FEDERAL COURT OF AUSTRALIA

Fiorentino v Companies Auditors and Liquidators Disciplinary Board

[2014] FCA 641

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| Citation: | Fiorentino v Companies Auditors and Liquidators Disciplinary Board [2014] FCA 641 |
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| Parties: | **PINO FIORENTINO v COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD and AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** |
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| File number: | NSD 120 of 2014 |
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| Judge: | **WIGNEY J** |
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| Date of judgment: | 19 June 2014 |
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| Catchwords: | **ADMINISTRATIVE LAW** – application for review of a decision of the Companies Auditors and Liquidators Disciplinary Board – applicant’s applications for adjournment refused – whether the decisions not to grant an adjournment denied the applicant natural justice – whether the requirements of natural justice give the applicant a right to legal representation – whether the applicant was denied legal representation  **ADMINISTRATIVE LAW** – whether the decisions not to grant an adjournment were legally unreasonable – principles of legal unreasonableness |
|  |  |
| Legislation: | *Australian Securities and Investments Commission Act 2001* (Cth)  *Corporations Act 2001* (Cth)  *Crimes Act 1914* (Cth) |
|  |  |
| Cases cited: | *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2006) 151 FCR 466  *Blazevski v Judges of the District Court of New South Wales* (1992) 29 ALD 197  *Dietrich v The Queen* (1992) 177 CLR 292  *Dunsmuir v New Brunswick* [2008] 1 SCR 190  *House v The King* (1936) 55 CLR 499  *Igbinosun v Law Society of Upper Canada* [2009] O.J. No. 2465; 2009 ONCA 484  *Li Shi Ping v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 35 ALD 557  *Minister for Immigration and Border Protection v Singh* [2014] FCAFC 1  *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332  *ML v Australian Securities and Investments Commission* [2013] NSWCA 109  *ML v Australian Securities and Investments Commission* [2013]NSWSC 283  *New South Wales v Canellis* (1994) 181 CLR 309  *Regina v Panel on Take-overs and Mergers* [1990] 1 Q.B. 146  *Sullivan v Department of Transport* (1978) 20 ALR 323  *WABZ v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 134 FCR 271 |
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| Date of hearing: | 1 May 2014 | |
|  |  | |
| Place: | Sydney | |
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| Division: | GENERAL DIVISION | |
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| Category: | Catchwords | |
|  |  | |
| Number of paragraphs: | 96 | |
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| Counsel for the Applicant: | T Rickard | |
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| First Respondent: | The first respondent filed a submitting notice save as to costs. | |
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| Counsel for the Second Respondent: | PT Russell | |
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| Solicitor for the Other Respondent: | Solicitor for the Australian Securities and Investments Commission | |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| NEW SOUTH WALES DISTRICT REGISTRY |  |
| GENERAL DIVISION | NSD 120 of 2014 |

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| BETWEEN: | PINO FIORENTINO  Applicant |
| AND: | COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD  First Respondent  AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  Second Respondent |

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| JUDGE: | WIGNEY J |
| DATE OF ORDER: | 19 june 2014 |
| WHERE MADE: | SYDNEY |

THE COURT ORDERS THAT:

1. The application be dismissed.
2. The applicant pay the second respondent’s costs of the application.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| NEW SOUTH WALES DISTRICT REGISTRY |  |
| GENERAL DIVISION | NSD 120 of 2014 |

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| BETWEEN: | PINO FIORENTINO  Applicant |
| AND: | COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD  First Respondent  AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  Second Respondent |

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| --- | --- |
| JUDGE: | WIGNEY J |
| DATE: | 19 june 2014 |
| PLACE: | SYDNEY |

**REASONS FOR JUDGMENT**

1. Mr Fiorentino is a liquidator and an official liquidator registered by the Australian Securities and Investments Commission (**ASIC**) under the *Corporations Act 2001* (Cth) (**the Act**). In June 2013 ASIC filed an application with the Companies Auditors and Liquidators Disciplinary Board (**the Board**) for an order under s 1292(2) of the Act cancelling Mr Fiorentino’s registration. ASIC contends that in the course of the liquidation of a particular company Mr Fiorentino failed to carry out or perform adequately and properly the duties of a liquidator. ASIC makes a number of specific allegations against Mr Fiorentino. There is a degree of complexity involved in the matter.
2. The Board originally listed ASIC’s application for hearing in October 2013. That hearing date was vacated on the application of Mr Fiorentino. The matter was set down for hearing in November 2013. On the eve of that hearing Mr Fiorentino again applied for and was granted an adjournment. The November hearing date was vacated and the matter was set down for hearing to commence on 3 February 2014.
3. On the eve of the 3 February 2014 hearing, Mr Fiorentino again applied for an adjournment and the vacation of the hearing. That application was refused, as was another adjournment application made on the day the matter was listed. The matter proceeded. Mr Fiorentino withdrew and played no part in the hearing. The Board has not yet made any decision or order in respect of ASIC’s application.
4. Mr Fiorentino challenges the Board’s decision to refuse his February 2014 adjournment applications. He contends, in effect, that as a result of the decisions he was denied procedural fairness in respect of the Board’s hearing. He also contends that the decisions were legally unreasonable.
5. For the reasons that follow, Mr Fiorentino’s challenge fails and his application is dismissed.

## Statutory background

1. The Act provides for the appointment of liquidators of companies being wound up. Where the winding up is by the order of a court (for example the ss 459A, 459B, or s 461) the court may appoint an official liquidator to be a liquidator of the company: s 472 of the Act. Where the company is wound up voluntarily (for example, by special resolution under s 491, or following a meeting of creditors under s 497) a liquidator must be appointed by the company or the creditors respectively: ss 495, 499 of the Act.
2. Part 9.2 of the Act deals with the registration of auditors and liquidators. Where a natural person applies under s 1279 of the Act for registration as a liquidator, ASIC must, under s 1282, grant the application if:

(a) The applicant is a member of a professional accounting body, holds a degree, diploma or certificate from a prescribed institution or has other qualifications and experience that ASIC considers equivalent;

(b) ASIC is satisfied as to the experience of the applicant in connection with the winding up of bodies corporate;

(c) ASIC is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator.

