

Submission to the Parliamentary Joint Committee

On Corporations and Financial Services

Issues associated with recent financial product and services provider collapses.

My submission relates specifically to Storm Financial and Colonial Geared Investments.

Submitted by: ROBYN TOOHEY

BACKGROUND:

For 29 years, I had a satisfying and supportive relationship with Storm Financial, (also known under previous company names), initially taking out insurances, superannuation and other related services. In 1997 a margin loan was arranged for me and subsequent steps into various investment products were made.

For 22 years I had been a satisfied customer of the Commonwealth Bank of Australia (CBA), the Commonwealth Development Bank, Colonial Margin Lending (CML) and Colonial Geared Investments (CGI) through involvement and ownership in a number of small to medium sized businesses, various loans and investments. The bank and its subsidiaries profited from development loans in 1987, (worth in excess of \$1 million) where the bulk of the loans were borrowed at an interest rate of 17% and an additional loan at a rate of 22%. Other business dealings, loans and investments ensued over many years.

Through considerable hard work and long term investments, by early 2008, I had accrued a share portfolio in excess of \$10 million. My margin loan facility on this portfolio amounted to approximately \$6 million. Understanding the Storm Financial model as I did, and recognising the strong working relationship between Storm and its various partners including CBA, CML and CGI, gave me confidence that appropriate protocols and compliance arrangements would be in place and dependable. I never thought my hard work would result in being over a million dollars in debt with no assets to show for it.

CURRENT SITUATION:

In late 2008, along with many others, I was devastated to find myself in a seriously distressing, financial position. At the end of November, I received a phone call from a Storm adviser, informing me of the catastrophic news that I had been sold down, by CGI, 123% into negative equity. This was indeed a shock since I had not received a margin call notice or even a phone call, as indeed I had received both previously, when I went into margin call, six years earlier.

Even though I had been closely following the events of the stock market decline, I had confidence in those charged with overseeing the wellbeing of my portfolio, and their responsibility to inform me of the need to act should it be necessary. From the action taken by CGI, with the previous margin call, as mentioned above, my understanding was that this process would automatically work again. This did not happen, resulting in a devastating outcome, which destroyed my income stream along with my independence.

As time went on and the reality of this situation started to sink in, I attempted to seek further support and clarification from my Storm advisers. It was indeed distressing to find that after such a long relationship with Storm that I was unable to speak with them. This apparently was due to a gagging order issued by ASIC, though I understand the CBA influenced this.

Like other Storm clients, I had worked hard over many years, aiming to be financially independent, build enough security to be a self funded retiree and not be a burden on the taxpayer. At a time when I thought I could enjoy the benefits of my efforts, and be in a position to spend quality time with my children and grand children, I find myself in a position to have to work full time, just to cover the basics in life.

Given that I could no longer gain direction from Storm, I began speaking with the bank. They were clearly not willing to accept any responsibility for their lack of action and were determined to lay all blame squarely on Storm. Their primary focus was on how I was going to relay the debt.

COLONIAL FAILURES:

In early October 2008 on three occasions when I was in the Brisbane Storm office, I requested they provide me with a copy of the current status of my portfolio. They advised that this would not be possible, due to inaccurate data being fed from Colonial Geared Investments. The CGI data was inaccurate and sometimes days out of date, therefore unreliable. This situation made vital decision making extremely difficult.

I was aware of the imminent need to convert all or part of my portfolio to cash, as a protection against losing the whole of my investments. I was appalled that a major institution the size of CBA, which should have had dependable systems in operation, failed to deliver reliable data, particularly at this critical time. This inaction proves that the product did not meet expectations of either party and hence was defective. Surely a duty of care is required here.

In 1997 I signed my original Margin Loan application with CML. From the following clauses extracted from this document, my understanding was that a safeguard and an automatic systems process was in place to cover any downturn in the market beyond my established Loan to Valuation Ratio (LVR).

Extracts from my 1997 margin loan application:

- ☐ *"A Margin Call happens when your security falls in value and the Current Loan to Security Ratio equals or exceeds the Margin Call Loan to Security Ratio". It also states that there are options regarding dealing with a margin call and advises what to do if I get a Margin Call:*
 - ☐ ***"We will advise you in writing** of both of these amounts plus any fees that you might incur if you choose to reduce the loan balance.*
- ☐ *Clause 37 regulates the giving of notices which:*
 - ☐ *Must be in writing;*
 - ☐ *Signed by a Manager;*
 - ☐ *Sent to the address last notified.*

The very fact that a Margin Call is called a “Margin Call” infers just that – a ‘call’ is made when a ‘margin’ is reached. From my previous experience this margin call has activated a systematic advice or has resulted in a staff driven action.

The inference of the above assurances gave me faith that all bases would be covered, analysed and appropriately activated in case of the issue of a margin call.

Feedback since the collapse of Storm and the commencement of the Parliamentary Enquiry, have suggested that the bank’s wording in the Margin Loan documents are open to incorrect interpretation and / or misleading.

