

30-July-2009

I wish to put a submission before the Parliamentary Joint Committee on Corporations and Financial Services. It concerns the experiences of Mrs Hellmuth, my mother in law.

I am concerned about Mrs Hellmuth's treatment by her financial advisers and the two banks (ANZ Group and Macquarie Margin Lending) that were engaged to assist with this process. I am concerned not only about her treatment over the past few years but also the current ongoing treatment my wife has had to endure in her attempts to sort her mothers finances out since we became aware of the depth of her involvement with Storm Financial. Mrs Hellmuth suffers from vascular dementia and my wife is her Enduring Power of Attorney.

I do not claim to have any great knowledge of financial investment, and am not certain whether my concerns of Mrs Hellmuth's treatment actually breaches legal grounds. I hope that by sharing Mrs Hellmuth's story with you that people better educated than I in this area will be able to make such a judgement and perhaps assist us in obtaining a final outcome to this sad series of events where Mrs Hellmuth has lost so much of her life's savings.

I do not wish to entertain you with a complete history of Mrs Hellmuth's finances since 2001 so I intend to focus on the specific aspects of the information that I have an issue with. I will attempt to do this under the subject heading of each entity that provided the information to me.

### **Storm Financial.**

Issue 1.

I wish to mention first that just prior to November 2006 the financial situation that Storm had set up for Mrs Hellmuth seemed quite responsible to me. This was:

Owned Mackay Home	\$115,000	(No Mortgage)
Share Portfolio	\$218,000	(Commenced with \$60,000 of cash around 2001)
Margin Loan with BT	\$111,000	(LVR of approx 51%)

A pension was being drawn from the share fund of \$1000 per month for Mrs Hellmuth.  
"Loan versus Total Nett Worth" ratio is an excellent 33%. ( $111,000 / (115,000 + 218,000)$ ).

Note: Mackay house was being rented for approx \$9000 per year which would cover the interest on the margin loan comfortably. This meant any serious downturn in the market did not risk losing control of the margin loan. The \$115,000 is the purchase price of the house and in fact it could be revalued due to the mining boom in Mackay to \$300,000.

This then would make the "Loan versus Total Nett Worth" ratio a superb 21%. ( $\$111,000 / \$300,000 + \$218,000$ ).

Mrs Hellmuth Total Nett Worth      \$407,000

This situation for a 70 year old lady living with her new husband in Bundaberg seems to me a very comfortable and appropriate degree of financial investment.

In November 2006 Mrs Hellmuth's finances were completely rearranged by Storm (claiming to be at the request of Mrs Hellmuth wishing to use the equity of her house to invest more money in the market.) The above had by May 2007 become:

Mackay Home	\$300,000	( Mortgage to tune of \$192,000 – 65%)
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Share Portfolio	\$529,000	(Valuation in May 2007)
Margin Loan with MML	\$255,000	(Macquarie Margin Lending A/c for \$500,000 opened. Current LVR of 48% with access to a further \$245,000 when required)
Mortgage on Mackay Home	\$192,000	(With Anz – Nambour Branch)

**Mrs Hellmuth's Total Nett Worth \$382,000**

The pension was altered to draw from the share fund an amount of \$1250 per month for Mrs Hellmuth. "Loan versus Total Nett Worth" ratio has now become 54%.  $[(255,000+192,000) / (300,000+529,000)]$ . The greatest change of all of course from these alterations has been to what I would suspect a good financial adviser would consider the most critical component of Mrs Hellmuth's financial arrangement – that is RISK.

With loans now generating interest above \$40,000 per year there is no hope of the rent from the house being able to relieve the pressure should there be a serious downturn in the market and as Mrs Hellmuth at her age would not be expected to be able to return to paid employment no hope of meeting these obligations without selling all her assets.