1. The registration of a liquidator may be cancelled by the Board. Relevant to this matter, s 1292(2) of the Act provides as follows:

(2) The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:

(a) ….

(d) that the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

(i) the duties of a liquidator; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;

or is otherwise not a fit and proper person to remain registered as a liquidator;

by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.

1. Section 1294 of the Act provides as follows:

(1) The Board must not:

(a) cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate: or

(b) deal with a person in any of the ways mentioned in subsection 1292(9);

unless the Board has given the person an opportunity to appear at a hearing held by the Board and to make submissions to, and adduce evidence before, the Board in relation to the matter.

(2) Where subsection (1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Board must give ASIC and APRA an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

1. The constitution and powers of the Board are provided for in Division 1 of Part 11 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). The Board consists of a Chairperson, a Deputy Chairperson and members nominated by the Board of the Institute of Chartered Accountants and the Board of Directors of CPA Australia (accounting members) and members suitably qualified or experienced in business, commerce, finance and economics (business members): s 203 of the ASIC Act. The Chairperson and Deputy Chairperson are required to be experienced legal practitioners: s 203(2) of the ASIC Act.
2. The Board’s functions and powers in relation to applications by ASIC under s 1292 of the Act are to be performed by a Panel of the Board constituted by the Chairperson or Deputy Chairperson and either one or two accounting members and business members: s 210A(4) of the ASIC Act.
3. Division 2 of Part 11 of the ASIC Act deals with hearings by a Panel of the Board. Hearings must take place in private unless a person entitled to appear at a hearing (other than, relevantly, ASIC) requests that the hearing takes place in public: s 216(2) and (3) of the ASIC Act. The Panel may give directions as to who may be present at a hearing that is to take place in private, however a person who is entitled to be given the opportunity to appear at a hearing, and his or her representative, cannot be prevented from being present: s 216(4) and (6) of the ASIC Act.
4. Section 218 of the ASIC ACT provides for proceedings at hearings of the Board. Subsections 218(1), (2) and (3) relevantly provides as follows:

(1) At a hearing:

(a) the proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the corporations legislation (other than the excluded provisions) and a proper consideration of the matters before the Panel permit; and

(b) the Panel is not bound by the rules of evidence; and

(c) the Panel may, on such conditions as it thinks fit, permit a person to intervene in the proceedings.

(2) The Panel must observe the rules of natural justice at and in connection with a hearing.

(3) At a hearing:

(a) ASIC or APRA may be represented by:

(i) a staff member, or a member or acting member, of ASIC or APRA; or

(ii) a person authorised by ASIC or APRA for the purpose; and

(b) a natural person may appear in person or may be represented by an employee of the person approved by the Panel; and

(c) a body corporate (other than ASIC or APRA) may be represented by an employee, or by a director or other officer, of the body corporate approved by the Panel; and

(d) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member, officer or employee of the association approved by the Panel; and

(e) any person may be represented by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.

1. The exercise of power by the Board under s 1292(2) of the Act does not involve the exercise of judicial power: *Albarran v Members of the Companies Auditors and Liquidators Disciplinary Board* (2006) 151 FCR 466. A hearing held by a Panel is, however, “taken to be” a judicial proceeding for the purposes of the *Crimes Act 1914* (Cth): s 222 of the ASIC Act.

