NAB Breaches Trade Practices Act.

Summary:
NAB once again under scrutiny from the corporate regulators for unconscionable conduct. Personal guarantees have to be explained to the customer, or the opportunity given to obtain independent legal advice. NAB's non-compliance is a breach of the Trade Practices Act.

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Article: Regulator Examines NAB Over 'Breach'

NATIONAL Australia Bank, which has only recently emerged from the greatest scandal in its history, is again under investigation by the corporate regulator.

The nation's biggest bank has been accused by the Australian Securities & Investments Commission of failing to fully inform a customer about the risks she faced when she offered her property holdings

as security for her son's business.

As a result, Faouzia Safetli alleges she and her family were forced to sell about $9 million worth of property and she lost her home just four weeks after the death of her husband.

> ASIC is investigating allegations that NAB breached court orders and engaged in unconscionable conduct in 2003 by enforcing guarantees extracted from Ms Safetli, an elderly woman of Lebanese descent with only limited English.

Her case is significant because the courts have found NAB engaged in similar conduct on four separate occasions, with the most recent instance in 2001 when the Federal Court laid down a strict code of behaviour for NAB lending officers.

News that NAB is again entangled with regulators comes only months after the bank satisfied the industry watchdog, the Australian Prudential Regulation Authority, that it had changed its culture and put new systems in place to deal with the 2004 foreign currency options disaster.

The $360 million in losses suffered by the bank led to a restructure of the NAB board, including the resignations of chairman Charles Allen and chief executive Frank Cicutto.

A NAB spokesman said yesterday the bank had complied with its Federal Court undertakings, and was co-operating with ASIC in the latest investigation.

"We are actively trying to resolve the concerns of Mrs Safetli and ASIC, but due to privacy requirements we can't discuss customer details," he said.

The code of behaviour, contained in Federal Court consent orders, specifies that personal guarantees have to be explained to the customer, or the opportunity given to obtain independent legal advice. The court said non-compliance would be treated as a breach of the Trade Practices Act.

ASIC makes it clear in a May 4 letter to NAB’s solicitors, a copy of which has been obtained by The Australian, that it believes the bank might have breached the code in the Safetli family case.

"The statutory declarations, which stated that she had received independent legal advice before signing (the guarantees) were therefore false and known to be false by the NAB," ASIC's director of investor and consumer protection, Warren Day, says.

Mr Day later says that NAB’s conduct "raises questions" about the quality of its internal compliance procedures, and the integrity of its commitment to the Federal Court orders.

The NAB spokesman said the bank's internal procedure was to explain personal guarantees and advise customers to obtain legal advice. "We believe we met the undertakings given to the Federal Court in 2001," he said.

In the Safetli family case, Ms Safetli provided two guarantees and accompanying statutory declarations for a NAB loan to her son's tyre business.

Mr Day says in his letter to NAB’s solicitors that Ms Safetli could not read or understand the guarantees, as she had "limited knowledge of English (and) limited reading ability and comprehension".

Despite that, the bank acted on the guarantees when the business hit trouble, selling about $9 million of property and removing her from her home four weeks after her husband died.

The NAB spokesman said Ms Safetli had legal representation in a NSW Supreme Court case that

concerned her home. "The issue of unconscionable conduct was not raised and the court ruled in favour of NAB," he said.

The Safetli family's battle against NAB, spearheaded by Dispute Assist, a firm independent of the Banking Industry Ombudsman that helps customers who are feuding with their banks, is continuing.

Last year, NAB, which holds a second mortgage over the one remaining property held by the Safetli family in Camden, southwest of Sydney, issued a writ against the owners of the property, Ms Safetli's son Haissam and his wife, Amanda.

In Mr Day's letter to NAB's solicitors, ASIC asks the bank to remove the writ.

The watchdog says this would enable it to conduct its inquiries "without the distraction".

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