The Questions I believe that need to be answered by the financial advising community and in particular Storm's advisers as a result of the above are:

1. What part does "risk" play in the development of a financial plan and is not the personal situation of the client a "critical" component. (I define "personal situation" as the ability of the person to earn an income)
2. When we talk about "risk" – are we not attempting to find a balance between "making more money" versus "protecting the assets we already own"
3. If the above is true then how can an adviser justify that they are serving the interests of their client when in fact they (as in Mrs Hellmuth's example above) transfer 100% of the balancing components of an investment from the "protect assets" component to the "make more money" component.
4. What benefit does an adviser gain from recommending to a client to leave their house generating rent and capital appreciation?
5. What benefit does an adviser gain from recommending to a client to mortgage their house and invest the money (lets say \$200,000) into say an index fund.
6. Is it not true then that an adviser does not make a lot of money from "protecting assets" in comparison to the income that can be generated from the actions required as a result of the "making more money" component of financial advising.

Concerns:

My issues with the above are as follows:

Change is what makes money for financial advisers. It is in the best interest of a financial adviser to re-arrange a client's affairs so that the largest portion of the clients nett worth is situated in what I have defined as the "making more money" component of their financial package. In comparison there is little to be made from a client in telling them to keep renting out their house or retain the shares they already own. Change is what makes money for financial entities and I would like to ask those involved in putting questions to the financial players at this enquiry to focus on trying to get a true understanding who was really to benefit from the purchase of units in that index fund, who was really to benefit from the creation of that mortgage over the family home.

I ask the enquirers to try and define how far one is allowed to stray from the stewardship of "protecting a clients asset base" to "making a client more money" before it is evident that the decisions and actions being taken are no longer really for the benefit of the client at all.

Obviously from the above I believe that this is the only explanation that Emmanuel Cassimatis has for many of the decisions he made under the gauntlet of caring for his clients when many of those clients had

no real need to have so much of their asset base devoted to making more money when they were at the stage of their lives that they were.

## Issue 2.

From the period August 2007 to March 2008 Mrs Hellmuth was advised and arrangement made to purchase more storm index funds on at least 5 occasions by digging further into her margin lending facility each time it seemed the index price (market) faltered. I believe this activity is well known to the enquiry members and has been widely reported.

### Concerns:

The obvious question to be raised here is who should be aware of this happening before irreversible damage is caused. To my mind an organisation like Storm is required to be audited each year and regulations should be in place and requirement defined to give an external auditor the power to make a decision upon the true nature of the decisions that advisers are making for their clients. If the auditor suspects the real benefit of these decisions are really for the prime purpose of promoting the companies success at the cost to the clients risk profile then the activity should be reported. The challenge to develop a process to make this work is really for the honest majority of the financial community.

It seems to me that Storms owner and every one of their advisers had attached their hopes of all becoming “filthy rich” on the storm index funds and to this aim they were all instructed and keen to follow these simple mantras.

- get more clients invested in storm index funds

- get more of our clients asset base invested in storm index funds

- as the index fund value increases get the client to borrow more money against that and get that in to the storm index fund also.

The naming of the company as Storm is quite appropriate – and I would not be surprised that this has not escaped Emmanuel Cassimatis. By getting everyone focused on the above a vortex of financial pressure is created commencing firstly as a breeze but whose ultimate realisation is to create an inertia for thousands of investors money wishing to buy storm index funds. This would create a capital underpinning of the index value and as that value gained momentum borrowing against this would continue its momentum all the while generating fees to fund more efforts to gain more client money to continue the financial frenzy until a virtual financial cyclone had been created.

## Issue 3

In February 2008 Mrs Hellmuth’s son David (who was also a Storm client) had some concerns that Mrs Hellmuth may have been dragged into a greater level of debt than an astute person should be in. By this time Mrs Hellmuth had been diagnosed with vascular dementia and her dementia was becoming more and more evident as she started to struggle with even playing a game of scrabble – something she had done almost every day for years. It was extremely obvious that she did not have the slightest idea how to interpret a financial report.

David’s concern stemmed from the continual pressure that Storm was putting on him to borrow more money against his house married with the difficult time they had given him some time earlier when he had requested they cash in some of the index funds.

Mrs Hellmuth was very protective of her finances and she was not able to explain to her son on the phone anything about them other than Emmanuel was looking after them for her. She had been totally consumed by Emmanuel’s “kindness” and statements that should anything happen to her investments that he would pay the loans himself. She left everything to him and signed everything as soon as it arrived and often got it back to them in the next days post. I should mention that the papers were clearly tagged where to sign. She would have read nothing, signed it and returned it.

