

Submission to the Parliamentary Joint Committee on Corporations and Financial Services. 2009.

Specifically:- CBA/COLONIAL/STORM FINANCIAL

27 July 2009

Submission

This submission will – in the main – address the enquiries Additional term of reference adopted by the committee on 25 February 2009 for inquiry and report by 23 November 2009:

“The committee will investigate the involvement of the banking and finance industry in providing finance for investors in and through Storm Financial, Opes Prime and other similar businesses, and the practices of banks and other financial institutions in relation to margin lending associated with those businesses.”

Many earlier submissions have covered a significant number of the issues which have seriously affected Investors in the failed Storm Financial Company.

I would like first to draw the attention of the Honorable Committee Members to one of the submissions in particular. That is Submission Number 30 from Sean & Paula McArdle. They also have a Supplementary Submission 30A.

The McArdle accounts of wrongdoing by the Banks and Margin Lenders in particular will be enlightening study and an excellent resource for probing questions which need to be answered. The same could be said of the SICAG (Storm Investors Consumer Action Group) submission – and several others – I trust including this one.

My wife and I joined Storm Financial – then known as ozdaq – in late 2000. We had no debt. We owned our home and four small investment properties. We checked with ASIC and FPA to be sure there were no recorded ‘black marks’ against that ozdaq/Storm Financial. None were found.

We were comfortable that our Margin Loan was with what we thought was an honest and reputable company - Colonial Margin Lending. At commencement in 2000 the Margin Loan with Colonial was approximately \$700,000. It grew – as did the asset base – to over \$2,000,000 up to November 2008. As of December 2008 it no longer exists. Colonial wiped us out.

We now have no debt with Colonial. Our House Loan is with Westpac. Our loan with Westpac exceeds \$1,000,000.

Both loans were arranged by Storm Financial. The Westpac loan has monthly interest payments we cannot support. We have borrowed to assist cover to interest and we are in discussion with Westpac.

Over the period of time we were involved with Storm Financial we sold three Investment properties and those funds were invested through Storm. All Funds – at Storms recommendation - were invested in the most conservative, passive, investment available (apart for Cash) – Index Funds. Lowest Management Expense Ratio (MER). The best Investment diversification possible. No ‘all eggs in one basket’ position.

We were always assured, verbally and in writing – especially as Retirees – that our Home and investments were safe. A copy of an email from Emmanuel Cassimatis dated August 2002 stated:-

“Just a quick note to confirm my conversation with you dated 9th July, 2002 which included my promise to you that your home and investments would be fine and safe in the long run if kept within the ozdaq financial plan structure.” My underlining.

In the actual notes from the meeting Notes reported in the same email the following statement was made.

“Emmanuel discussed (name withheld) need for a guarantee that things would be OK. EC told him volatility will always be there as part and parcel of the plan and he cannot get around that. Emmanuel did promise (name withheld) all would be OK and he would not lose his house etc.” My underlining.

We had researched Investment advice of Warren Buffet – who has consistently recommended Low Fee Index Funds to those who are not active Investors. He still talks about it. At an AGM of his Company, Buffett said:-

“Most investors, both institutional and individual, will find that the best way to own common stocks (‘shares’) is through an index fund that charges minimal fees. Those following this path are sure to beat the net results (after fees and expenses) of the great majority of investment professionals.”

Investing in Index Funds is far from a greedy risky investment. It was ultra conservative.

Let me summarise our conservative approach to this investment.

- ASIC. Checks Re ozdaq/Storm. Clear.
- FPA. Checks Re ozdaq/Storm. Clear.
- Investment vehicle. Australian Shares via Index Funds – Conservative and Passive.
- From Storm we had a “guarantee’ in writing plus many verbal assurances that we would never lose our home or investments.
- Warren Buffet. Recommends Index Funds again and again for Non Professional investors.
- Colonial Margin Lending. Large, reputable (we thought) Margin Lender.

How much more could we have done??

Without any reference to us Colonial sold everything we owned in November 2008. Due to the actions of Colonial Margin Lending referred to in the submission we are now forced to sell the home we love. It has been on the market for 6 months – with very few inspections and no offers.

I am 74 years of age. My wife several years younger. Both retired. My long period in Corporate and Public life gave me an opportunity to contribute in a number of ways to the Community which was recognized in the late 1980s with an AM – Member of the Order of Australia.