On further investigation for answers, Colonial’s own website relating to Margin Lending as displayed early in January 2009, states within it’s Frequently Asked Questions (FAQ’s) section:-

- ☐ *“What happens if I Do Not Respond Within the Time Limits?”*
- ☐ *“Colonial Margin Lending **will sell** sufficient security to clear any overdue Margin Call, so that the current Loan-to-Security Ratio is restored to the base Loan-to-Security Ratio”.*

Again, one could feel assured that the checks and balances were in place as protection against total destruction of an investment portfolio. The above information gained from the Colonial website has since been removed, and when I asked why this information was removed, the bank said they update their website from time to time and don’t need to explain the reasons for the removal of some wording.

I have a print out of the above mentioned FAQ’s if these are required by the committee, and a copy of the bank’s response should it be required.

CBA CONDUCT:

My first impression regarding my early phone conversations with CBA staff was that all blame for the current situation and my losses was placed squarely on Storm. After further calls, I was referred to a senior member of the Credit and Risk Management department, Mr Robert Ralston. One of my first questions to Mr Ralston was “why did the bank, when I was in Margin Call in 2003, both phone me and send me a written margin call notice and fail to do so this time? Mr Ralston advised that Storm (ozdaq) had been notified in 2003 of the margin call and that I must be mistaken in my recollection as I would not have received a phone call or a written margin call notice, as I claimed.

As a matter of course, I requested a number of document copies from the CBA, including a copy of the 2003 margin call letter.

After six weeks and a number of calls regarding same, I received most of the requested documentation; however I didn’t receive a copy of the 2003 margin call letter. Amongst the other documents requested was the original Margin Loan Application which arrived with two critical pages missing.

Again I raised the matter of the 2003 margin call letter, and Mr Ralston yet again said I was mistaken, and he didn't wish to continue talking about the matter. He went on to ask if I'd considered bankruptcy.

This matter of the 2003 letter was extremely important to my case as it set a precedent of action from the CBA. *I am now in possession of this letter, signed by Brian Phelps, Colonial Margin Lending Client Services, dated 19 February 2003, clearly confirming my account was in margin call and requesting 'this margin call be met within the next five business days'.* Appropriate action was taken to inject funds and remedy the situation, allowing me to continue operating my investments.

The fact that a copy of this letter exists when Mr Ralston blatantly and repeatedly stated otherwise, gives me serious concern to the ethics behind this behaviour. *I am happy for the Committee to have a copy of this letter, if it is required.*

Mr Ralston asked me to forward a completed Money Planner which I did. He asked many questions regarding my financial position, work and other history which I answered openly and honestly in an attempt to work towards and gain, a reasonable resolution. When he discovered that I'd worked for Storm for a short time in a marketing role, (not in the capacity of an adviser), he was verbally critical and berated me for a considerable period of time during that phone call, because I had been involved with what he described as 'risky products'. Interesting, since the CBA and Storm had had a successful and profitable partnership for many years with these products. This behaviour was totally unprofessional and as such, I wrote a letter of complaint to John Clothier, the senior executive of CGI. I was particularly concerned that Mr Ralston would be prejudiced against me for the time I briefly worked for Storm and this seemed to be affecting his willingness to offer any positive support whatsoever. As of this date, I have not received a response from John Clothier.

In the same conversation, Mr Ralston then went on to question my level of debt. My comment to him was, if he thought my debt levels were too high, why had the bank undertaken two 'desk-top-valuations' of my New Farm property within six months. And why had they done this without a request from Storm, or myself, and subsequently offered me additional loan funds for investment? Mr Ralston stated 'desk-top-valuations' did not exist, and that Storm would have initiated the additional loans, which I know to be incorrect.

Eventually when a letter of offer did arrive from Mr Ralston, he in fact stated "The Bank does not dispute a desk-top-valuation of your New Farm property . . . ". This turn around may have come about due to media articles exposing that desk-top-valuations, known as VAS, were indeed common practise.

Once again, this questions Mr Ralston credibility and his refusal to acknowledge the questionable activities of the bank.

After many emails, my situation did not seem to improve or progress. I asked Mr Ralston again if he could offer a resolution. He responded with an email on February 16, 2009 stating "the bank is not prepared to agree to any debt compromise". At this point I became even more stressed and wondered where to turn next.

Not only was I getting no real help from the CBA, I was unable to obtain advice or guidance from Storm.

BANK OFFER:

The media and the Storm client support group, SICAG, were reporting that former Storm clients in difficult positions were gaining assistance from the CBA's Hardship Assistance Unit in Townsville. I rang the Townsville Hardship Assistance Unit for help. The attitude of the people I spoke with was refreshing, positive and seemed to progress. Mr Ralston became aware of my contact with the Hardship Assistance Unit and advised them they were not to continue to help me. When I commented to someone at the Hardship Assistance Unit that I had the feeling I had been dealing with a 'debt collector' type of person, they agreed that my impression was correct.

