To The Hon Bernie Ripoll MHR Parliament House Canberra, ACT 2600.

From Dr Stanley Robinson

16 March '09

Dear Sir,

Parliamentary Enquiry re bad financial advice and being duped by financial advisers.

My submission is that had the financial adviser not misrepresented that all the bank's products were low risk because of diversification (a contemporary note of mine records the Financial adviser's statement that investment in 25 companies was diversification), my wife would not have signed the Personal Financial Profile and other subsequent documents that the financial adviser duped her into signing without even explaining the contents to her. Those documents contained material matters that had they been explained my wife would not have invested at all.

My wife took her case to the Panel but it was a waste of time. It ignored the fact that it was impossible to read, by a person whose second language is English, 50 odd pages of Prospectus, three supplementary trust deeds of over 70 pages each, and attend to other matters during a single afternoon.

This all came about by being duped so that the financial adviser on behalf of the Bank got access to her funds and the financial adviser obtained money from the Bank by misrepresenting that the prospectus had been attached to an application form when signed by my wife. Surely both are criminal offences.

This is a very short summary of the events that surround my wife investing in managed funds owned by a bank. My concern is that my wife and I were duped and taken advantage of and that it was a waste of time taking the matter to the Panel of FOS.

This a summary of what happened.

"Both my wife and I were continually harassed by bank staff to have the advice of a bank's financial advisor to get a better return than we were having on passbook accounts and IBDs. The advice was always said to be free.

My wife relented and a financial adviser called one afternoon.

She told the adviser that she wanted no risk to her capital. He then gave a presentation stressing that all the bank's funds were low risk because of diversification. When asked how much she owed him, he replied, 'Nothing I am paid by the Bank.' To her statement

that , 'The bubble has to burst.', he replied, 'No. The Fund managers always make money. They are experts with all these programmes.'
All these statements were misrepresentations

She asked him what properties the property fund was invested in and the stocks that the dividend imputation fund was invested in, to which he replied he could not reveal as it commercial information. These statements too were misrepresentations as some information was contained in a prospectus that she ought to have been given but was not (as to this see below).

I was present and took some notes.

He failed to tell us that he was limited to advising on the bank's products.

When my wife said she was interested in investing in two funds, the advisor said that he had to complete a form. This he did and skewed my wife's responses so that there was ambiguity which was later taken advantage of (but wrongly) by the Panel to her disadvantage.

He then produced a form that he said, 'All you have to do to give effect to your wishes is to sign it.' This my wife did so without reading it relying on the advice of the adviser. He was after all a fiduciary and she was at law entitled to rely on him to tell her all material matters affecting the investments but the Panel paid no heed to this. (The form was in small print and my wife's second language is English).

This form said, 'Please read the Principal Prospectus .. This application .. made.. subject .. of the Principal Prospectus as amended'. Tucked in the middle of a clause was the provision 'I agree to be bound by the provisions of the Trust Deed .. as amended'.

But neither the Principal Prospectus nor the principal trust deeds and the three relevant supplementary trust deeds were shown to her or myself. Indeed had the first ten pages of the Principal Prospectus been read she would have made no investments as the bank had characterised the funds she had chosen as higher than low risk.

This pattern was repeated when she secondly invested. That occasion had one curious twist in that at one stage I stood up and told my wife she was putting too many eggs in one basket and to invest in the stock market. The adviser made no comment. At that juncture the adviser had to leave and see another at the bank branch. We followed and sat around. He then misrepresented that the fund my wife eventually invested in had earned 10% over the preceding five years and would do so over the next five years. She fell for it. It was false. The fund also was misrepresented as invested in Australian securities. This too was false.

The investment plans were handed over the next day and my wife told to file them. They were not read. Curiously there was provision in them for invested through the offices of JB Were but the return to the adviser would have been less.

When the adviser left the bank he came round saying that he wanted to continue with the ongoing service and misrepresented to her that to access information from the bank about her investments he needed her to sign an authority. But the document purported to assign the trailing commission to him! Anomalously she did not own the right to the trailing commission.

There were a number of instances where there was a lack of responding to my wife's needs, such as bringing the forms to correct an overweighting in a fund.