My wife a highly qualified Nurse. Worked in Casualty, Cancer Wards, Midwifery, Surgery and for the 15 years prior to her retirement was 2IC of the largest Rehabilitation facility in Australia dealing in critical care and rehabilitation of amputees from accidents, child strokes and the whole spectrum of life changing and life saving Rehabilitation Nursing. She has a degree which majored in Pastoral Care and during her life has done incredibly good work for hundreds of people who were severely debilitated.

HONORABLE COMMITTEE MEMBERS WE NOW COME TO YOU ASKING THAT THE COURSE JUSTICE BE PURSUED – SO WE MAY ACHIEVE SOME DEGREE OF REHABILITATION.

If the forgoing objective is not met this enquiry may produce some meaningful recommendations for the future but you will leave thousands of honest and good people financially destroyed human beings with little hope for the future.

Up until November 2008 we were financially comfortable self funded retirees. The demise of Storm has resulted in the loss of millions - in Investments acquired through life savings and our home - through the sell down by Colonial. Our entire life's savings and investments wiped out in this catastrophic debacle.

Between us my wife and I contributed to the work force and paid our taxes for a combined period of 90 years. After a lifetime of work to ensure our self funded retirement and plans for our children and grandchildren, some utter fool at Colonial Margin Lending pushed a button and wiped out all of our investments – without any prior advice to us – in contravention of all agreements we had in writing with Storm and Colonial.

As indicated we joined ozdaq – later known as Storm in June 2000. We have a house loan through Westpac and had a Margin Loan through CBA/Colonial Margin Lending.

From our entry to Storm in 2000 until the Advisors demise caused by CBA/Colonial Margin Lending we paid Colonial Margin Lending \$844,000 in interest and to June 2009 we have paid Westpac \$493,000 in interest. We continue to pay approximately \$7,000 interest per month off the house loan. We have had to borrow further to pay the interest until the house is sold. And given the market, a sale is quite unlikely in the near future. All we have is income from one remaining property of \$2,400pm.

MARGIN CALLS.

- Our Statement of Advice (SoA) in 2000 from ozdaq – pages 12 to 14 covers Margin Lending in much detail. At page 14 – our SoA states:-
“MARGIN CALLS. A margin call will be made if your equity – the value of the assets that you contributed to the investment – falls below the agreed lending ratio. If this happens THE LENDER will ask you to provide additional funds to restore at least the minimum equity position.” (My Capitalisation)

How much clearer can it be?

- We were not told of what was apparently a critical LVR level around November 2008 and we were not given the opportunity to address the position (which we could have) in accordance with Colonials own terms. This is in spite of the fact that their own document – which we had signed - clearly stated – at page 48 under item 2 – Margin Calls:-
“If a margin loan equals or exceeds a certain percentage of the overall security value you will receive a margin call.” (My Underlining)
We did not receive any call.

- Right from the outset we were quite clear that if a margin call was made it would come from the Lender.

Section 3.2 of the Banks own document, being the Terms and Conditions reads:-

"You must pay us the amount owing, on the date we specify, if:

(a) you are in default (see part V); or

*(b) **we** send you a notice requiring you to do so. **We will always give you at least five (5) working days notice if we do this**".*

Colonial FAILED to do this.

In the Federal Court of Australia on 24 December 2008 Storm Financial (Applicant) took the Commonwealth Bank of Australia (Respondent) to Court. Presiding: The Honorable Judge J Greenwood.

- Page 12 of the transcript item 39 shows that in a Sworn Statement Mr David McCulloch, who for 25 years was employed in senior positions in the Commonwealth Bank before being employed by Storm Financial, gave evidence under oath that:-
"..... wherever a loan exceeded the buffer relating to a margin ratio for a margin loan, the Bank would write to the client borrower and would require the client to do what was necessary to bring the loan back to the relevant ratio"
- Also at Page 12 of the transcript, item 39, Mr Paul Johnson, appearing for Storm, in a Sworn Statement, gave evidence that that he established Colonial Margin Lending in 1996. The Judges statement said:-
"it was his (Mr Johnsons) experience that once Storm referred a client to Colonial, Storm had little or nothing to do with the management or maintenance of the facility thereafter."
- In that same section of the Judges notes, Mr Johnson, under oath, is again reported to have stated:-
"... the Bank's practice was to act on instructions only from those clients - and not instructions from Storm without confirming that an individual client with a margin loan facility had provided those instructions."
- On Page 15 of the transcript the Judges statement – item 43 reads:-
"I am satisfied that solely for interlocutory purposes, Storm has demonstrated a sufficient likelihood of success demonstrating that the statement as to sole meeting on 4 December (between Storm and the Bank) are capable of being misleading or deceptive or likely to mislead or deceive."
- On page 16 of the transcript – item 49 - Judge J Greenwood comments:-

