

**SELECT COMMITTEE INTO THE
FINANCE BROKING INDUSTRY IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
FRIDAY, 28 JULY 2000**

SESSION 1 OF 4

Members

**Hon Ken Travers (Chairman)
Hon G.T. Giffard
Hon Ray Halligan**

Committee met at 11.05 am

SEARLE, MRS LYNDA,
Company Director, Penlas Pty Ltd,
PO Box 729,
MORLEY, examined:

The CHAIRMAN: On behalf of the committee I would like to welcome you to today's meeting. To begin with, Penny, could you please state your full name, contact address and the capacity in which you appear before the committee?

Mrs Searle: Yes, sir. My full name is Lynda, spelt with a Y, Dorothy Searle, nicknamed Penny of 26 Waverley Street, Dianella, and I appear before the committee in my role as Company Secretary for PenLas Pty Ltd as trustee for the PenLas Superfund.

The CHAIRMAN: You will have signed a document entitled "Information for Witnesses." Have you read and understood that document?

Mrs Searle: I have read and understood it, thank you, sir.

The CHAIRMAN: These proceedings are being recorded by Hansard and to assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing for the record?

Mrs Searle: Yes.

The CHAIRMAN: A transcript of your evidence will be provided to you and I will remind that your transcript will become a matter for public record.

Mrs Searle: Yes, sir.

The CHAIRMAN: If for some reason you wish to make a confidential statement during today's proceedings, you should request that evidence be taken in closed session before speaking about the matter. Further, the committee may of its own motion resolve to take evidence in closed session. The taking of evidence in closed session may be relevant where, for example, the committee believes that the evidence may breach the committee's term of reference (3) of its inquiry. I will just briefly read that -

The committee in its proceedings avoid interfering with or obstructing any inquiry being conducted into related matters and in particular inquiries by -

- (a) the police;
- (b) any liquidator or supervisor of any company;
- (c) the Gunning inquiry;
- (d) Australian Securities and Investments Commission; or

(e) any prosecution.

However, if evidence is given to the committee in closed session, that evidence will become public when the committee reports on the item of business to the Legislative Council unless the Legislative Council grants an ongoing suppression order at the time that the committee tables its report.

Can I just make a couple of brief comments? Firstly, can I advise the people in the public gallery that only accredited media or press are able to take notes during the committee and if I can also take the opportunity just to introduce myself as Ken Travers but also my colleagues the Honourable Ray Halligan and the Honourable Graham Gifford. Certainly we have received your submission. Thank you very much for that. It is very comprehensive. I would like to invite you, if you would, to make a few introductory comments and remarks to the committee and then we will go through some questions that we have about the submission.

Mrs Searle: I guess the only thing I would like to make, which I think is in there somewhere, is that we actually do believe that this kind of investment under normal circumstances can be very sound and is beneficial both for investors as well as for the economy of WA and I guess that is why we have put in the effort that we have. We are not against the industry or the operators in that industry per se, just in what has gone wrong with what we deem to be improper practices which have led to the scandal that we now are facing, but we do have great faith in this type of investment.

The CHAIRMAN: Yes, all right. Is that all you wanted to commence with?

Mrs Searle: No. I would really like to go through particularly part A and not so much part B. Part B has been around for a while but part A is new information that we have not put out anywhere before and in fact some of the matters that we are raising in part A have only come to light within the last month or couple of months particularly with Meadow Springs which is a new investment which came under the new Federal legislation which we only entered into this year. Sir, these have not gone anywhere before. This is the first time that we have presented these problems in part A.

The CHAIRMAN: Have you some comments you would like to add to the submissions?

Mrs Searle: If you do not mind, I would like to read out part A. Would you have any objections?

The CHAIRMAN: Certainly all the members have a copy of the submission you have provided to us and that is now a public document so people have the ability to get copies of it. I would suggest that if there are maybe key points in it that you would like to draw to the committee's attention or expand upon, that might be the - it is fairly comprehensive. You are welcome to read it out if you want to, but I just make the comment that we certainly have a copy of it in front of us.

