

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

2014 - 2015

Department/Agency: Australian Securities and Investment Commission

Question: BET 83

Topic: Secured Capital and Finance

Reference: Hansard page no. 42 - 03 June 2015

Senator: Canavan, Matthew

Question:

Senator CANAVAN: I am not sure if it was the same report, but it was at least a liquidator's report as well—I believe it is the same report that I have just quoted from—it also said:

I can only conclude that the operation of SC&F—

Secured Capital & Finance, which Mr Gore was involved with—
was something akin to a Ponzi scheme.

So I am still trying to establish what you did, after receiving that report, to stop Mr Gore from being involved in further activities to defraud—

Mr Tanzer: I am trying to establish that myself. I will take it on notice. I am quite happy to come back to you with some information about that.

Senator CANAVAN: Okay, if you could. There seems to be a gap here. You got that report in May 2010 but it does not seem like any action had been taken against Mr Gore, and then you received a cold call in late 2011?

Mr Tanzer: The action in respect of Mr Gore was with respect to ActiveSuper, which related to an SMSF related matter.

Senator CANAVAN: I understand that.

Mr Tanzer: There may be a range of reasons associated with—

Mr Medcraft: We will come back to you on that.

Senator CANAVAN: I would obviously be concerned if people can just change the names of the companies that they should be operating in—

Mr Medcraft: No. I would be interested to hear the response.

Senator CANAVAN: The court found that he was a shadow director of this particular company, MOGS Pty Ltd. Were you aware that he was a shadow director of that entity before the court found that?

Mr Tanzer: I do not think so.

Senator CANAVAN: My understanding is that last year you did actually look into a complaint that Mr Gore had been acting as a director while an undischarged bankrupt. Are you aware of that?

Mr Tanzer: I will go back and check. I will take it on notice.

Answer:

BET 83

Liquidator's report

Section 533 of the *Corporations Act 2001* (Corporations Act) obliges liquidators to conduct preliminary inquiries into the affairs of the company to which they are appointed, and to report to ASIC where these inquiries reveal evidence that company officers may have breached their obligations. ASIC received a report from the liquidator of Secured Capital &

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Finance Pty Ltd (ACN 098 864 174) (now deregistered) in May 2010 under section 533 of the Corporations Act. The liquidator reported to ASIC that his inquiries suggest that Mr Craig Gore may have contravened certain sections of the Corporations Act in his role as director of Secured Capital & Finance Pty Ltd.

ASIC considered the allegations raised in the report and recorded the information in our intelligence database. At that time, ASIC concluded that the information available about Mr Gore's conduct did not provide ASIC with sufficient grounds to pursue further regulatory action. ASIC was also not in a position to exercise our administrative power to ban Mr Gore from managing corporations for up to five years under section 206F of the Corporations Act.

In November 2010, Mr Gore became automatically disqualified from managing corporations by virtue of executing a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*. Part X allows a debtor to enter into an arrangement with their creditors to satisfy their debts without being made bankrupt.

In 2011 ASIC commenced a regulatory action against Mr Gore and others for misconduct relating to illegal share raisings involving Australian self-managed super fund investors.

Mr Gore subsequently became bankrupt in 2012 and became automatically disqualified from managing companies due to bankruptcy. As of 19 April 2015, that bankruptcy had been discharged by law.

MOGS Pty Ltd (ACN 136 499 360)

ASIC brought legal proceedings against MOGS Pty Ltd (ACN 136 499 360) (In liquidation) (MOGS) in 2013, alleging MOGS, Mr Gore, and others had contravened various provisions of the Corporations Act and the *Australian Securities and Investments Commission Act 2001*. As part of those proceedings, ASIC was aware that from late 2011-mid 2012 Mr Gore was engaged as a consultant to MOGS Pty Ltd.

2014 complaint that Mr Gore was managing while disqualified

In December 2014, ASIC received a report of alleged misconduct from a member of the public raising concerns that Mr Gore was managing a corporation while an undischarged bankrupt. ASIC's handling of this matter is discussed further in the response to BET84.