Justices Act 1886

I acknowledge by virtue of section 110A(5)(c)(ii) of the Justices Act 1886 that:

(1) This written statement by me dated 22/04/2009 and contained in the pages numbered 1 to 21 is true to the best of my knowledge and belief; and

(2) I make this statement knowing that, if it were admitted as evidence, I may be liable to prosecution for stating in it anything that I know is false.

S P J McARDLE

.....Signature

Signed at Coolum.this.22nd.day of April 2009.

SUMMARY SUBMISSION FOR PARLIMENTARY INQUIRY
McArdle

Sean McARDLE
42years old
Forensic police officer and Sergeant with the QLD Police, 20 years service.
Married (16years) with 2year old son

We have invested in the Share market for the last 18years.
We have used gearing and equity to grow portfolio for that entire period.
We had never used Margin Lending at any time prior to joining Storm Financial.

I have never missed a repayment or been late for a repayment.
My banking record is impeccable

Invested with Storm February 2007.

At the time our total income was about $96,000 gross.

Loans by CBA investment home loan $1000,000. Brokered by Storm Financial
Macquarie margin loan 2000,000. Brokered by Storm Financial.
Attempts prior to Storm securing these loans by the clients resulted in offers of a maximum of $350,000max from the CBA

In August 2008 I was warned by Macquarie Margin Lending that I was approaching closer to buffer then I had indicated I wanted to get.

As a result I had a meeting with my Storm advisor where he suggested I move $40,000 from our repayment account to the portfolio to correct the LVR position.

I told them this was not a suitable suggestion and eventually my wife and I added $250,000 of out own cash, plus arranged for hundreds of thousands of dollars worth of shares to be moved to the portfolio. We also followed a recommendation given by Storm to change margin lenders to Colonial.

Early September 2008 Colonial Margin Lending took over our margin loan from Macquarie.

We had no contact with the bank in arranging this.

My wife or I were NOT given or shown a Terms and Conditions document.

In signing over my loan to Colonial I was left in no doubt that I had an agreement with the bank that in the event of approaching Buffer and Margin Trigger points I would be given notice and time to correct the LVR.

I have recently discovered that at the time of taking over my margin loan it was increased from $2000,000 to $3000,000. This was never discussed with us and has the physical appearance of been done fraudulently.
The first contact I had with the CML was on the 8th of December when I was contacted by Mr Angus Cameron stating that all my securities had been seized and sold and that I owed the bank $207,000 due to my negative equity resulting from the 126.3% LVR when I was margin called.

I asked why I hadn't been contacted as I had the ability to almost instantly correct my LVR and in fact was expecting a buffer notification. It has been repeatedly stated that CML had no legal obligation to contact me, and further stated that they never contact clients directly. This contradicts it's own terms and Conditions and Application forms.

The CBA and Storm have formed an unholy alliance to mutually benefit each other by way of putting clients into massive loans which paid percentage dividends by way of upfront fees to Storm and ongoing interest to the bank.

As a result of my advisors actions I was misled into a ridiculously dangerous Investment strategy. Despite this unethical behaviour, my wife and I were aware of our obligations to correct our LVR if required. ***We made sure we were in a financial position to address an even bigger fluctuation then that seen in the second half of 2009. All we needed was notification of our position.***

As a result of the banks deliberate decision to not ensure we received a notification, we were unnecessarily and predatorily destroyed financially.

For the sake of a 30cent phone call I would have corrected my portfolio and still have a $4000,000 plus investment portfolio. Instead I am paying off over a million dollar debt with no assets to support it, and dealing with a bank refusing to answer any questions or provide any proof of its claim of acting appropriately.

Sean McArdle
Coolum Beach

SUBMISSION TO

PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES 2009

Sean and Paula McARDLE are married and equal participants in all financial matters contained and referred to within this document.

They have:-

- invested in the Share market for the last 18years.
- Never missed a repayment or been late for a repayment.
- Their banking record is impeccable
- used gearing and equity to grow portfolio for that entire period.
- never used Margin Lending at any time prior to joining Storm Financial.
- Have been cash cows for the CBA by way of interest only repayments and fees for virtually the entire 18years.

Trevor Benson was the McArdle's financial advisor for the past 8 years and was a Storm Financial employee and expressly authorised to be the only person to act in that capacity for the last two years of that period.

Storm Financial is a financial planning company that employed the McArdle's Financial Planner, Trevor Benson. No other employee or representative of Storm Financial was authorised in any capacity to make any representations on the McArdle's behalf.

INTRODUCTION:

Storm Financial have misled the McArdles into participating in an investment strategy by misrepresenting the exposure through the margin lending component of the product.

The McArdles believe this was a deliberate strategy as they had spoken of their aversion for margin lending and openly expressed apprehension at any form of margin loan.
At all times through negotiations re the McArdle's proposed investment strategy, their advisor played down, understated and told untruths about their exposure to margin call and the consequences.

At no time were the risks of this strategy explained to include the devastation to the client's financial position in the event of margin call.

The McArdle's would not have participated in such a strategy had these risks been disclosed.

The McArdle's contacted ASIC twice for assistance prior to committing to the Storm product, but were not assisted in any way (further information on Page 16 and on)

The McArdle's recognised the limitations of their experience and knowledge of financial practices and for that reason had their accountant Mark Thompson a partner, of Whytes Accountants and Business Advisors sit in on an information session.

The expressed purpose of doing this was to get a financial assessment and recommendation from a financially astute individual with the client's interest at heart.

Thompson gave a positive recommendation in relation to proceeding with this product. Further he failed to identify any areas of concern such as the level of gearing exposure.

It was later found that Mr Thompson was paid a $10,000 "referral" by the McArdle's advisor, Trevor Benson .

