

**Submission to:  
the Parliamentary Joint Committee on Corporations and Financial Services  
Inquiry into Financial Products and Services in Australia.**

## **Background**

My wife and I were clients of Storm Financial (Storm). Our investments in Index Funds were supported by a property mortgage with the Bank of Queensland and a margin loan through Colonial Geared Investments (CGI). In September 2008 we were self-funded retirees looking forward to a comfortable retirement, which we felt we'd earned after both of us had spent more than 45 years in the workforce. By December, our world had crashed, our retirement savings were almost all gone, we were left with a \$1 Million debt on our home and small investment Unit, and I had returned to work, albeit part time.

We were distressed to see our savings evaporate after the world's financial meltdown, but we accepted that there was (and is always) a risk with any investment. Our distress over the turn of events was compounded by the apparent unconscionable conduct of either our financial adviser Storm or the bank, CGI, or both, resulting in our losing a large additional sum of approximately \$800 000. It is the conduct that lead to that outcome which is the basis of our submission.

## **Inquiry's Terms of Reference**

This submission is submitted as being relevant to the Inquiry's consideration of:

- The role of financial advisers
- The appropriateness of information and advice provided
- The practice of banks and other financial institutions in relation to margin lending.

Our charge of unconscionable conduct centres around two aspects of this business:

- (i) The lack of clarity in financial information provided by both Storm and CGI both of whom seem to operate under the delusion that volume is an acceptable substitute for quality, and
- (ii) The way in which the investor's interests were totally ignored during the process of recovering a margin loan— a neglect by both Storm and CGI.

## **Clarity of Financial Information**

(i) Storm.

The regular reviews with our Storm adviser were thorough, but the supporting paperwork was always overwhelming. It was never clear from that paperwork that because we were both retired, repayments on both the mortgage over our property, and the margin loan, had to be funded from our investment funds, and that the Loan to Value Ratio (LVR) shown on CGI's monthly statements only related to the margin loan. The "L" in the LVR for our real financial position was in fact the margin loan **plus** the mortgage loan. This lack of clarity resulted in our being more complacent about our situation that we had any right to be. That is, our risk profile was higher than it appeared to be from the paperwork.

**It is suggested that it ought to be a requirement that the written advice from a financial adviser contains a summary sheet which clearly outlines the client's overall financial position, including the risk attached to the advice, clearly, in a form understandable to a non-accountant.**

(ii) CGI

For many months prior to September 2008, CGI's monthly statements had shown very confusing LVR's for our account. The September statement was the last one we received from CGI until well after the crash had occurred and all of our shares sold down (without our knowledge!) When we queried the LVR issue with our financial adviser we were told that "They (CGI) have got it all screwed up. We've told them about it, so don't worry about it."

Our margin loan was taken out with the then Colonial State Bank in July 1998, and in those early days the "borrowing limit" was always shown as 70%

It was our clear understanding that our margin loan was based on a nominal LVR of 70% (which we understood was CGI's standard rate) with a (later) add-on of 10% "special arrangement" for Storm clients. The "borrowing Limit" shown on that September statement was 80%. This, together with the reassurance of our adviser was sufficient for us to let that matter lie. To this day we do not know what the real situation was!

**It is suggested that the lender be required to provide advice directly to the client in a clearly understood format, what the situation is in respect of ratios and margin call risks – and especially where there is a change in those criteria.. What is needed is a clear statement of the current LVR and the value (in dollars) at which a margin call will occur.**

**Failure to do this in a timely fashion should be reason enough for the margin lender to be held responsible for any financial disaster which results from their failure to provide this clarity.**

### **Recovery of Margin Loan**

Because of the rapidly falling market in October 2008, and acting on Storm's advice, we gave Storm written instructions on 13 October to take whatever action was necessary to preserve our financial position, including selling down all of our shares if the market continued to fall.

On submitting that authority we were assured by Storm that all clients' accounts would be treated individually - we were concerned that in the confusion of a rapidly changing market, and with everything being controlled by Storm's head office in Townsville our account might get lost in the crush. At a later meeting with our Storm adviser on 16 October we were advised that Storm was in discussion with the margin lenders to achieve a best outcome for all parties, and were reassured again that each client would be treated individually.

We had no further contact with Storm in this critical period apart from circular letters on 17 and 21 October, and a group presentation about the shape of the economy, client reassurance, and Storm brand protection by Storm Director Emmanuel Cassimatis on 12 November 2008.

On 8 December we were telephoned by CGI advising us that all of our shares had been sold and that we still owed them a sum of money to make up the shortfall between the sold-down

value and our margin loan. Stunned, we arranged for the payment of the outstanding value of the margin loan from our cash reserves on 11 December. In that telephone call of 8 December, CGI claimed that Storm had been advised of our situation on 28 October and that when they had heard nothing by 25 November they exercised their right to sell our shares to recover most of their loan. CGI has consistently refused to confirm this verbal advice, but in a letter from CBA Group Customer Relations on 22 May 2009, it has been confirmed that margin calls were made on 28 October, and again on 17 November. The letter does not specifically say that the call was made on Storm, but that is my presumption based on CGI's telephone advice – certainly no calls were made on us, the party to the margin loan.

On 9 December we emailed Storm about this situation with a follow-up telephone call on same date but were unable to get any confirmation from Storm about CGI's claim of an October advice

The letter from CBA was received only following a "needle" from our local Toowong Branch of the CBA on 22 May where we complained about the lack of openness on the part of CGI in this matter. [I need add here that the local CBA Branch has been very helpful in our current situation which is certainly none of their making] It seems quite incredible to me that as the investors directly involved, neither Storm nor CGI saw fit to advise us of the situation in a timely fashion!

The difference for us between selling our shares at an LVR of 80% (as we had understood was the contract) and actually selling them one month later at 102% represented an immediate loss of about \$800 000.

Each party blames the other – CGI say it was Storm's responsibility to advise them of what action they should take in respect of the margin call, while Storm maintain that it was CGI's responsibility to advise us directly. In the meantime we're the poor bunnies caught in the middle of this Teflon-coated argument.

We had prepaid the interest on our margin loan to 30 June 2009. Following the repayment of that loan in its entirety, we requested that CGI return the balance of the interest we had prepaid, which they did minus a \$60 000 penalty for our breaking the loan agreement.

To compound an already miserable situation, CGI held onto the money from our sold-down shares for a period of 19 days until we asked specifically where the funds were and please to put them into an account especially set up with the Commonwealth Bank (CBA) back in October for just this sort of eventuality. CGI's written response to the request for interest for that period was that they held the money because we had not told them where to put it and therefore we were not entitled to any interest. This is absolute rubbish, given that the money from about 20% of the sold down shares was deposited by CGI to that special account by CGI on 28 November – 3 days after the sell-down.

The recent letter from CBA has confirmed that they will not pay us any interest for the use of \$2.6 Million of our money that they had squirreled away for 19 days. We have appealed again this ruling, and will proceed to take it to the Bank Ombudsman should we continue to receive no satisfaction.

**The process involved when a margin call is made should be spelled out to the investor at the time the margin loan is applied for. Again such a critical item should be included in the summary of key issues and spelled out in simple language. Having it buried in a complex PDS (and we've never seen one for this margin loan so I don't know what it says) is not enough.**

We recognize that our chances of recovering any of the monies due to us is extremely small, but the fact that they would make a big difference to our financial situation means that we will explore every avenue available to us to get some justice.

Yours respectfully,

[Name and address withheld by request]

31 May 2009