

**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (a)**

Submission No. 102

Submittor: Mr & Ms Richard and Jennifer Kaan
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SUBMISSION

**TO: SENATE OF THE COMMONWEALTH OF AUSTRALIA:
SELECT COMMITTEE ON SUPERANNUATIONS AND FINANCIAL
AFFAIRS**

FROM: RICHARD AND JENNIFER KAAAN

Members of the Kaan Family Super Fund
6, King Edward Street, Pymble, NSW 2073

27 March 2001

The background facts:

- In April 2000 Saxby Bridge Financial Planning Pty Ltd., who had a f precise understanding of our situation and investment strategies, recommended that we appoint Commercial Nominees of Australia Limited (CNAL) as trustee of our Family Super Fund.
- In May 2000 we appointed CNAL as trustee of our family super fund. In doing so, our family company resigned as trustee.
- The bulk of the assets received by the trustees of CNAL in early July 2000 was in the form of cash. After carrying out investment instructions, the residual cash component amounted to about \$288,000. CNAL had been instructed by to place this into a cash management account.
- .On 15 Nov 2000 directors of CNAL advised that they had suspended transactions in the ECMT and on 15 Dec 2000 provided details of the assets in the ECMT as at 30 June 2000, that is, before CNAL received our money.
- We wrote to the then directors of CNAL on 19 Nov 2000 informing them of our intention to withdraw funds from the ECMT.
- A meeting with the then directors of CNAL took place on 27 Nov 2000. At that meeting I told them that I held them personally liable for their duty of care. They both said that CNAL had been keeping ASIC and APRA informed.
- I wrote to the directors of CNAL on 20 Dec 2000 holding them personally liable should CNAL not be in a position to make funds in their care in the ECMT immediately available. I copied APRA and ASIC.
- I also wrote to them on 31 Dec 2000, warning them of an injunction unless they provided an undertaking not to dispose of any of the cash in the ECMT. This letter was unacknowledged, and has not been complied with.
- Both letters were passed to APRA during December 2000, along with other material setting out our dilemma.
- CNAL wrote to me on 11 Jan 2001 informing me of new directors and that APRA and ASIC were being kept informed by them.

- APRA acknowledged receipt of my correspondence as at 4 Jan 2001 and asked me to let them know if we heard from the directors of CNAL. **Nothing has been heard from APRA since then.**
- I wrote a personal letter to Jillian Segal, a commissioner at ASIC, who is known to me since we both have past connections to Harvard University and the Institute of Company Directors, on 2 Jan 2001. It summarized the dilemma and sought her urgent attention.
- She was on leave during January. She herself replied on 5 Feb 2001.
- In the meantime I sent a dossier on the matter to Jan Redfern, NSW Regional Counsel of ASIC on 3 Jan 2001, enclosing copies of key documents in my problems with CNAL.
- On 19 Jan 2001 I chased for a reply from ASIC and spoke to Megan Cassidy, who works in ASIC's Complaints Management Program. I had in fact not complained, rather I wanted, and still want, information on what ASIC was doing in its appointed role in this matter.
- She wrote to me 24 Jan 2001, *inter alia* thanking me for the effort I had made to bring this matter to ASIC's attention. She suggested a meeting with herself and Jan Redfern.
- I wrote to Minister Hockey on 24 Jan 2001, setting out the problems and calling for his support in my problems with CNAL; in the letter I stated I had heard that ASIC and APRA had first had their attention drawn to irregularities in the ECMT around May 2000. A person in Minister Hockey's office acknowledged receipt of the letter on 12 Feb 2001, indicating that the matter was the subject of legal action and that a reply would be forthcoming as soon as possible. **Nothing has ever been received from Minister Hockey.**
- The meeting with ASIC took place on 9 Feb 2001 at ASIC NSW offices. I heard, again, that the problems at CNAL fall partly into APRA and partly into ASIC; that ASIC had now appointed a receiver into the ECMT; that APRA was moving to suspend the trustee status of CNAL; that there was now a sense of urgency.
- I put to Jan Redfern that ASIC apparently knew something concerning deficiencies in the ECMT back in May 2000: she denied this. When I stated that this allegation had been reiterated during a recent conversation with Senator Watson, Jan Redfern stated that this was inaccurate.
- In reply to questions about proposed actions, she stated that CNAL's directors were in ASIC's sights for breaches of trust, and Saxby Bridge would be for negligent advice. There was no comment as to my concern about the energy and speed needed to produce a good outcome.
- Having had a brief telephone conversation with Senator Watson, I wrote to him on 8 Feb 2001, setting out the problem and requesting his help in galvanizing the regulators, who by now had not impressed me.
- On 20 Feb 2001 I wrote a second letter to Minister Hockey. In it I reiterated my concern at past slow action, congratulated him for ASIC's recent actions and encouraged him to evoke the provisions of the SIS (1993) Act, enabling him to replenish deficiencies in funds caused by failure in funds approved by APRA under certain circumstances.

- **Neither this or my previous letters to Minister Hockey has been answered.**
- On 20 Feb 2001 I also sought Senator Watson's support for tougher ministerial action, to repair the damage done to us because a defective fund had evidently not been properly controlled by the regulators.
- APRA finally sacked the CNAL trustee and appointed Oakbreeze, who have frozen the assets (mostly scrip) in our fund for 2 months. This prevents our moving to appoint a new trustee and from exercising our investment strategies.

OUR SUBMISSION:

- My wife and I are professional people, with extensive experience in investment. We are debt free, risk averse, conservative investors.
- We accepted Saxby Bridge's written recommendation to appoint CNAL as trustee of our Family Fund.
- The material supporting the recommendation also stated that CNAL had the approval of APRA to act as a trustee for DIY funds like ours: we derived additional confidence from the APRA backing.
- In point of fact, the position regarding the jurisdictions of APRA and ASIC over CNAL and its cash fund are still murky, and \$300,000 of our savings have disappeared into that murk.
- If APRA's attention was drawn to irregularities back in Feb 2000 by PricewaterhouseCoopers, why was nothing done for six months, during which the CNAL directors piled good new money into a flawed, unapproved cash account?
- APRA pointed out that the ECMT is unregistered and therefore not controlled by it. But we ask: how did APRA come to approve CNAL as a trustee in the first place without investigating the proposed cash account? It is a basic fact and expectation that every trustee structure needs a sound cash account through which to pass deposits, investments and income.
- Why was I given inaccurate, misleading information by ASIC in January 2001 regarding their knowledge of the CNAL situation 10months previous?
- This fiasco prevents us from controlling our Family Super Fund in the manner provided for by the super legislation and as we intended : the non-cash assets have not been released by the new trustee, preventing us from maximising our investment strategy. In addition, the \$300,000 in cash tied up in the ECMT is at risk.
- It will also cost us thousands in legal, travel and communication expenses.

- Hard-working, thrifty and experienced investors like us, coming to the end of their financially productive years, are entitled to believe that a Government-approved trustee, and one recommended by a Government licensed advisor, is sound.
- I have a serious heart condition which is exacerbated by stress. Be well aware that the last three months have been an extremely stressful time for us both, as a direct result of the recommendations of Saxby Bridge and APRA's and ASIC's supervisory incompetence. This will shorten my life expectancy, and our enjoyment together of the fruits of our hard-won investments..
- **We are entitled to place confidence in Government- approved advisors and trustees and now look to the Government for protection and restitution. We call on the Minister to invoke the provisions of the SIS Act (1993), and expect him to push through Parliament appropriate recompense for innocent victims, as he demonstrates that Australians can after all have confidence in the Government's supervision of the superannuation industry.**