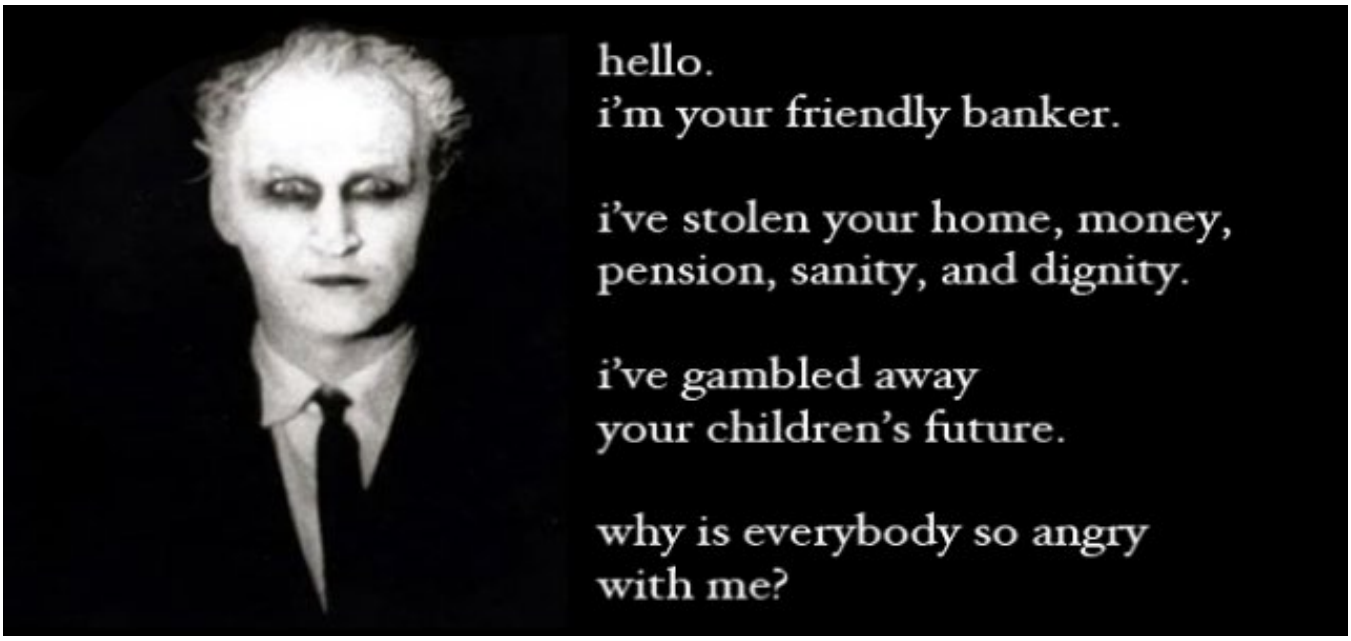
NAB - Guilty

Summary:
The Federal Court has today declared that the National Australia Bank acted unconscionably in its dealings with a Tasmanian woman, Mrs Kathryn Ashton.

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Federal Court Declares NAB Acted Unconscionably

The Federal Court has today declared that the National Australia Bank acted unconscionably in its dealings with a Tasmanian woman, Mrs Kathryn Ashton.

The declaration follows proceedings taken by the Australian Competition and Consumer Commission. The proceedings were settled after mediation between the parties and today's declaration was made by consent.

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"The ACCC alleged NAB sought and enforced a personal guarantee for $200,000 to cover loans to Mrs Ashton's husband's business, using the couple's Mt Nelson, Hobart home as security, and then withheld $7,760 over and above the home mortgage amount, realised after the home was sold", ACCC Chairman, Professor Allan Fels, said today.

The guarantee was obtained from Mrs Ashton in June 1998 as security for a business loan to a company of which Mr Mark Ashton was a director. The ACCC alleged that at the time Mr Ashton was seriously incapacitated. Mrs Ashton executed the guarantee in her own name and in her husband's name, exercising a power of attorney. She was not a director or shareholder of the company.

The ACCC alleged that when NAB sought Mrs Ashton's guarantee, it did not explain the nature or effect of the guarantee, or advise her that she should obtain independent legal advice. The ACCC also alleged that NAB knew the company was in serious financial difficulty but did not inform Mrs Ashton. A year later, NAB demanded payment of the company's debts to the bank secured by the guarantee. The ACCC alleged that enforcement of the guarantee resulted in the sale of the Ashton's family home and NAB required the entire sale proceeds to be paid to the bank.

After the ACCC instituted the proceedings NAB annulled the guarantee signed by Mrs Ashton and refunded to the couple with interest the excess money taken from the proceeds of the sale of the Ashton's family home under the guarantee which amounted to $7,760. The ACCC and NAB engaged in mediation which resulted in agreement on orders to be sought from the Court. As part of the settlement NAB consented to pay $28,500 to the Ashtons for damages, the claim for which included emotional stress, caused to them by NAB’s conduct, and consented to pay the ACCC’s taxed legal costs.

"The prohibitions on unconscionable conduct in the Trade Practices Act 1974 will continue to be an ACCC enforcement priority", Professor Fels said. "NAB and other financial institutions should not take unfair advantage of a person in a vulnerable situation by obtaining a guarantee without ensuring the person has full knowledge of its terms and effect.

"It is of particular concern that NAB has been found by the Courts on three previous occasions in 1988, 1998 and 1999 to have engaged in unconscionable conduct in relation to the obtaining and enforcing of personal guarantees, and has now again admitted to the Court to have engaged in such conduct.

"Banks and other financial institutions which obtain guarantees from individuals to meet the debts of others should ensure that the person giving the guarantee understands its terms and effects".

The Court today ordered, by consent, injunctions against NAB and one of its Hobart business banking managers, Mr Carlton Dixon, to restrain them from obtaining personal consumer or business guarantees in Tasmania without properly explaining the nature of the guarantee and the need to obtain independent legal advice before signing the guarantee.

The Court also ordered by consent that NAB include in its internal Lending Manual a statement requiring all the NAB’s lending staff throughout Australia to strictly comply with these procedures when obtaining personal consumer or business guarantees. The Court also ordered by consent that NAB circulate to all its lending staff throughout Australia a bulletin to this effect.

The ACCC acknowledges that NAB has consented to orders being made by the Court thereby avoiding the need for a contested hearing.

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