on the basis of his factually false report.["C"]

The ASIC knew of ought to have known that the report of Mr Woods the "Independent Expert" was factually false, nevertheless they accepted the same without question.

7. ADMINISTRATOR WITH EXTENSIVE EXPERIENCE OF MORTGAGE FUNDS AND TRACK RECORD OF GETTING 100CENTS IN DOLLAR APPOINTED AND UNANIMOUSLY CONFIRMED BY CREDITORS.

Directors appointed Mr Martin Green of Grant Thornton (who successfully did the Patrick administration) as Administrator because of his extensive experience in dealing with mortgage funds and also because of his track record in achieving a return of 100 cents in the dollar when administering the Heritage Mortgage Fund. ["D"]

The Administrator's appointment was unanimously confirmed by the creditors of DIT.

The Administrator prepared a report dated 1st December 1998 in which he affirmed that he could achieve a return of 100 cents in the dollar.

8. ASIC TAKE ACTION TO DISMISS ADMINISTRATOR AND APPOINT LOCAL "INDEPENDENT EXPERT" AS LIQUIDATOR WHO INDICATES ONLY 50 CENTS IN DOLLAR RECOVERABLE

Notwithstanding the same, the ASIC took steps in the Federal Court to overturn the appointment of the Administrator Mr Martin Green who was unanimously endorsed by DIT creditors and who prepared a report regarding the affairs of DIT indicating that he could achieve a return of 100 cents in the dollar and instead the ASIC sought to, and eventually succeeded in appointing its "Independent Expert" as Liquidator who admitted that he had no previous experience in managing mortgage funds and who confirmed in his correspondence to you on 8th May 2001 that he could only achieve a return of less than 50 cents in the dollar.

In fact to date Mr Woods has only recovered less than 20 cents in the dollar.

1. I have sought unsuccessfully a break up the Liquidator's costs in administering the fund to date.
2. In particular I wanted to ascertain how were the properties disposed off.
3. Were the properties sold by public auction and was it advertised when and where?

4. I am particularly interested in the 2 properties securing the Burdon loan, as the Cricket Center at Bridgewater was valued at \$385,000, and Mr Burdon's house a Berriedale was valued at \$165,000, making a total valuation of \$550,000, and yet the Liquidator Mr Woods "forgave" Mr Burdon some \$100,000, which in the ordinary course of events, should have gone to the creditors, and allowed him to refinance his properties with the National Australia Bank, so that he was able to take a lease on a hotel in St. Helens.

9. "INDEPENDENT EXPERT" DEFAMES DIT DIRECTORS

In the course of that hearing in the Federal Court, because we were not parties to the action we could not put any submissions before the Court. Subsequently, on the basis of his factually false report, Mr Woods defamed my fellow Director, Ian Tapping and I, when he provided malicious information to the David Carrigg a reporter of "The Mercury" which published an article, implying that we had, inter alia, stolen \$500,000.["E"]

10. DIRECTORS ISSUE PROCEEDINGS FOR DEFAMATION, NEGLIGENCE, NEGLIGENT MISTATEMENT AGAINST MR WOODS, MR S. PURDON (ASIC OFFICER) ASIC MR D. CARRIGG AND "THE MERCURY".

It is instructive note that when I cross-examined Mr Woods under oath on 23rd February 1999 he denied that he did so and that is not the only time that he provided false information under oath.["F"]

In response we instituted proceedings in the Supreme Court for defamation, negligence and negligent misstatement against Mr Woods, Mr Scott Purdon ASIC officer, Mr David Carrigg and "The Mercury".

In his Affidavit date 16th February 1999 Mr Woods acknowledged the falsity of his report.["G"]

11. MR WOODS GIVES UNDERTAKING TO INVESTIGATE CLAIM AGAINST TASMANIAN TRUSTEES, MR MAX MCMULLEN AND MR HUGH BARRY

At the subsequent Federal Court hearing Mr Tapping and I withdrew our application against the appointment of Mr Woods as Liquidator on the proviso that he investigate our claims against the Tasmanian Trustees, their solicitor Mr Max McMullen, and Mr Hugh Barry.

To date, Mr Woods has not taken any action against the parties mentioned above nor has he provided any report in respect of his investigations.

12. MR WOODS INSTITUTES PROCEEDINGS AGAINST ME FOR A ALLEGED DEBT NOTWITHSTANDING THE FACT THAT THE COMPANY OWED ME MORE THAN I WAS PAID AND PUT IN A CROSS CLAIM FOR THE BALANCE

However Mr Woods has instituted proceedings against me for an alleged debt which is the subject of item 7. of his correspondence.

Mr Woods knows full well that there is no debt because at the time I was paid I was owed \$32,500 by DIT, but because the sum owing to me was unclear at the time I executed a mortgage document, in which the terms and conditions are quite explicit, the most pertinent being that the mortgage has no effect whilst DIT is indebted to me.

In effect, because of my prudence, ensuring that I did not take monies from the Company, which I did not earn, without consideration, I am the subject of legal action by the Liquidator.

I deeply resent the fact that my earnings are disputed in this manner.

That the Liquidator's claim is tenuous is beyond question as his reply to my Defence and Counterclaim clearly exemplifies

I hazard to guess Mr Woods actions are motivated more from a deep seated resentment against me for exposing his numerous shortcomings than from his intention to protect the creditor's interests, when in desperation, he seeks to have the whole fund declared illegal, and put the investor's funds at risk.["H"]

13. MR WOODS CLAIMS A PAUCITY OF DOCUMENTATION AND YET REFUSED TO JOIN THE ASIC AS PARTY TO THE ACTION

NOTWITHSTANDING THE FACT THEY HAVE DIT DOCUMENTATION IN THEIR POSSESSION

I also note that Mr Woods laments the paucity of documentation in respect to our mortgage fund, and yet he steadfastly refuses to accede to my efforts to have the ASIC, who hold all the DIT documents, made a party to this particular action, and hence enable all the issues to be ventilated and all the documentation that the ASIC has examined by the Courts.

14. THE ASIC AT THE INSTIGATION OF MR WOODS INSTITUTED PROCEEDINGS AGAINST ME FOR ALLEGEDLY FAILING TO LODGE A REPORT AS TO THE COMPANY'S AFFAIRS

Notwithstanding the fact that DIT was investigated by the ASIC on no less than 6 separate occasions by their various officers and accountants in the course of which they took all of the Company's records and at this time still have some in their possession, of which Mr Woods the Liquidator was aware or he ought to have been aware, and notwithstanding the fact that, Mr Woods the Liquidator had in his possession or ought to have had in his possession, 2 reports from the ASIC, his own report dated 16th October 1998, the Administrator's report dated 1st December 1998, two reports regarding the Company's affairs from my fellow director Mr Tapping one submitted to the Administrator and one submitted to Mr Woods and a report As to the Company's affairs submitted by me, although by this time drowning in reports the Liquidator still required a report from me, which made me suspicious, in view of all the litigation on foot and I sought a meeting with the ASIC to discuss this request.

My request was refused I was charged the matter was heard by a biased magistrate and I was fined \$750.

I appealed to the Supreme Court.

I subsequently received a tampered transcript of proceedings, with important bits of the same missing which I took up with the Attorney General and eventually rectified and the Supreme Court upheld my appeal.["I"]

I apologize for the hurried manner in which I have composed this sequence of events but feel that it is essential for the Senators to be aware of all the facts when Mr Woods presents his submission.

As mentioned previously, Mr Tapping and I, welcome a full investigation.

Yours faithfully,

Jon Jovanovic