Eventually my wife made a complaint to FICS. As a result of that complaint the bank disclosed the Principal Prospectus and the supplementary trust deeds and sought to rely on the Principal Prospectus to avoid liability for such things as the adviser's failure to disclose commission, difference between the two entry fees, MER, making available a copy of the principal trust deed, etc. The Panel failed to recognise that had my wife been aware of the existence of those documents before the original complaint was made she would have relied on them as was subsequently the case in her original complaint.

As a result of disclosing these documents the grounds of the complaint were widened. For instance that the bank itself in processing her application had failed to check against the Personal Financial Profile that the investments fell within its terms, misrepresentation, and so on.

The complaint was also widened when details of the Rules governing financial advisers were accessed and relevant legislation read.

When it was alleged that the financial adviser was liable for the wrong of deceit, the bank did not bother to put in a reply. Its correspondence with the Service was on first name terms.

We should have seen the writing on the wall.

Basically what my wife submitted was that it was not possible to read (let alone understand) the 52 pages of the Principal Prospectus and the three supplemental trust deeds of around 70 pages each on the afternoons on which investments were made, which were material and which the adviser was under a duty to explain to her whether as a fiduciary or as discharging his duty in exercising care towards her.

One supplementary trust enabled the manager to invest in futures and another in contingent interests – in short they were allowed to gamble away my wife's money. Had I had an opportunity to read these deeds, I as a lawyer would have had a lot to say.

She also submitted that the principle that a party cannot rely on an exemption clause where that clause or document is misrepresented. She also relied on breaches of the Corporations Act and other legislation. All these issues and others were ignored by the Panel.

Despite the fact that the adviser acknowledged that he had little recollection of what he said the Panel failed to take any heed of the unchallenged evidence of two professionals (part of which was supported by contemporaneous notes).

In dismissing the application because the Panel considered that the complaint was merely that of falling investment value, the Panel failed to consider all the Complainant's submissions and is in breach of the principle that,

'Justice not only must be done, but seen to be done.'.

In short going to the Service was a waste of time and money and the bank knew that it had everything wrapped up. The reality is that my wife can not afford the stress or to risk the loss of further money against an opponent that has an endless supply of funds and does not care."

I am happy to make all the documents available together with statements and submissions that my wife made to the Service.

Comment

If we are correct that the prospectus was not produced or attached to the application form when that form was signed, then the financial adviser's subsequent attaching of it to the application form and submitting it to the bank was obtaining money by false pretences. Further the representation that he was paid by the bank when he stood to gain $7,500.00 in commissions out of her funds is surely obtaining money by false pretences.

Proposals.

In the hope that something can be done to spare others the trauma and loss of money, I make the following suggestions:-

1. That financial advisers be only paid by the client and to be paid commission by a third party or receive any other benefits be made a serious offence. In addition if an adviser does receive commission or other benefits from as third party then the investor is entitled to recover these.

2. That banks be banned from owning in part or in whole managed funds.

3 That the personal financial profile be completed by the investor free from the influence of the adviser or a person associated with or related to the adviser.

4 That all documents that affect in any way the investment or the terms upon which it is to be held are to be given by to the investor at least 14 days before the decision to invest is made.

5 That all interviews by financial advisers with investors be recorded by the adviser and a copy of the transcript be given to the investor at least 7 days before the decision to invest in made.

6 That before a fund manager accepts an application he has to send to the applicant investor a list of all the documents that affect the investment (including forms to correct overweighting and withdrawal) and highlight the fees that the manager is to charge. and other fees that the investor is to be charged.

7 That fund managers and financial adviser be prohibited from requiring an investor to agree to an exemption clause limiting liability or to a clause to the effect that the investor has read and understood a document.

8 That the Panel of FOS have regard to the investors particularly where the evidence is at odds with documents that they signed but could not have understood because of their length and the nature of the language of the documents and their language skills.

9 That the jurisdiction of the Panel of FODS be widened so as to give investors relief in the following circumstances – the documents were not the investor's deed, fraud, deceit, undue influence (including persuading the investor to accept a higher risk than that the investor first expressed), the failure to discharge the duties of a fiduciary, negligence (failure to disclose all material facts) and failing to give effect to the investor's expressed wishes.

10 That where there is non-compliance in any degree with the obligations cast on a financial adviser, then in the absence of proof of a greater loss, the investor is entitled to the return of the amount of her or his investment together with interest at 5% from the date of the investment until payment giving credit for income payments (including capital gains included as income) since the date of the investment.

Yours sincerely