

## Submission to Senate Inquiry

### "Post GFC banking sector"

24<sup>th</sup> May 2012

**Economics References Committee**  
**PO Box 6100**  
**Parliament House**  
**Canberra, ACT, 2600**

Dear Senators,

Please find attached my submission that relates to how my business and my family have been treated by Bankwest after it was acquired by the Commonwealth Bank of Australia.

#### **Executive Summary**

Bankwest have effectively ruined the lives of six people by managing to manufacture \$2.2 million in extra charges and fees over a debt of approximately \$50,000 that was in the process of being retired via sale of property.

Bankwest and their representatives knowingly misled all guarantors as to the independence of legal advice. Our legal advice was provided by Bankwest's representative who failed to declare a conflict of interest or advise any parties of their right to actual independent advice.

Bankwest has systematically acted in a manner detrimental to the guarantors namely;

- Breach of privacy laws during the application process
- Significant overcharging of loan payments during the first 12 months of the loan
- Ongoing pressure to sign new variation of facilities letters
- Constant threats of sanctions for not agreeing to sign forms
- Enacting an agreement then accusing guarantors of lying and issuing a default
- Preventing sale of the property/business by refusing to approve an agent
- Delaying a response to an offer for full refinance in order to seize guarantor property
- Consistently failing to return calls and e-mails or provide information
- Failure to meet agreements on return of personal property

#### **Detail**

We owned and operated a hotel business in Launceston and when the freehold (building) became available we used a broker to source a loan to purchase it for approximately \$2.2Million including costs. The broker referred us to Bankwest who offered to lend us the full purchase price. In order to raise the full amount Bankwest required us to provide the following security;

- The hotel freehold
- Our home and 3 blocks of land
- Both our parents homes as 3<sup>rd</sup> party security
- Fixed and floating charges over all companies

Our legal representatives were Rae & Partners. They handled the sale contract, establishing the purchasing structure and advised us through the purchase process. Approaching settlement we were advised that Rae & Partners are Bankwest's representatives in Launceston.

When the loan documents were provided by Rae & Partners, all six guarantors (Bindi, her parents Jack and Silvia Smith, Nick and his parents Peter and Robyn Murphy) were gathered around a table at the hotel and run through the documents as a group and they were then passed around the table for signing. At no stage were any guarantors offered true independent advice, (as the Bankwest representative purported to be providing this).

During the purchase process the vendor of the property advised us that they had a friend at Bankwest who provided the vendor with all the details of our financials and application. Needless to say we were incensed when the vendor told us this. Upon settlement we officially complained and Bankwest denied any improper actions took place and offered us \$5k to never mention it again, which we accepted. The Bankwest employee who had passed on the information to the vendor then left the bank.

Our finance was set up as four loans, one against each security. The larger loan against the hotel (\$1.47 million) was Interest Only. We soon began receiving threatening letters and phone calls from Bankwest stating that we were behind in payments on the largest loan. We had difficulty understanding why our repayments were so far above the initial repayment amounts on our loan paperwork. After many threats from Bankwest, we audited our loan statements and discovered that the major loan had been set up as Principal and Interest payments instead of Interest Only and Bankwest had over charged us in excess of \$50k.

When we pointed out that the major loan was actually in credit, Bankwest simply advised us to disregard all previous communications. There was no discussion about how this had occurred or that the loan had not been established as per our loan agreement. We received no apology or explanations from Bankwest, the matter simply ceased to exist.

Bankwest then sent us a Letter of Variation of Facilities in May 2009, congratulating us that Bankwest had agreed to vary our facilities. We had not requested a variation but came under increasing pressure via phone calls, letters and e-mails from our Bankwest Representative, to sign and return the documents as soon as possible. This continued on for some months until the Credit Manager issued the letter of demand.

When the GFC hit our business was greatly impacted. We had recently spent \$200k on renovations to the property and had depleted all of our reserves. Revenue dropped almost overnight, which had the positive outcome of making us re-assess our business plan and assumptions we had around trade. We tweaked the business model and people responded. Each month following the changes brought increased revenue. We paid down all our outstanding invoices. We were however, behind by nearly three months in our loan payments.

We arranged a visit with the Credit Manager from Bankwest who we presented the changes in our business plan too, and showed the impact it was making on revenue, along with the improvements we had made during renovations. We set up a plan to get back in front and had made several extra payments on top of our ongoing commitments.

Several weeks after his visit, the credit manager, sent an email that accused us of lying to him, saying that during his visit, we had told him we would pay down the whole amount in a lump sum. We responded that we had never said anything of the sort and that if we had access to the arrears we would have already paid the full amount. He declined to respond any further and instead he referred our file to Middleton's who issued a notice of demand.