Mrs Searle: On Meadow Springs I think I would like to comment that on there we have a lot of concerns because this one was under the new Federal Act which we entered into this year and it

would appear to us that the single responsible entity who is the person who is responsible for the operations of or holds the licence for finance broking seems to in one hand obviate their responsibilities to the finance broker. In this instance it was set up as a separate entity. They seem to offload their responsibilities to the finance broker who is not the licensed party under ASIC in one breath and in another breath they seem to be seeking indemnity from the lenders and so they seem to have set themselves up and I guess the whole emphasis of the Act has just been destroyed. There is no single responsible entity that lenders would have a come-back against and it just seems most weird. We did notify ASIC of this as and when it came to our attention and we know that they have taken some action. We do not know what. We are not party to any information from ASIC to us. We only ever give information to ASIC, but I know that they have taken some action in this matter.

The CHAIRMAN: Right. Just whilst you are on that particular point, are you suggesting under the existing ASIC legislation that the problems that have been encountered in the past in Western Australia are or could potentially continue?

Mrs Searle: I am saying to you they are not potential. They are in existence now with Meadow Springs which is going on now. Meadow Springs as a project has just been completed. From the point of view of construction it still will be ongoing as an investment. People who invested in Meadow Springs, as indeed we did, are in for a 2-year period until the sale of those units down at the resort. There have been a lot of problems with Meadow Springs in the way that it has been operated as far as we are concerned. We are also very horrified that because we were fortunate enough to get on the title, whereas most investors - in fact we were the only investor who did. We were party to information that other investors may not be aware of and that in fact in the way that this has been set up there are now two classes of investors who share the same rights as a first mortgage but in fact had differing interest rates and we think the WA investors have been disadvantaged in this matter at the expense of Victorians. \$3m of Victorian money has come into the State into that project at a higher interest rate to Victorian lenders than what it is to WA lenders. That is something that we alluded to ASIC could happen at a meeting we had with them in April and then in May we were confronted with having to sign documents that allowed that to happen and if we failed to sign the documents the \$3m would not have come in from the Eastern States because this was undersubscribed when the project started and it would have meant that the construction would have had to halt and the builder would have been owed \$1.1m. So we were faced with the circumstances where we had to actually sign those documents and it was something we did not agree to and morally we think is wrong.

The CHAIRMAN: All right. Do you have some further comments you want to make?

Mrs Searle: No, except that our experience of Meadow Springs under the new Federal legislation - and I have said that I do believe in this kind of investment. We will never go in another similar evidence that is set up like that again. We see it as a far worse problem than what is experienced under the WA State act in past investments that we have been here. There is a school of thought out there amongst finance brokers that with the advent of the new Federal legislation, "Everything will be okay, go for it, let us do away with the State act." I am giving a warning, as I did with Global to the Ministry of Fair Trading in 1998. I give another warning that if that is done and everybody relies only on the new Federal legislation, there will be very serious problems for investors.

The CHAIRMAN: In fact that issue - and you may not feel competent to provide the answer, but from your understanding of it, the single responsible entity is Phillips Fox, or - - -

Mrs Searle: They are not now. I might add there has been a change in that organisation. I do not know what brought about that change and, as I say, I am not party to information from ASIC. There has been a change now but the fact that the legislation allowed that to happen is very frightening, but certainly Phillips Fox - there were three lawyers who actually are employed by Phillips Fox and they set up a company called the Australian Managed Funds Ltd, who then took on the licence through ASIC, and in fact if you like - I do not know what the term is - franchised out to Clifton and Partners I think for a lump sum fee, which is in the prospectus here and declared in the prospectus - a lump sum fee for Clifton and Partners then to manage, and they actually passed on an authority to most of the employees of Clifton to sign on their behalf, so you get the situation where for protection of lenders the directors of the responsible entity, in this case the three lawyers who set up that company, are supposed to sign and declare that the second part of the prospectus is okay and you are getting an employee from Clifton and Partners who is signing for all three directors, which suggests to us that the directors, the responsible entity, the person to whom the lenders should have recourse to, have not even seen the second part of the prospectus before it has been offered out in the public. We find that extremely frightening.