On 5<sup>th</sup> March David took a letter from his mother to Storm financial. See Attachment 1. As you can see the letter clearly states that Mrs Hellmuth has dementia and that she does not understand her finances. It also requests David, her son to get an understanding of them from her Storm representative Hayley so he can explain them to her fully.

This letter was taken by Storm to their “legal department” and on the 11<sup>th</sup> March, 2 days later, a Storm adviser (either Hayley or George) rang David at home and said they did not recognise the letter and would not be giving him access to any of his mothers details nor were they willing to talk to him about it. On the day David took the letter to them they refused to talk about any of Mrs Hellmuth’s details until their legal department reviewed the letter.

Concerns:

The issue I have here is with the fact that Storm outright refused to deal with a members request for assistance. The fact the letter was not written in a proper legal manner should not have been an issue. It was a cry for assistance from Mrs Hellmuth. It further annoys me that of course that person was a frail elderly person who by her own admission had now stated that she did not understand her financial situation with Storm. Immediately upon finding out about this Storm closed ranks and refused to deal with her son concerning his mothers affairs – even though he also was a Storm client. The fact he had cashed in a large some of money despite Storms protests meant the advisors knew he was not an easy target and probably would not be supportive of the level of debt they had achieved in his mothers case.

The questions arising from this is obvious: What can be done to stop advisers from taking total advantage of mentally handicapped people or the elderly who do not have the ability to comprehend what is going on any more. This is especially critical when it has become obvious that they are fully informed of their clients inability to understand their situation. May I suggest that rather than having the client sign to say they fully understand the issues around their investments that perhaps the Adviser should sign a similar form to state they believe their client does understand the issues and further that they have never been informed by anyone or attempted to be informed by anyone of the clients inability to understand these issues.

Two months later Storm re-arranged Mrs Hellmuth’s mortgage on her house in Mackay to a fixed rate. In the previous 12 months she had already received several notices of arrears from Anz for not having enough funds to pay the loan. This also meant now that the loan was interest only. The rate was set at a staggering 9.1%. This means the interest on the residential loan is about \$4000 more than the rent from the house which means that from this point in time it will be entirely up to what the stock market portfolio does as to her ability to ever pay it off.

## **Anz Banking Group.**

Issue 1.

In March 2007 Storm Financial arranged for Mrs Hellmuth to access the equity in her family home (currently being rented) so she could invest more money in the index funds as per their Statement of Recommendation of November 2006. The arrangement meant opening several accounts with Anz and Anz agreed to a Residential Investment Loan of just over \$192,000. The branch that arranged for this major change in Mrs Hellmuth’s investment scheme at the instigation of Storm Financial was the Nambour Branch specifically 66 Currie St, Nambour. I wish to make a point of this branch because the members of the family are all wondering why the Nambour branch is involved in Mrs Hellmuth’s financial affairs. Mrs Hellmuth has never visited Nambour in her life apart from when one had to pass through it many years ago when travelling from Townsville to Brisbane. She has a long history in Townsville, she owns a house in Mackay and lived there for 8 years, and she has remarried a Bundaberg man and moved there to reside – but she has never had any affiliation with Nambour. As a result of this I wish to make the ambit claim that I believe Storm financial had a “cosy relationship” with either a person or persons at the Nambour branch and they used this “cosy relationship” to acquire a much more extensive loan for Mrs Hellmuth than what they might be able to acquire elsewhere. Mrs Hellmuth was incidentally a Suncorp customer. To add some weight to my claim I wish to present the quotes from 3 banks for what each was willing to lend to Mrs Hellmuth for the same property.

In Attachment 5 all 3 quotes are presented. ANZ’s quote is a simple fax from a June Haasmann from the Nambour branch and is extremely brief in its presentation. BOQ has offered to lend up to \$150,000 “based on your income figures” but states that “these would have to be verified”. Westpac is only willing to lend \$50,000 to Mrs Hellmuth and interestingly the letter says this is with “satisfactory property valuations”. I

was under the understanding that Storm had just got a property valuation for \$320,000. My concern relates to the large variance in what each bank is willing to lend to Mrs Hellmuth for the same property.