The McArdles would never have employed such a dangerous and unsuitable product if they had been fully informed and had understood the risks. This is not an hindsight statement. The limits of our agreeable exposure were made very clear to our advisor and accountant in both the years prior, and subsequent to our involvement with Storm Financial.

Regardless of the nature of investment product, and the fact that the clients were mislead or deceived into participating in the strategy, the clients were in a financial position to fiscally tolerate all of the market downturn of the second half of 2008.

That is to say if the McArdles had not been margined called ***without notice,*** they would still be in the same investment scheme having tipped more cash in as required when notified of their position by the bank..

The McArdles had the financial ability to correct their LVR position, and would be riding out the market fluctuations.

CBA/CML/CGI breached their own contract and did not provide the client with the contractually agreed opportunity/responsibility to correct their LVR.

PART ONE:

In late 2006 the McArdle's were told by two different lending managers of the CBA Toombul and Virginia branches, that they *may* be able to borrow a maximum of $500,000 for investing.
This was not guaranteed as approval would need to come from Sydney and the McArdle's were told they did not have sufficient income to support this figure despite being asset rich.

Documents eventually obtained reluctantly from the CBA show the McArdles were in actual fact given an offer of $350,000 only. This was the maximum the bank would loan them.

Within one month of these attempts to secure a loan, the McArdle's advisor, via Storm Financial, secured them a $1,000,000 loan on exactly the same figures that the McArdle's had presented previously to the bank. Approximately $100,000 joint income.

This poses the following questions:-

1. What is the banks standard formula for lending? Typically it amounts to no more then 30% of the client's income. CBA approved a loan to the client's with repayments amounting to more then 70% of their total income?
2. The bank has stated in the press through a spokesperson that it has not relaxed lending standards to Storm clients. How is it that Storm brokered a $1,000,000 loan to clients with a joint income of $100,000.
3. If this is indicative of CBA loans can it provide the percentage of non Storm clients that received loans with repayments equalling similar percentage totals income.
4. Can the bank explain the budget that these clients would need to adhere to, to maintain such a loan long term?
5. What % of Storm clients had loans with repayments above 75%?.
6. Why is the biggest bank in Australia using unlicensed loan brokers to secure hundreds of millions of dollars worth of loans on its behalf?
7. What was the relationship between Storm Financial and the bank that allowed this to occur?
8. Who was involved? Who approved the relationship? What written agreement exists of this arrangement?
9. What branches/sections of the bank assessed the McArdle's application? Why was there such a massive difference between the loan the McArdle's may have been able to achieve and the loan Storm secured for them less then one month later with the same figures?
10. Why is the bank refusing to provide the client with copies of all documents associated with this loan?
11. What remuneration did the bank give Storm for brokering these loans?
12. Was it simple a case of 100% approval which benefits both Storm and the bank in the case of inflated loan figure? Remember both the bank and Storm received upfront remuneration based on a <u>percentage</u> of the investment undertaken.
13. Is there evidence that Storm Financial benefited by way of contributions by CML/CBA/CGI to client's overseas trips, functions and special loans to advisors?
14. Was the relationship in accordance with strategic guidelines formulated to deal with managing conflicts of interest?
15. Why was the relationship between bank and financial planner not declared to the clients at anytime during the compliance periods of selling the strategy and applying for the loan?
16. This relationship/strategy was such that it benefited the bank and Storm Financial by disregarding the retail client's consumer rights of safety and information regarding risk. How does the bank explain not only participating in but designing and implementing this inappropriate relationship and strategy?

17. This relationship/strategy contributed to, and exaggerated the catastrophic results of margin call. How does the bank explain this as appropriate?
18. Is it standard banking practice to double gear retail clients in the manner they participated in with Storm Financial? If not, why?
19. Should the bank as an active participant in this investment strategy have considered or recognised the propensity for failure in a receding market?
20. Should they have informed the client of this propensity prior to accepting the loan application so as to ensure the client's decision was informed?
21. Has the bank got any records to show that due diligence was followed in relation to clients position?
22. In the event the answer to this is "No" What statutory exculpation exist allowing the bank to sell a product of this inherently dangerous nature without obligation to warning clients of the danger to their financial position? Surely if Nestle have to put warnings on 50cent chocolate bars that it "*May contain traces of nuts"* then a disclosure of risk individual to the client's multi million dollar investment would be considered minimum risk management practice? Perhaps *" may destroy you financially and emotionally as the bank refuses any responsibility for its products and conduct"* would have been appropriate in this case .

23. The client's interest repayments for this product are approximately $72,000 a year. Or put another way 100% of the major wage earners income. Why does the bank not address each such loan on an individual basis, preferring to address risk with a generic vague and misleading combination of documents? Is their remuneration not sufficient to spend a couple of hours with the client?
24. What auditing process did the banks perform to ensure that all risk management concerns and appropriate conduct was adhered to by Storm Financial staff that were brokering these loans on mass, on the bank's behalf, and with the banks knowledge? For example the McArdle's were not given a copy of the terms and conditions of the loan. Nor were they given access to the CGI website to monitor their loan. The only advice we were provided during his process was "sign where the yellow tags are"
25. Is it appropriate that the bank allowed this systemic unlicensed brokering to occur on their behalf and for their benefit, without ensuring the clients are appropriately informed?

The McArdle's investigation into this matter revealed that the mentality taken to Storm brokered loans, and at least CBA/CML/CGI approval, was that of a production line. Virtually any loan forwarded to the bank by Storm would be approved, regardless of the banks own guidelines, and the risk presented by the disproportionate nature of the amount of borrowings sort, and the income available to make repayments by the client.

The McArdle's are also aware via reliable sources, that criminal activity has occurred during the brokering and approval stages of loans. This includes but is not limited to at least one ********** person receiving a loan, and bribes been given to senior CBA staff for loan approvals. This criminal activity applies equally to both Storm and Bank staff.