## Factual background

1. Mr Fiorentino is a highly qualified and very experienced liquidator. He was first registered as a liquidator on 11 October 1994 and as an official liquidator on 13 January 1997. It may be inferred that at the time of his registration ASIC was satisfied that he had the qualifications and experience required for registration under s 1282 of the Act. He has been a member of the Institute of Public Accountants for over seven years and was a member of the Insolvency Practitioners Association of Australia from December 2001 to December 2012.
2. On 12 June 2013, Mr Fiorentino’s then lawyer, Sally Nash of Sally Nash & Co Lawyers was served with a Statement of Facts and Contentions (**SFC**) and six folders of documents referred to or relied on in the SFC. The SFC and supporting documents had earlier been filed with the Board and constituted ASIC’s application under s 1292(2) of the Act for Mr Fiorentino’s registration to be cancelled.
3. The service of the SFC and supporting documents would not have come as a surprise to Mr Fiorentino. He had been aware that ASIC had been conducting a review of his practice and had been investigating certain matters involving him since 2010. Throughout the period 2010 to mid 2013 Mr Fiorentino was represented by Ms Nash.
4. The SFC is a lengthy document. It runs to some 149 pages. As the name suggests, it sets out the facts and contentions relied on by ASIC to make out its case that Mr Fiorentino’s registration should be cancelled by the Board. It sets out 26 separate contentions by ASIC concerning breaches or contraventions of various statutory and other duties and responsibilities that Mr Fiorentino had as a registered liquidator. It also provides detailed factual particulars of each of the contentions, cross referenced to the supporting documents.
5. It is unnecessary to rehearse ASIC’s contentions or the factual allegations contained in the SFC. The contentions and allegations relate primarily to Mr Fiorentino’s conduct as a liquidator of ERB International Pty Ltd (**ERB**) from the time of his appointment on 2 April 2008 until ERB was deregistered on 24 January 2010. Some contentions and allegations also relate to conduct which occurred after ERB was deregistered, but which nonetheless concern matters that arose as a result of ASIC’s review and investigation of Mr Fiorentino’s conduct as a liquidator of ERB.
6. The SFC effectively divides the facts and contentions into three groups. The first group (contentions 1 to 5) relate to Mr Fiorentino’s alleged conduct in failing to give a particular creditor notices and reports relating to meetings of creditors, as well as his conduct relating to certain proxies relied on at those meetings. The second group (contentions 6 to 14) concern Mr Fiorentino’s alleged failure to properly investigate and inform creditors about particular transactions engaged in by ERB, as well as his failure to seek legal advice and failure to approach the court in respect of related settlements with certain creditors. The third group (contentions 15 to 26) includes a number of other allegations that, generally speaking, relate to certain alleged failures on the part of Mr Fiorentino to properly or adequately discharge specific duties or obligations as a liquidator of ERB, or matters that otherwise allegedly demonstrate that he is not a “fit and proper person”.
7. It may be accepted that ASIC’s case, as particularised in the SFC, involves a degree of complexity. But that is largely a product of the large number of contentions and corresponding alleged breaches or contraventions of provisions in the Act, the Code of Professional Practice issued by the Insolvency Practitioners Association of Australia and the Code of Ethics for Professional Accountants. None of the individual contentions (and associated facts) are of any particular factual complexity. Whilst the alleged contraventions undoubtedly raise questions or issues of law, those questions or issues are not overly complex. They generally relate to the content of various broad duties, including duties to act with care and diligence, or in good faith, or specific provisions that one would expect an experienced liquidator to be familiar with.
8. Within six weeks of the filing of the SFC, the Board convened a pre-hearing conference. Mr Fiorentino was represented by Ms Nash. The Chairman set the matter down for hearing to commence on 21 October 2013. Directions were made for the filing and service of a response to the SFC by Mr Fiorentino, as well as service of the evidence to be relied on by ASIC and Mr Fiorentino at the hearing.
9. Mr Fiorentino did not comply with the timetable. On 3 September 2013 there was a further pre-hearing conference. Mr Fiorentino was represented by counsel. He applied for and was given more time to file his response. He also applied for the October hearing date to be vacated. That application was refused.
10. Within ten days, however, Mr Fiorentino, through his counsel, sought another adjournment. This time the application was successful. Mr Fiorentino was given an additional two weeks to file his response and a new hearing date of 18 November 2013 was set. Revised directions were made in relation to the service of evidence.
11. Both ASIC and Mr Fiorentino complied with the directions made relevant to the 18 November 2013 hearing date. Statements and an expert report were filed and served by Mr Fiorentino. For all intents and purposes the matter was prepared and ready for hearing in November 2013. Importantly, Mr Fiorentino was legally represented throughout this period by experienced solicitors and counsel. By September 2013, Ms Nash had been replaced by Swaab Attorneys as Mr Fiorentino’s solicitors. Mr Fiorentino, through his solicitors, had briefed Mr Rickard and, apparently, Mr Dunn QC as his counsel.
12. Notwithstanding this, at the hearing on 18 November 2013 Mr Fiorentino applied for an adjournment. He was represented on this application by Mr Rickard. The basis for the application was explained in an affidavit sworn and relied on by Mr Fiorentino in support of his application. In short, Mr Fiorentino explained that, despite having initially retained solicitors and counsel to appear for him at the hearing, on 7 November (11 days before the hearing) Mr Fiorentino had decided that he would represent himself. That was because he had not received confirmation from his professional indemnity insurer that it would indemnify him in respect of his legal costs for the hearing. Mr Fiorentino decided that he could not afford to pay counsel himself. He had advised his counsel accordingly on 8 November. His counsel (Mr Rickard) had told Mr Fiorentino that in the circumstances he would do no further preparation for the hearing.
13. Three days before the hearing Mr Fiorentino was advised that his insurer would indemnify him. The insurer did not, however, confirm that it would retain his existing solicitors and counsel. Mr Fiorentino claimed that his counsel was now not properly prepared for the hearing, given that he had ceased further preparation for the hearing on 8 November. He was in any event no longer available for the duration of the hearing.
14. The Board granted the adjournment, albeit it appears with some reluctance. Relevant to the current application, the Board’s reasons for granting the adjournment include the following:

Ultimately, it cannot seriously be disputed that it would be beneficial for Mr Fiorentino to be provided with the opportunity to present his case with the assistance of counsel who has fully prepared the matter, rather than attempt to deal with the matter himself. There was no dispute that Mr Rickard had not prepared for the matter and that he now has other commitments during the time allotted for the hearing.

The Application is not simple and involves some legal complexity. A number of witnesses are to be cross-examined. It is to be assumed that Mr Fiorentino has little experience as a cross-examiner, and certainly, less experience and expertise than counsel.

1. Part of the “price” paid by Mr Fiorentino for the adjournment was that he was required to undertake to ASIC and the Board not to accept any further appointments as a liquidator, or which would require him to be a registered liquidator, pending determination of the proceedings.
2. The matter was listed for hearing on 3 February 2014.
3. It is important to emphasise that at no stage during the November 2013 adjournment application did Mr Fiorentino contend that he was unable or unwilling to represent himself at the hearing. It is implicit in the affidavit he relied on in support of the application that, at least as at early November 2013, he was ready and willing to represent himself at the hearing in the event that his insurers did not indemnify him. In his affidavit he said only that “now that indemnity has been granted, I wish to be represented” at the hearing. The basis of the adjournment application, and the reason it was granted, was that because indemnity had been granted it would be “beneficial” for Mr Fiorentino to be represented.

## January and February 2014 adjournment applications

1. On 29 and 30 January 2014 the Board was made aware (initially by ASIC and then by Mr Fiorentino’s solicitors) that Mr Fiorentino intended to apply for another adjournment. As a result, the Board convened an urgent hearing by telephone on 31 January 2014. Mr Fiorentino was again represented by Mr Rickard of counsel.
2. Mr Fiorentino relied on an affidavit sworn by him in support of the application. The basis for the application was that Mr Fiorentino’s insurers had withdrawn what was now said to have been its “conditional” grant of indemnity. Mr Fiorentino’s solicitors had been notified of this on 23 December 2013. Nothing was done about this prior to 29 January, beyond Mr Fiorentino’s solicitors sending a letter to the insurer on 24 January 2014 threatening legal proceedings should indemnity not be confirmed.
3. In his affidavit, Mr Fiorentino claimed that he had been unable to instruct solicitors and counsel to prepare for and appear at the hearing because he could not afford to pay their fees if he did not have insurance cover. He said that even if the insurer now confirmed that it would provide indemnity he would still have to seek an adjournment to enable his solicitor and counsel to prepare for the hearing. If the insurer continued to deny indemnity, he intended to commence court proceedings to compel the insurer to provide cover.
4. As it turns out, the insurer confirmed on 30 January 2014 that it would not indemnify Mr Fiorentino.
5. In his affidavit, Mr Fiorentino said:

I am not happy that I have been required to apply for two adjournments, both of which have been precipitated solely because of Nova’s dealings in respect of this policy. However, as set out in my First Affidavit, I feel that if I am not able to retain a legal team and have them properly prepare for and appear on my behalf at the hearing in these proceedings, I will be disadvantaged in the proceedings. My ability to have legal representation for the hearing will not be finally resolved until the issues involving Nova referred to above have been resolved.