Westpac \$ 50,000

BOQ \$150,000

ANZ \$192,000

I wish to draw to the attention of the enquiry this huge variation in willingness to lend money to Storms client Mrs Hellmuth and say that the ANZ seems extremely generous when you consider that the only income that Mrs Hellmuth has is approximately \$14,000 per year rent. The simplicity of the fixed quote also wreaks of a fate accompli and I question whether this is really the substance of an arms length transaction or a cosy relationship between Storm and the ANZ branch of Nambour.

## Issue 2.

My other concern with the ANZ bank is with the difficulty in extracting information from them. In an attempt to verify what information has been put on the loan application a copy was requested in writing from the bank on 18-May-2009. It was again requested in writing and verbally on 18 June 2009 from the Mackay Branch and then again on 18<sup>th</sup> July 2009 in writing from Nambour branch. A letter dated 22 July 2009 from the Nambour branch thanked us for our request and promptly told us to contact another section of the bank to obtain a copy of the application. As a result we are still waiting for this information at the end of July 2009.

Since trying to sort out Mrs Hellmuth's affairs with ANZ my wife has had her request completely ignored as in the loan application request. She has been told she was wrong by 3 bank staff in questioning that her mother in her demented state had overpaid her loan by 2 payments (\$3000) only to have the 4<sup>th</sup> person agree with her completely but who could only fix one of the transactions. This whole exercise took an hour and a half on the phone.

In that hour and a half my wife talked to Suzanne in Mackay who said ring Homeloans she didn't really know, then she talked to Harry who said best to ring the Collection number. Dylan at Collections said he didn't think there was anything wrong with the account but he was really the Arrears department and so he put my wife through to Kevser in Loans Enquiries who promptly agreed that there had been two extra payments made. Kevser said she fixed one but she would have to put my wife through to Steph in Mortgages to reverse the other. She was then put through to Steph (the fifth person) to reverse the second error which wouldn't go through till that night and we discovered 2 days later that the transaction was put through backwards so in fact Steph of Mortgages had actually taken another payment off Mrs Hellmuth which after taking into account the success of Kevser from Loans Enquiries in reversing one payment out this put us right back where we had started. Finally, in raising this error to the bank my wife was told she would now have to request the correction in writing before it could be fixed. This despite the fact that one person already had fixed a transaction while on the phone and remember these entries were done in error by the bank without any request from us in writing in the first place. I am sorry, I know that this is a serious enquiry but if the ANZ Bank is not the Fawltly Towers of the banking industry I am dying to meet the bank that is. My bank by comparison rings me up when they see a larger than usual transaction go through my account to check if I knew about it.

My wife has been given a number to call from one bank staff if we needed to talk to her again that when rung was the banks emergency power failure number. She has had to endure ringing the Nambour branch at 3.40 pm to get an answering machine message saying everybody was busy with customers – please leave a message. In our attempt to take the stress away from Mrs Hellmuth especially as her dementia is deteriorating so rapidly now, my wife requested in April at the Bundaberg branch and in writing to the Nambour one that all correspondence be sent to our Mackay home. A month later letters were still going directly to Mrs Hellmuth. In our quest to piece together a financial history of Mrs Hellmuth we attempted to obtain a copy of all statements for the last 3 years or at least since the inception of the house loan which was March 2007. This involves 2 ANZ bank accounts. We were told it would cost us \$14.00 per statement but we could get the information from the internet. We set up internet banking and discovered that the ANZ only provides 3 months of transactions for each account. Of course by this time the data I need is older than 3 months. Assuming one statement covers one month then I have to pay ANZ for 24 statements by 2 accounts coming to a princely sum of about \$672.00 in statement fees before they will provide me with the data to do the review that I need to do.

When asking about the banks “Financial Hardship Provisions” and whether they could assist Mrs Hellmuth we were told that we could not make the next 3 interest payments on the loan. Further questioning made it very clear that although our payment could stop the interest being calculated on the 192,000 would not – in other words the bank was very happy to extend our loan by 3 months and no doubt accept the extra interest that this arrangement would provide them. Interestingly as the ANZ Bank was refusing to reverse out the \$3000 overpayment until we requested it in writing the nett result of their offer was really a 1 month offer not to pay.