At a glance it is obvious that an extraordinary and inappropriate alliance between CBA and Storm Financial existed. This relationship is such that it did not simply breach best practice guidelines. It treated them with arrogant contempt. It is obvious that the bank benefited by way of massive sales and Storm via upfront fees on implausibly high investment loans. At no time was this relationship disclosed to the clients nor was the likelihood that it would negatively impact on both Storm's and the bank's responsibility to fulfil its obligations to the McArdle's (more on this point further on).

PART TWO:

Soon after obtaining the Investment Home Loan as outlined above, the client's advisor, via Storm Financial secured, a $2,000,000 Margin loan from Macquarie Margin Lending (MML). Remember the clients were on a combined income of $100,000 and had a $1,000,000 investment home loan to service.

All the above questions could be applied to MML.

PART THREE:

This investment strategy was managed by the McArdle's, their advisor, Trevor Benson and MML until August 2008. At this time MML contacted the clients and the advisor, (Trevor Benson not Storm Financial). This contact was to advise them that the client was getting closer to buffer then they, (the McArdle's) had expressed they ever wanted to get.

As a result of this entirely professional response by MML to market fluctuation the McArdle's had a meeting with their advisor and put a further $250,000 of their own money into the portfolio as well as arranged for hundreds of thousands of dollars of shares to be moved from other areas to the Storm investment product.

On top of this we were advised to move to Colonial Margin Lending because they offered a higher buffer trigger of 80% and higher margin call trigger of 90% and thus would increase the margin of safety of our portfolio. The McArdle's took this advice and CML took over the then $2,500,000 margin loan from MML.

The three components of this strategy were implemented for one purpose. That was to increase the clients LVR safety margin.

Examination of the increased buffer and margin call points has since been found to have been far from beneficial to clients as it was promoted. It instead has proven to be catastrophic in a variety of cases. This has been denied by the bank however forensic accountancy should be able to provide a clear opinion on the mathematical equation as it applied to CML'S ability to determine reliable and accurate client positions.

This poses the following questions:-

26. If it is found to be the case that the higher trigger points are flawed, how did the bank come to be selling this catastrophic product?
27. Who from the bank and their position approved the upward movement of these trigger points? Why? What documentation exist showing the reason behind the consideration of such a move?
28. What stress testing was applied to the product in the research phases that led to it been deemed suitable for sale to general public?
29. When did the higher LVR privilege come to be part of the relationship with Storm Financial and CBA/CML?
30. How many other financial planning companies had this product available to them?
31. What effect would this have had on the float price of Storm Financial?
32. What benefits would this have had directly or indirectly to CBA/CML/CGI given that Storm's products were primarily CBA index funds?
33. Who negotiated the higher buffer and margin call trigger points?
34. How many other financial planning companies have received this deal and under what circumstances?
35. What statutory exculpations exist to free CBA/CML/CGI from responsibility to ensure their products are safe and appropriate for retail clients?

CML took over the MML margin loan in September 2008 when the market was under extreme downward pressure/volatility.
They took over this loan held by a client with a $100,000pa income, and a $1,000,000 invest home loan.

Not only did CML take over the $2,500,000 Margin loan, but they either changed or approved a document changed by someone other then the McArdle's to show the loan was now $3,000,000. (document available)

Given the circumstances of CML taking on this loan the follow questions would seem to require answering.

36. How could it be considered appropriate that CBA/CML did this with no contact with the McArdle's whatsoever?
37. Can CBA/CML ensure the McArdle's were given a copy of the terms and conditions document? (clients will declare under oath that they were not given nor did they sight a copy of the terms and conditions).
38. Despite now claiming it is the client's responsibility to monitor their own portfolio via a website. What did CBA/CML do to ensure the client had the prerequisite skills, desire and availability to resources. to fulfil this obligation?
39. What documentation exists that demonstrates the McArdles were aware that the obligation to monitor their portfolio meant, 24Hr monitoring 7 days a week, to ensure that margin call did not occur? and indicated to the bank it was their desire and that they had the resources and ability to fulfil the obligation? .
40. If only for their own protection why did CBA/CML not assess the client's comprehension of the investment strategy they were borrowing the money for?
41. Why were the terms double gearing or tiered gearing not mentioned or explained at any time? Why did the bank not feel it necessary to provide any

sort of insight as to the effects of a margin call? Remember this client was, in the previous weeks, subject of a "close to buffer warning".

42. The CBA/CML made no contact with McArdles. How then did it adequately assess the appropriateness of this retail client being exposed to this type of product?
43. Is it appropriate for "one of the four pillars of our community", to only assess their own risk when dealing with retail clients? All be it at the cost of the retail investor?
44. Would it be standard practice to approve a loan with alterations that had not been initialled, without questioning the changes, and who made them?
45. How did the bank come to the conclusion that this was an appropriate amount to loan this retail client? Remember the CBA was now loaning $4,000,000 to the clients on a $100,000 gross income.
46. How many other non Storm clients have income to loan to income ratios similar to the McArdle's?
47. How many other non Storm clients have loan to income ratios similar to the McArdle's for double gearing investing?
48. Can the bank explain how the McArdle's came to be approved these loans for a very high risk strategy during a market downturn of the type witnessed in 2008 given the banks statement that there has been no departure from lending practices for Storm clients?

The following three questions need to be considered in unison. They provide an insight to the banks mentality re lending.

49. What was the risk to the bank if the client reached margin call?
    Answer: None, in fact they stand to benefit significantly given the value of the McArdle's land. In this case they also got to snatch their money back at a time when they were struggling to raise cash for the Bank West acquisition.
50. What was the risk to Storm if the McArdle's reached margin call?
    Answer: None they already had their up front fees.
51. What was the risk to the client if the client reached margin call?
    Answer: Catastrophic financial devastation.
52. How does the bank explain the above as not alarming, when deciding that the loan is for an appropriate purpose by the client? How does the bank defend not disclosing this risk to the client fully and in clear easy to understand language?
53. What incentive existed for the bank to ensure the McArdle's did not go into margin call?
54. Why was this incentive not enough to force CML to pick up the phone and ring the McArdle's direct?
55. Why did the bank depart from their standard operating practice re contacting clients on this occasion?