The CHAIRMAN: So the current manager now is the Australian Managed Funds Ltd?

Mrs Searle: No, what has happened now is -

The CHAIRMAN: The single responsible entity?

Mrs Searle: All we know is Knightsbridge now has taken over what was Clifton Finance. Kim Clifton is no longer the single director. There is an Andrew Parkinson who is now the director of Clifton Partners Finance, now called Knightsbridge, with Kim Clifton as a director, and we believe that one of the directors from the Australian Managed Funds Ltd is also a director of Knightsbridge. There has been a change within that group and I dare say for more information, ASIC will probably be able to supply that, because I do not know what has happened there.

The CHAIRMAN: Right.

Mrs Searle: But, yes, it means that a group of lawyers can set themselves up, or indeed anybody can set themselves up as a single responsible entity, apply to ASIC for a licence and then actually franchise that licence out, and I believe that is being done currently in the Eastern States.

The CHAIRMAN: Right. In terms of under the State legislation, is there a licensed finance broker involved in it?

Mrs Searle: The registered entity as far as ASIC is concerned with that group now is Knightsbridge.

The CHAIRMAN: Right, so in terms of under the State legislation, any recourse through the Finance Brokers Supervisory Board would be taken against Knightsbridge if there was a problem?

Mrs Searle: I assume so. As to the actual legal set-up of it, I am not totally aware of that.

The CHAIRMAN: No, I understand. I am trying to get your understanding of it. I realise that obviously the full legal implications we may need to get further advice on.

Mrs Searle: Yes, but I have very, very grave concerns. We raised these concerns actually with ASIC. We went to see ASIC in April with a list of matters that we wanted to raise. One of those was the way people set up and then franchised. The other thing was oversubscription; undersubscription. All seemed to be able to be done under the new legislation to loans. We raised also the issue of lenders not being able to get access to statement of accounts, because here under the WA legislation it was very handy to actually get a statement of account. You could see what was happening in the trust account. Before you started calling on people, "Help. There is something seriously wrong here," you had the ability to check it out yourself. That ability does not exist under the Federal legislation. We have raised all these matters with ASIC and I have given an undertaking that as soon as the finance broking problems governing this inquiry and the Gunning Inquiry are over, I will actually sit down and compile a report as to how we think the changes should occur, but whether we will get them or not of course will be another matter.

The CHAIRMAN: All right. In terms of the soundness of that investment for Meadow Springs, do you have any - other than the undersubscription you have mentioned.

Mrs Searle: Of course there are always the problems of valuations, but as far as we are concerned - and one of the reasons why we then did capitulate and sign the documents to bring the \$3m in from the Eastern States was because the project would have gone down if we had not and it was a viable project. Despite the fact we wanted to test new legislation and we deliberately went in just to do that, we did obviously also want to protect our money and to us, from a construction point of view - which is our business, that is what we operate in, we know the construction area well - we thought it was financially sound from a construction point of view - of course the finance brokers do something yet again - we thought the building itself would stand up and when we discussed board construction with the construction company involved on here, and also Ralph Beattie Bosworth were also the independent quantity surveyors involved here, we knew them, particularly Ralph Beattie Bosworth, we had a close association with them on large projects we have been involved with in Perth over the years, so we could go to them for information, and we did. We sat on the tail of this one going all the way through to construction. The construction side is sound. We signed those documents to bring the \$3m in to protect investors' money because if that money had not come in, it would have gone down with a partially complete building. It needed the money to complete. It is sound. The value of the construction does equal the amounts that have been progress paid to it. From that point of view it is sound. It really now depends on how it is handled, and of course you have the disparity now, you have two lots of investors, all first mortgagees, but at differing interest levels, so you have got that disparity there.

