

### PROJECT MAGELLAN (PM)

The one common theme in all the cases brought before the Commission is that the bank decided to close down the loans even though the loans were being serviced within the loan agreements. The reasons were mainly on an LVR basis and the customer was ignorant of the internal background rumblings within the bank.

It is obvious that the bank did not conduct sufficient due diligence when assessing the loan book of Bankwest, but instead had internal assessments after the purchase which resulted in loans being terminated and all the onus placed on the customer who incurred significant financial distress and subsequent moral distress. They dressed up this internal process on the basis of a need to prepare financial accounts as a public company and therefore had to make provisions in their accounts.

Personally, I did not know about PM until I heard it at the RC. My case was not put on the basis of PM and I object to my evidence being dismissed in that respect.

That is not to say that I do not believe that CBA conspired to relieve itself of Bankwest loans it did not want to continue on its books for an ulterior motive and involved conduct falling below community standards.

### MY CASE

I placed emphasis on three acts by the bank which I considered to be unconscionable and falling into the category of misconduct and falling below community standards. There are other issues which can be listed with further detail.

#### FIRST– UNILATERAL VARIATION OF THE EXPIRY DATE OF LOAN FACILITY

The unilateral variation of the expiry date in June 2010 from the original fifteen years to June 2023 to a 12 months expiry just two years after the loan facility was implemented in 2008. The CBA has distorted the evidence and stated that I requested the change after negotiation. This is factually incorrect and a gross misrepresentation of the evidence. Why was the Relationship Manager not called with whom I had telephone conversations and the final verdict of the bank, on the expiry date, was communicated by him to me by telephone. I did not request the change and I have contemporaneous notes of my 'phone conversation with that Manager recording what I was told would be the terms of the facility. It has been proposed that the reason was to do with the rate of interest and that I would not accept the higher interest rate that went with the longer term, but the bank's own evidence shows that the bank provided the first variation to the expiry date of 24 months (from 15 years) in August at a higher rate than previously anyway, before any discussion or negotiation, this bank evidence also shows that internal discussions were taking place in June 2010 regarding the expiry date. The intent of the bank, from its own evidence, was clear and blind Freddy could see **but this has been ignored**. It took three months to finalize negotiations during which I continued to request retention of the expiry to June 2023. My goal was simple. As a business man I wanted to obtain a fair interest rate and maintain the expiry date of June 2023, in accordance with the original terms. The evidence of the bank showed that there were significant internal discussions on this matter, of which I was unaware, culminating in the bank in October 2010 telling me the terms, including the expiry date of 12 months, and the subsequent final variation letter in November 2010.

#### SECOND– ENGINEERING EXPIRY OF THE LOAN FACILITY

The bank engineered the expiry of the facility in January 2013. We attended a meeting in September 2012 to discuss the rollover of the facility. The bank was to initiate a valuation on a time of the essence basis in order to be in a position to rollover the facility. They did not engage the valuer until November and in December at our request on this subject we met again only to be advised by the CBA Manager there was insufficient time to rollover and we needed to enter a Deed of Forbearance (DOF). My wife, a Solicitor, has contemporaneous notes of this meeting. The bank's evidence seeks to counter my evidence by saying that this was not the case but tellingly they have no records of this meeting to produce. The CBA has fabricated a position in their submission by saying that "at expiry in January 2013 I had not sold GME's or sold the house" and stating we were in "Monetary Default" which is completely false and their own evidence states, in a Strategy Paper prepared by a CBA employee Suzann Chan on 10 December 2012 that, **"there is no Monetary Default"**. The CBA has implied that this was the reason for entering the DOF when the DOF terms clearly show those sales were to happen going forward and their evidence disputes the assertion that there was monetary default at this time.

### **THIRD – UNILATERAL CANCELLATION OF THE DOF AFTER 5 WEEKS FROM SIGNING**

The bank unilaterally cancelled the DOF after 5 weeks from signing in late January 2013 on a technicality.

**The DOF contained a further two (2) year facility.**

The bank was requested, under the terms of the DOF, to extend a date to receive the funds from the sale of the GME's by two weeks. The bank cancelled the DOF on 05 March 2013 one week after this request. The bank received the funds on 08 March 2013 which was within the requested extension. The bank did not respond to the requested extension.

Despite repeated requests from myself and the Solicitor acting for me on this matter, the bank did not withdraw the cancellation. This DOF had been negotiated with the assistance of a Solicitor at a cost of \$8,000.

**The bank obviously had no intention to honor the DOF because it contained a further 2 years facility.**

**These items required rigorous examination which I was expecting to occur at the Royal Commission. Instead Counsel Assisting virtually led the bank on the bank's subsequent submissions where they exonerated themselves. Breathtaking**

### **OTHER ISSUES**

#### **LACK OF PROCEDURAL FAIRNESS**

No advice on being able to engage a representative at the cost of the RC to cross examine the bank's evidence and their submissions.

The Counsel Assisting virtually led the bank on its submissions and all they had to do was agree and then the bank put forward misrepresentations and fabrications to shore up their position. These were not challenged.

#### **LACK OF RIGOROUS CROSS EXAMINATION**

There was no regard for the underlying content in the evidence of witnesses and the intent behind the bank's conduct. In addition, there was no examination of the bank's evidence where it clearly does not support the submissions by the bank and also disclosed the internal ruminations by the bank in determining the bank's course of action relative to loans.

#### **BANK'S CONDUCT**

Where the bank's positions on loans were being formulated in internal discussions there was no communication to customers to allow some fruitful discussion on those positions. There was no timely alert and there was no intent to abide by the Banking Code of Conduct. This is conduct falling below community standards and **displays a complete lack of transparency.**

The bank has distorted evidence, contrived to mislead the Commission and made factually incorrect statements. Their intent leading to their actions of calling in performing loans can only be described as **unconscionable and misconduct of a most serious nature.**

Customers have been driven out of their businesses, lost their homes and suffered catastrophic financial losses, even though they were performing their obligations within the loan agreements. Why? **This question has not been rigorously pursued.**

#### **FAMILY TRAGEDY**

I gave evidence on 28 May 2018. On returning to Sydney I was informed that my Sister was terminally ill. My Sister died on 08 June. I was unaware of the dreadful content of the closing remarks and the bank's submission until later. I sought an extension so I could respond publicly to those items but I was denied.

#### **VALUERS AND RECEIVERS**

There has been no examination of the roles, actions and possible corruption of these participants in the process of depriving customers of their livelihoods. The Commission should carry out this examination.

#### **SUMMARY**

No customer, especially those performing their obligations, should be demonized and pursued like a criminal in a legalistic vacuum when they have done nothing to precipitate action by the bank. The RC needs to address this.