Just an hour ago as I am finalising this submission Suzanne from Mackay rang to say I need to send Zoe of Melbourne a copy of the Power of Attorney before she can release it. I said we have sent a copy to the Nambour branch when we sent the original written request on the 18<sup>th</sup> May. I have since discovered a copy was taken into the Mackay branch when Helen set up the internet banking and further a copy had been mailed to the Melbourne Collections section around April 1 when we sent them a letter requesting them to stop sending mail to Mrs Hellmuth. How many copies of POA’s must we send before the ANZ Bank is willing to accept that my wife is the legal Enduring Power of Attorney for her mother.

My complaint here is firstly a general complaint of poor service from a bank that claims to be a pillar of our society. It is difficult to not be sceptical about a banks intentions when such simple requests as a copy of a loan application meet with such resistance and other requests with what can only be defined as complete incompetence.

Secondly, the obvious design built into the ANZ computer data bank to limit access to account transactions so one must purchase the transactions after 3 months at \$14.00 a hit can only be described as blatant daylight robbery. This information should be available via the internet for at the very least the current financial tax year. Personally I believe two years of data should be a legislated requirement and with no fee. I have already found \$3000.00 of extra money paid off the residential investment loan because Mrs Hellmuth thought incorrectly that it was due and the bank staff took her money when she came into the bank to pay it despite their knowledge of her dementia.

Personally I would like to see under the financial hardship provision free access to account data for 5 years. I believe it is far overdue that the minimum amount, timing and expense of account information should be legislated for all banks and I would suggest that two financial years should be the minimum amount and there should be no fee for internet access to this information.

Further I would appreciate it if this enquiry could encourage banks involved in the Storm fiasco to provide this information on request free of charge as an indication of good faith that they have nothing to hide and that they do not want to be seen as prospering further from the Storm debacle.

My experience as stated above in the last 3 months alone with the ANZ bank would not permit me to allow them to organise a child’s birthday party let alone have influence on my financial future.

### **Macquarie Bank-Margin Lending (MML).**

Issue 1.

Mrs Hellmuth had a Margin Loan arranged with the Macquarie Bank in March 2007 which initially paid out the Margin Loan with BT Finance Group and provided additional access to funds. It appears there was no impediment to Mrs Hellmuth getting a line of credit up to \$500,000. At the same time Mrs Hellmuth (via Storm) had also applied for a residential investment loan of \$192,000 on her house. This meant that in a 1 month period Mrs Hellmuth had acquired access to \$693,000 on an income of approximately \$14,000 per year.

In discussing this with Daniel Norton (MML) earlier this year he stated there was no financial requirement to provide proof of income or assets for any margin loan up to \$1000,000 with their bank.

Concerns:

My issue with the Macquarie bank specifically and the financial regulators generally is really quite simple. Financial institutions should not be allowed to operate as financial institutions if they do not have any intention to ensure their investment has some hope of ever being paid back. And by this I do not mean by

money that has been borrowed from another institution such as in Mrs Hellmuth's case where the loan of \$192,000 has had to be used to pay back the Margin Loan for Macquarie Bank when the index funds lost their value.

## Issue 2.

In October 2008 Macquarie compulsorily sold out all of Mrs Hellmuth's index funds. In subsequent discussions with Daniel Norton of MML He claimed that they had the power to do this when the LVR went above 75%.

During a discussion on 18-06-2009 Daniel claims that Storm financial were advised every time the investment went into margin call territory and that they had been informed of this prior to the sale of the units. When asked could he provide myself ( my wife is Mrs Hellmuth's daughter and Enduring Power of Attorney) with a copy of the notices Daniel Norton said he could not due to the "litigious nature" that was now beginning to surround the issue. He was referring to the CBA antics. It needs to be noted here that as my wife was the Enduring Power of Attorney and we had now enacted it since the decline of Storm that we had been in discussion with Daniel before concerning what to do with the Margin loan. Daniel wanted us to get rid of it. It was taking some time to get our heads around what it all meant and this discussion took place as one of several to resolve these issues.

Prior to this particular discussion we had emailed Daniel Norton on 25-05-09 and requested a copy of all the documents relating to Mrs Hellmuth's loan facility. We received them on 06-06-09.

