

3 October 2012

Senate Economics References Committee
PO Box 6100, Parliament House
CANBERRA ACT 2600

Att: Mr Tim Bryant

Dear Sir

**Tony Townsend Pty Limited and Townsend Hotel Management Pty Limited
(Both Receivers & Managers Appointed) (In Liquidation) ("the Companies")**

T/a The Sandringham Hotel, Newtown ("the Hotel")

**F&J Townsend Investments Pty Limited (Administrators Appointed)
(Receivers & Managers Appointed) ("F&J Townsend")**

We refer to your correspondence dated 24 September 2012 in relation to a supplementary submission received from Mr Tony Townsend, the sole director of each of the Companies.

Thank you for providing us with the opportunity of responding to the submission. Please note that we only propose responding to the allegations that have been made directly against Ferrier Hodgson, and that we do not propose to respond to the allegations that have been made directly against the Bank of Western Australia Limited ("the Bank").

On this basis, we outline the relevant facts and our responses as follows:

Background

- Ferrier Hodgson is a specialist provider of financial advisory, insolvency and forensic accounting services. We are frequently engaged by financiers and corporates to assist in situations of financial distress.
- Ferrier Hodgson was approached in July 2011 by the Bank and asked to undertake an Investigating Accountants' review of the Companies and the Hotel. At the time that the Bank asked Ferrier Hodgson to undertake this work:
 - the Companies had committed numerous breaches of their facilities with the Bank; and

ferrier hodgson_response to senate inquiry.docx
A01:85083

- in any case, the facilities had expired in December 2010 and the monies that remained outstanding under those facilities were immediately due and payable to the Bank (and in fact had been for over 6 months).
- Ferrier Hodgson was formally engaged as Investigating Accountants by the Bank on 29 July 2011.
- As part of our work, we met with Mr Townsend and a representative of the Bank in August 2011. During the course of this meeting, the role as an Investigating Accountant to investigate the Companies' financial position and to report to the Bank on that financial position was explained to Mr Townsend.
- Ferrier Hodgson provided a report to the Bank on 16 August 2011 on the Companies' financial position and the options available to the Bank to manage its exposure.
- Subsequent reports were provided to the Bank on 13 September 2011 and 30 September 2011.

Receivership Appointment

- Ferrier Hodgson partners Morgan Kelly and Ryan Eagle ("the Receivers") were appointed as Receivers and Managers of the Companies and the Hotel on 9 July 2012.
 - At the time the Receivers were appointed, the Companies' facilities with the Bank had expired for more than 18 months and the Companies had failed to repay to the Bank the monies outstanding to it under those facilities, despite being granted numerous temporary extensions by the Bank to do so. On this basis, Ferrier Hodgson was satisfied at the time of the appointment of the Receivers that the Bank had a proper basis for the appointment.
 - We note that Mr Townsend has claimed in numerous public forums that either the no default had occurred under the Companies' facilities with the Bank or, alternatively, that the only default by the Companies was a "Loan Value Ratio" default. For the reasons that we have set out above, this is not correct. To the best of the Receivers' knowledge, the Bank has never relied on a "Loan Value Ratio" default as the basis for the Receivers' appointment.
-
- Immediately following the Receivers' appointment, representatives from Ferrier Hodgson met with Mr and Mrs Townsend at the Hotel to take possession of and secure the Companies' assets. As you would appreciate, the nature of the Receivers' appointment required such steps to be taken.
 - At that meeting, I explained to Mr and Mrs Townsend the receivership process and outlined that a sale campaign for the Hotel would be undertaken.

