

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 005 357 522)

Respondent

Affidavit of: **Susan Rebecca Babani**

Address:

Occupation: Retired

Date: 8 November 2023

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I, Susan Rebecca Babani, of [REDACTED]
retired, affirm:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ), from December 2007 until November 2017 In the position of Chief Human Resources Officer.
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. In December 2007, I commenced employment with ANZ in the role of Chief Human Resources Officer. I held this role for the entirety of my employment with ANZ.
4. In my role as Chief Human Resources Officer, I was a member of the ANZ Executive Committee reporting to the Chief Executive Officer. I had overall responsibility for the Human Resources function, including Remuneration and Benefits, Talent, Culture, Learning, Resourcing, Diversity and Inclusion as well as providing strategic business partner support covering Australia, New Zealand, Asia, Pacific, Europe and the United States.
5. Prior to my employment with ANZ, I held various executive roles in large global institutions in the United Kingdom, Canada, the United States, China and the Philippines.

Membership of the Clawback Review Group

6. From August 2013 until November 2016 (after which I commenced gardening leave until the end of my employment), I was a voting member of the Clawback Review Group (the CRG) in my role as Chief Human Resources Officer.
7. The CRG had the discretion to "clawback" or adjust employees' deferred unvested equity/cash downwards (including to zero). The exercise of that discretion required confirmation by the Board or the Chair of the Human Resources Committee. The CRG and the Board or the Chair of the Human Resources Committee, exercised their discretion to make such a decision in accordance with the Clawback Review Group Charter and the Clawback Review Guide. Now produced, shown to me and marked 'SRB-1' is a copy of the Clawback Review Guide last updated in July 2015 and the Clawback Review Group Charter operative between October 2014 and September 2015.
8. Pursuant to the Clawback Review Guide any recommendation for the downwards adjustment of an employee's deferred equity/cash required the support of the Divisional

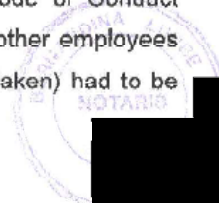
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Chief Executive Officer, Divisional Chief Risk Officer and Divisional General Manager, Human Resources.

9. If the downwards adjustment of an employee's deferred unvested equity/cash was recommended to the CRC, my role as a voting member of the CRC was to review any documents and other information provided to me in support of that recommendation and, on the basis of those materials and that other information, determine whether it was appropriate to clawback some or all of the employee's deferred unvested equity/cash.

Involvement in the decision to commence a disciplinary process with respect to Etienne

10. Prior to the CRG considering the proposal referred to in paragraphs 14 to 20 below, ANZ conducted a review of the communications of Global Markets employees to identify whether those communications constituted, or could constitute, a breach of ANZ's Code of Conduct and Ethics (the **Code of Conduct**) and other employee policies (the **Code of Conduct Review**). I was not involved in the Code of Conduct Review, other than receiving periodic updates on the progress of the review from Yoram Finger, General Counsel and Head of Employee Relations and Health & Safety Service, who reported to me. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.
11. Following the Code of Conduct Review, a disciplinary process was undertaken with respect to a number of employees whose communications were identified as involving potential breaches of the Code of Conduct and other policies. Those disciplinary processes were led by Mark Evans, Chief Compliance Officer. A number of employees including the Applicant (**Etienne**) were either subject to a disciplinary process or received informal counselling as a result of the Code of Conduct Review.
12. Given that the discussions and events which led to the commencement of the disciplinary process in relation to Etienne occurred eight years ago, I cannot remember the detail of each discussion in which I was involved with respect to the decision to commence a disciplinary process specifically against Etienne. I also do not specifically recall when and how the decision to commence a disciplinary process in relation to Etienne was made. However, I recall discussing the matter with Mark Evans and Nigel Williams, Chief Risk Officer. I also recall forming the view that, having regard to the seriousness of the conduct that had been identified through the Code of Conduct Review, it was obvious that the conduct of Etienne (as well as many other employees with respect to whom disciplinary processes were subsequently undertaken) had to be



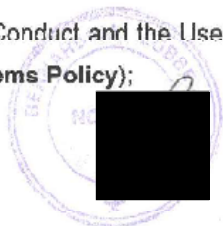
subject to ANZ's disciplinary process. I recall that those with whom I discussed the matter agreed. In particular, Etienne's communications contained sexual and offensive comments, were sent by Etienne while using ANZ's systems, and were inconsistent with the principles of diversity, inclusion, equity and treating others respectfully.

13. Nigel Williams and I were both members of the Executive Committee (known as the "ExCo") and involved in the discussions that were occurring at the time about appropriate next steps in light of the findings of the Code of Conduct Review. I considered the decision to commence a disciplinary process with respect to Etienne's conduct to be the correct way forward and although I do not recall specifically when and how the decision was made, my recollection is that Nigel Williams agreed. Once a decision was made, I had no involvement in the conduct of the disciplinary process involving Etienne.