PART FOUR.

According to verbal (CBA/CML/CGI refuse to provide written documentation to the McArdle's) information from CBA, on the 28th of October 2008, the McArdles hit buffer point.

The McArdle's would like the inquiry, and in fact all persons with a margin loan with CBA/CML/CGI to know:-

- They received **no contact whatsoever** from CBA/CML/CGI, or their advisor or for that matter any other employee of Storm Financial.
- The clients had no access to the website to monitor their own position because they were not given the access pins and passwords by CBA/CML/CGI.
- Their financial advisor, Trevor Benson stated he received no advice from CBA/CML/CGI in relation to the client's positions.
- CML states that they gave advice re the client's position via updating the web site. That is the same website that they didn't ensure was up-to-date or accurate. Nor did they give their client access to it, but have stipulated it was the client's responsibility to monitor their portfolio position via this site.
- CML further stated via Mr John Clothier that they provided no training to Storm advisors. This would suggest that they were born with the inherent knowledge that advice from CBA/CML/CGI would be given via defective website. It also begs the question of how advisors were to know that they were not going to receive LVR notifications as they previously had from CML?, and further that the clients they shared with CML were now their responsibility to notify of LVR positions?
- There has been claims by CML that Storm breached it's commercial agreement yet no commercial agreement has been produced to prove it exist.
- CML have failed to reveal any copies of this notification to the client despite multiple requests and complaints to the bank and FOS over a four month period.
- The clients have learned that CML margin loan clients have been contacted directly by CML usually in writing, re their position as a standard procedure prior to this matter, and their advisors were also contacted. It is the belief amongst advisors within the financial planning industry that this is in fact what happens.

On the 17th of November the McArdle's LVR reached the margin call trigger point. **They did not receive any notice** of this event **contrary** to the Terms and Condition document and the Application document now referred to by the bank. All the above points are relevant to this position.

The banks position is that the clients gave them expressed authority to tell only the clients financial advisor via section 4.3 of the T&C.

The McArdle's require answers to the following questions:-

56. How does this document exclude them being notified?
57. How does the bank see it as reasonable that the investor/borrower be made a third party in conducting their financial affairs, effectively removing them from essential knowledge and control of their own financial investment portfolio?

58. Why was this clause not explained in a way that left no doubt that the bank had no intention of contacting the McArdle's directly, despite the terms and conditions and application form directly contradicting this mind set? Further, that other clients have been contacted directly in the past?
59. Can the bank please provide historic examples of their use of this clause in the manner that it has been applied to Storm clients on this occasion?
60. 450 "high value" CML/Storm clients entered into margin call and negative equity positions without raising a finger to correct their LVR position. Is it reasonable for Australia's biggest bank to hide behind the only sentence its lawyers could find when it has so obviously and inappropriately failed (for whatever reason) in its obligations to communicate with its clients?

During this time the clients were watching the market fall and had prepared for receiving a buffer call and in fact were contacting their advisor for details of their position. This was after they had contacted CML directly and were told to contact their financial advisor, without any insight or information being disclosed about their position. The client's financial advisor assured them their position would be fine but was unable to give LVR figures as "they" were having trouble getting accurate information out of Colonial. .

On the 8th of December Sean McArdle received a phone call from Mr Angus Cameron of Comm Sec who stated that all my assets had been seized and sold, and that he was in negative equity to the tune of $207,000 as the bank hadn't margin called them at 90%, in accordance with their Terms and Conditions and the Application documents. In actual fact they had waited until the McArdle's LVR was at 126.3%.

This demand for payment of the negative equity debt, was the first contact I had had from CML.

Sean McArdle explained at that time, that I had the cash to put into the investment to correct my LVR and was waiting to be notified of my position. Further that he could transfer that cash within a couple of hours. Mr Cameron explained that he was very sorry but the margined call occurred on me on the 28th of November, approximately two weeks earlier, and as such it was too late.

Arrangements were commenced by the McArdles to have the negative equity immediately paid back to the bank. The clients now realise that this action was premature, but had come automatically and while the client was still shocked and unaware of the banks role in sending them broke. After approximately $158,000 had been transferred to the
bank the client realised that questions needed answering and no more money has been forwarded to the bank. This leaves a debt of approx $58,000 accruing interest.

Mr Cameron did also explain that this was all Storm Financial's fault and definitely not the banks. This claim has since been the subject of mention hearing in the Federal Court in Brisbane, before Judge Greenwood in December 2008. The result of this court case was Storm had met the required standard of proof to proceed to the hearing re claims that the CBA had participated in deceptive and misleading conduct under the Corporations Act.

This case was to proceed to full hearing as a matter of urgency on the 9th of January 2009 despite leading counsel's quips that it would require them to work through the Christmas holidays. On the 8th January 2009(note that this is the day before the trial} Storm were forced into liquidation as a result of legal gamesmanship by CBA. As a direct result, the court case was forced to be abandoned and the CBA was free to escape scrutiny of the Federal Court where it could not apply its considerable influence. I am sure that this was not its intention and just a coincidence of its need to protect itself and it shareholders from Storm Financial.

If the bank's intention was to avoid valid scrutiny of its actions, then the banks legal counsel would appear to have aided the biggest bank in Australia to pervert the course of justice. This was achieved by implementing a legal strategy to circumvent the natural judicial process which may well have seen Storm Financial win damages for the misleading and deceptive conduct by the CBA. I am not aware of any statutory exculpation that exists, which allow legal counsel to conduct itself in this manner. It would certainly be unethical and shameful at the least and certainly conduct likely to bring the whole profession into disrepute.

