Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
P O Box 1473
Wellington 6140

Conduct of Financial Institutions

Privacy of natural persons

Brief nature of our issue:
We were once the owners of a 150ha sheep and beef property in Marlborough with no debt. In the process of developing our freehold farm into a vineyard and dealing with "Bank P", we ended up with nothing. The "Bank P" manager, "HE" ended up owning the finished vineyard.

Outcome sought:
I want "Bank P" and their employee taken to court and their corrupt dealings exposed. We spent over $800,000 on legal fees trying to get discovery which was only partially successful because "Bank P" thwarted us at every corner and caused us to eventually run out of funds to pursue this matter any further. Public exposure of "Bank P's" corruption is what we seek. We want restitution for the damage.

Public Interest:
I believe NZ has insufficient tools and oversight to prevent big business preying on individuals such as ourselves and getting away with it. It is in the public interest to have confidence in large corporations to have processes and controls on their employees with regard to insider knowledge and advantages. "Bank P" had no controls over this employee. Our story is how the relationship manager who had no money to invest, conspired to end up owning the completed vineyard himself and we were left with nothing. The justice system did not facilitate the private individual when the opposing party is a large banking corporation. "Bank P" closed ranks. We could not go to court as our funds had run out.

Brief History
The senior "Bank P" bank manager was "HE". "HE" was the Equity Partnership Specialist based in Christchurch. We were referred to "HE" by a large accounting firm. "HE" became very interested in our property and personally invested shares in the project right from the beginning. How he conspired to gain control is extremely convoluted. Harvest forecasts, were doctored, to support bank loans much larger than we ever intended. Interest rate swaps were put in place that the early income could never support. In hindsight, it was inevitable that the bank would eventually put the business into receivership.

How "HE" gained control is, we think, too convoluted to pursue. It would be easier to just concentrate on the receivership sale process, which clearly wasn't in our best interests.

By September 2010 the vineyard could no longer pay interest on the debt of $7.8m owing to "Bank P"". "HE" and friends owned 45% of the company and had gained control. They refused to contribute further even though we were prepared to and "Bank P" put the company into receivership.

"Bank P" appointed a receiver who appointed a Real Estate company in Auckland to sell the property. A marketing programme was drawn up. It was proposed to market the property both internationally and nationally.

The local manager for the real estate company in Marlborough specialised in selling vineyards and he started immediately to take clients over the property. What we did not know at this time was a prospective purchaser from Southland had contacted the real estate agent in late 2010 and had expressed interest in purchasing the vineyard at $8.0m. He made an offer of $8.0m in January 2011 (I have a copy). By March 2011 the purchaser contacted the local agent. The purchaser had become incredibly frustrated with the real estate company and the Receiver who would not discuss the matter with him and requested could he deal direct with the Blenheim agent. After some negotiation, we accepted the purchaser's increased offer of $9.5m which the Blenheim real estate agent processed for presentation to the Receiver.

The Blenheim real estate agent was then the recipient of the obfuscation and elusiveness of his Auckland office and the Receiver.

So frustrated were we all that we contacted a consultant, for advice "Mr C"". "Mr C" was able to ascertain from the receiver that the vineyard had been sold. The Receiver would not say to whom or at what price. Our lawyers battled for a month with the receiver to eventually find out that the receiver had accepted an offer of $6.2m from "HE" and friends, which coincidentally was the value of the loans owed to "Bank P"", less personal guarantees.

Why did the Receiver sell to "HE" 3 weeks before harvest, with another party interested at a higher price and before the marketing campaign was completed? Why did the receiver sell the vineyard when he had told us that because it was a young vineyard with no proven yield the price it would currently fetch would not reflect its value, therefore he would not sell the vineyard prior to harvest? The harvested grapes went immediately after purchase to "HE" and friends, $600,000.

The only reason this situation eventuated was because of the lack of internal controls "Bank P" had. The systems were weak and the opportunities were open for employees to "prey" on the public. The public had every right to believe they were protected with legislation and banking controls.