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

14. On 27 August 2015, following the conclusion of the disciplinary process in relation to Etienne, I received an email from Mark Evans, Chief Compliance Officer which attached:
- (a) a paper by Mark Evans entitled "Etienne Alexiou – Proposed Clawback of Deferred Equity", which explained the background to the disciplinary process that had been commenced in relation to Etienne, the outcome of the disciplinary process (being the termination of Etienne's employment), Mark Evans' recommendation to the CRG that, having regard to the findings made against Etienne in the disciplinary process, 100% of Etienne's deferred invested equity be clawed back, and the reasons for that recommendation (the **Clawback Recommendation**);
 - (b) examples of communications sent by Etienne from his ANZ Bloomberg account and ANZ email account that led to the disciplinary process involving Etienne and the decision to terminate his employment; and
 - (c) a CRG paper entitled "Employee Equity Matters – Etienne Alexiou", which requested that the CRG endorse the Clawback Recommendation by a circular resolution.
15. Now produced, shown to me and marked 'SRB-2' is a copy of Mark Evans' email dated 27 August 2015, including its attachments.
16. The CRG paper asked the CRG to:
- (a) confirm that a robust process had been followed in arriving at the decision to terminate Etienne's employment;
 - (b) confirm that Etienne's behaviour was in breach of the Code of Conduct and the Use of Systems, Equipment and Information Policy (the **Use of Systems Policy**);

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- (c) confirm that there were no dissenting views among the CRG on these matters; and
 - (d) approve by circular resolution that the deferred unvested equity previously allocated to Etienne be clawed back due to behaviours and actions which in the opinion of the CRG are serious and warrant clawback, subject to confirmation by the Chair of the Human Resources Committee (i.e., the Clawback Recommendation).
17. I read and considered the materials sent to me by Mark Evans on 27 August 2015 when I was deciding whether to approve the Clawback Recommendation. After reading the entirety of the paper prepared by Mark Evans, I came to the view, on the basis of this paper and the other documents provided to me, that Etienne's communications were in breach of ANZ's expected standards of behaviour, including as set out in the Code of Conduct, the ANZ Values and the Use of Systems Policy. There were two key considerations that informed my decision:
- (a) first, the multiplicity of communications that Etienne had engaged in over an extended period of time, which, in my view, meant that the behaviour was not an isolated incident and that there was a pattern of behaviour by Etienne; and
 - (b) second, in my view, the communications were in significant breach of the standards and I regarded them to be particularly egregious. I considered the communications to be particularly egregious because of their content, which in some cases was sexually explicit. Some of the chats stood out to me, namely, those where Etienne made sexual comments about his child's teacher and other comments about females. These comments were disrespectful and did not align with ANZ's Values.
18. As the head of the Human Resources function, I was not only familiar with the standards as set out in the Code of Conduct, the ANZ Values and the Use of Systems Policy, but I endorsed and contributed to their development and the mandatory training required to be undertaken by ANZ employees on these standards. In light of Etienne's conduct, which was identified after the equity had been granted to him, I considered that the grants were not justified and therefore the clawback was an appropriate course of action. The purpose of these incentives was to reward performance, which included an employee's compliance with ANZ's Values and policies. When making decisions to grant incentives to employees, managers were required to consider not only the level of the employee's performance (i.e., the "what") but also how they had achieved those results and whether those behaviours were in line with ANZ's Values. I considered that it would be inconsistent for ANZ to make serious findings against Etienne as part of a disciplinary process and then, at the same time, release these payments to him. I was also satisfied that a robust disciplinary process had been conducted by the business with the support of Human Resources. I was satisfied that a robust process had occurred

because I knew from my discussions with Mark Evans that he had reviewed the chats and emails of employees identified as part of the Code of Conduct Review and prepared summaries that were provided to the individual employee for response as part of a disciplinary process.

19. I do not have a specific recollection of discussing this particular proposal with other members of the CRG and I can see from the documents that there was no meeting of the CRG to vote on the proposal. However, at the time, it was the usual practice of the CRG members to discuss proposals that were put to the CRG for decision which were complex, such as where the employee the subject of the proposal was senior or the amounts proposed to be clawed back were significant.
20. On 28 August 2015, I replied to Mark Evans' email and confirmed that I approved the Clawback Recommendation. Now produced, shown to me and marked 'SRB-3' is a copy of my email to Mark Evans dated 28 August 2015.

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

21. Etienne alleges that he made various complaints and disclosures to ANZ and the Australian Securities and Investments Commission (**ASIC**) during his employment with ANZ, 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) a complaint or disclosure allegedly made by Etienne in December 2014,
- as those terms are defined in the Second Further Amended Statement of Claim.
22. Etienne did not make any complaints or disclosures to me, including the alleged complaints and disclosures referred to in paragraph 21 above. I was not informed by others within ANZ, nor did I have any knowledge that Etienne had made the complaints or disclosures referred to in paragraph 21 above prior to, or when, a decision was made to commence a disciplinary process or to clawback his deferred unvested equity.