1. Counsel for Mr Fiorentino submitted that an adjournment was required to enable Mr Fiorentino to commence proceedings to compel the insurer to provide cover. If the adjournment application was not granted Mr Fiorentino would be without legal representation. He submitted that the hearing should be adjourned to a date to be fixed and that he estimated that the foreshadowed court proceedings against the insurer could be determined within six months.
2. The Board rejected the adjournment application. It advised the parties of this decision on the afternoon of 31 January 2014. It provided written reasons on 3 February 2014.
3. The Board’s reasons contain a detailed and careful summary of the history of the matter, including the previous adjournment applications, the evidence relied on by Mr Fiorentino and the parties’ submissions. Because the legal reasonableness of the Board’s decision is now challenged by Mr Fiorentino, paragraphs 20 to 31 of the Board’s reasons, which provide a detailed explanation of the Board’s decision to refuse the adjournment application, should be set out in full:

20. We are prepared to assume, for the purposes of this application, that there is, at least, a serious question to be tried concerning Nova’s liability to indemnify Mr Fiorentino, either by reason of the terms of the policy or estoppel. We consider that the material in Mr Fiorentino’s affidavits supports this conclusion, although we note that certain potentially relevant correspondence was not tendered.

21. We are also prepared to assume, for the purposes of this application, that Mr Fiorentino will be unable to afford legal representation at the hearing, although the evidence is substantially assertion.

22. Notwithstanding these assumptions, in our view, the circumstances do not justify a further adjournment.

23. In the first place, the hearing of the matter has already been substantially delayed from the original hearing date of 21 October 2013. The hearing date has been extended twice. The Board is required by statute to deal expeditiously with complaints against liquidators in the public interest. As we said on the last occasion, we accept that applications will often involve serious consequences for a respondent (including potential loss of livelihood), but it is important that matters are prepared and determined as soon as possible, consistently with the requirements of natural justice.

24. Whilst Mr Fiorentino’s undertakings go some way to alleviate potential prejudice to the public from further delay, there remains a public interest in applications being dealt with promptly. The public is entitled to expect that the regulatory and disciplinary mechanisms aimed at ensuring maintenance of proper professional standards operate efficiently and that matters are determined promptly regardless of a respondent’s private funding arrangements.

25. Secondly, the present application is for an adjournment “to a date to be fixed”. No one can say what that date will be. Mr Rickard submitted that the proceedings against Nova are appropriate for expedition and will not be unduly lengthy. He submitted that a decision could be handed down within three months. In addition, he accepted that there would be some further weeks required for legal representatives to prepare, assuming that Mr Fiorentino was successful. He submitted that six months was a realistic estimate of the likely delay to the proceedings. We do not agree that this is a realistic estimate of the time likely to be required for a final resolution of the dispute. Even accepting that the matter may be appropriate for expedition, we are less sanguine about the three months estimate and note that an appeal could well delay the matter further. We note that no proceedings have been commenced in the month since Nova rejected indemnity and that this may affect the chances of obtaining expedition. In our view, whilst it may be possible to obtain a resolution of the matter within six months, it is equally possible that it may take two or three times that period. It is simply unacceptable to adjourn the matter to a date to be fixed, on this basis.

26. Thirdly, there is no certainty that Mr Fiorentino will succeed in the proceedings and secure funding for legal representation. The position was different on the last occasion. On that occasion, everyone proceeded upon the assumption that Nova *would* be funding legal representation at the hearing. In those circumstances, the Panel decided that a relatively short adjournment to a date to be fixed was warranted. Here, even if we were to grant the application, there is no certainty that Nova will be funding legal representation even if an adjournment is granted.

27. We accept (as we did on the last adjournment application) that it cannot be seriously disputed that it would be beneficial for Mr Fiorentino to be provided with the opportunity to present his case with the assistance of counsel who has fully prepared the matter. However, absence of legal representation does not give rise to an automatic right to an adjournment. In the circumstances of the present case, an adjournment is not justified. We note that s 218 of the ASIC Act contemplates that respondents will appear in person before the Board and respondents often do. Mr Fiorentino appears to have had significant assistance from his existing legal representatives in preparing the matter for hearing.

28. At the end of the day, the timing of hearings before the Board cannot depend upon the vicissitudes of a respondent’s private funding arrangements. The Board must be able to hear matters expeditiously, regardless of problems in obtaining legal representation. The Panel has already attempted to accommodate Mr Fiorentino’s position by granting an adjournment on the last occasion.

29. It is also relevant that this application was made at the eleventh hour, notwithstanding that Mr Fiorentino learned of Nova’s intention to refuse indemnity more than a month ago. The Board is ready to hear the matter on Monday. Panel members are part time appointees with their own professional commitments, who arrange their affairs to hear and determine matters promptly in order to facilitate the performance by the Board of its statutory duties. Those arrangements have already been disrupted once before, as a result of the last adjournment application. Mr Fiorentino ought to have made the present application as soon as he became aware of Nova’s changed attitude.

30. In all the circumstances, we do not consider that the requirements of natural justice justify a further adjournment to permit Mr Fiorentino to attempt to secure funding for legal representation.

31. For these reasons, the Panel decided on 31 January 2014 to refuse the Respondent’s application for an adjournment of the hearing to a date to be fixed.

1. Despite the Board having refused his adjournment application on 31 January 2014, when the matter came on for hearing before the Board on 3 February 2014 Mr Fiorentino applied for a further adjournment. He was not legally represented on this occasion. He gave the following evidence in support of his adjournment application:

If I have insurance cover then the insurers will take care of the preparation of the case by the instructed lawyers. I need two months to sort this matter out and issue proper and fair representation. I’ve also stated I have applied for litigation funding against the insurers, with the litigation funding solutions and I have already met with them and they should have sent me a letter before 10 o’clock to that effect and if - to deny this adjournment would be unfair and a denial of natural justice in the present circumstances. Failing consent of this adjournment I will need to have recourse to review through the Administrative Appeals Tribunal and take injunctive relief in the Federal Court. I cannot proceed today. On that basis I need to leave.

