John A. Salmon

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PUBLIC SUBMISSION

Dr Shona Batge
Secretary
Parliamentary Joint Committee on
Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA
ACT 2600

Dear Shona

Re: Inquiry into Financial Products and Services

First of all I would like to acknowledge receipt of your letter of 13 May 2009 and say that I am most appreciative of your advices.

An acquaintance has sent me a copy of Radomir (Ron) Jelich's May 2009 twenty three page submission to your Inquiry. Needless to say I found the contents of Mr Jelich's submission to be of particular interest.

Before highlighting matters of concern regarding the involvement of the Commonwealth Bank of Australia, I think it appropriate that I furnish your Committee with a brief background of past involvement.

CV: I was employed by the National Australia Bank for thirty-six years, 1950-1986 and since retirement have advised small business clientsinvolved in litigation against their bank lenders. Have been accepted as an expert witness in the jurisdictions of the Federal Court of Australia and the Supreme Court of Queensland. I have authored a book titled The Untouchable Banks which is yet to be published.

Let me reiterate for a moment some of my comments and conclusions which extended from the material made available to me.

"There is a common denominator of words, 'its advice was all a con', duped by financial advisors','are criminal

-/2

offences', 'obtaining money by false pretences' and 'Storm Financial was a con'. I agree in totality & say that this financial crisis is far worse than the Foreign Currency Loans fiasco of the eighties."

"Given what many victims of Storm Financial have said, 'con' & 'criminal' etc, it is my interpretation on the known facts that Storm Financial victims were sold a financial product which was representative of a "sting" operation."

After reading Radomir Jelich's submission I am completely satisfied that my "sting" conclusion is reaffirmed.

My initial "sting" conclusion in my advices to yourself was directed to banks and it is now patently clear that the Commonwealth Bank of Australia is a co-conspirator engaged in a "sting" operation. The CBA's name is permeated throughout Mr Jelich's submission and in my view, it is all adverse.

One of Mr Jelich's statements particularly drew my attention and that was, "Cleints would not see a bank officer at all" - page 8, final para refers.

I would like to give your committee my definition of a bank "sting" operation which is as follows:

> A sting operation in the general sense means that a bank will engage in a deceptive lending process whereby the victim will fail in his endeavours; it is a clear entrapment exercise. The bank has the tools at their disposal to ensure that their clandestine aims will succeed. This will mean that security given to the bank will be lost in due course, with resulting impecuniosity being the norm. The bank has the ultimate tool of instituting bankruptcy proceedings against their victim. The bank will always have a hidded agenda for instigating a sting operation which is of varied circumstances. The bank may employ the assistance of outside co-conspirators to achive their aims in the operation.
>
> A bank knows full well that if litigation eventuates in due course, then the legal profession at its highest level, ie the judiciary, will come to their aid.
>
> By virtue of the bank's status in society, no one is immune from a bank "sting" operation; they have

the ability to exploit anyone.

A bank "sting" operation is 'white collar crime' and it is also 'economic crime'. My consultancy experience over the last twenty years indicates to me that banks are masterful exponents; they certainly demonstrate this capacity when it comes to a "sting" operation.

Bank foreclosures which follow-on from "sting" operations usually have unfortunate and harsh consequences, and one of the most common is that they render their victims impecunious. This means that the victims cannot mount a defence with a competent legal team. A predominant number of victims are the owners of a small business operation which is their sole means of livelihood, and of course the bank's tactics terminates their cash flow. That is the general state of play.

I have no doubt that in the Storm Financial/ Commonwealth bank arrangement, that the bank would conduct its affairs in similar fashion as I have described in my definition of a bank "sting" operation as above.

What all this means is that a victim in the Storm Financial/ Commonwealth Bank entrapment exercise would find it virtually impossible to succeed in litigation against the Commonwealth Bank. My general perception here is that the Commonwealth Bank has played a secondary role because the bank apparently did not give direct advice to Storm Financial victims - refer Radomir Jelich's submission, page eight, final para, "Cleints would not see a bank officer at all."

