SUBMISSION TO

Committee Secretary Services
Parliament Joint Committee on Corporations and Financial Services

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Inquiry Into Financial Products and Services In Australia

- Introduction

Terms of Reference

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2. The General Regulatory Environment for these Products and Services
3. The Role Played by Commission Arrangements Relating to Product Sales and Advice, Including the Potential for Conflicts of Interest, The need for appropriate Disclosure and Remuneration Models for Financial Advisors.
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Introduction

To Committee Secretary

On the 29-08-06 Storm Financial signed us up and advised us that my husband take out a loan for $163 000 with the Bank of Queensland with myself as guarantor for the loan. The equity in my house was used.
It took 5 months of lots of meetings and discussions before we signed up and only because they guaranteed that the house and initial loan would NEVER! Be at risk. We had asked to be in a low risk portfolio and again were told that we would never have the house or that loan at risk as they had buffers in place to protect them and as long as we did everything they told us to, which we did it would never happen! We were also told that they had insurance to cover us if any advice they gave us went wrong and we would get back what we lost. Guess what, we can’t find any now that things have gone to crap!!
When we signed the application for the loan from Bank of Queensland we didn’t see or speak with a representative from the Bank. Yvette Daniels at the Mackay office handed us the paperwork blank and asked us to check on her computer that our information was correct and it was. She then said great just sign and she would fill out the information from her records, after all that why we paid them so much money.

She then arranged margin loan documents from Macquarie and again we had no contact with anyone from this bank. We signed stating at no time did we want to be more than $250 000 in debt. We have found since getting copies of these documents in Jan 2009 that at some time after the papers left us that the amount of $250 000 had been crossed out and initialled and changed to $500 000! This was not mine or my husbands signature, so who did this?
Yvette then worked out a payment system for us which was $2319 a month into a CMT ACC and then allocated to all of our costs.
Storm Financial fee cost at this time was $29 600 to which we were told this would be the only fee for them to look after our portfolio, rather then paying a smaller yearly fee that worked out a lot dearer over the time. We thought this would be the best money option to save in the long term considering there would be no other fees for the time we would be clients. We have now discovered trailing fees and strange happenings in our statements that we were previously unaware of.
On the 8th of October we were asked by Storm to sign a document to sell down up to 75% of our portfolio and we did. We were then asked on the 12th October to change this to 100% we did.
On the 22-10-2008 Macquarie bank made contact with my husband to say we had a margin call for $13 500 and had till the next day at 5:00pm to pay this. We contacted straight away Yvette to find out what the heck was going on and were told there must have been a mix up as to her knowledge we should not have been in margin call. She said don't worry I will look into it! We then contacted her 2 days later after hearing nothing and she said doesn't know what happened but she looked into it and there was no problem. After receiving our paperwork that we requested from Macquarie in Jan 09 we can see that in October 08 a portion of our portfolio was sold to the value of $21 330.26 and paid into our loan? But we were not at any stage told this had happened or had to happen.
Through Nov and Dec 08 we tried numerous times to contact the Mackay office, being John Schulter and Yvette Daniels only to be frustratingly told by reception they were not allowed legally to speak with or give any information to us. Gee that's what we paid all this money for, to help when all this was happening. And to find out we were sold out at such a huge loss and them nowhere to be found with a statement. JUST GREAT!!
Now we have no portfolio and a debt against our home and have lost an amount including fees, interest and payments we have calculated to the value of $275 836.43.
Guess we won't be retiring comfortably! As now we have a loan to pay the value of $163 000 plus the interest for however long this takes. This is just disgusting. We still are paying the remainder of the original loans before joining Storm which were already against our home of 1. $22 000: 2. $76 000: I am assuming instead of being self funded retirees we will now be on the pension when this time comes.
Thanks to Storm and the banks involved in this fiasco our lives, dreams and comfort have now been destroyed. Instead there is worry and lots of hard work ahead just to own our home again let alone anything else.

I hope and pray that you can put this right sooner rather than later.

1. The Role of Financial Advisors

Our feeling is that this role should be filled by people who are qualified and experienced in accounting and financial matters. They would be the best judge of the issues at stake and would be competent at recommending the effective safeguards to protect the public from the STORM FINANCIALS of the world. It makes us wonder just how qualified the advisers were at Storm? The reckless advice they gave affected the lives of so many people and they should be held accountable!
We hope that the committee is comprised of people that are qualified in financial affairs and hope that you will take into account some advice from public and private sectors of the accounting and financial planning areas.
Then with all the relevant information at hand as well as the submissions from the affected public the committee will enter into discussions and we hope that they will make a well informed decision about what formal qualifications should be mandatory for financial advisers to obtain before the can give financial advice to the public?

2. The General Regulatory Environment for these Products and Services

Because Storm Financial is the financial institution that affected us personally we will focus on them.
The way that Storm Financial carried out its business was questionable but, ASIC does not appear to have been aware of this. More than likely they don't have the resources to investigate a company until something happens to alert them to a problem. Storm Financial most likely knew this and therefore worked the system accordingly. So obviously the system is not working as it stands and therefore the regulations in place do not provide the safeguards to protect the investors (us).
These loopholes need to be identified and fixed so more people don't end up where we are, and having those who are accountable escaping punishment for destroying lives.

3. The Role Played by Commission Arrangements Relating to Products and Advice, Including the Potential for Conflicts of Interest, The Need for Appropriate Disclosure and Renumeration Models For Financial Advisors.

Storm Financial assured us that all fees obtained by them from any financial institutions it was dealing with would be brought back to us in the term. They would be renumerated solely through the fees we paid for services they provided. Fees that were from what we believe are among the highest in the industry. The fact was we paid Storm fees in advance and all fees were paid out of the margin fund there by effectively increasing our margin loan borrowings and subsequent margin loan interest. The actual fees paid did not seem to be re- entered into the calculations when looking at the actual LVR and the true value of our portfolio.