The CHAIRMAN: To your knowledge, you may be the only West Australian investor that is aware of that differential at this stage?

Mrs Searle: When we signed the documents in the offices of Phillips Fox, one of the directors there did say, "We are going to notify other investors." I am not aware whether that has been done. I did raise the question, was that a requirement ASIC asked them to do, and he said, "No,

we are going to do it off our own back," but whether it was done or not, I do not know because shortly after that we came out of that investment, which is another story on its own.

The CHAIRMAN: So Meadow Springs you are not involved in?

Mrs Searle: Meadow Springs we are not involved in, but we are still in on Pieros.

The CHAIRMAN: Is there anything else on Meadow Springs? Otherwise we might move on to Pieros.

Mrs Searle: No.

The CHAIRMAN: Are there other issues you wanted to raise?

Mrs Searle: No, that is about it. Are there any questions?

The CHAIRMAN: Are there any other questions, Ray or Graham?

Hon RAY HALLIGAN: If I may.

The CHAIRMAN: On Meadow Springs.

Hon RAY HALLIGAN: Yes, just on that Meadow Springs, Penny, if you could just clarify something for me. You said that the investment was sound.

Mrs Searle: Construction.

Hon RAY HALLIGAN: I am not sure how the construction can be sound unless it is not going to fall down.

Mrs Searle: No; financially, the balance.

Hon RAY HALLIGAN: The thing was you obviously did not have all the money that you required to complete the project and therefore you said you accepted the \$3m from Victoria and had to capitulate, I think was the word you used, to them being paid the higher interest rate. I am just wondering about the initial planning of this investment. Obviously you did not have all the money you required, went ahead with the building or partial building, and then had to find the other moneys to complete it, as you said, to protect the money that you had already put into that partial building.

Mrs Searle: That's correct. In this instance, that was actually said in the prospectus that it would start undersubscribed. We went to see Clifton Partners and queried this with them because we were not happy being in the construction industry if it was done that way. They said, "Of course you only need the small amount of money to begin with." They said they had already got people who were going in, there was not going to be a problem, but rather than have the money just sitting in an account and of course the borrower has to pay the interest, they would bring it in in stages. We accepted that and in hindsight, where we went wrong, we did not ask the question,

"How much have you actually got in?" and it came as a shock to us later on when we started making inquiries as to why they wanted the money, why we had to sign for this money coming in from the east to find out that the builder was already owed \$1.1m. The building works I think were almost complete. They were three-quarters complete and the value of the building did equate with the value of money that had been spent on it. That is what I mean by it was financially sound. In a lot of these bills, you will find that is not the case, so we checked that. We kept ringing the quantity surveyor every three months to check the progress payments and we would ring the managing director of Broad Construction and check that the value of the building works was there, so whatever was being poured into the project matched the money that was being spent on it, so from that point of view we were very comfortable; but what we did not ask was, "How much have you got to start with?" Of course it left Broad Construction being owed \$1.1m and the building still I think probably had another three months or two months' work left to complete which of course at that stage would not make it viable from a selling point of view.

Hon RAY HALLIGAN: Very true.

Mrs Searle: I did not really want to sign but then based on that I thought we would be jeopardising other WA investors if we did not sign, so we signed.

Hon RAY HALLIGAN: Just two more things if I may. Have you been involved in an investment of that nature before where it has been under-subscribed and you have to wait for others to put money into the pool to be able to complete the project?