“It seems unlikely as a matter of prudential bank management that the Commonwealth Bank of Australia would have displaced all responsibility for its loan portfolio with these borrowers and investors entirely to a third party, Storm.” The Judge goes on to say at that same number:-
“The boundaries of that relationship (between Bank, Advisor, Borrower) are the core matter in issue in these proceedings.”

There is little doubt these comments by Judge Greenwood would have been disturbing in the extreme for the Commonwealth Bank of Australia. The Judge goes on to say that the matter must be tested at trial. A date was set for 9 January 2009.

We now know that because of actions taken by the Bank subsequent to 24 December to force Storm into Receivership that it was never possible to proceed to trial on 9 January. Most convenient for the CBA.

Honorable Members of this Committee there are multiple pieces of damning evidence indicating despicable practices by the Bank which have forced thousands of ordinary, hard working and previously hard working - now retired - Australians into – *not a life – but an existence of near poverty* – a drain on the social security system, where just months ago they were comfortable, working families or Self Funded Retirees.

The unconscionable act of selling us down, without any contact, borders on criminal – certainly Breach of Agreement. After selling us down we had a negative equity position of over \$300,000. Although Colonial did not call us before they wiped us out, they had no difficulty, almost immediately after their destructive action, calling us demanding payment of the \$300,000. We were able to raise the \$300,000 within days – proving that had we been contacted - any out of order situation could have been quickly rectified. We were not given the chance. They broke our agreement – and in most cases – including ours – still had the temerity and gall to charge us a break fee of \$52,601.35. THEY broke the loan – but charged US the break fee.

No wonder Mr Norris said he was not proud of some actions taken by the bank. He should be – as any right thinking person would be – absolutely disgusted.

This process has resulted in me suffering severe Reactive Depression and several anxiety related conditions – included a compromised immune system, which medical experts believe can lead to many diseases including:- Rheumatoid arthritis, ulcerative colitis, Crohn’s disease, allergic rhinitis and other allergies, as well as numerous other diseases - all theoretically caused by improper immune system responses.

There is evidence that a frightening number of Colonial Victims have been actively pursuing suicide options.

My wife is heartbroken and sick with worry about the future for us - but more so because of the inability to do the things parents and grandparents like to do, want to do and carefully planned their finances so they could do -- and that is be there for their children and grandchildren.

My depressive condition lasted for a little over 6 months. Thanks to my wife and medical advisors I am now recovered sufficiently to compile this brief submission. Only those who have ever had 'the lived experience' can know how bad and debilitating this illness can be. The related issues will be with me for years and in so many ways our quality of life has been significantly diminished. I am just one of hundreds whose health has been seriously comprised arising directly from this matter.

Colonials utterly cruel act leaves us – and hundreds of others - in a position where we have to sell our home, stand in queues at Centrelink, probably lose the ability to pay for private health cover, renege on promises to family about support for our Grandchildren's Education, manage long term health issues created through this debacle, become burdens on the Social Security & Health systems and live a seriously depleted lifestyle.

Our Banks – including the Commonwealth Bank of Australia have been supported by our Government with Deposit Guarantees. This backing comes from taxpayer's funds – our taxes. So on one hand we are supporting the banks with our taxes while they act recklessly and wipe out the life savings of thousands.

Recently Mr Ralph Norris CEO of the Commonwealth Bank has admitted that mistakes have been made and they are working with Slater & Gordon to address some of the serious problems Colonial has caused. At least – to that extent – Mr Norris is to be commended for admitting a major stuff up in their system and a willingness to look at each case to see how it can be repaired.

Mr Norris has intimated that making things right will not cause any financial difficulty at all for the Bank. The CBA Vision statement is:-

"The Commonwealth Bank's vision is to be Australia's finest financial services organisation through excelling in customer service."