After reviewing these documents thoroughly we were still unaware that Mrs Hellmuth had actually had a Margin Call. Daniel during the discussion where he refused to give us copies of margin calls (to Storm) informed us that in fact Mrs Hellmuth had had 5 Margin Calls since being with Macquarie.

When asked to send us a list of the Call dates and Amounts he said he wasn't willing to do that but he was willing to tell us over the phone. The following was the information he relayed to us.

Date:	No of Days in Call	\$Dollars	
06-04-2007	2	125,217.69	
19-05-2007	8	43,880.37	
11-07-2008	4	29885.18	
18-07-2008	5	33464.60	
31-07-2008	13	148,859.84	Forced redemption occurred.
03-10-2008	20	248,822.55	Forced redemption occurred.

On the 30-10-08 and 18-12-08 Daniel said MML had redeemed \$315,000 of index fund units because no action had occurred from the (alleged) issue of their notices for margin call to Mrs Hellmuth's Storm advisers.

## Concerns:

I have 3 major concerns stemming from the above. Firstly of course is with the refusal to provide all information relating to Mrs Hellmuth's account when originally requested. As stated before we had no idea Mrs Hellmuth had incurred a margin call even after receiving the file of documents from MML. I think that the enquiry should be hammering home the serious professional neglect of an organisation taking the liberty to decide what information they will provide to their client and what they will not based upon a potential litigation claim. As far as I am concerned deceit can be both deliberate and subtle. I would like to see the enquiry members communicate to all players that they will consider even subtle deceit as serious an omission as deliberate deceit. No better example can I think of then the subtle deceit of filtering out information to give a client that may prove to be a critical factor in their case to decide whether they have a legitimate claim against an organisation.

My second concern relates to my review of the data specifically relating to the Margin Calls that MML supplied me. The Margin call for the 06-04-07 for \$125,217.69 is actually the exact payout figure for the BT Margin Lending facility that Mrs Hellmuth had prior to MML. This is not a margin call but obviously the drawing of the money to pay BT Finance prior to transferring the units to MML.

I cannot check the other margin calls because Colonial First State took the index data off the website. Since the financial year is hardly over – I can only think that the data was removed because it was so full of error. I would like to check that the margin calls MML claim they have issued are in fact valid margin

calls however MML have refused to supply me with daily index figures they used to value the portfolio and CFS has removed them from their site all together.

I asked Daniel Norton to provide me with details of the movement in Mrs Hellmuth portfolio since its inception.

The data does not seem to add up. One would expect that initial transfers into the portfolio plus all purchases and sales would end up with a nil balance for each fund type by the time the portfolio was completely closed (sold out). However my analysis of the data shows a negative closing balance for two index units and a positive balance for the other two. See Attachment 2 and 3. I am yet to ask for an explanation from MML for this- perhaps the enquiry can get one. Attachment 3 is the MML statement for the entire investing period April 2007 to June 2009. Attachment 2 is the same data entered into an excel spreadsheet which calculates a running balance for each category of unit purchased. Certainly were these figures used to value any portfolio I would be horribly concerned about the result on the LVR as the number of units in each category indicates what unit price one ends up with.

The other issue I had with this information from MML was the inconsistency I found when comparing information about a transaction to the information I possessed from Colonial First State about the same transaction.

For example:

A transaction on 09-08-07 for the purchase of 3643.3 units of Storm Aus Resources was reported on the MML statement as a purchase of 3629 units. A difference of 14 units.

A transaction on 09-08-07 for the purchase of 3722.6 units of Storm Aus Tech was reported on the MML statement as a purchase of 3568 units. A difference of 154 units.

A transaction on 30-08-07 for the purchase of 4436.3 units of Storm Aus Resources was reported on the MML statement as a purchase of 4304 units. A difference of 132 units.

A transaction on 30-08-07 for the purchase of 4522.2 units of Storm Aus Tech was reported on the MML statement as a purchase of 4206 units. A difference of 316 units.

A transaction on 09-08-07 for the purchase of 16083.0 units of Storm Aus Industrial was reported on the MML statement as a purchase of 15974 units. A difference of 109 units.

A transaction on 30-08-07 for the purchase of 19605.3 units of Storm Aus Industrial was reported on the MML statement as a purchase of 18507 units. A difference of 1098 units.