- I offered to retain Mr and Mrs Townsend to continue working offsite on a casual basis, which they accepted. Their work included booking live bands and promotions.
- At my initial meeting with Mr and Mrs Townsend, I advised Mr Townsend that in the event that he secured a refinance proposal, even if a partial refinance, he should notify me immediately as this could bring the receivership process to an immediate end if the refinance proposal was acceptable to the Bank. I offered to assist Mr Townsend with putting any such proposal to the Bank for its consideration.
- Since the date of our appointment, the Receivers have continued to trade the Hotel in the ordinary course, whilst pursuing a public sale campaign with Knight Frank.
- Approximately one week after the appointment I called Mr Townsend requesting an update on his refinance proposal and again advised him that he should put forward the best offer he was able to generate. Mr Townsend stated that he had an investment property to protect. I advised that if he put forward an offer a settlement could be negotiated with the Bank. Since that conversation, I have had no communication from Mr Townsend regarding his refinance or any settlement proposal.
- Shortly after our appointment, I discovered significant discrepancies between reported creditor accounts and actual balances outstanding. Many creditors had not been paid by the Companies for an extended period of time and at the date of the Receivers' appointment, there was approximately \$521,553 outstanding to unsecured creditors. Some examples of these creditors are:
 - Australian Taxation Office (Income Taxes): \$202,278. Debt relates to the period from 2008 to 2012.
 - Australian Taxation Office (Superannuation Guarantee Charge): \$82,224. Debt relates to the period from 2010 to 2012.
 - Office of State Revenue (Land Tax): \$31,400. Debt relates to outstanding land tax for 2011 and 2012 years.
- The Office of State Revenue issued a statutory demand to each of the Companies on 25 June 2012 in the amount of \$31,233 in respect of outstanding amounts due to it. That demand was unanswered and, to the best of my knowledge at the time of the Receivers' appointment on 9 July 2012 that demand remained unanswered.
- A review of the management accounts maintained by the Companies indicated that the Hotel had been trading at a loss for the previous three years, and a letter from Mr Townsend's accountant to the Bank dated 31 May 2011 confirmed this.

Breach of Privacy

- Prior to the Receivers' appointment, no public comment was made by any partner or employee of Ferrier Hodgson about the Companies or the Hotel.
- Since the appointment of the Receivers, all comments made to the media by the Receivers have been in direct response to public comments made by Mr Townsend in relation to the financial position of the Hotel and its operations and have been appropriate and accurate. Those comments have been on relevant matters such as:
 - the fact that the Receivers have been appointed and the reasons for that appointment;
 - the fact that the Receivers were evaluating the business of the Companies; and
 - the fact that the Receivers were taking all possible steps to find a buyer for the Hotel and to ensure that the business would continue to operate until a sale could be achieved.
- We confirm that since the Receivers' appointment, the Receivers' agents, Knight Frank, have marketed the Hotel as a live music hotel. We refer specifically to Mr Townsend's allegations that the Receivers have interfered with the sale of the Hotel to a potential buyer for a price of \$5 million and that the reason that this sale did not proceed was because the potential buyer had been told that the Hotel was on "receiver watch". The Receivers deny that there is any truth in any of these allegations. The Receivers understand that the reason the sale did not proceed was primarily due to the fact that Mr Townsend hoped to lease back the Hotel from the potential buyer for a period of two years and retain the liquor licence and Poker Machine Entitlements (PME's).

Residential Property: F&J Townsend Investments Pty Limited ("F&J Townsend")

- Mr Townsend, in his capacity as sole director, appointed Hall Chadwick as Voluntary Administrators of the Companies on 21 August 2012.
- In addition, Mr Townsend appointed Hall Chadwick as Voluntary Administrators to F&J Investments on 21 August 2012.
- No communication was received or discussion held with the Bank or the Receivers prior to this action being taken.
- F&J Investments owns a residential unit at Bardwell Park, New South Wales ("the Property"), which was provided by the Companies to the Bank as supporting security for the Companies' facilities with the Bank.

- As you may be aware, the effect of a Voluntary Administrator's appointment is to replace the powers of the directors with an independent administrator. Following the appointment of the Voluntary Administrators by Mr Townsend, control of the Property passed to the Voluntary Administrators. The Bank then had a limited period within which it could appoint receivers to the Property.
- As a direct result of the appointment of Voluntary Administrators to F&J Investments, the Bank appointed the Receivers as Receivers and Managers of the Property on 7 September 2012. This was at the end of the period when such an appointment could occur.
- Following this appointment, Ferrier Hodgson was required to take possession and secure the Property. Accordingly, Ferrier Hodgson sent a representative to the Property on 7 September 2012 to provide notice of the Receivers' appointment to the tenant, and to request written details of any tenancy arrangements. The tenant identified herself as Mr Townsend's sister. This was the first time that Ferrier Hodgson had been informed that the tenant was in any way related to Mr Townsend. The Ferrier Hodgson representative handed the notice of appointment to Ms Townsend and then left the Property. Prior to their appointment the Receivers were not aware of any matters concerning the medical condition of Mr Townsend's sister. Accordingly, Mr Townsend's allegations regarding the Receivers' motivation for attending the Property and serving its tenant are without any basis or merit and are categorically denied by Ferrier Hodgson and the Receivers.
- No action has been taken by the Receivers with respect to the Property since our initial visit. At this stage we have taken no steps to sell or otherwise deal with the asset, have had no contact with the tenant and, at Mr Townsend's request, limited any communication in this regard to the office of his solicitors.