Again I tried to progress with Mr Ralston, who, after a number of requests from myself, eventually presented an offer from the bank on April 21, 2009. The essence of that offer is - if I am prepared to sell my home, apply the net proceeds towards repaying the Investment Home Loan, plus remaining proceeds towards the Margin Loan debt, then the bank would be prepared to write off the residual Margin Loan balance (a debt, which the bank created themselves, as a result of their failure to issue a margin call). He then said this would allow me to have a '**fresh start**' without the prospect of bankruptcy. Mr Ralston followed with, "Of course, such an arrangement would also require the parties to release one another from all claims in relation to all loans and in relation to Storm's activities." The offer would have left me with nothing, and he was asking for a release of all claims.

Needless to say, I rejected the bank's offer and was unhappy with the treatment I had received from a bank which had publicly been saying that they were assisting former Storm clients to alleviate their hardship and distress.

Feeling quite troubled and being aware of a number of former Storm clients receiving deals from the Hardship Assistance Unit, I contacted the unit again. I was making progress until I received a call from a member of the Assistance Unit informing me that I would have to once again deal with Mr Ralston, a person who had clearly shown prejudice towards me and had demonstrated an unwillingness to acknowledge events which actually occurred or provide critical documentation. The representative from the Hardship Assistance Unit advised me that "there were very clear guidelines as to how people will be dealt with who had worked for Storm." An interesting statement, given that I'd been a client of Storm for 29 years, and worked for Storm in a non-advisory role for about 20 months.

CONCLUSION:

As has been previously stated, I have been a client with Storm Financial for 29 years. Over that time, I found the education process valuable and advisers always accessible. Together with Storm, I had previously worked through a margin call received from CGI, to successfully maintain my portfolio and retain an income stream. Through some difficult times I endured, the Storm team, and in particular my adviser, gave me valuable support, in personal situations and with business matters. This assistance was forthcoming, beyond the scope of their role and given freely because I was a valued client and I needed the assistance.

After hard work and diligent investing, I had accrued a stock portfolio in excess of \$10 million. I am fully aware of the current economic climate and the devastating effect it had on the Australian, and other stock markets in mid 2008. I was totally prepared to cash down my shares to avoid a major catastrophe, understanding that I had a LVR margin buffer.

The Code of Banking Practise (modified May 2004), Code 2.2, states "We will act fairly and reasonably towards you in a consistent and ethical manner. In doing so we will consider your conduct, our conduct and the Contract between us."

CBA is under a duty to:

- Exercise reasonable care and skill in acting on a Margin call; and
- Monitor the performance of a share portfolio so that it does not fall below the LSR.

I believe the CBA's behaviour and actions were negligent and/or in breach of contract for the following reasons:

- On 20 June 1997, I entered a margin lending facility with Colonial State Bank (Colonial), loan number 2257 (Margin Loan) which clearly specified that the previous steps would be taken (as detailed above).
- Margin Loan Documents made provision for 'Margin Calls' (Margin Loan Documents contained at Schedule One).

CBA:

- o promised to deliver a Margin Call Notice
- o were under a contractual duty to exercise the Margin Call and provide notice (CBA failed to exercise their obligations in relation the Margin Call, particularly with respect to notice requirements); and
- o were obliged to sell down my portfolio at the established LVR in the event that a margin call was not acted upon (the Margin Call was not acted upon and CBA failed to sell down my portfolio at the established LVR).

In addition to the contractual relationship and duty of care CBA owes me as its customer under the Margin Loan Documents, CBA owe a fiduciary duty arising:

- As a result of the existence of the relationship of competence; and
- By the understanding by CBA to perform a task or fulfil a duty in my interests, that is to say, to perform the task and fulfil the duty of making the Margin Call and to act on the Margin Call on or about 15 October 2008 to sell shares to ensure that positive equity was maintained.

If the bank had fulfilled its contractual obligations, I would not be a position of total distress and hardship, owing over one million dollars.

After numerous attempts to resolve this diabolical situation, I felt I had no other alternative than to seek legal advice on this matter.

My Claim against CBA

- Negligence and/or breach of Contract for failure to act on a Margin Call.
- Negligence and/or breach of Contract for failure to sell down shares.
- Wrongful claim of early termination interest.
- Loss of interest on share portfolio.
- The CBA failed to in it is duty of care to carry out the proper checks in relation to home loans.
- The CBA have destroyed my independence and income stream.

CBA's Obligations

- Reinstatement of my portfolio at the position it should have been at sold down.
- Interest on the balance of the portfolio to 30 June 2009.
- Reimbursement of Home Loans.
- Damages / consideration of tax implications as a result of the bank's actions.

I respectfully request that the Joint Parliamentary Committee investigate why CGI's systems failed to issue margin call notices in 2008, when the process had functioned perfectly on previous occasions?

There appeared to be a very successful partnership which benefited all parties, CBA, Storm and clients for many years, why was the Storm index Fund shut down with record speed, and who bought the bulk of the shares?

Would the committee please ask the CBA to show the protocols for dealing with past and present Storm personnel?

Robyn Toohey