

## **BANKRUPTCY TRUSTEE FEES    CASE STUDY 6573**



Our client is a 59 year old widowed disability support pensioner living alone in country Victoria. His only asset – his home – is currently under threat of sale from a trustee in bankruptcy who in one year has racked up over \$100,000 of professional fees over a debt that started out at just under \$12,000.

Our client's troubles began when a panel beating workshop he and his son were jointly operating fell into financial difficulties. Bad blood developed between father and son resulting in his son suing him for monies flowing out of the operation of the workshop.

The suit resulted in judgment being entered against our client in the Magistrates' Court of Victoria for the sum of \$11,986.43. Rather than allowing our client to pay off the debt by instalments, or to raise funds to satisfy the judgment, our client's son took a drastic step: he instructed solicitors to bankrupt his own father over a \$12,000 debt.

In March 2007 our client was declared bankrupt by way of a sequestration order arising out of a creditor's petition. Total claims of all creditors proving in the administration stood at approximately \$42,000.

A trustee in bankruptcy was appointed to administer our client's bankrupt estate. For our client, this was a disastrous turn of events.

In the twelve months to March 2008, the trustee had incurred professional fees and disbursements of \$102,739.51<sup>1</sup>, together with estimated future fees of \$15,000. Of the \$112,086.84 raised by liquidating our client's various business and personal assets, not a cent had gone to pay out the debt for which our client was originally made bankrupt.

By March 2008, the trustee was demanding an additional \$93,039.37 from our client to pay out the bankruptcy. The only way this money was going to be raised was by selling the last remaining asset in the estate: our client's home, to which our client holds free title save for a caveat lodged by his trustee.

Our client has co-operated with the trustee during the course of the bankruptcy and is unaware of any events or circumstances which could possibly justify such high fees.

Our client's powerlessness to improve his situation or fight the conduct of the trustee is acute. Because he has been unable to either find a buyer for his home or obtain finance to pay out the trustee, he remains trapped in this administration, with fees ever increasing.

Our client turned to his local financial counsellor for assistance who wrote to the federal government regulator responsible for bankruptcy, the Insolvency and Trustee Service Australia.

The financial counsellor also referred the matter to the Consumer Action Law Centre for legal advice and representation.

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Consumer Action obtained pro bono advice from a barrister with regards to the prospects of success of legal action compelling the trustee to reduce his fees to a more reasonable level. Unfortunately, the risk of an appeal, and of the equity in his home being further consumed by legal costs, prevented him from initiating legal proceedings.

Consumer Action continued corresponding with ITSA's Bankruptcy Regulation division, and eventually – some five months after this matter had initially been drawn to its attention – received a substantive response.

However, in a letter dated 13 May 2008, ITSA declined to intervene, stating: 'Bankruptcy Regulation does not have the authority to compel a trustee to alter his fees and costs.' In response to our request that ITSA take action against the trustee under s 179 of the Act, ITSA states:

The Inspector General in exceptional circumstances may undertake proceedings under section 179 of the Act. A number of factors would have to be considered prior to making any decision to make such an application. It is also noted that your client is also able to make application under s 179.

Clearly, ITSA does not view our client's story as exceptional and – given its failure to take any steps to censure the trustee or assist our client in obtaining a remedy – our grave concern is that ITSA does not see this matter as one deserving of remedial action.

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<sup>i</sup> This sum is calculated with reference to documentation supplied by the trustee. Notably, the Receipts & Payments Summary of 7 Jan 08, which discloses payments out of the estate towards the following line items:

- Advertising costs: **\$565.96**
- Legal fees: **\$3,503.90**
- Trustee's fees: **\$66,331.39**
- Trustee's costs: **\$2,051.97**
- Valuation of property: **\$550.00**

Further, the summary of funds required to pay out the estate under cover letter of 28 March 2008 discloses outstanding trustee's remuneration of **\$29,736.29**, and estimates future fees and disbursements to completion of the administration of **\$15,000**.