If the Honourable Members of the Committee will excuse the colloquialism "blind Freddy" can see CBA have fallen so far short of their vision statement aspirations by margins (no pun intended) that could only be described as chasms.

Mr Norris has made it clear that any actions taken to correct the current situation of ex Storm clients will not have any effect on the Banks Finances.

The CBA's incredibly large but prudent Loan Book Provisions will more than take care of that. So for the Bank to do the right thing – 100% - will not even be a blip on the radar within their business. But for the thousands of devastated victims full recompense of the funds lost in the Colonial blunder will be significant relief.

Storm

This was not a disaster the owners of Storm wished upon themselves or their clients. Nevertheless they have been at the centre of events which has ruined their business and the lives of thousands of trusting clients by not being sufficiently diligent with the relationships they had with all banks and margin lenders. Had they been diligent and exercised greater professional control in their arrangements with the Banks much more could have and should have been done to ensure the protection of their now utterly devastated ex clients.

It should be noted that Storm went to exceptional lengths to work with the Bank to rectify the situation quickly and efficiently. This action was noted by Judge Greenwood and is reported in some detail at Item 39 in the transcript of the December 24 Federal Court hearing. The Bank flatly rejected Storms offer which (a) viewed at the time when Storms proposal was put to the Bank it looked like a very workable, fair proposition that would benefit the Bank; Storm and their clients and (b) viewed today that proposal – I respectfully suggest – would be grabbed by both hands by the Bank. The cost to the Bank – had they accepted Storms Rescue proposal - would have been miniscule compared to the cost of their actions to date and what it will cost the Bank by the time this sorry debacle is settled.

My dealings with both principals at Storm was sometimes 'robust' however they were always courteous and appeared to have the specific aims of their clients at heart. Of course – as has been shown – if a client aims were achieved – so were Storms objectives and they were quite upfront about that. It seems obvious that this disaster is not something the Joint CEOs ever contemplated – let alone orchestrated.

But the fact remains it happened on their watch and while Colonial were and must remain absolutely responsible for the final act of unbelievable bastardry, Storm did not live up to their oft quoted credo "You are not here for us, we are here for you".

As to other alleged corporate misdeeds - that is for others to determine – not us.

ASIC

We cooperated with ASIC post the demise of Storm, gave them copies of documentation and had a three hour discussion with three ASIC Officers.

What I do not understand is that ASIC - I am informed – were in Storms Offices during October 2008 following some complaints and walked away giving Storms methodology and system a clean bill of health. Within a matter of weeks the entire operation collapsed. How is it that ASIC was unable to 'stop the rot' before the disaster.

It seems to me that ASIC is quite efficient at operating and investigation AFTER the event – but seems to lack the ability to PREVENT such catastrophes. How much more efficient and cost saving it would be if ASIC worked on the basis of PREVENTION.

Also I remain at a loss to understand why ASIC gagged Storm from talking to their clients in the immediate aftermath of Colonials abhorrent sell down of all clients. At a time when clients most needed help, ASIC denied contact. Why??

Resolution.

As Honorable Members of the Committee will be aware the Storm issue is far from a 'one suit fits all' situation. So I have no blanket recommendation. There are however many many Colonial victims with a similar pattern of investment to ours. In those cases I say that the minimum recompense which the bank should provide – through Colonial - should be based on:-

1. Reinstate funds to the level of the investment at the day the bank sold us out.
2. Refund the Break Fee charged. Colonial broke the loan – we did not.
3. Refund the Negative Equity amount we were forced to pay.
4. Sufficient weight should be given to the loss of future income resulting from Colonials actions.

Even if all of the above was agreed and settled Colonial will have denied Investors of a future in the Investment cycle. Any funds received from the above recommendation would simply be used to settle others debts. It is a matter of record that since Colonial acted to wipe out Storm clients on November 20 – the market has risen by more than 30% -- and Storm clients are not in the market.

Viewed from another perspective. If I was given a further 10 years to live and obtained the return I had been receiving as at 07/08 from my Storm Investments I would earn an income over that time of approximately \$1,000,000. That is a very basic calculation and ignores the compounding growth through the market and the 'organic' growth of the Index Fund Investments.

I thank the Honorable Members of the Committee for taking the time to read this submission and trust that only good will come from this experience. Your recommendations can make difference – in some cases no doubt a life saving difference – to many honest Australians who have been so badly treated in all these circumstances.