Therefore Financial Advisors should be made to apply a standard set of industry fees which are transparent? These fees should clearly state what they are for, how much they are, where they are to come from and clearly if there is a fee in every step ongoing. These fees should be for services rendered and up front fees should not be allowed as we paid Storm for future services that are no longer available. Now we have no avenue for recourse.

4. The Role Played by Marketing and Advertising Campaigns

Storm made a number of claims in its advertising and its documentation including its statement of advice (Contract) that were misleading and misrepresentative. I am sure that you have been sent a copy of one of these statements and I trust that you will agree that they stepped outside the boundaries of appropriate behaviour.

5. The Adequacy of Licensing Arrangements for those who sold the Products and Services.

Our aforementioned comments regarding suitable qualifications must figure in the licensing arrangements somewhere. We are not qualified to give an opinion on this; however I think that it is clear that this aspect needs to be looked at by your committee very closely.

6. **Consumer Education and Understanding.**

Laymen are generally people that are not versed in a subject such as financial investments. Professionals are people that are and should be capable of explaining in laymen's terms what is involved. Rightly or wrongly we assumed we were dealing with a professional body and were receiving sound financial advice. We had no reason to believe otherwise. The numbers presented to us by storm seemed to stack up. We would invest in the market place on a broad front. This meant that if any one company collapsed, we would have a fail-safe system in place. Storm further claimed that the trigger points they ad established for our portfolio would guarantee that our assets would never be threatened. If Storm had acted on these trigger points there would have been time to withdraw our investments and preserve our assets. Storms failure to act in this regard is inexcusable and makes them culpable. We were shown many slides and projections but Storms strategy was never really diagrammed. If it had been we would have all seen that it was an unacceptable risk. Storm had an uncanny ability to lure investors like ourselves into their program. The lure was that everyone could adapt to the model and the sales pitch was such that all of us were fooled into thinking we were safe in their model.

7. The Adequacy of Professional Indemnity Insurance.

The issue of professional indemnity insurance is critical to this debate and serious reforms need to be undertaken to ensure that the investors using financial institutions (Banks) are covered by a mandatory insurance policy. This cover should allow for a recovery percentage of an investors asset base. You can not guarantee that markets will not fall or that portfolios will remain in tact but you can guarantee some degree of protection if their asset base is eroded away as a result of poor business practice. If financial institutions operate buffers or trigger points they should be responsible for contact and explanation at the time to the consumer. (US) If they do not they should be held accountable and liable as a consequence. Professional Indemnity Insurance should cover this but to what degree. It is our understanding from the Worrells report that storm did carry Professional Indemnity Insurance. How does this serve Storms Clientele? We have a case of breach of contract because Storm failed to act once the trigger points had been reached and this led to negative equity in our share portfolio. I believe we also have a case for misrepresentation as we were misled into signing the original statement of advice.

8. The Need for any Legislative or Regulatory Change

The committee I am sure will fully investigate the involvement of the banking and finance industry for providing finance for investors through Storm Financial. This is great news and relief as it takes the onus off us to pursue the banks alone.
Are the banks partly to blame for the falling of Storm and the losses we incurred as a result of this? We hope that you the committee establish this. We can only tell you the facts and how they relate to our personal involvement with the bank of Queensland who gave us a 2^{nd} mortgage facility against our home, and the Macquarie Bank who extended our borrowings by providing a Margin Loan.
Both loans were obtained for us by Yvette Daniels at Storm Financial Mackay who advised us that this was the best course of action to build a Portfolio. As a result this was the worst advice we could have received as now we have discovered that this was a very High Risk Strategy and we never wished to be high risk investors.

We now find ourselves in a situation that has left us with more Debt than either of us has ever had and looking down the barrel of another 20 years or more to get back to the situation we had prior to meeting with Storm finance.

Have the Banks acted inappropriately when writing this business for us with Storm? Only you can determine this but in our minds with the knowledge we now have we believe Yes.

We are led to believe that the Banking Institutions have a set of ground rules for writing Loans and this includes some form of contact with the borrower to establish the capacity to repay the Loans and also that the documentation that has been received is correct and stacks up against the loan.

As storm arranged both of our borrowings for this portfolio we were unaware that there were discrepancies in the documentation; The home Borrowed against was in Donna's name but the borrowing was for Colin and the documentation stated that Colin was a half owner in the home. We were told that a Valuation was done on the home but we never met with anyone for this valuation. The wages were overstated and my employment status was also. I was on Contract employment at that stage. These things we have found later would have had an effect on our capacity to borrow if the Banks were doing their Due Diligence.

As most of this information is in our introduction I will leave this here. Storms advice seems to have been reckless and self seeking which disadvantaged the borrower and placed the client's portfolios at risk. At this point they became cowboys.

On closer examination of the margin loan we took out with Macquarie it becomes clear that the only ones to benefit from this were Storm and the Macquarie Bank. Storm was paid fees up front from the margin loan and the bank was paid interest every month. Storm opened a CMT account on our behalf from which we paid the house loan and our other living expenses. This account was also supposed to act as a cash reserve but failed to as it was constantly being drained.

If margin loans are taken out for investment then the ratio should be based on the true owner's equity. If the portfolio has been inflated by borrowings that include fees and margin loan interest then the result of the ratios largely differ and are therefore untrue.

In closing a few questions come to mind,

1. How much responsibility do the banks own in the downfall of storm?

2. Did they rely solely on the information about the clients assets without checking for themselves?

3. Do they have a duty of care to us the client?

Colin and Donna Smith 25-07-2009