Mrs Searle: I am not aware we have and in other investments that we have had, no, the money was there up-front. This is the first time it came to our notice and because we knew we were going into this one, although we did not know quite how under-subscribed it was. This is one of the reasons why we had a meeting with ASIC to raise the issue, what can be done to prevent it and indeed by the same token if there are no investors on the title deeds, and indeed we only went on because we objected to some of the things in the prospectus and so things were changed and the compensation was that we would go on the title deeds, so things there were changed to fit us in. Indeed we could see now that you can actually over-subscribe. We are asking, "Where are the controls to stop them getting more money in than what the building needs?" We have sat down and we have actually worked out that you can actually over-subscribe it as well as under-subscribe it and the investors will not know.

Hon RAY HALLIGAN: That worries me greatly about the investors not knowing, not that somebody is out there guiding them through this maze. You mentioned that you were allowed to have your name placed on the title deed.

Mrs Searle: Yes.

Hon RAY HALLIGAN: But other investors were not as lucky as you. What is going through my mind, and it has come up time and time again about investors not having their name on the title deed, is: what checks and balances do you put in place to ensure that you have that security?

Mrs Searle: It is easy when you are dealing with a WA State Act because you can just turn around and demand, "I want to be on the title" within a certain period but under the new Federal Act you do not go on the title.

Hon RAY HALLIGAN: Why invest? This is what worries me. Why risk all of those moneys not knowing whether or not your name is likely to be on that title deed which is your security?

Mrs Searle: I can tell you that we do not and this is why we always got on the title deeds here. We made it awkward. If they wanted our money, they had to do it, and we wanted to test what it was like under the new legislation. We were determined to go into it.

Hon RAY HALLIGAN: It can be a costly test.

Mrs Searle: It could well be but it proved enormously that there is a very serious problem with the new legislation. I mean, everywhere we went, right up to the Gunning Committee, all finance brokers were saying, "No. We will go with the new legislation." Now I can see why they want the new legislation.

Hon RAY HALLIGAN: What worries me though, Penny, is: why did the investors not say, "The Act is not strong enough. We will not invest"? They went ahead and invested.

Mrs Searle: I do not think investors knew. You see, for a lot of investors this is all new to them. Some of them may have even thought they were going on the title. They have got to go through a document like this. I mean, it is enormous. You really have got to sift through. In there it tells you that this could operate under a deed of trust, but the deed of trust is not there. We asked for the deed of trust and when we got the deed of trust, we found out that if you are going to be put on the title, all the costs went to you. At the discharge of the mortgage, the costs went to you. We did not like that so we went back to Clifton and said, "We do not like that. We do not want to go in under that." "Okay." they said, "we will put you on the title. We will exclude you from the deed of trust." That is what we did. In there we got an exclusion and we wrote our own addendum.

Hon RAY HALLIGAN: You also mentioned that in that particular prospectus there was a senior executive who signed under the authority of three directors. I would imagine, and it is something I will need to check, that a prospectus of that type would come under some legislation. I mean, company law - - -

Mrs Searle: It does. It comes under ASIC.

Hon RAY HALLIGAN: With shares?

Mrs Searle: Yes.

Hon RAY HALLIGAN: If someone wants to sell shares, they have to put out a prospectus and that comes under the Companies Code.

Mrs Searle: Yes.

Hon RAY HALLIGAN: I am not sure what occurred in this instance is necessarily in accordance with the law.

Mrs Searle: I would suggest to you it probably was not because ASIC acted.

Hon RAY HALLIGAN: Again the question keeps coming to my mind: why would someone having money to invest accept a prospectus of that nature and provide those moneys?

Mrs Searle: It is because we recognised the signature. We knew Andrew Pierce's signature. It does say "or agent for" at the bottom, but we actually recognised the signature and we knew that it was not any of the three Phillips Fox directors, so we went and fronted their office. I do not think any other investor would know. I mean, it is quite reasonable where you have got three directors in one entity that one director might sign on behalf of the other two because they were absent or away but one would not expect no directors to have signed; for it to have been, if you like, allowed by authority for somebody outside that organisation to sign on all three's behalf when they are signing a declaration. We happened to pick it up.

Hon RAY HALLIGAN: Just one a point of clarification very quickly, if I may. PenLas Super Fund - could you explain a little more about that? What is your company? What is your organisation?

