

13. EVALUATION AND FINDINGS

13.1 I intend dealing with the evaluation of the evidence and findings under the allegations as expanded on in the pre-trial minute on page 22 and further of bundel A. The charges and allegations will not be repeated in this document as they are set out fully under the heading "allegations" in the pre-trial minute.

6.1.1.1

Shaun testified that it was the duty of the board as part of corporate governance to provide him with policy documents. However as the person in charge of KT and being the only member of the board who would be continuously a part of the various boards that were appointed, it is quite clear, that, as Michelle Wasserman testified, this duty was that of the CEO or the secretariat. Shaun was CEO of Port Elizabeth Tourism before. He should have been well aware that it would be necessary for policy documents to be put in place. However he has not brought this to the attention of any of the boards he served on. It is simply not good enough to blame the board, and Shaun is found guilty of this charge.

6.1.1.2

It is common commercial good practice to ensure that agreements are in place when funding is provided, especially when such funding would come from public funds. Shaun was well aware that a proper agreement was in place in relation to the Oyster festival. It is unclear why he proceeded throughout his tenure as CEO of KT to operate without proper contracts being drawn up for each and every event and each and every occasion when money was provided.

Shaun testified that he trusted the beneficiaries of the donations by KT and it was not necessary for formal agreements. This clearly is an unacceptable business practice and places everybody involved at risk.

Shaun could not provide any reasonable explanation why this basic safeguard was not put in place.

Lee Cole on behalf of KT highlighted certain events which already created difficulties due to the absence of proper agreements.

Shaun also could furnish no reasonable explanation how controls would be exercised should he for whatever reason become unavailable. Shaun is found guilty of this charge.

6.1.1.3

Once again as set out in the previous findings, Shaun as a result of his experience in tourism and working in Port Elizabeth Tourism should have ensured that proper delegations were in place from the outset of his employment. However, leaving that aside, during March of 2012 he received a direct instruction to provide a list of delegations. This instruction included that the list of delegations should be presented to the finance committee at their next meeting in April. Shaun failed to do that and failed to provide the list of delegations up until his suspension. Shaun should have realised the importance of this document and made immediate work of it. Shaun's explanation that they decided internally that they did not have the capacity to do so and appointed K & S to draft the documentation is not acceptable. Especially in relation to the delegations Shaun could have obtained examples from similar organisations and at least prepared a draft document for discussion. Shaun is found guilty of this charge.

6.1.1.4

The board members testified that they were completely unaware of events and basically only become aware of them through the media or when they saw an event in Knysna. As this is one of the core functions of KT, one would have expected Shaun to present the board on a regular basis with contracts, budgets detailed analysis of specific events for which the funding would made available.

Shaun explained that he could spend as he deemed fit on the line items. However a responsible CEO should have realised that the board should have been briefed as fully as possible on all events. Shaun is found guilty of this charge.

6.1.1.5

Shaun testified he did prepare a set of financial documentation for the board whenever they met and also at finance meetings. From the evidence it does not appear that Shaun was ever specifically instructed to present a monthly budget. Shaun is found not guilty of this charge.

6.1.1.6

From the evidence it is clear that funds were allocated to events without contracts or specification as to how the funds would be allocated. Shaun admitted that he incurred expenses which the bookkeeper would not know of until such time as she receives the invoices. This clearly is an undesirable practice and would not have happened if proper agreements were in place. Furthermore allocation of funds was never reported on a regular basis or at all to the board and they were completely unaware of the spending. Shaun is found guilty of this charge.

6.1.2.1

Shaun admitted that he rolled creditors up to 120 days and longer. Ruth testified at the moment there is about R 200 000.00 creditors outstanding and that excluded the amount owing the attorney general.

Shaun then blamed the budget cut from the Municipality for the necessity to roll creditors. As KT always had a fixed budget and income even with the budget cut, a responsible CEO would have made adjustments immediately in order to put the organisation in a situation where it would not be necessary to roll creditors.

Despite the financial difficulties, Shaun proceeded to appoint another employee at a salary of R 8 500.0 per month and appointed a consultant for a three month period on a retainer of R 10 000.00 per month. This is a clear indication of poor financial management. Shaun is found guilty of this charge.

6.1.2.2

Shaun testified that he was never requested to provide an age analysis of creditors. No evidence to the contrary was presented. Shaun is found not guilty of this charge.

