

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

**Main Inquiry
Reference (a)**

Submission No. 105

Submittor: Name withheld

March 29, 2001

Chairperson
Senate Select Committee on Superannuation
Parliament House
Canberra

Subject: Commercial Nominees of Australia Limited

Dear Sir:

My wife and I are two people very much caught up in the present problems surrounding the Trustee company, Commercial Nominees of Australia Limited (CNA) which we believe you are now discussing. We therefore would like to make our story and concerns known to the Committee.

In January of 2000 money previously held in a Super Fund environment by my previous employer Caltex was put under my control as I had turned 55 years old and had left their employment five years before. In the six months prior to this event, my wife and I visited many Financial Advisors and sought advice on the various approaches to investing this money while maintaining it in a Super Fund environment that could ultimately lead to an Allocated Pension. Finally we decided to use the services of a Financial Adviser group known as Wealthy and Wise (now Pacific General Securities). Wealthy and Wise recommended (indeed it was their only recommendation on Trust companies) that CNA be utilized as the Trust Company to oversee and hold all investments so that the Fund (The ... Family Superannuation Fund) would be regulated by APRA rather than the ATO. The concept of a Trust Company involvement was also seen by us to be beneficial in allowing us to be able to rely on persons more knowledgeable of the Superannuation legislation than we could hope to be.

Because of a concern for the stock market potentially being overheated, we took a decision not to invest all of our money into the market when it became available but to instead slowly invest the cash into various market securities or managed funds so as to "average" our investments. We were satisfied with this approach to protect ourselves from the fluctuations of the stock market and we were advised that our Cash was held a bank cash management account. At mid-year as we were satisfied with the consolidated environment of the ... Fund, we rolled over the funds held in my wife's name in another Superannuation Fund, Mobile Superannuation of Sylvania.

In late July our Financial Adviser approached us with a recommendation that we move the Trustee responsibility from CNA to another group called Australian Superannuation Nominees Limited (ASN). This group was already doing our Fund Administration work and the recommendation was based on the efficiency of bringing both functions together in one trusted organization. I believe the Adviser also had concerns about the status of CNA at this time but this concern was not volunteered to us. We signed the authority to transfer the Trustee role and expected that action to take effect reasonably promptly.

Then in November we heard about the Directors of CNA freezing the assets of an Enhanced Cash Management Account and were told that we had some \$125,000 of cash in this account. We inquired about this with great concern as we had never heard of the account, known then

as the ECMT. We had thought that our funds were on deposit in a cash management account with a major bank and all of our routine reports showed our cash holdings as "Cash at Bank". We were also angry as more than three months prior we had authorized a change of Trustee and thought that we would not have any exposure to CNA by the November date when the account was frozen. However, obviously we had been mistaken and misinformed about both matters and since November we have not had access to a significant amount of money that represents a large share of our Super Fund assets. Worse than having no access, we were then informed in December that the investments made by the ECMT in fact had little value and our money would appear to have been reduced by 80 cents in the dollar (our \$125,000 had been reduced to a value of only \$25,000).

In January our Financial Adviser ran a briefing for clients like ourselves who had been caught up in this matter. From private discussions at that meeting we came to understand that most people there had lost potentially in the vicinity of \$10,000 not the \$100,000 that we seemed to be exposed to. The legal advice brought into the meeting, a Mr. W.W Madgwick of Garrett Walmsley Madgwick, indicated that the problems of CNA could be traced back to some bad investment decisions in the late 90's which probably caused them to enter into more risky investments to try to make up the loses. He indicated that it was likely that the nature of investments made by the ECMT would not be viewed as appropriate for money held in Trust within a Superfund environment and therefore the Directors of CNA may be held liable for fraudulent activity. However, he indicated that if they were guilty of fraud then the Indemnity Insurance required to be held by Trust companies would not be available to restore our position. This was the first time that the risk of never seeing our money again was raised as up to this point our Financial Adviser had indicated that restoration of our funds was only a question of time, ie until the Insurance policies held by CNA were called on to perform.

This is where things stand now. We still have no access to the funds that were originally held in Trust by CNA but should have been transferred to ASN Trustee responsibility prior to November (we are told that the speed of this transfer being effected in practice is determined by the company who is losing the Trustee responsibility and in this case CNA decided to move very slowly). We have explored through our own legal advice whether we have an action on our Financial Advisor who we trusted to be an expert in this area and aware of the status of the entities he was recommending for handling our fund. To date we have no determination on whether there is something to be pursued here.

The Superannuation environment is one that people like myself have relied on to create an asset that will be able to provide a secure and comfortable lifestyle in retirement. We thought in entering this environment that we had done the right thing in visiting and screening our Financial Advisor so that we could set up something that would be professionally managed with expert advice. We were aware in taking a greater role in where our funds were being invested that there were risks that assets might fall as well as rise due to the performance of the underlying investments and this fact caused us to be very nervous about understanding this aspect of performance. However, nothing in what we had learned and what we were monitoring prepared us for the sudden loss of funds "on deposit at a major bank", our understanding of the disposition of our Cash assets. In fact we were very comfortable in the erratic market in holding a substantial amount of cash that was earning a modest interest rate.

We are hopeful that in your discussion of the CNA issue that we believe is now before you that you can take into consideration the effect that this type of failure has on persons like ourselves. It has potentially wiped out many years of savings through a totally unanticipated

and unimagined peril. We also hope that you may be able to point us to where and how we might proceed to be able to recover as much of this money as we possibly can. Up to this moment we still have in effect lost the full \$125,000 as no funds have been unfrozen so even the routine bills of the Super Fund must now be met with either selling assets (in the present depressed market) or topping up Superfund contributions.

It had been our understanding that following some spectacular failures of Trust Companies a decade ago, that the legislation enacted had established a high degree of protection for small investors like ourselves. We are hopeful that this will still prove to be the case and ultimately our total funds can be restored to us but the present advice is very depressing. We look to you for advice and assistance in this matter.

Should there be any value in hearing directly from us on any aspect of the story above, we would be available to attend Canberra promptly for such a meeting over the next week.