1. As the Chairperson pointed out, this evidence really amounted to both evidence and submission. Mr Fiorentino’s submission to the Board was that he needed a two month adjournment because he had applied for litigation funding to enable him to pursue an action against his insurer in respect of its refusal to indemnify him. He did not go so far as to say that the litigation funders had approved his proposal. He did not explain how he arrived at his estimate of two months as being the time that would enable him to “sort this matter out.”
2. It is readily apparent that the only change from the circumstances that existed when the Board refused Mr Fiorentino’s adjournment application on 31 January 2014 (only three days earlier) was that Mr Fiorentino ostensibly was applying for a shorter adjournment (two months, as opposed to an indeterminate adjournment estimated to be for six months) and had apparently approached litigation funders. Beyond that, Mr Fiorentino’s case for an adjournment was as it had been before. He claimed that it would be denial of procedural fairness not to adjourn the hearing because the result would be that he had no legal representation at the hearing.
3. It is important to emphasise that Mr Fiorentino’s adjournment applications, both on 31 January and 3 February 2014, were put on the basis that he needed time to pursue his insurer so that he could ultimately obtain legal representation. At no time did Mr Fiorentino seek a short adjournment so that he had time to prepare for the conduct of his defence without legal representation.
4. The Board refused the further adjournment application. In its reasons, initially given orally, the Board noted that nothing of significance had changed since the previous application on 31 January. The Board found that:

In our view, it would be unrealistic to think that anything would be solved by a two month adjournment of the matter and that the reality of the position is that if there’s going to be a substantial time before Mr Fiorentino would be able to sort out his funding position, it is inappropriate for these proceedings to be adjourned while that occurs.

1. Otherwise, the Board indicated that it repeated the reasons which it gave for refusing the adjournment application made on 31 January 2014.
2. Following the refusal of the further adjournment application, Mr Fiorentino indicated that he would withdraw from the hearing. The Panel told Mr Fiorentino that it would be willing to adjourn the matter until the next day to permit Mr Fiorentino to challenge its decision in the Federal Court. The proceedings were adjourned to the following day on that basis.
3. Mr Fiorentino did not, however, commence proceedings in the Federal Court that day. Instead, he filed an application in the Administrative Appeals Tribunal. The application was heard and determined on 5 February 2014. The Tribunal found that it had no jurisdiction to entertain Mr Fiorentino’s application. There has been no challenge to that decision.
4. Mr Fiorentino commenced these proceedings on 5 February 2014. He did not, however, press for any interlocutory relief.
5. Mr Fiorentino appeared before the Board again on 4 February 2014 to advise that he had filed an application in the Administrative Appeals Tribunal and to request written reasons for the refusal of his adjournment application made on 3 February. He then withdrew. As a result, the Panel conducted the hearing of ASIC’s application in the absence of Mr Fiorentino. On 5 February 2014, the Board handed down written reasons for refusing the 3 February adjournment application. The hearing before the Board concluded on 6 February 2014. The Board has not yet made a decision in relation to ASIC’s substantive application.

## Mr Fiorentino’s case for relief

1. In his amended originating application Mr Fiorentino originally sought 15 declarations or orders. A number of the declarations and orders related to issues in the substantive matter before the Board, such as whether ASIC was able to rely on alleged contraventions of ss 180 to 184 of the Act in its application to have Mr Fiorentino’s registration cancelled, and whether the SFC should be struck out in whole or in part. At the hearing, Mr Fiorentino did not press the Court to make these applications and orders.
2. The only declarations and orders that Mr Fiorentino pressed the Court to make relate to the Panel’s refusal to adjourn the hearing on 31 January and 3 February 2014. They are:

1. A Declaration that the refusal of the First Respondent to grant an adjournment of the hearing of the Application of the Second Respondent number 03/NSW13 on 3 February 2014 denied the Applicant natural justice and/or procedural fairness.

2. A Declaration that the Applicant’s right to procedural fairness and natural justice are afforded to him by an adjournment of the hearing of the Application of the Second Respondent by the First Respondent to a date after April 2014.

3. A Declaration that the rules of procedural fairness and natural justice require that the Applicant be afforded the opportunity to obtain, pursuant to his policy of professional indemnity insurance, competent legal counsel and prepare fully for the hearing of application of the Second Respondent number 03/NSW13 by the First Respondent.

4. A Declaration that the Respondent’s purported hearing of any application dealing with the Applicant is in the absence of the Applicant a denial or natural justice and/procedural fairness.

5. An Order in the manner of a writ of certiorari that the proceedings before the First Respondent in matter 03/NSW13 held in the absence of the respondent on 6-10 February 2014 were null, void and of no effect.

(Errors in original)

1. The submissions advanced by or on behalf of Mr Fiorentino in support of the making of these declarations and order may be shortly stated. He advances, in effect, two contentions. First, he submits that the effect of the Board’s decision to refuse an adjournment was to deny him legal representation. As a result, he contends that he was unable to present any case before the Board. This was contrary to the rules of natural justice.
2. Second, Mr Fiorentino contends that the Board’s decision was legally unreasonable in the sense considered by the High Court in *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332 (***Li***). In this respect, he submits that the Board’s decision was not informed by any consideration other than the asserted sufficiency of the opportunities provided to him to put his case. The board did not, in Mr Fiorentino’s submission, consider the reasons he had advanced in support of the adjournment application and did not balance the “legislative objectives” set out in the Act and in the ASIC Act. The decision to refuse the adjournment was also, according to Mr Fiorentino, fatal to his case. As a result there was an arbitrariness about the decision that rendered it unreasonable.
3. At the hearing, the submissions advanced on Mr Fiorentino’s behalf focused on three matters that he contended pointed to the legal unreasonableness of the Board’s decision. First, it was said that the substantive proceedings were complex and that witnesses would need to be cross-examined. Second, the Board had earlier, in the context of the November 2013 adjournment decision, accepted that it would be “beneficial” for Mr Fiorentino to have legal representation. It followed, according to Mr Fiorentino, that the Board was required to make the same finding in the context of the February hearing. Third, in Mr Fiorentino’s submission there was no prejudice flowing from an adjournment because Mr Fiorentino had already given an undertaking not to take on any further matters as liquidator.