Mrs Searle: Right. PenLas Pty Ltd was formed in 1994. We do project management in the construction industry. Our last project was the Karrinyup Shopping Centre refurb. We acted as the project manager for the whole of the refurb on behalf of the client. Our history is that in the past my partner Doug Hellens was a project manager or construction manager for Multiplex for 17 and a half years and in fact was project manager for most of the large buildings that Multiplex did and we formed our own company in 1994. I am an accountant who has never practised by qualifications but I class myself as an administrator, so we set up - I do all the administration side, and PenLas Super Fund is obviously our super fund from PenLas Pty Ltd.

Hon RAY HALLIGAN: Your own moneys?

Mrs Searle: There are only two directors so, yes - in essence, yes.

Hon RAY HALLIGAN: Could you then therefore tell me? What is your involvement with the finance brokers?

Mrs Searle: When we were setting up the company in 1994, we needed somewhere to park funds that had a relatively good return. We were in the construction industry so we were interested in anything to do with development and building. We were au fait with that. We were au fait with drawdown and checks and balances in the building industry, to check that what goes down here goes up there. We were very comfortable with that. We went in initially not knowing that there were problems in the finance broking industry. It came as a shock to us when in 1998 or late 1997 we had concerns about one project with Global. We went and looked at the building. We were appalled at what we saw. We took photographs. Then we started examining and if you see with Global, we have got very well documented allegations against Global. Up until then, we had tested and liked - we had about six or eight or possibly even as many as ten investments that went well with no problems, so we started putting more money in and then we found out what was going on. I have to be fair and say that as far as all the investors are concerned, unless you really do some delving, it is very difficult to find out what is going on

there because every barrier is put in your way. To try and get information from the finance broker or the borrower you really have to go out and search and do it yourself and indeed a lot of the investors will come and say, "I do not know what went wrong. Up until Global collapsed or Grubb collapsed, I was getting my interest" but they did not know where the interest was coming from. . It is very, very difficult to get information. You have to really delve and know where to look and unfortunately I had to learn that.

Hon RAY HALLIGAN: And have some experience such as you have.

Mrs Searle: Yes.

Hon RAY HALLIGAN: That I understand, thank you.

Hon G.T. GIFFARD: Penny, can I just ask you, I take it that on page 3 of part A of your submission you are talking about that document that you have just gestured to us about the three directors not signing it and it being signed by another person. You drew a conclusion or possible conclusion that they had not even seen it and it was just signed by another person. Is there anything other than the fact that none of these signatures appear on that document - do you know anything else that led you to conclude that they did not even see it or are you concluding that on the basis that not one of them have even signed it?

Mrs Searle: I am concluding that and I could be concluding that incorrectly, but that statement is a statement that is there so that directors can say they do know and they do understand what is in the first and the second part of the prospectus and they are putting their name to it. I take very seriously the fact that their names are not there. So whether they were party to what was in the prospectus or not, they have obviated, if you like, their responsibility by not signing. Unfortunately again I point out that a lot of investors would not pick that up and indeed, I would suggest to you, they may not have picked it up and most of them might even be in ignorance. If you have directors of a company who are not prepared to put their name to what is by law a declaration they have to make, then I find that frightening and I would suggest that that is something you might like to ask ASIC because when I approached it ASIC, their attitude was, "Don't mind one signing on behalf of the others, but no signatures, that is a no-no."

Hon G.T. GIFFARD: The declaration does allow an agency arrangement, you are saying, in the complete absence of any of them.

Mrs Searle: Yes, and there was a property authority. There was a property authority and I got a copy of that from Clifton and Partners. There was a proper authority giving them permission to do that.

Hon G.T. GIFFARD: For that person to sign.

Mrs Searle: Yes, and that also was supplied to ASIC. I supplied a copy of that to ASIC, yes.