Perhaps in the interest conducting a professional transparent investigation without favour or affection, malice or ill-will, ASIC could further examine these findings. It would be appropriate to have these findings explored and definitely in the public interest given that a significant suggestion of impropriety lies squarely on the shoulders of "one of the four pillars of our community". A bank that has actively sort and received government, and therefore public, support in the form of huge cash guarantees. A bank that is currently handling a significant proportion of the public's cash, home loans and other financial products.

Yet it would appear that our regulators are more concerned about the $2m that the Cassimatis's may have paid themselves, then questioning if Australia's biggest bank is conducting dishonest, unethical and deliberately non transparent business activities.

PART FIVE:

The clients believe they were collateral damage in a dispute between Storm Financial and the CBA and as such were not the intended targets, but more so a convenient excuse for the CBA to pursue a belligerent attack on Storm Financial orchestrated to suit the banks own needs/wants at that time.

The McArdle's believe this is supported by the fact that CBA sold out an equity fund worth more then $1.4billion for the sake of margin calls worth around $30million. Further no real attempt was made by the bank to resolve those margin call short falls. There was no overt act on the banks behalf to work with their business partner to clear these margin calls. It would be justifiable to say that the CBA has actively engaged in deliberate and orchestrated negligent conduct with the result being a perceived belief that they could justify the predatory conduct they were about to engage in.

61. What did the bank want that $1.4 billion for?
62. Did any of this money go towards the Bank West acquisition?
63. Were any of the shares sold at the bottom of this market purchased by CBA or any of it's subsiduaries?

On or about the 23rd of December Sean McArdle had a telephone conversation with Mr Angus Cameron of CML.

In précis,
during this conversation it was affirmed to the client that :

- Colonial were aware of the movements of my portfolio towards buffer and beyond.
- That they had continued to be in contact with Storm Financial.
- That Colonial was aware of the catastrophic nature of a margin call on the client.
- That Colonial had all my contact details and in fact had "got straight through" first time when ringing me to demand payment for the outstanding negative equity debt that Colonial had allowed to be incurred on my behalf and without my consent or knowledge.
- That Colonial could have rung if they wanted to but the reason they didn't was they have apparently" no legal obligation to contact the client."
- That at that time "it was all hands on deck" indicating they were too busy to conduct their obligations in the manner a reasonable person would expect.
- That if the clients had been Comm Sec clients they would have been called and protected from margin call but because we were with Storm no such calls were made.
- It was further explained that Colonial only ever dealt with the advisors and never contact clients directly. This was explained as a standard feature of the product.

This makes their Terms and Conditions deliberately deceptive and misleading. This point should have been disclosed to the client before the loan was implemented. It is also worth noting that CML have previously contacted Storm clients directly, as well as their advisors to warn them of their LVR position , and as such indicates that Mr Cameron is comfortable telling untruths to the banks Clients to promote the banks agenda.

Given that approximately 450 Storm clients, 200 of whom CML describe as high value investors, all went through buffer and into margin call while the bank was in negotiations with the chief executives of Storm;

64. How does CML explain not noticing something strange about the fact that not one of these people lifted a finger to correct their LVR position?
65. How does CML explain not one Storm client contacting them to plead for mercy or ask for assistance of any kind?
66. What risk management strategies did the bank have in place to recognise that communication of their notices had failed or otherwise?

67. Once the failure was recognised what remedial action did the bank take given it was their responsibility to ensure the client received and comprehended the notices as per the Terms and Conditions and Application Documents?
68. Why is the bank suggesting it is comfortable with notifications via a reported defective web site when its own computer system "Empire" automatically produced notifications for clients and advisors as the system recognised the LVR trigger points being reached?
69. How many other clients, of other financial advisors had the "Empire" notifications ignored and were advised via the CGI website during this time?
70. Why did the bank choose to make a change to their standard notification procedures at this time? and why for Storm Financial clients?

A further telephone conversation was made to Mr Phelps an executive of CML.
I was given his direct number by a suburban CBA branch manager who had become aware of my situation and believed it to be wrong and in need of urgent attention to be rectified.

This phone call took place on the morning of the 24th December 2008.

In précis, during this conversation it was affirmed to the client by Mr Phelps

- That Colonial were never going to contact the directly.
- There was no one I could deal with directly at CML to sort out this situation.
- That I was a Storm Financial client and as such CML could not contact the client.
- ***That "the relationship between Storm and the CBA is that you are a Storm client and we are not allowed to contact you" (This conflict of interest was never explained to the clients prior to this conversation.***
- Phelps explained that this had been the arrangement for many years and had worked well.
- When Colonial realised that Storm was not responding in the appropriate manner they stepped in and took over.
- By taking over Mr Phelps confirmed he meant contacting clients and stating that they had been put into negative equity and owed the bank money.
- When asked to confirm the banks actions as reasonable, Mr Phelps refused to answer the question.

As a result of Mr Phelps's demand to have the situation put in writing, and the knowledge that the McArdles had a financial ability to continue the investment, a proposal was forwarded to the bank. This asked that bank to reinstate the portfolio making whatever changes it deemed necessary to continue doing business including the management of the portfolio being switched to Comm Sec. It was also pointed out that the clients had been cash cows for the bank over their many years of responsible financial dealings. An offer of complete confidentiality and no blame or responsibility clause was offered by the McArdles. Further to this the financial benefits to the bank were spelt out including the fact that the market had continued to fall and reinstating the loan would be financially less then the funds the bank had recouped as a result of executing the margin call in the first place.

The McArdle's received a response from Mr Phelps. This response rejected the offer and put blame squarely at the clients and Storm Financials feet. The banks position that it has no responsibility in this matter was again reiterated.
It was not explained how the bank came to believe it could provide a proven catastrophically dangerous, and significantly flawed product without applying basic due care or implementing risk management strategies, and then claim it had no responsibility.

