

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

17 October – 18 October 2012

Question: SBT 30

Topic: Section 420A of the Corporations Act - Insolvency Practitioners

Hansard Page: pg 127, Thursday 18 October 2012

Senator WILLIAMS asked:

Senator WILLIAMS: I have real concerns around section 420A of the Corporations Act, regarding insolvency practitioners selling assets at or around market value. Senator Bishop, Senator Bushby and I have just been participating in a banking inquiry. In one bloke, Jim Neale's, public submission, his asset was sold by a receiver even though he was not a company. I have asked you about this before. Even when receivers sell for privateers, they still must abide by the Corporations Act. An asset valued at \$4 million was sold for \$650,000. After the sale the valuation was \$3.8 million. To me, that seems a very cheap sale of that asset. Are you prepared to look at something like this? If something is valued at \$4 million or \$3.8 million and sold for \$650,000, that —

Mr Medcraft: Do we have a name?

Senator WILLIAMS: Jim Neale. He made a submission to our banking inquiry. I can forward you all the details, if you like.

Ms Gibson: I think it would be better if we had the details. You may need to make sure you are comparing like with like.

Senator WILLIAMS: Yes, exactly.

Mr Medcraft: We will take it on notice if you give us the details.

Senator WILLIAMS: Mr Medcraft or Ms Gibson, have you ever pursued anyone for breach of section 420A?

Ms Gibson: I will take that on notice, if I may.

Senator WILLIAMS: Okay.

Answer:

Your question refers to a Mr Jim Neale. ASIC only regulates transactions affecting corporate entities, not persons. We cannot comment on the personal circumstances of Mr Neale.

More broadly, section 420A of the *Corporations Act 2001* is designed to codify the common law duty a receiver (appointed by a mortgagee) owes to a mortgagor regarding the power of sale of relevant mortgaged property. The section enables parties such as the receiver, and the company (mortgagor) to understand the scope of the receiver's duty regarding the sale of mortgaged property.

The section is not an offence provision so there is no statutory penalty for a breach under the Act. The primary remedies available for a breach of the section are the general law remedies of set-off and an account (which is the difference in value of the property if it had been sold without breaching

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the section). The availability of remedies to aggrieved parties, (for example, a mortgagor or guarantor), are to be tested by reference to the duty imposed under the section.

Notwithstanding, ASIC has standing to inquire into the conduct of Receivers and Managers, and other Controllers pursuant to section 423 of the Act.

ASIC has conducted investigations in respect of three separate confidential matters which included a review of a possible non compliance with the section. Insufficient evidence was found to warrant continued investigation in each of these matters.

Project start date	Investigation No.	Date finalised
7 May 2004	ENF2004/10588	21 May 2004
6 April 2004	ENF2004/6667	3 September 2004
9 May 2002	ENF2002/7520 ¹	26 November 2011

¹ This matter was reviewed again with separate Investigation No. ENF2010/27061