

Form 59
Rule 29.02(1)

Affidavit

No. NSD719 of 2020

Federal Court of Australia
District Registry: NSW
Division: General

Etienne Alexiou

Applicant

Australia and New Zealand Banking Group Limited (ACN 006 357 522)

Respondent

Affidavit of: **Douglas Farrell Stolberg**
Address: 
Occupation: Retired
Date: 9 November 2023

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Filed on behalf of (name & role of party) Australia and New Zealand Banking Group Limited, the Respondent
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[Version 3 form approved 02/05/2019]



I, Douglas Farrell Stolberg, of [REDACTED], retired, affirm:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), from August 2008 to May 2019.
2. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.

Employment history with ANZ

3. I commenced employment with ANZ in August 2008 in the role of Head of Institutional Banking for Europe & America.
4. In September 2010, I commenced in the role of General Manager – Americas, based in the United States.
5. From February 2013 to January 2018, I was the Chief Risk Officer, International and Institutional Banking, based in Hong Kong and responsible for overseeing the overall risk management of the International and Institutional Banking division globally.
6. From January 2018 until the cessation of my employment with ANZ in May 2019, I occupied the role of Chief Wholesale Credit Officer for the ANZ Group.

Involvement in the decision to clawback Etienne's deferred unvested equity

7. As the Chief Risk Officer, International and Institutional Banking, I was consulted in relation to recommendations made to the Clawback Review Group (the **CRG**) for the downwards adjustment or clawback of the deferred cash/equity of employees in the division. My role was to determine whether I considered the proposal was consistent with how other employees were treated in the same or similar circumstances, and there was a logical basis supporting the proposal. I was also responsible for assessing the proposal from a risk management perspective as the risk lead for that division of the business. If the proposal concerned an employee's compliance with their risk responsibilities, I considered whether I agreed with the interpretation taken by the manager presenting the proposal. If I supported the proposal, it was submitted to the CRG for decision, provided it was also supported by the Chief Executive Officer and the General Manager, Human Resources of the International and Institutional Banking division.
8. The proposal concerning the Applicant (**Etienne**) was emailed to me by Mark Evans, Chief Compliance Officer, on 27 August 2015. Now produced, shown to me and marked 'DFS-1' is a copy of the email from Mark Evans to me dated 27 August 2015 and its attachments. Mark Evans sought my support for a recommendation that ANZ clawback 100% of Etienne's deferred unvested equity (the **Clawback Recommendation**).

CB 4051
ZNA.001.001.1968

Andrew Geczy (at that time, the Chief Executive Officer of the International and Institutional Banking division) and Anouk De Blieck (at that time, the General Manager, Human Resources of the International and Institutional Banking division) were copied to the email. The email attached a paper that described a disciplinary process that had been conducted in relation to Etienne and the findings of that process, and confirmed the decision by Mark Evans to terminate his employment. The email also attached examples of communications sent by Etienne which had been the subject of the disciplinary process. In my role as Chief Risk Officer of the International and Institutional Banking division, I did not supervise Etienne or have any oversight of his trading activities from a risk perspective. Shayne Collins, Group General Manager Markets Risk, was the responsible risk officer with oversight of these activities.

9. When I received this email, I was aware that there had been a review of the communications of certain Global Markets employees and disciplinary processes had been conducted following this review in respect of certain employees. I knew this because Mark Evans had previously sought my support for proposals taken to the CRG in relation to other employees in the International and Institutional Banking division who had been investigated as part of that process. I was not involved in the review of employee communications, or the subsequent disciplinary processes nor did I receive updates about their progress.
10. I read the paper and the examples of communications provided to me by Mark Evans. The proposal did not concern trading or hedging activity. Rather, it concerned compliance with ANZ's Code of Conduct and Ethics (the **Code of Conduct**) which is a document that sets out the behavioural standards expected of employees. I read the documents carefully. It was my usual practice to read the material in support of a proposal carefully because I recognised that the consequences for the individual, as a result of the clawback of remuneration, can be significant. I was satisfied that it was appropriate for Mark Evans to take the Clawback Recommendation to the CRG for consideration for the following reasons:
 - (a) findings had been made that Etienne had breached the Code of Conduct and ANZ policy by his conduct. Mark Evans' paper identified that this conduct had occurred over a period of time, including the period during which the equity had been granted. Had ANZ known of this behaviour at the time, in my view, it was likely that the equity would not have been granted in the first place;
 - (b) the Code of Conduct was explicit as to the standards expected of employees and, based on my experience working at ANZ, I considered that extensive efforts were made by ANZ to reinforce those standards through means such as regular training;

(c) I was satisfied that ANZ had conducted a process to review the communications to which Mark Evans had given considerable time and thought; and

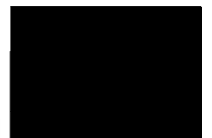
(d) the proposed consequence was consistent with the approach taken in relation to other employees investigated as part of that review of employee communications. The Clawback Recommendation was consistent with prior recommendations made by Mark Evans which were presented to the CRG and ruled upon.

11. On 28 August 2015, I replied to Mark Evans' email to confirm that I supported the Clawback Recommendation. In my email to Mark Evans, I said that I endorsed the Clawback Recommendation on the basis of his note and the extensive deliberation already conducted by the relevant stakeholders. By this comment, I was referring to the review of employee communications referred to in paragraph 9 above (which I was aware had occurred, but was not involved in), and the consideration by Mark Evans, Andrew Geczy, Anouk De Blicck, myself and the CRG in relation to prior cases with similar circumstances. Now produced, shown to me and marked 'DFS-2' is a copy of my email to Mark Evans dated 28 August 2015.

CB 4095
ZNA.001.001.2011

Knowledge of alleged complaints and disclosures and involvement in decisions relating to Etienne's employment

12. I endorsed the Clawback Recommendation solely for the reasons in paragraph 10 above. No other reasons played a part in my decision to endorse the Clawback Recommendation. In particular, I deny that I provided my support for the Clawback Recommendation because of complaints and disclosures allegedly made by Etienne during his employment, including:
- (a) the October 2011 Complaint;
 - (b) the February 2013 Complaint;
 - (c) the 17 July 2014 Complaint;
 - (d) the 18 July 2014 Complaint;
 - (e) the October 2014 Complaint;
 - (f) the February 2015 Complaint;
 - (g) the First ASIC Disclosure;
 - (h) the Second ASIC Disclosure; and
 - (i) any other complaint or disclosure allegedly made by Etienne in December 2014, as those terms are defined in the Second Further Amended Statement of Claim.



13. Etienne did not make any of the alleged complaints or disclosures referred to in paragraph 12 above to me. I did not have any knowledge of these matters prior to learning of the allegations made by Etienne in these proceedings.

14. I did not make, nor was I involved in the alleged: Standing Down decision; the decision to issue the Press Release; the decision to commence the Disciplinary Investigation; the Termination decision or the Withholding of the 2014 Bonus decision as defined in the Second Further Amended Statement of Claim. My participation in the internal decision-making process that led to the alleged Forfeitures decision as defined in the Second Further Amended Statement of Claim is as described in this affidavit.

Affirmed by the deponent
at Petoskey
in Michigan, United States
on 9 November 2023
Before me:



Signature of witness

Full name of notary: Therese Bujold

Date of notarisation: Nov. 9, 2023

Commission expiration date: Nov. 8, 2029

County of commission: Emmet

County of execution: Emmet