## Was there a denial of natural justice?

1. There is no doubt that the Board was required to observe the rules of natural justice at, and in connection with, the hearing. Subsection 218(2) of the ASIC Act expressly provides as such. The question, then, is whether in refusing to adjourn the hearing the Board failed in some way to observe the rules of natural justice. The issue here relates to the content of the natural justice hearing rule, or what procedural fairness required in the circumstances of the case. Did the refusal of an adjournment mean that Mr Fiorentino did not receive a fair hearing?
2. Mr Fiorentino contends, in effect, that the Board denied him legal representation and that this meant he was unable to present his case. He relies on authorities that support the proposition that it will be a breach of procedural fairness to refuse to allow a person to be represented, whether by a lawyer or another person, at a hearing. In *Li Shi Ping v Minister for Immigration, Local Government & Ethnic Affairs* (1994) 35 ALD 557 (***Li Shi Ping***), Drummond J referred to a number of cases where administrative tribunals had excluded lawyers. His Honour summarised the effect of the cases in the following terms (at 570):

The effect of the cases is that in the absence of statutory indication to the contrary, administrative bodies and lay tribunals are in general free to exclude lawyers; but the circumstances of the particular case may be such that a refusal to allow legal representation may constitute a denial of natural justice. This is likely to be so where complex issues are involved or where the person affected by the decision is not capable of presenting his or her own case. In this sense, it may be said in certain circumstances the “right to legal representation” is an element of natural justice.

1. This passage was referred to with apparent approval by the Full Court in *WABZ v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 134 FCR 271 (***WABZ***) at [59] (French & Lee JJ) and [103] (Hill J).
2. The effect of s 218(3)(e) of the ASIC Act is that Mr Fiorentino had a right to be represented at a hearing before the board by a barrister or solicitor. But here, unlike in *Li Shi Ping* and *WABZ*, the Board did not exclude Mr Fiorentino’s lawyers or deny him the right to representation. The most that could be said of the Board’s decision was that the practical effect of its refusal of the adjournment applications was that Mr Fiorentino would have to appear unrepresented at the hearing. But that was because Mr Fiorentino claimed that he was unable to pay his lawyers.
3. In any event, a decision to deny legal representation will not necessarily constitute a denial of natural justice. In *WABZ*, French and Lee JJ identified four considerations relevant to the question whether a decision to disallow representation might amount to a denial of procedural fairness. Those four considerations are:

1. The applicant’s capacity to understand the nature of the proceedings and the issues for determination.

2. The applicant’s ability to understand and communicate effectively in a language used by the Tribunal.

3. The legal and factual complexity of the case.

4. The importance of the decision to the applicant’s liberty or welfare.

1. Even if the effect of the Board’s decision was to deny Mr Fiorentino legal representation, the circumstances of this case are not such that he was denied procedural fairness. There was no evidence to suggest that Mr Fiorentino did not have the capacity to understand the nature of the proceedings and the issues for determination. He was and is a highly qualified and experienced accountant and liquidator. He did not at any stage contend before the Board that he did not understand, or was not capable of understanding, the case that ASIC brought against him.
2. Mr Fiorentino was also plainly capable of understanding and communicating in English, the language used by the Tribunal. That is clear from the portions of the hearing transcript where Mr Fiorentino was representing himself.
3. It may be accepted that the case against Mr Fiorentino involves some degree of complexity. The Board did not suggest otherwise. However there was nothing to suggest that the complexity was such that Mr Fiorentino would not be able to mount a defence to ASIC’s case unless legally represented. As already indicated, whilst ASIC’s SFC was lengthy, that was essentially a product of the large number of factual allegations ASIC made against Mr Fiorentino. The facts themselves are not particularly complex. Whilst the question whether the facts in the SFC, if made out, constituted contraventions of various statutory provisions might involve some legal complexity, there was nothing to suggest that Mr Fiorentino was not capable of understanding or dealing with the legal issues. As a highly qualified and experienced liquidator, it might reasonably be inferred that he had some familiarity and experience with the statutory provisions in question.
4. At no time did Mr Fiorentino contend before the Board that he was unable to represent himself because of the complexity of the matter. At most, he contended that he should not be “disadvantaged” by not having legal representation. As ASIC points out, however, Mr Fiorentino was initially prepared to represent himself at the original November 2013 hearing.
5. Finally, whilst an adverse decision by the Board would no doubt have serious ramifications for Mr Fiorentino’s career and possibly his livelihood, it did not concern his liberty. In that respect, his case is distinguishable from cases where the outcome of the decision could involve incarceration, immigration detention or deportation.
6. It is also important to emphasise again that this matter is not concerned with a decision to exclude Mr Fiorentino’s right to be legally represented at the hearing. The Board accepted that Mr Fiorentino was entitled to have a lawyer represent him at the hearing. The difficulty was that he could not secure legal representation, on his terms, on the day appointed for the hearing. He needed a lengthy adjournment to enable him to secure representation. Even then, legal representation was not ensured. The effect of Mr Fiorentino’s submission is that the requirements of procedural fairness in the circumstances of his case compelled the board to grant an adjournment.
7. This matter is more akin to cases where a temporary stay of proceedings has been sought by an applicant on the basis that they have been unable to secure legal representation. There is no doubt that a court has jurisdiction to grant an adjournment or stay until such time as an indigent person charged with a serious criminal offence is provided with legal representation necessary for a fair trial: *Dietrich v The Queen* (1992) 177 CLR 292 (***Dietrich***) at 315, 357, 374-375. That principle is based on, and derives from, the accused’s right to a fair trial: *Dietrich* at 326, 353, 362.
8. But Mr Fiorentino is not indigent. Nor is he charged with a serious criminal offence. The principle in *Dietrich* does not extend to parties in a civil trial or an administrative proceeding: *New South Wales v Canellis* (1994) 181 CLR 309 at 330, 335. There is no absolute common law entitlement to legal representation in civil trials: *WABZ* at [96].
9. The question here is whether the dictates of procedural fairness compelled the Board to grant Mr Fiorentino an adjournment.
10. The decision whether or not to grant an adjournment is highly discretionary. In *Regina v Panel on Take-overs and Mergers* [1990] 1 Q.B. 146 at 178, Lord Donaldson MR said:

I also remind myself, as a general proposition, that a decision whether or not to adjourn a hearing is par excellence a matter for the exercise of judicial discretion by the court or tribunal seised of the matter and that it is well settled that, on an appeal from such a decision, an appellate court will not intervene only on the ground that it thinks that it would have reached a different decision. It must be satisfied that the first instance decision was wrong in principle or, which is usually the same thing, that it resulted from a self-misdirection. Where, therefore, a right of appeal exists, but is not exercised, something more is required if relief is to be granted on judicial review. Quite how much or what more defies definition, if only because intervention by the court in such circumstances is wholly exceptional…

1. In *Blazevski v Judges of the District Court of New South Wales* (1992) 29 ALD 197 (***Blazevski***), a criminal case involving an application for an adjournment by two accused persons so that they could be represented by counsel, Kirby P and Priestley JA held that appellate courts, both in appeals and in proceedings by way of judicial review, will rarely disturb the decisions of judicial officers or Tribunals to grant or refuse adjournments. Relief will, however, be (and in *Blazevski’s* case was) granted if a “serious injustice” or a denial of procedural fairness has been occasioned by a refusal of an adjournment.
2. Did the refusal of an adjournment application here occasion a serious injustice or a denial of procedural fairness? Two matters complicate the resolution of this issue. First, the Board has not yet decided ASIC’s substantive application. It remains to be seen whether the Board will decide the matter in ASIC’s favour and cancel Mr Fiorentino’s registration. Second, it is difficult to determine how Mr Fiorentino would have conducted his case without legal representation. That is because he decided to withdraw from the hearing when the Board refused his adjournment applications. The hearing accordingly proceeded in his absence. But it was Mr Fiorentino’s forensic decision to take that course. He did not have to withdraw.
3. The answer to the question must ultimately turn on whether, by denying the adjournment, Mr Fiorentino was denied an adequate opportunity of presenting his case before the Board: *Sullivan v Department of Transport* (1978) 20 ALR 323 at 343. In this case, was Mr Fiorentino effectively denied the opportunity to challenge ASIC’s evidence or present evidence or submissions in his defence? Was he effectively denied his right under s 1294 of the Act to appear at the hearing?
4. For the reasons already given, Mr Fiorentino was not denied that opportunity by reason of the refusal of the adjournment applications. The practical effect of the decisions was that Mr Fiorentino would have been required to conduct his case without legal representation. But Mr Fiorentino was a highly qualified and experienced accountant and liquidator. He had received the benefit of legal advice and assistance in preparing his written response and evidence and otherwise preparing the matter for hearing. The matter was not so complex that a person of Mr Fiorentino’s education, training and experience could not deal with it without legal representation. That is the case even if, as contended, some cross-examination was necessary.
5. Whilst it no doubt would have been to his advantage to have his lawyers appear for him, it does not follow that Mr Fiorentino was incapable of presenting his case. The evidence does not support such an inference or conclusion. The fact that Mr Fiorentino did not take up the opportunity to present his case (and ultimately did not avail himself of his right under s 1294 of the Act to appear at the hearing) was a product of his own forensic decision. It was not the inevitable or necessary result of the refusal of the adjournment applications. There was no “serious injustice” or denial of procedural fairness as a result of the refusal of the adjournment applications.
6. As for whether the Court should interfere with the Board’s discretionary decision to refuse the adjournment, that issue is best considered in the context of Mr Fiorentino’s argument that the decision was legally unreasonable. There is a considerable overlap between the two questions: see *Minister for Immigration and Border Protection v Singh* [2014] FCAFC 1 (***Singh***) at [50].

## Was the refusal of the adjournment legally unreasonable?

1. The principles relating to jurisdictional error arising from legally unreasonable administrative decisions have recently been considered by the High Court in *Li* and the Full Court in *Singh*. Both cases concern the legal unreasonableness of decisions of the Migration Review Tribunal to refuse to adjourn review applications to allow an applicant to attend to matters that might satisfy criteria for the grant of a visa. The general principles, so far as they are relevant to this matter, may be summarised as follows:

(a) The requirement of reasonableness flows from or is connected with an implied legislative intention that a discretionary power that is statutorily conferred must be exercised reasonably: *Li* at [29], [63], [88]; *Singh* at [43].

(b) Legal unreasonableness can be a conclusion reached by a supervising Court after the identification of an underlying jurisdictional error in the decision-making process. Or it can be a conclusion reached without necessarily identifying another jurisdictional error: *Li* at [27]-[28], [72]; *Singh* at [44]. In the latter case unreasonableness may be taken to be unreasonableness from which an undisclosed error may be inferred: *Li* at [27], [68]; *Singh* at [44].

(c) Unreasonableness can be inferred where the decision appears to be arbitrary, capricious, without common sense or “plainly unjust”: *Li* at [28], [110]; *Singh* at [44].

(d) In those circumstances, where reasons are given, the supervising court is concerned with seeing if there is an evident, transparent and intelligible justification within the decision-making process: *Li* at [105]; *Singh* at [44]-[45]. The intelligible justification must generally lie within the reasons given by the decision-maker: *Singh* at [47].

(e) Regard can also be given to the outcome of the decision: whether the “decision falls within a range of possible, acceptable outcomes which are defensible in respect of fact and law”: *Li* at [105] (Gageler J quoting *Dunsmuir v New Brunswick* [2008] 1 SCR 190 at 220-221); *Singh* at [44]-[45].

(f) The legal standard of reasonableness and the indicia of legal unreasonableness will need to be found in the scope, subject and purpose of the particular statutory provisions in issue in any given case: *Li* at [67]; *Singh* at [48].

(g) If, by reason of the refusal of an adjournment application, an applicant is not provided with an opportunity to present his or her evidence, it might be concluded that the hearing contemplated did not take place: *Li* at [62]; *Singh* at [51]-[52].

(h) The overriding duty of the Tribunal to review a decision may require the Tribunal, acting reasonably, to consider the exercise of the discretion to adjourn in a particular case. A failure to adjourn can, in some circumstances, be so unreasonable as to constitute a failure to review: *Li* at [100]-[102].

