NAB - Guilty Of Unconscionable Conduct

Summary:
National Australia Bank caught red handed after decimating a Tasmanian family with an unconscionable $200,000 fraud. ACCC to the rescue.

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ACCC Alleges Unconscionable Conduct By National Australia Bank

The Australian Competition and Consumer Commission (ACCC) has instituted proceedings in the Federal Court alleging unconscionable conduct by National Australia Bank Limited in breach of the *Trade Practices Act 1974*.

The ACCC alleges that **NAB** contravened the unconscionable conduct provisions of the Act in relation to obtaining personal guarantees and indemnities for $200,000 from a Tasmanian woman as security

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for a business loan to a company of which the woman's husband was a director. At the time the personal guarantees were executed, the woman's husband was seriously incapacitated. The wife executed a personal guarantee for $200,000 in her husband's name exercising power of attorney and a personal guarantee for $200,000 in her own name.

The wife was not a director or shareholder in the company for which the personal guarantees were sought by **NAB** and had no involvement with the day to day running of the company. The ACCC alleges that she was an inexperienced person in business matters generally.

Following the subsequent financial failure of the company, **NAB** on at least four occasions demanded that the woman and her husband re-pay **NAB** the monies owed to the bank by the failed company on the basis of the personal guarantees previously executed by the wife. The ACCC alleges that in response to **NAB's** payment demands, the couple sold the family home, the entire proceeds of which were recovered by the bank. The ACCC further alleges that **NAB** is improperly withholding thousands of dollars from the sale of the home.

The ACCC is seeking court orders including:

- A declaration that NAB has breached unconscionable conduct provisions of Part IVA of the Trade Practices Act
- An injunction restraining NAB from engaging in similar conduct in the future
- An order that the personal guarantees and indemnities obtained by NAB from the wife are of no force or effect
- An order requiring NAB to repay all excess monies recovered by the bank from the proceeds of the sale of the couple's family home, in connection with the personal guarantees and indemnities obtained through the wife
- An order requiring NAB to pay damages to the couple for emotional distress
- An order requiring NAB to review its trade practices compliance program
- Findings of fact; and costs.

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