The Commonwealth Bank's defence would undoubtedly be that it was Storm Financial's responsibility solely to advise and explain to clients the full ramifications of the product/s which they were selling.

You can rest assured that,if the Commonwealth Bank was joined in any litigation process, then they would have entered into the "dirty tricks" campaign. My consultancy experience reveals that banks have a bag full of "dirty tricks", any of which the bank will introduce at any stage to ensure that they will come out a winner.

A good example of a bank 'dirty trick' is as follows:

In the Foreign Currency Loans fiasco of the 1980's, Westpac Banking Corporation sold approximately 875 of these loans to customers throughout Australia of which approximately 225/230 were sold in Queensland. The FCL's sold in Queensland could be apportioned from the point of view that approximately 185 were sold to the non-corporate borrowers with the difference going to the corporate borrowers of the bank.

A very high percentage of those loans sold in Queensland was achieved by the Bank's Manager, International Business Development, Mr Schulz*. Mr Schulz was so successful that the bank increased his performance targets.

Mr Schulz had a specialised spiel and consistently gave ADVICE to the bank's customers and also to prospective FCL borrowers with respect to aspects of FCL borrowing.

It goes without saying that those who decided to proceed with FCL borrowing accepted Schulz's ADVICE. Not only did they accept Schulz's advice at the outset, there was always on-going advice regarding foreign exchange movements during the currency of the loan which was usually a three to five year term.

When Schulz was appointed to the position of Manager, International Business Development in the beginnging of 1983, the Australia Dollar was eqeivalent to about 1.8 Swiss Francs. Just over three years later by mid 1986, the Australian Dollar was equivalent to one Swiss Franc. During the continuous downward trend from 1983 to 1986, Schulz was continually contacted by existing borrowers for ADVICE with respect to their FCL.

Numerous Westpac Banking Corporation discovered documents indicate that the bank's employees were giving ADVICE to borrowers and prospective borrowers. It is also clear that the bank's FCL borrowers relied on their employees ADVICE and as a result of that reliance, eventual losses became evident and were eventually realised.

As time went by in 1986, Westpac Banking Corporation was faced with the prospects of being engaged in litigation for years to come. Towards the end of 1986, or could well be early 1987, Westpac Banking Corporation's legal representation arrived at a decision that the bank's employees only gave INFORMATION concerning FCL's sold to borrowers, they did NOT GIVE ADVICE.

This change in tact by the bank is confirmed in their documents and also court filed documentation. Very neat sleight of hand by the bank.

Schulz was Westpac's principal witness in Federal Court

* name change

of Australia litigation No QG 92 of 1991 where Drambo Pty Ltd was the Applicant and Westpac Banking Corporation was the Defendant. Drambo was a corporate victim of Westpac's foreign currency loans' saga of the 1980's.

During the trial hearing conducted in 1995 and 1996, Schulz was persistently cross examined on the question on whether he gave ADVICE. His response on all occasions was that he only gave INFORMATION which was distinctly untrue. The bank's legal team realised at the outset of the litigation that the "ADVICE FACTOR" must be suppressed at all costs and the legal team which was headed by very senior members of the legal profession were prepared to subvert the course of justice; it was absolutely no trouble to them. The whole process could be construed as contempt of legal process or disorder in law.

It will readily be deduced from my remarks here concerning Schulz and Westpac Banking Corporation that victims of Storm Financial would have a remote chance only of succeeding in litigation against the Commonwealth Bank. I would not recommend it. Mediation in this instance would be the much better approach. However this is a stage determination as I am not in possession of all the facts.

"Dirty tricks" employed by banks are of unlimited dimension and makes litigation where a bank is a party to the proceedings a very hazardous venture indeed.

I hope to be in a position to make a further submission to you in due course.

Sincerely

John A SALMON