We were shocked and sought legal advice and guidance from our lawyer at Rae & Partners. Rae & Partners refused to see us citing a conflict of interest as Bankwest's representatives in Launceston, which was a further shock as they had provided us with all our advice during the purchase and loan process without ever mentioning a conflict of interest.

During this period we came to the conclusion the stress was all too much and we would sell-up the hotel and business, and move on with our lives. Bankwest agreed providing they selected the agent. We were to provide three proposals for them to select from. We arranged for the proposals and Bankwest rejected them as having insufficient detail. We returned to the agents who were all loathe to do any further work on their respective proposals without being guaranteed the listing.

When we submitted this fact to Bankwest via Middleton's they then stated that they were unhappy with the Marketing budget of \$20k, and would prefer a major marketing campaign be undertaken in The Age and Sydney Morning Herald. We disagreed with Bankwest's plan and an upfront marketing spend in the order of \$40k to \$50k that we had no way of paying (coincidentally the entire arrears amount). We passed on information from all tendering agents that over 80% of sales came from initial contact via internet listings but they were unmoved and refused to approve a listing with any of the agents.

We had at this stage been approached by two separate parties who were interested in the purchase of the building and the business. We had reached the stage of completion of due diligence and were negotiating with one party over a purchase price when Bankwest took their next action, despite knowing we were close to achieving a sale.

Our next contact with Bankwest was Receivers turning up at the hotel door and kicking us out on Oct 18th 2010 with no advance warning. We still have not been given access to the property to gather our personal property which was documented and promised to be returned to us in April 2011. All cash, bank accounts and stock was also seized.

All income has been retained by Bankwest with no payments made to our Bankwest loans or the Bank of Queensland business loan. We had finance in place for a new kitchen, which Bankwest has refused to pay (despite retaining exclusive use of the equipment) and which we are being pursued to pay.

Despite having an agreement to return our personal property (including furniture, artwork, electronic equipment and other sundry items), Bankwest have failed to return the items and appear to have sold them and retained the money.

In early February we submitted an offer to settle/refinance as we had finally found a financier. We received no response for over a month, apart from the acknowledgement that it was being considered. Bankwest used this time to take control of the blocks of land as mortgagee in possession.

After we had been notified the property seizure had taken place, Middleton's advised that the Hotel and Business has been sold some time ago, despite taking one month to respond to our offer to refinance and settle the matter.

After submitting a complaint to the Financial Ombudsman, Bankwest made contact with us and claimed they had been trying to reach us for some months. Despite our postal address and phone numbers not changing since well before we became Bankwest customers, we received no letters or phone calls.

Bankwest also took this opportunity to advise that no offer was ever received and they had no contact from us in "a very long time". Despite this claim, our lawyer has a file of correspondence including the refinance offer.

Upon meeting with Bankwest we were advised that the commercial property was sold for approximately \$1.3m around November 2011 and that the current debt stands at approximately \$2.2 million which is the same figure that we started with and which means they have attributed over \$1.3m in receivers charges and other bank 'fees' since October 2010, as a result of a dispute over the original amount of less than \$50,000.

This entire situation could have been completely avoided had Bankwest allowed us to discuss our repayment arrangement set in place in 2009/2010. The original amount overdue could have been repaid in less than 6 months or we could have simply updated our valuation on the commercial or residential property to bring the debt back into acceptable LVR. We additionally could have then easily refinanced the loan to another bank if this is what Bankwest had wanted.

There is no logic in the process that they have followed that has taken our debt of \$50k that we were overdue to an estimated \$2.2m now owed in fees and outstanding balance. We can only reason that there was an ulterior motive to marking our loan as a bad debt alongside all the other commercial loans that Bankwest called in after their takeover by CBA in 2008.

The unconscionable conduct by Bankwest has had a devastating impact on our life and that of our families who are directly linked (as additional guarantors) to this situation. We have had to move interstate in order to find work in order to maintain payments on first mortgages with Westpac loans and the first mortgage with Bank of Queensland on the Business loan. We have continued to pay these loans the entire time as best we could.

My parents are both in their 70's, my mother suffers from Parkinson's disease and my father has severe Osteoporosis, both receive in-home care and are very frail. As I now have to live interstate due to this situation this is incredibly stressful for both my parents and me and we must now contend with the added threat of having their home seized by the bank and sold out from underneath them.

Yours Faithfully,

Nicholas Murphy & Bindi Smith