

From:
To: [MG Consumer Law](#)
Subject: Unfair Trading Practices :- Financial Industry :- Submission by 29th November 2023
Date: Sunday, 5 November 2023 5:15:23 PM

Hi,

I hereby provide my submission on an issue which I believe is an unfair trading practice, due to the playing fields not being level...with unfair contract terms...and limited bargaining power by a small business/or individual...controlled by a very big business.

My background

I have been in the financial industry for 50 years now, working my way up employed in the banking industry for 27 years, before becoming a mortgage broker for 23 years.

I am self-employed in an industry that is now attending to 70% of all mortgage loans in Australia. As I head towards retirement, I am hoping I can contribute to the financial industry, by way of pointing out what I believe is an unfair *'take it or leave it'* trading practice which results in a small business/or individual having no chance to negotiate rights and obligations. A clear imbalance is demonstrated in this issue which needs to be rectified.

In November 2022 legal changes passed by Federal Parliament, introduced penalties for contracts stipulating unfair terms.

One would have thought big business making millions from the services of small businesses who have to abide by one sided contracts, would have subsequently reviewed their standard contract terms, to address obvious imbalances. Their refusal to do so is against the initiatives of Government spending time and resources to attempt to stamp out unfair trading practises.

The mortgage broker Industry in Australia

This is growing and is a critical part of a very well regulated industry.

Brokers trade mostly as self-employed sub-originators, using an aggregator that has secured loan origination agreements with lenders.

Aggregators make brokers sign contracts which set out terms and conditions including remuneration details.

Unfair term in contract:- Clawback

Soon after a mortgage loan settles, the bank/lender pays an origination fee/commission to the aggregator, who deducts their portion of the income and pays the broker the balance.

An example of this would be:-

Home loan amount say \$350,000 with say .65% payable to the aggregator = \$2,275 paid to aggregator who deducts say 15% = \$341.25 income for the aggregator, who then pays the broker the balance of \$1,933.75

Commission Clawback terms exist If the loan is paid out quickly in the lender's books, normally within the first year or two...as follows:-

Loan paid out in first year = 100% clawback and 50% clawback in the second year.

The contract term in the aggregator/broker contract, setting out terms when a clawback is imposed, stipulates that the aggregator does not apply their initial income component to the clawback.

If a loan is paid out in the first year, the aggregator claws back the full amount from the broker, namely \$2,275...and therefore retains their \$341.25 component of the origination fee/commission.

The broker therefore suffers a loss of \$341.25 because their initial income was only \$1,935.75 but has to absorb the full clawback amount of \$2,275

The broker would have spent many hours on the deal as follows:-

Assessing the borrower's requirements, needs and objectives...according to and in terms of stringent rules and regulations.

Determining the most appropriate lender, product etc.

Preparing the application to the lender, gathering supporting documents etc.

Submitting the application and then seeing to further loan application requirements, execution of loan documents...and staying on top of the settlement process.

The broker's work from beginning - settlement, is hours and hours of work.

Brokers are consumers, relying on commission income to support families.

The aggregator does not spend any time on the deal, but retains their component of the origination fee / commission, whilst the broker suffers a net loss.

Aggregators are massive companies making millions profit every month.

This is an unfair, unwarranted, one-sided trading practice.

Further details

Lender loyalty is a thing of the past...never to return again. Many claw-backs arise when a borrower can get a better deal from another lender seeking to gain market share, offering a reward and a better rate to move their home loan to them...within one or two years of the first settled deal.

The aggregator gets a new origination fee after the broker again spends many hours arranging the new refinanced loan...but the aggregator still does not refund the broker their initial income on the first deal.

Remedy/how can this unfair trading practice be rectified

All aggregators must be instructed to immediately amend the contract that the broker had to sign, by way of a deed of variation...stipulating that the aggregator's share of the initial origination fee/commission, will no longer be included in the broker's claw back amount.

Furthermore, it should be pointed out to the aggregator that the broker should be refunded all the amounts that the aggregator has clawed back unfairly since the unfair trading contract was signed.

Aggregators should be made aware of the fact that if they do not comply, they can be financially penalised in terms of law introduced on 9th November 2022 :- up to \$50 million.

If anyone wants to discuss the above further with me, by all means communicate.

Regards,

Paul Pietersen

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