Hon G.T. GIFFARD: All right, and that proper authority would have been signed by each of the directors.

Mrs Searle: I cannot recall offhand. It might have been, but that authority was given to practically everybody in Clifton Partners' office, not just to directors or senior executives.

Practically everybody in Clifton's office was named in that authority.

Hon G.T. GIFFARD: To be able to sign.

Mrs Searle: To be able to sign on behalf of the directors signing on the second part of the prospectus.

The CHAIRMAN: The directors are ultimately liable though, are they not? Do they give personal guarantees in it at all or are they signing with immunity in this instance?

Mrs Searle: This is what I do not know. All I know is they have to by law sign. This is really a matter that needs to be taken up with ASIC - enough to say that I provided the information to ASIC and they acted. What they did and what was the outcome I do not know because we are not party to that information, but all I can tell you is the information we supplied to ASIC they acted upon. They did me the courtesy of ringing me late one night saying, "We are going in. We are interviewing them the next morning," and that gave me a chance to get a letter off very quickly to ASIC pointing out that we did not want the project stopped on Meadow Springs because it was at that stage so near to completion and if they stepped in and stopped the money coming from the Eastern States, we feared that all investors would lose their money, where there is at the moment every opportunity that the asset value is there in the building if it is completed and therefore can go on and be sold, that if there were to be any losses because of the way it might have been managed by the finance brokers, the value of the building was sound and needed to be completed for on-sale, and so we put in a plea to ASIC that they do not do anything to actually stop the construction which was so close to completion. We had been and inspected the building and in fact ASIC went down and looked at the building and I presume they must have come to the same conclusion.

The CHAIRMAN: Yes, so effectively you were caught in the middle of your investment process of having to make a call as to whether to keep going or report the - - -

Mrs Searle: That is right, and also the moral judgment because to me it is morally very wrong that you have people who are sharing first mortgages and hiding it by bringing a fourth mortgage. What they did was put them as fourth mortgagees but gave them equal priority with the first mortgagee. That is how they got round it and that is the documents we were signing.

The CHAIRMAN: Right.

Mrs Searle: So we were signing deed of priority giving the Victorian investors the same equal rights as the first mortgagee, but they were getting 12 per cent and I think Western Australians were getting, I think from memory, 10.35 per cent.

Hon RAY HALLIGAN: May I ask why you signed the particular document?

Mrs Searle: Because the building, sir, was at the stage where it was so close to completion. Without that money the builder would have gone off-site. Yes, the builder would have walked off-site. He was already owed \$1.1m in progress payments.

The CHAIRMAN: You had to basically make a call of heads or tails.

Mrs Searle: We had to make a call. We had to swallow whatever moral feelings we had. We had to protect the investors. I might add that we did have money in at that stage, but we had already been given an unconditional promise that we would be paid out but whether we stayed in or paid out, we had to protect the investors' interests and indeed we took the same attitude with the matter on Pieros at one stage where we took some action that we felt we had to do to protect the investors.

The CHAIRMAN: If there are no other questions, we might move on. Do you want to go through the comments about Pieros, if there are any?

Mrs Searle: Pieros is very simple inasmuch as Mr Peter Tilli was represented to us in the way that you see there, but what might or might not be a problem is that with Pieros in the document of offer it is not a prospectus because it was before the new Federal legislation came out, but in the document of offer there should have been - - -

The CHAIRMAN: Can I just check that? It was on 30 January 1998, is that right, so it was the day before? The offer was sent out the day before the new legislation.

Mrs Searle: I do not know. This was presented to us. It was not registered with ASIC or the prospectus. It did not come under the new Australian Managed Funds Act or whatever it is.

The CHAIRMAN: No, as I understand it, that was on 1 July 1998 that that came into being and your submission here says that the letter of offer you got was on 30 June.

Mrs Searle: 30 June, yes.

The CHAIRMAN: So it was the day before.