(i) It cannot be suggested that the Tribunal is under an obligation to afford every opportunity to an applicant for review to present his or her best possible case or improve upon the evidence. It may decide in an appropriate case that “enough is enough”: *Li* at [82].

(j) Properly applied, a standard of legal reasonableness does not involve substituting a Court’s view as to how a discretion should be exercised for that of a decision-maker: *Li* at [30], [66]; *Singh* at [47]. The test of legal unreasonableness is stringent: *Li* at [113].

1. The provisions of the Act and the ASIC Act concerning hearings by the Board differ in some respects from the provisions in the *Migration Act 1958* (Cth) that were considered in *Li* and *Singh*. There is, for example, no express power for the Board to adjourn a hearing. Both Mr Fiorentino and ASIC agree however, that such a power can or should be implied, particularly given the terms of s 218 of the ASIC Act. Despite the differences between the legislative schemes, the general principles emerging from both *Li* and *Singh* apply to decisions by the Board in relation to adjournment applications.
2. When these principles are applied to the decisions in question here, it cannot be concluded that the Board’s decisions to refuse the adjournment applications in late January and early February were legally unreasonable.
3. The Board’s reasons disclose an evident and intelligible justification for refusing the adjournment applications. The Board gave essentially five reasons for refusing the applications.
4. First, the Board reasoned that the hearing had already been substantially delayed in circumstances where the Board was required to deal expeditiously with complaints against liquidators in the public interest. Mr Fiorentino’s undertakings did not completely alleviate the potential prejudice to the public from further delay. He remains a liquidator. He is only prevented from taking on new appointments.
5. The Board’s finding that there is a public interest in it hearing complaints expeditiously has some support in the authorities. In *ML v Australian Securities and Investments Commission* [2013]NSWSC 283 Rothman J said of proceedings before the Board (at [50]):

There is public interest in ensuring that liquidators are not available to the public if they do not meet the requirements of probity and proper conduct that are required. ASIC is charged with the prosecution of such disciplinary proceedings.

1. On appeal, Basten JA also referred to the public interest in dealing with complaints against liquidators so that, if necessary, appropriate orders can be made to protect the public interest generally, and also the exercise of public functions by an officer appointed by the Court to manage corporations: [2013] NSWCA 109 at [18]. Given the protective nature of the Board’s jurisdiction, a degree of expedition is plainly warranted.
2. Second, the Board reasoned that it was unacceptable to adjourn the proceeding to a “date to be fixed” to accommodate Mr Fiorentino’s foreshadowed action to compel his insurer to indemnify him. It did not accept the estimate of six months initially given by Mr Fiorentino’s counsel, or the two month estimate given by Mr Fiorentino on the second adjournment application. The Board did not accept that the issue concerning Mr Fiorentino’s legal representation would necessarily be resolved within either of those time frames.
3. Third, there was no certainty that Mr Fiorentino’s action against his insurer would be successful and that he would ultimately secure legal representation. It followed that if an adjournment of six months was granted and yet Mr Fiorentino was unsuccessful in his claim against the insurer, the Board would be back to “square one”.
4. These were entirely legitimate and reasonable concerns on the part of the Board. This was not a case like *Igbinosun v Law Society of Upper Canada* [2009] O.J. No. 2465; 2009 ONCA 484, where the adjournment sought was for a very short period and the applicant was assured then of legal representation.
5. As the Board pointed out, the circumstances in February 2013 were significantly different to those that existed at the time of the November 2013 adjournment application. The situation then was that everyone proceeded on the assumption that the insurers would be funding Mr Fiorentino’s legal representation. All that was sought was a short adjournment to a fixed date to ensure that his lawyers were able to properly prepare. That was not the case in February 2014.
6. Fourth, it is at least implicit in the Board’s reasons that, whilst it accepted that it would be “beneficial” for Mr Fiorentino to be represented, it did not accept that Mr Fiorentino would not be able to adequately present his case unrepresented. It pointed out the Mr Fiorentino had received significant assistance from his existing legal representatives in preparing the matter for hearing.
7. It should also again be observed, in this context, that Mr Fiorentino never claimed that he was unable to present his case if unrepresented. He initially intended to represent himself leading up to the initial hearing date in November 2013. Mr Fiorentino’s evidence, at its highest, was that he would be “disadvantaged” if not given an adjournment.
8. Finally, the Board pointed out that Mr Fiorentino had made his application at the “eleventh hour”, when he should have made the application a month earlier when he became aware of the change of position by his insurers. This had resulted in disruption and prejudice to the Board and its individual members. This was by no means an irrelevant consideration.
9. No error, let alone jurisdictional error, is exposed in this reasoning. Nor can the decision, or the reasons, be considered to be arbitrary, capricious or without common sense: *Li* at [28]; *Singh* at [44]; or “plainly unjust”: *Li* at [110] (Gageler J citing *House v The King* (1936) 55 CLR 499 at [505]).
10. Nor can the outcome be seen to be outside the “range of possible, acceptable outcomes which are defensible in respect of the facts and the law”: *Li* at [105].
11. It was in all the circumstances reasonably open to the Board to conclude, as it effectively did, that “enough was enough”: *cf. Li* at [82].
12. The circumstances of this case put it into the category of case where the Board had a “genuinely free discretion” or “decisional freedom”: *Li* at [28], [66]; *Singh* at [44]. Minds may differ and reasonable decision-makers may reach different conclusions about the correct or preferable decision. But the fact that a different Board, or the Court on review, might have exercised the discretion differently, does not provide a proper basis for the Court to intervene.
13. The Board’s decisions were accordingly not legally unreasonable. Mr Fiorentino’s challenge on this basis must be rejected.

## Conclusion and disposition

1. Mr Fiorentino’s challenge to the Board’s refusal to adjourn the February hearing has accordingly failed. He has not demonstrated that he has been denied procedural fairness as a result of the decisions, or that the decisions were legally unreasonable. There is no basis for the making of any of the declarations sought by Mr Fiorentino. Nor is there a basis for quashing the Board’s decisions.
2. Mr Fiorentino’s application is accordingly dismissed with costs.

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| I certify that the preceding ninety-six (96) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Wigney. |

Associate:

Dated: 19 June 2014