Although I understand that the CFS statement caters also for Fee rebates and Reinvested Distributions there is still no alignment of unit quantities when I take this into account – in fact in the Resources example above it makes the reconciliation worse.

See attachment 4 for a copy of the statements recording these transactions. This is compared to the MML data of Attachment 3.

I have also found an inconsistency with the MML statement re 18-04-08 where the authority requested \$10,000 of Resources be purchased and in fact Tech were purchased instead. (Attachment 7)

Also during the compulsory redemption of the index funds on 15-08-08 CFS stated a redemption of 22,663 Resources and 38,702 Tech but the MML statement indicated the reverse – ie 38,702 Resources and 22,653 Tech. As the difference in unit prices between the two is \$2.98 this is of concern. (See Attachment 6).

I would like the enquiry to have a detailed analysis of what data was available, who used it and how accurate it was. Failure to prove the data is reliable should relieve the margin loan client from having to meet the margin loan obligations as the fees charged for providing this service must imply the payment for accurate information. Without this accuracy in the data one would have no hope of knowing what they were worth or more importantly what one owed and neither would the Margin Lender.



Issue 3.

My third and undoubtedly most serious concern with MML's treatment of Mrs Hellmuth is their outright refusal to deal with their client. I noted that on page one of the copy of the Application for the Margin Loan that MML sent me was Mrs Hellmuth's address and phone details. She had not moved house during the time of getting the margin loan so all her contact details were still correct. One must anticipate that these details were undoubtedly entered into a database of MML somewhere during the loan process simply to open an account if nothing else. Why did MML not contact Mrs Hellmuth to tell her that her margin loan was in margin call? The claim that Storm were advised is in my opinion completely invalid whether it be true or false. The contract MML had for the \$500,000 was not with Storm (unless of course they had an undisclosed "comfortable agreement"). The agreement was with Mrs Hellmuth. I believe that under any agreement one must communicate with the person who is party to the agreement especially when the designated party for that person fails to return any communication. The contract MML had with Mrs Hellmuth gave it a lot of power to do things but to take the power of "we will act without informing you of our intention" is to cross the boundary of abuse. MML financially abused Mrs Hellmuth when they acted to sell her units without any attempt to inform her of what they were doing. Storm financial did not owe MML any money – How could MML even consider that it had fulfilled its contractual obligation that it was informing Mrs Hellmuth by informing Storm. Having said this MML have to this day refused to show Mrs Hellmuth proof it did in fact inform Storm.

I believe the oversight of MML (amongst others) to inform its client directly of its dire intention to sell them out is the most serious of breaches stated so far. Insult is only added to the injury when one considers how easy it would have been to look up the database and make a phone call.

I realise that there may have been a large number of phone calls but to my mind any organisation that charges a fee for service – implied in the fee is the cost of communicating with the client. In fact I believe that what is and should always be implied in any contract is the "intention to communicate" and this intention cannot and should not be able to be abdicated by either party.

Of all the achievements I hope this parliamentary enquiry delivers I think the most important would be to hammer home to the financial industry that implied in any contract whether explicitly stated or not is the requirement to state ones intentions to act to the other party prior to doing so. Failure to fulfil this obligation should be considered of such a serious breach of contract that it should be able to be used to overturn the decision that was made or receive damages incurred for such a decision. Mrs Hellmuth never had a chance to review her options despite the fact she had access to 4 other family members finances and a husband none of whom were tied up with Storm. I cannot prove that the results would be any different to today but what the above does prove is that MML treated Mrs Hellmuth with complete contempt from the minute they heard of her and did not take the least care to see what ability she had to repay them through to dumping her lifeless portfolio without the slightest attempt to communicate with her their intention to do so.

If the Australian public are to have any faith in the Australian Banking Industry then this enquiry must not permit any financial institution to justify this action of non-communication as plausible in any form whatsoever. Money may make the world go around but communication makes it go round in an orderly fashion.

I have always been of the belief that banks existed to help businesses get ahead, but over the past few months I am starting to wonder if Banks think businesses exist to help banks get ahead.

One day a few good men are going to deal with the conflicting issue that banks want you to make lots of money and banks want to make lots of money.

I wish the members of this enquiry the best of luck in their endeavours if they choose to take it upon themselves to be a few good men.