It is significant to note that an affidavit given to the Federal Court December 2008 by Counsel representing Storm Financial was from a former long term employee of the bank and stated that he was instrumental in the development of the margin loan product. Further it was never intended to be a bank - Financial Adviser relationship product. It was always a bank to client product. The McArdles also interpreted the relation ship as being a contract between themselves and the bank. There is no mention of a third party carrying the responsibility for notifying the clients of their position and if there had been they would not have signed.

The end result is for the sake of a thirty cent phone call by the bank, the McArdle family's financial position has been catastrophically destroyed.

Perhaps the Parliament Inquiry and ASIC in considering this inappropriate lack of action by the bank could ask itself the following.

71. Would a reasonable person expect contact directly from the bank under these circumstances?
72. Is it reasonable for a bank to not disclose that it will not contact it's client due to a conflict of interest with the client's financial planning company?
73. Is the relationship between the bank and Storm Financial appropriate, given the matters discussed in this submission?
74. Do the CBA's actions meet the minimum standard required of the largest bank in Australia when considering ethics, honesty, transparency and lawfulness?
75. Who is the banks client in respect of the Margin Loan?
76. Is it reasonable to expect that the person who holds the loan, carries the responsibility for the loan, is the sole respondent for the obligation and the sole entity in respect of consequences for failure to meet those obligation, is **NOT** in the banks view the person who should be contacted in view of critical event such as Buffer trigger and Margin Call?

77. Are the documents presented or at least which should have been presented to the client misleading and deceptive given the admissions (in writing and spoken word) by Mr Phelps, Mr Cameron and Mr Clothier that clients never get contacted by the bank?

PART SIX:

Mr Clothier is an executive manager of Colonial Margin Lending and a person found, by Judge Greenwood to have told an untruth to the Federal Court of Australia. The untruth was in relation to the extremely important point which had been under contention between the bank and Storm Financial CEO Emmanuel Cassimatis.

That point being that Cassimatis had given the instruction to sell all clients at LVR of 90% or above. Mr Clothier supplied an affidavit to the court suggesting that at a meeting of the banks representatives and Storm Representatives, Emmanuel Cassimatis gave the instruction. Tape recording transcripts of that meeting presented to Judge Greenwood led to the discovery that this was not the truth, and further Judge Greenwood rejected counsel for the Bank's contention that it was an honest mistake. Disappointingly no further action was taken by the court in relation to the matter.

The McArdle's forwarded a letter requesting information of Mr Clothier in relation to their Margin loan and the actions taken by the bank and other information that will be pertinent to subsequent inquiries.

Mr Clothier's response was again in line with the banks policy of denying all responsibility, and further blaming Storm and the clients.

It did point out that they provided no training to Storm Financial Advisors. This raises question as to the appropriateness of the bank allowing its business partner to broker hundreds of millions of dollars of loans on behalf of its clients. If this no training and I suspect no auditing was the banks position it would appear to be a gross case of deliberate negligence for the sole purpose of financial gain and benefit of both parties being CML and Storm Financial. It is also clearly at the expense of the client's consumer rights and contrary to public expectation of Australians biggest bank.

Mr Clothier continued to tell untruths to the McArdle's, when referring to the relationship between Storm and CBA/CML/CGI, by stating that CGI had only contributed to a sign that was hung at a dinner function during an overseas Storm arranged holiday. This is conflicted by numerous accounts from Storm clients who attended such holidays who were asked to contact the bank and thank them for contributing to the wonderful experience the holiday participants had had. Further "special loans" were offered to Advisors about the time Storm Financial was to float. Anecdotal evidence is also available about contributions to Christmas parties and other functions. Not only does this bring the honesty of Mr Clothier into sharp focus but also the appropriateness of his employment in the financial industry. It also tends to indicate an "unholy alliance" between these two business partners with dishonesty being employed to again mislead clients. This suspicion is highly elevated given attempts by the bank to distance themselves from Storm since early December 2008.

The rest of the questions asked of Mr Clothier and request for information by the clients were ignored or deliberately disregarded as inappropriate.

Mr Clothier was kind enough to supply the McArdle's with some of the documents relating to their loan application of August 2008. Unfortunately he was not aware of the guidelines set by the Privacy Act and forwarded the information with the details of other persons fully exposed. This would seem to be contrary to the intentions of the act as a whole but specifically section 6.1(c).

The questions and request subject of the above inquiry made directly to Clothier are now the subject of an official complaint to the Financial Ombudsmen's Service. Since this has been typed the Financial Ombudsmen's service has actively demonstrated a reluctance to assist the McArdles in their attempts to secure their personal documents from the bank. As a long term employee of the State Government I have seen such behaviour in other lazy and incompetent individuals and stand firm in stating that such apathy and contempt for the McArdles would result in a private sector firm going broke very quickly. If the positions were reversed I am sure the members of FOS concerned would certainly appreciate more assistance then they offered the McArdles.

PART SEVEN:

Since being all but financially destroyed, the bank has made it clear that it was the client's responsibility to monitor their position. This was to be done by a CGI website. Secret passwords and personal identification numbers were required to access the client's information.
The clients were neither informed as to the *requirement* to monitor other then being informed it was possible *if* we desired to do so. The McArdles have never had any interest in monitoring their own portfolios as closely as the bank is now indicating is required with such a loan. As such this product was never a suitable product for the McArdles and given proper disclosure this would have been evident. Further the McArdles were not provided the required access code to perform this monitoring function. This has been reported to Mr Robert Ralston at CML. Unfortunately since this advice has been sent, Mr Ralston has not provided a response. In fact Mr Ralston has preferred to not answer any questions. This is despite being supported by Senior Legal Council for the bank, Mr Charles Tilley in questioning the McArdles intentions, and suggesting that their correspondence was threatening. This ridiculous and frivolous accusation was address immediately; however Mr Ralston will not answer very straight forward questions.

