


Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a)

Submission No. 146

(Supplementary Submission)

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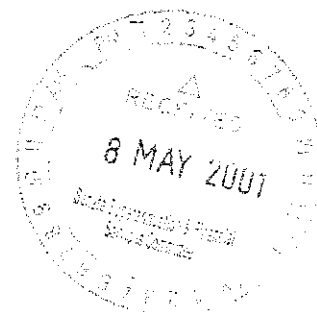
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- 8 MAY 2001

May 1, 2001

The Hon. Senator John Watson
Chairman, Senate Select Committee on Superannuation
Parliament House
Canberra, ACT 2600



Dear Senator Watson:

**Re: SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993
Application for Financial Assistance under Section 229**

We are writing to you to bring the attached letter to the Treasurer to your attention. This letter seeks the grant of Financial Assistance from the Treasurer under his powers within the Superannuation Industry (Supervision) Act 1993 following on a major loss of money from our small APRA Superannuation Fund, the Shuptrine Family Superannuation Fund. This loss has arisen from the collapse of the APRA approved Trustee company, Commercial Nominees of Australia Limited (CNAL).

We had from paper work supplied by or on behalf of CNAL through our financial adviser understood that our cash assets within the Fund were held "at bank". This proved to be some sort of euphemism as the funds "at bank" we have now discovered were improperly and potentially fraudulently invested in speculative ventures, eg a mushroom farm, and these ventures now appear to be valueless.

If fraud is established then we understand there is no prospect of any recovery against the insurance policies that must be held by the Trustee against investment losses.

We consider we are representative of the many small superannuation funds which have apparently sustained loss in this debacle. We had been concerned to invest wisely for our financial independence and security in our retirement years but appear to have become victims of the actions of Trustees which at best were ill conceived and at worst reprehensible.

It is our understanding that the circumstance in which we now find ourselves is exactly the circumstance envisaged when the above Act was passed by Parliament. We therefore believe that there is considerable merit to our request. However, we are also aware that the provisions of this Act have not been used up to the present time. We would therefore appreciate your assistance in pursuing and supporting the use of the Treasurer's powers in this circumstance to restore the Shuptrine Fund to the state it should presently be in, inclusive of the lost interest on the money within the Cash Management account prior to it becoming "frozen" and unavailable to us.

Thank you for your assistance in this matter. Should you require any further information from us, we would be ready to supply on your request.

Yours faithfully,



G.R. Shuptrine



M.J. Shuptrine

G.R. and M.J. Shuptrine

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May 1, 2001

The Hon. Peter Costello, Treasurer
Office of the Treasurer
Parliament House
Canberra, ACT 2600

Honorable Treasurer:

**Re: SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 –
Application for Financial Assistance under Section 229**

We are writing to you as persons gravely affected by the recent collapse of the Trustee company, Commercial Nominees of Australia Limited. In particular, we are writing to seek your support for the grant of Financial Assistance being made by our present Trustee to restore our financial position following our apparent loss of over \$100,000 from our Shuptrine Family Superannuation Fund. We understand that you have the power to grant such assistance under the provisions of the Superannuation Industry (Supervision) Act 1993.

We attach for your information a short description of the details of our involvement with Commercial Nominees of Australia Limited (CNAL). This note was created recently to submit to the hearings being conducted by the Senate Select Committee on Superannuation and Financial Services. We were not able to attend the hearing itself due to late awareness of the sitting time and date. However, we are most concerned at the actions of the Directors of CNAL. We have recently ascertained that our superannuation cash assets, which were supposed to be on deposit in a major bank, were invested instead on loan to mushroom farms and other speculative investments completely outside the scope of a cash management fund within a Superannuation Trustee company.

You might also be aware of a recent SBS Insight report on this matter which implied that fraudulent activity was present. Should this prove to be the case it would appear that this will breach any possible insurance cover for investment loss.

The SBS report indicated that we are probably only one of more than 200 small APRA funds affected by the at best negligent but possibly fraudulent activity of this APRA approved Trustee.

These lost superannuation funds represented a significant portion of funds we had received from superannuation payouts and had purposely rolled over into supposedly secure controlled superannuation funds to provide for our future retirement years. The loss of funds has created a significant negative impact on our financial security and potentially on our independence in retirement.

We have been professionally informed by our investment adviser that there is no reasonably foreseeable prospect of recovering more than 20 cents in the dollar of our lost investment

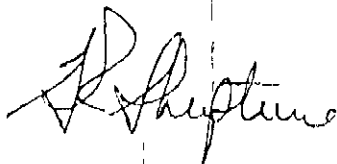
funds but even this proportion is not certain and is unlikely to be recovered for some time. Continued loss of our investment funds continues to cause us loss and damage as we are also losing interest on this capital which we would otherwise have anticipated receiving.

In this circumstance we believe that we can hope for restitution of our loss only through your powers under the abovementioned Act.

It is our understanding that an interim Trustee has been appointed by APRA to take the place of CNAL. This interim Trustee is Oak Breeze Trustees, a subsidiary of Price Waterhouse Coopers. We understand through reports from our financial advisor that Oak Breeze and our present Trustee (Australian Superannuation Nominees Limited) intend to make application for Financial Assistance to you and we trust that you will find this circumstance one totally deserving of your granting of such assistance.

If you require any further information from us or would like to talk to us about any of the details of our situation, we would be most ready to assist. Thank you for your assistance in this matter.

Yours faithfully,



G.R. Shuptrine



M.J. Shuptrine

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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 (CNAL) 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 CNAL be utilized as the Trust Company to oversee and hold all investments so that the Fund (The Shuptrine 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 Shuptrine 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 CNAL 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 CNAL 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 CNAL freezing the assets of an Enhanced Cash Management Trust 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 CNAL 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 CNAL 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 losses. 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 Superannuation Fund environment and therefore the Directors of CNAL 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 CNAL 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 CNAL 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 CNAL decided to move very slowly). We have explored through our own legal advice whether we have an action on our Financial Adviser 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.

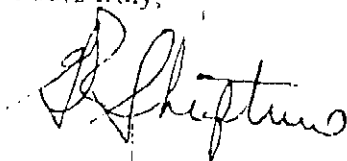
The Superannuation environment is one that people like myself have relied on to create an asset that will be able to provide a secure and comfortable lifestyle in retirement. We thought in entering this environment that we had done the right thing in visiting and screening our Financial Adviser so that 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 CNAL 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.

Yours truly,



G.R. Shuptrine