6.1.2.3

It is common cause that conflict arose between the board and the CEO when the investigation started. However it is difficult to see how this could be framed as a charge and as far as it is a charge Shaun is found not guilty.

6.1.2.4

This is a duplication of what has been dealt with before and no further finding needs to be made.

6.1.3

The evidence presented indicated that KT suffered at least the following financial losses:

1. R 24 000.00 due to a failed insurance claim
2. R 120 000.00 credit extend to Lightley's and will in all probability not be recovered
3. An amount of R 176 000.00 to the auditor general
4. Certain SARS penalties.

Randi admitted that she failed to update the assets register. Shaun can therefore not be accountable for the insurance loss. However in so far as Lightley's, the auditor general and SARS are concerned Shaun is

clearly the responsible person and he is therefore found guilty of this charge.

6.1.4

Throughout Shaun's evidence, it was clear that he felt that he had the authority to do with the budget of KT as he deemed fit. He did however concede that it would have been expected of him to act in a responsible manner. Being experienced, Shaun should have prepared proper reporting systems and should have kept the various boards informed at all times in relation to most of the expenses but particularly the events and festivals representing the majority of the spending. It was Shaun's duty to create proper reporting systems in order to protect himself and the various boards. This he did not do. Shaun is found guilty of this charge.

6.2.1

Randi testified that she did not provide the Report to Management to Shaun prior to the AGM. It would therefore not have been unreasonable for Shaun to declare a clean audit at the AGM. Shaun is found not guilty of this charge.

6.2.2

Nan and Greg testified that at the board meeting at the Golf Club Shaun informed them that the Jamaica trip for one of the employees Glenderr was a sponsored trip. There is no reason not to believe their evidence in this regard. Furthermore Shaun's version was that he told them the trip may still be sponsored. It is illogical to talk about sponsorship after the event. Shaun's evidence is not probable in this regard. I found that Shaun did intend to mislead the board. He is found guilty of this charge.

6.2.3

This charge has already been dealt with above.

6.3.1.

Shaun testified that he had the authority to extend credit and that the CEO before him also had that authority. Although no written authority could be produced logic dictates that the CEO of such of an organisation as KT would not have authority to extend credit. If Shaun was prudent, he would have informed the board that he wanted to extend credit to Lightley's and also his reasons for doing so. The board could have taken a decision on that. Especially when Lightleys' debt started rising again, Shaun should have brought this to the attention of the board. He did not do so resulting in R 120 000.00 of public money being lost. Shaun is found guilty of this charge.

Evidence was presented that Ruth and Elma Booker warned Shaun to collect the outstanding Lightley's debt. Shaun chose to give preference to a well known Knysna brand to the detriment of KT

6.3.2

I have already dealt with the policies and procedures. From the evidence it is clear that Shaun did not provide proper feedback to the board on most of the important issues in relation to the business activities of KT. He did not provide detailed financial accounting in relation to the various events on which money was spent. When Shaun eventually did receive the Report to Management from the auditors he should have immediately brought that to the attention of the board as the allegations contained therein were important and serious. This Shaun did not do. Shaun is found guilty of this charge.

6.3.3

It is common cause that for a period of 13 months KT was not able to arrange proper signatures with their bank. This is a fairly simple procedure and should have been done immediately. To continue for such a period to run the petty cash through Shaun's bank account is negligent and certainly questionable business practice. The money paid

out to the taxi's has stil not been reconciled. Shaun is been found guilty of this charge.

6.3.4

KT was largely funded by the Municipality and this was common knowledge. Non-payment of creditors would certainly result in KT's name being brought in disrepute. Shaun elected to not to adjust his budget accordingly in order ensure timeous payment of creditors. Shaun is found guilty of this charge.

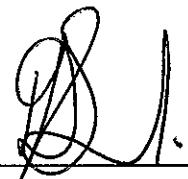
6.4

This has been dealt with above already. Shaun has received a direct instruction to provide the finance committee with a list of delegations and procedures and policies. He failed to do so. He failed to execute a reasonable instruction and is found guilty of this charge.

6.4.3

I find no evidence that Shaun deliberately intended to cause dissent amongst the board members and staff of Knysna Tourism. Shaun is found not guilty of this charge.

DATED AT GEORGE ON 16 NOVEMBER 2012



DESERÉ BARNARD
CHAIRPERSON