78. A check of the computer system will show that the clients have never attempted to access the CGI website. Given what the bank is now claiming to be crucial component of the margin loan product, what risk management systems does it have in place for ensuring compliance by its clients?

Further investigation indicates significant flaws relating to the information available on this CGI website relating directly to LVR positions. As such perhaps ASIC could examine

79. What are the exact nature of these information flaws?
80. How long have they existed?
81. What attempts have been made to correct the flaws?
82. What work has been done since October 2008 relating to any and all changes on the website and within the programming of the site?
83. Who authorised and requested the work be performed and for what purpose?
84. Has any attempt been made to sanitise the system of evidence relating to issues at hand?

85. Can the bank explain why a client with a portfolio of any size let alone the size of this McArdle's portfolio was not given passwords to access this site? Especially given the banks eagerness to allocate blame to the clients for not monitoring their portfolio.
86. Is it appropriate that the application form is at best vague in it's instruction or responsibility and definition of the clients obligation to monitor their portfolio?
87. Does a notification via a possibly flawed information system to advise clients and financial advisors of trigger points of a minimally acceptable standard? Or put another way would the bank accept this if they were in the clients shoes?.
88. Should the bank have disclosed it was selling a product with defective technical element that the bank will rely upon under these circumstances?

ASIC:

To state that the individuals employed by ASIC have failed spectacularly in this matter is a gross understatement.

The McArdle's contacted ASIC twice by phone during their own due diligence re Storm Financial and the statement of advice they had been given.
On both occasions the McArdles spoke to the person who initially answered the phone.
Both times the client stated that they were considering a statement of advice provided by Storm Financial.
The clients wanted:-

- Information pertaining to the business.
- The CEOs
- Their compliance record and any concerns ASIC had in relation to any aspect of the company or its proposals.
- Further the McArdle's asked if ASIC could provide any assessment or refer them to an independent person to review the Storm Statement of Advice.

The McArdles were clearly told both times that ASIC could not help with any information re the company and its proposal, because any comment they did make, would leave them open to litigation. ASIC were able to tell me that Storm Financial was a financial planning company.

After the demise of Storm the McArdles were astounded to see reports from senior ASIC personal stating that they had concerns re Storm's gearing model during the same period that the McArdles had been in contact with them for assistance as a retail investor.

They went on to say that they couldn't do anything because of the bull market, and the perceived reception they would have got from investors who were making spectacular returns at the time.
This is the equivalent of a doctor watching people take heroin and stating there was nothing they could do to prevent the eventual overdose because they were having such a good time when they were high.

It is not ASICs charter to refrain from making unpopular decisions, announcements or warnings. If they had delivered their concerns, and their warnings were dismissed by investors, then ASIC could sit back and comfortably confirm they had done their job. This is not the case now.

In December 2008 Storm Financial contended in the Federal Court of Australia that the CBA had participated in deceptive and misleading conduct under the Corporations Act. This claim went before ***Judge Greenwood*** . The result of this mention was Storm ***met the required standard of proof to proceed to the hearing re claims that the CBA had participated in deceptive and misleading conduct under the Corporations Act. The standard of proof in this court is extraordinarily high.***

This case was to proceed to full hearing as a matter of urgency on the 9th of January 2009 despite leading counsel's quips that it would require them to work through the Christmas holidays.
On the 8th January 2009{note that this is the day before the trial }Storm were forced into liquidation as a result of legal gamesmanship by CBA. As a direct result the court case was forced to be abandoned and the CBA was free to escape scrutiny of the Federal Court where it could not apply its considerable influence. I am sure that this was not its intention and just a coincidence of its need to protect itself and it shareholders from Storm Financial.

Perhaps in the interest conducting a professional transparent investigation without favour or affection, malice or ill-will, ASIC could further examine these findings. It would be appropriate to have these findings explored and definitely in the public interest given that the suggestion of impropriety lies squarely on the shoulders of "one of the four pillars of our community".

Since the beginning of 2009 we have witnessed ASIC in damage control, not conducting the thorough and exhaustive task of investigating the roles of all players in this matter. This damage control includes what many in the financial industry perceive as a very peculiar and interesting, if not suspicious, and certainly unprecedented court action to "protect creditors" from the DOCA by Storm CEOS. Coincidently this action to close the door on the proposed Storm Financial DOCA, appears to be very favourable to the CBA. The CBA is a company that would appear to be an equal offender in this matter if not one that should be attributed a greater portion of blame. Yet ASIC seem more intent on explaining why they can not hold the CBA to account, then actually and conscientiously attempting to.

In March 2009 I contacted ASIC and anonymously asked if there was anyone there that could help me identify what statues I could research in order to find out regulations relating to margin loans. I made it quite clear that I did not want anyone to look up the statute or take any other action in relation to providing information. I was told that there was no one there that could assist with this matter as it was outside their jurisdiction. I pleaded to speak to anyone and stated that even a law student may be able to assist. This was met with what I recognise as a bureaucratic stone walling of someone who gets paid no matter how disinterested they are or what their work performance is like, yet still blames "the job" for their bad outlook on life.

This poses the questions:-
If I then went on to invest in a margin loan, would it be the ASICS position that there was no more it could have done to help the client as retail investor prepare for the pitfalls of this lending practice?
Would it be the position of the ASIC as demonstrated in the Storm Financial matter that the client was at least partly to blame?