Trading and Operations during the Receivership

- Mr Townsend has made the following allegations about the conduct of the Receivers since they took over the management of the Hotel:
 - the Receivers have run out of beer;
 - the Receivers have shortened the Hotel's trading hours;
 - the Receivers have treated patrons aggressively and forcibly removed international artist, Jonas Matranga, from the stage unnecessarily; and
 - the Receivers have damaged both the business and reputation of the Hotel.
- We respond to each of those allegations in turn.
- From the time of the appointment of the Receivers, Ferrier Hodgson engaged an operational agent to oversee the operations of the Hotel during the receivership period.

The individual in question has significant hospitality experience and has been undertaking similar assignments with Ferrier Hodgson for the last 20 years.

- Neither Ferrier Hodgson nor our operational agent has received any complaints or comments from patrons in relation to the operations of the Hotel since the appointment of the Receivers. Accordingly, Mr Townsend's allegations in this regard are denied.
- Upon the appointment of Receivers, it became evident that many of the supplier accounts (including liquor suppliers) were irregular and had been placed on "stop".
- So that the Receivers were able to continue running the business of the Hotel, the Receivers sought to establish new supplier accounts. As a result, there were some supply issues in the first week of the Receivers' appointment. From my recollection, Coopers Pale Ale was not available during the first weekend of our appointment because the supplier account had been placed on "stop" and the supplier was unwilling to supply the Hotel without confirmation from the Receivers that the Receivers would personally pay for any further supplies. The reason that the Hotel ran out of Coopers Pale Ale was because of this, not because of any act by the Receivers as suggested by Mr Townsend.
- I am not aware of the incident outlined in Mr Townsend's submission regarding Jonas Matranga being forcibly removed from stage.
- On 9 August 2012, following a compliance review of the Hotel, the Receivers became aware that the Hotel's temporary Development Application ("DA") permitting trading past 12am lapsed in November 2010. This was approximately 18 months before the Receivers' appointment.
- Despite this, the Hotel had been trading until 2am, outside of its permitted hours. This was very concerning to the Receivers and, accordingly, the Receivers sought advice from the Marrickville Council and their lawyers about whether the Hotel was permitted to trade until 2am.
- Following enquiries with Marrickville Council and receipt of written advice from our lawyers, it was determined on 17 August 2012 that the Hotel was not permitted by Council to trade past 12am. Marrickville Council confirmed to my office that if the Receivers traded beyond 12am they would be subject to fines. Accordingly, the Receivers reverted to closing at 12am effective from this date.

For the reasons outlined above, we do not consider that there is any basis for any of the allegations that have been made by Mr Townsend against the Receivers in his supplementary submission. Further, Ferrier Hodgson denies that the Receivers have acted in a way that has damaged the business or reputation of the Hotel or that they have conducted themselves in a manner that is dishonest, deliberately disruptive or bullish.

In summary what has occurred in this case is that a borrower has repeatedly defaulted under the terms of their facility with the Bank, that facility has then expired and not been repaid by the borrower and some 18 months later, after numerous indulgences, the Bank has exercised its right to appoint the Receivers to realise its security. Upon taking control of the Hotel it became apparent that many creditors had not been paid over a significant period of time with over \$520,000 due to unsecured creditors.

Ferrier Hodgson has no objection to this response being a public document and notes that it is provided under parliamentary privilege.

Please do not hesitate to contact me should you require any further information.

Yours faithfully
Ferrier Hodgson

Morgan Kelly
Partner