



A recent decision by the Administrative Appeals Tribunal (AAT) has upheld the disqualification of a director of a corporate trustee of a self-managed super fund (SMSF) for several contraventions of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

Key Takeaways

- The ATO is empowered to disqualify the responsible officers of a corporate trustee of an SMSF if they fail to satisfy the legislative standards of conduct imposed by the SIS Act
- The late lodgment of annual tax returns may constitute a 'serious contravention' in certain circumstances
- In resolving whether disqualification is justified, consideration is had to the nature, number and seriousness of the contraventions in question
- The Tribunal affirmed that the "prudent management" of individual funds constitutes the "immediate object" of the SIS Act

Background

In August 2019, Mr Gouloupoulos and his wife were disqualified by the Deputy Commissioner of Taxation for committing serious breaches of the SIS Act on multiple occasions. These include:

- Failing to lodge annual returns over a period of four years;
- Depleting the SMSF by 18 withdrawals totaling \$665,990.86 to fund the purchase of a new property and new Mercedes Benz vehicle; and
- Illegally accessing super where no condition of release had been met.

The trustee's conduct also resulted in breaches of the borrowing and in-house asset provisions of the SIS Act, in addition to the provisions regarding the acquisition of assets from a related party.

Mr Gouloupoulos subsequently appealed the decision.

Decision

Having regard to all the circumstances, the Tribunal concluded that Mr Gouloupoulos was not a fit and proper person to continue as a trustee of a SMSF. In reaching this conclusion, the Tribunal held that Mr Gouloupoulos sought to downplay his contravening conduct, which justified his disqualification.

Whilst Mr Gouloupoulos offered to complete an education course, implement strategies to avoid future contraventions, and provide an enforceable undertaking to halt the behaviour in contravention of the SIS Act, the Tribunal resolved that adopting these options were unlikely to reduce the risk of future breaches.

The Tribunal held that Mr Gouloupoulos "preferred to take actions that suited his own convenience and comfort", committing particularly serious breaches of the SIS Act and deviating from the standards expected of a responsible officer.

AAT Deputy President Ian Molloy rejected Mr Gouloupoulos' claim that he relied on the advice provided by his accountant, who according to Mr Gouloupoulos "planted the seed" to pursue the avenue of withdrawing funds from the SMSF.

Though the Tribunal acknowledged that Mr Gouloupoulos voiced some remorse for his actions, it concluded that he failed to admit the improper nature of his conduct.

Furthermore, the Tribunal accepted the submission of the Deputy Commissioner regarding the failure by Mr Gouloupoulos to ensure that the SMSF complied with the sole purpose test stipulated by the SIS Act.

Conclusion

This case affirms the stringent standards expected of a director of a corporate trustee of an SMSF. Directors of trustees of superannuation entities must be aware of their statutory obligations, and understand the harsh implications of failing to abide by such obligations.

If you would like any further information on this case or would like to discuss your legal rights, please contact Chris Kintis or your usual ClarkeKann contact.