After making further fuss in the print media about its determination to chase the banks, ASIC has appeared to be spending more time explaining that it is limited in what it can do, then actually investigating what it can do. This started with their head Mr D'Alisio when questioned by Senator Williams in Parliament. This claim is infuriating given the organisation has failed to recognise and act to correct the ludicrous limitations of the Corporations Act 2001 in relation to margin loans. This legislative short coming is now the excuse that ASIC appear to be going to use when explaining why they are not holding the banks responsible for their insidious behaviour in the Storm demolition by CBA.

The McArdles have been twice contacted by ASIC representatives determined to assure them that ASIC are in fact doing all that the public expect of them.

The second contact was as a result of a complaint that when questioned by an ASIC team member, No questions were asked regarding the banks involvement. Unfortunately, convincing the McArdle's of the ASIC commitment to examine the banks role was hindered by the notable absence of any evidence to corroborate these claims. The strength of ASIC'S convictions was further diminished with both these ASIC representatives pre-empting the investigations results by stating that they were limited by the by the lack of legislation available to them to act. They did assure the McArdle's that they would "keep their ears and eyes open in case something they could act on popped up".

It is of little consolation to former self made millionaires, bankrupted by their bank to know that ASIC are impotently sitting around with their ears and eyes open like stunned mullets.

If it is the claim that ASIC have acted appropriately in this matter and have done all that they can. Then ASIC may as well be dismantled as the joke that everyone in the financial industry, from insurers to planners and banks claim it to be.

CONCLUSION:

There seems to be widely accepted consensus that Storm Financial was appropriately dealt with by liquidation. That's because of it's involvement in the decimation of so many retail investors. Storm will, I am sure be found to never again be allowed to conduct financial planning services.

So then why should the CBA, who is no less an equal participant/partner in this scheme, be any different? Without the financial support of the CBA and others, Storm would have been impotent. CBA enabled this event to occur, and profited significantly, yet takes no responsibility while still extorting money from the people it

has ruined by way of investment loan repayments. Why should the CBA be allowed to lend ever again, given their behaviour in this matter?

Even worse the behaviours employed in addressing this situation with clients would suggest a systemic culture of dishonesty and non transparency which must surely bring into question the leadership of this organisation and its right to hold a financial services licence.

The making of a mistake is human and understandable especially during times of high stress such as were witnessed during September to December 2008. What is not acceptable is the lengths this bank has been willing to go to, to cover their incompetence. The lack of regard for the human devastation unleashed on the public since these events is nothing short of abhorrent and all involved should be dealt with in the harshest possible way including supervisors and managers.

Ralph Norris has to this date stood firm that Storm clients and Storm have only themselves to blame. If this is proven to be untrue and blame to any degree can be apportioned to the CBA/CML/CGI then Norris should be held accountable for the actions of staff under his control. He has received direct updates from executives involved in the debacle every second day and as such has no excuse for allowing the financial holocaust of so many Australian people. He should never be allowed to work in any capacity associated with the financial industry again or in any area where honesty and integrity are valued.

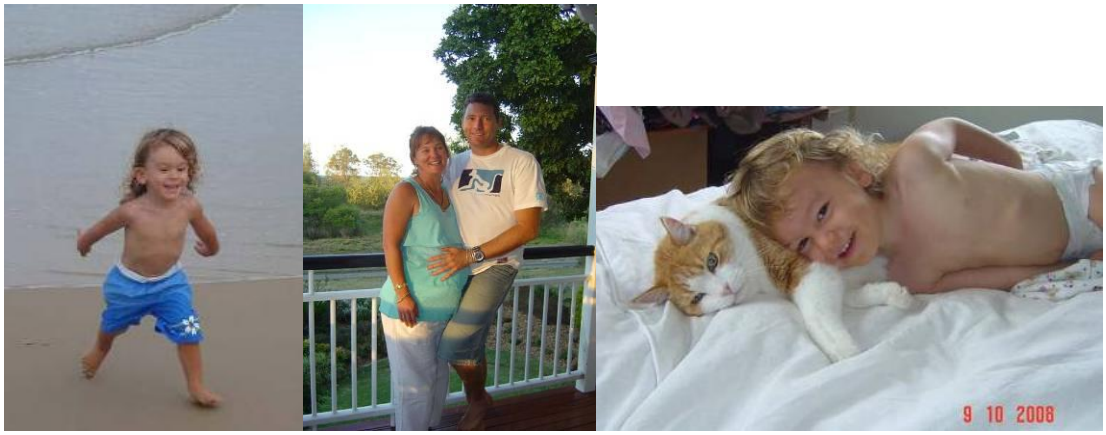
The bank will of course defend its position vigorously through our judicial system with the full knowledge that it can out last almost all clients and as such not have to pay compensation for the evil actions of a few incompetents within its ranks. This is exactly what they did on January 8th and resulted in Storm Financials case been aborted. No doubt the bank thought it was very clever in doing this and failed to show any regard for justice, morality and plain common decency. It's the purest example of American style business accruement of "profit at all costs" and disgustingly un-Australian.

I urge the Inquiry to lobby the Australian Government to order the CBA to show cause why it should be allowed the privilege to hold a Financial Services licence within Australia.

I would further urge the distinguished members of this Parliamentary Inquiry to lobby the Government to fund a test case on behalf of the victims in this matter so as to level the playing field against these corporate predators that have too much money and as a result too much power within the judicial system. This is an extraordinary situation and one in which the banks are clearly and comfortably sitting back believing it will not be held to account. This requires an extraordinary commitment by our government to hold our financial institutions to account and in the long term maybe restore some of the confidence that they were once regarded with.

We are honest, good people, not numbers on a balance sheet. For us this is not about saving face, nor is it not about profits or shareholders concerns. We worked incredibly hard and honestly to get what money we had. I didn't want my family to be like my mother, who struggled on a pension. That is the sum total of my greed.

To loose our savings in this manner is something that should concern all Australians with superannuation.



Noah-Jay, Paula and Sean McArdle

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Sean McArdle Paula Joanne McArdle