

Meltzer Mason Heath

Chartered Accountants practising as insolvency specialists

Refer to: Lloyd Hayward

No. of Company: 1722586

Liquidators' Further Report

Whitaker Limited (In Liquidation)

For the period to 14 January 2009

Introduction

Whitaker Limited was placed into liquidation by the High Court in Auckland on 14 July 2008 and Jeffrey Philip Meltzer and Lloyd James Hayward were appointed joint and several Liquidators.

In accordance with section 255 of the Companies Act 1993 the Liquidators are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six months. This report covers the period to 14 January 2009

Schedule of Receipts and Payments

There have been no receipts or payments in the period

Asset Realisations

Deposits paid by purchasers were paid to Blue Chip New Zealand Limited on the instruction of the company. Blue Chip New Zealand Limited is insolvent and in liquidation. At this time the prospect of recovery of these monies is unknown.

Dividends

There have been no dividends paid during the period covered by this report. At this time the Liquidators do not expect that there will be any dividend available for creditors.

The following sections of this report incorporate comments relating to all of the Blue Chip companies to which we have been appointed.



Investigations and Proposed Action

In addition to their statutory duties the Liquidators commenced investigations into the products marketed by Blue Chip companies and licensees, promotional material produced by Blue Chip in relation to the products and the documents entered into by investors when purchasing the products. The aim of these investigations was to determine whether the products breached any New Zealand legislation, in particular, the provisions of the Securities Act 1978. Senior Counsel was retained to advise the Liquidators on this aspect of the liquidations.

Funding for these investigations was provided from an allocation of funds from the Liquidation Surplus Account (“LSA”). Payments are made from the LSA at the direction of the Official Assignee for New Zealand for payment of the costs of proceedings in a liquidation after the commencement of the liquidation, legal or other expert advice, or the costs of any expert witness. The Liquidators are grateful for the assistance provided from the LSA.

Counsel’s initial view, as advised to the Liquidators, is that there has been an apparent breach of the securities legislation. This does not mean that an actual breach has been proved or that liability has been established against the companies in liquidation and/or persons involved with the management and control of the companies.

As the next step in this process, the Liquidators are applying to the Court under section 284 of the Companies Act 1993 for directions as to whether, in fact, there is a breach of the securities legislation and if so, the effect of the breach on investors’ sale and purchase and other agreements. If the Court decides there have been breaches of the securities legislation, it will then be necessary for the liquidators to investigate the liability or otherwise of persons involved in the management and control of the companies and whether or not any advisors to the companies may also be liable.

The Liquidators are severely constrained by the limited funding available. The available funding is sufficient only to make an application to the Court for directions. If, as a result of the application, the direction is that the securities legislation has been breached, further funding will need to be obtained to progress investigations and actions against those that may be liable.

Without a successful outcome to any proceedings that may be commenced by the Liquidators, it is apparent that no funds will be available within the companies in liquidation for distribution to investors and trade creditors.

Various investor groups have commenced, or are about to commence, proceedings in relation to several apartment developments in Auckland. Those proceedings are focused on cancelling sale and purchase agreements and recovering deposits paid. Those deposits are held in the apartment developers’ solicitors trust accounts.

The investor groups’ proceedings will not benefit those earlier (i.e. prior to 2006) investors in Blue Chip products who purchased units in developments and agreed to release their deposits to Blue Chip in return for payment of some form of compensation - the developments did not proceed and the investors were not refunded their deposits. However, the Liquidators’ application (which could be heard at the same time as the investor groups’ proceedings) may not only facilitate the outcome of those proceedings but will also seek to identify possible areas of recovery that may benefit the earlier investors together with trade creditors.

Creditors may be aware from media reports that criminal charges have been laid by the National Enforcement Unit (“NEU”) of the Companies Office against Blue Chip’s co-founder, Mark Bryers. Some of the charges relate to complaints made by the Liquidators. Further charges may be made against Mr Bryers and also other persons associated with the Blue Chip operation. The Liquidators are assisting the NEU with providing information in relation to requests made by them.

The Official Assignee, and other persons, have been appointed liquidators of further Blue Chip companies. Most, if not all companies, including the companies being liquidated by ourselves are bereft of assets, except for intercompany advances, the value of which are doubtful, if not worthless. The assistance for investors proposed following the liquidations in 2008 has not eventuated and is unlikely to do so.

The initial hearing date for the investor groups’ proceedings is in May 2009. Creditors will be updated on the progress of the Liquidators’ Court application in the next Liquidators’ report.

Please contact Lloyd Hayward of this office should you require any further information.

Dated this 12th day of March 2009

L J Hayward
Liquidator