Mrs Searle: We entered into this under the old system so I call this a "document of offer". It is not strictly speaking a prospectus. In there three options should have been put in place that, whereby the sale of the units upon being built and completed, would, if you like, protect investors' funds - I think it was to the tune of about 50 per cent - so there was, if you like, a safety margin in there and I cannot find any evidence at the moment that in fact those options were put in place. Tilli had paid up until June interest on this one. It is now in default in this month of July and we have been verbally advised that Norgard Clohessy were going to be appointed as managers-receivers by now Knightsbridge, was Clifton, to protect the interests of first and second mortgagees. I think by the time I wrote this it was only a verbal understanding. We now know - in fact we have been written to - that Norgard Clohessy have been appointed as such and we wrote to them on Wednesday informing them of the conditions. We faxed a letter to them informing them of the conditions that went out to lenders on this and asked them if they could inquire and advise as to whether these options were put in place prior to the registration of the mortgage and funds in excess of \$1.5m being drawn to the building works and if so, advise us how we can obtain copies. It would appear to us at this stage from the verbal response we have had from Ian Murie of Murie and Edward is that his understanding was he wrote those three options up, passed them over to Cliftons in 1998 and never had anything back and Clifton's memory is he did not like some of the clauses but cannot remember what happened to it, but that is only hearsay evidence. So this in fact may come up. Now that Pieros is in trouble this may

rear its head. Indeed I have also found out subsequent to writing Part A of this submission that there is now a new valuation of the project, surprise, surprise, and the valuation has come in at \$6m, the current one, whereas in December 1997 the sworn valuation in this document was \$7.295 m, so there may be some questions to be answered in that direction too.

The CHAIRMAN: Are you in a position to leave us any of those documents?

Mrs Searle: These have not gone anywhere but I would suggest that perhaps the fraud squad might be interested.

The CHAIRMAN: Right.

Mrs Searle: I do not know whether there is any connection between you and the fraud squad. If the Gunning Inquiry had made - this has not gone to the Gunning Inquiry.

The CHAIRMAN: I would suggest that we may take a copy but I would urge you to actually provide them to the fraud squad rather than the committee, but if we could get a copy of those documents.

Mrs Searle: Yes.

The CHAIRMAN: Does that include the sworn valuation in there?

Mrs Searle: The sworn valuation by Egan is in here. It is part of the submission that was presented to us for \$7.29m. The sworn valuation of \$6m is referred to in a letter from Cliftons, or actually now Knightsbridge. It is referred in a letter there. We have asked for copies and asked for copies. Where the copies have not been forthcoming - we have a copy of that - and in that letter to Norgard Clohessy we have also asked if they have sighted the sworn valuation and can they confirm it is the \$6m, so we are waiting for Norgard Clohessy to come back to us on those, but, yes, I can arrange to get you copies of those.

The CHAIRMAN: Is the construction completed on this development?

Mrs Searle: The construction is completed. It would have been about February, March of this year because there were still problems with the lifts and getting the final clearance from the City of Perth. It is complete. We have had a look at it, as indeed we have all our investments now. We sat on the tail of that one all the way through. Unit 1 has been sold. There have been lots of stories about other units being sold but none of them have come to fruition and it is currently in the hands of two real estate agents. It is not a bad project, actually.

The CHAIRMAN: How long have the units been on the market?

Mrs Searle: They started to go on the market off the plans and during construction, so it seems to have been around for a long time but the building itself did not get final clearance and it was not strata-titled until about February, March. I will need to look up the exact date, but somewhere around there it was strata-titled.

The CHAIRMAN: In terms of the put options, you have never seen a copy of the put options?

Mrs Searle: Never seen a copy of them at all, and of course until the sale of units was coming up and then the problems with Pieros, we did not have call to actually query and ask for them. As you can appreciate, at that stage in 1998 we just thought it was just Global. We did not realise until we started delving that it was deeper, so at the stage we went into it, we did not think to ask for them. In fact they were not ready when it went in because in the document it does say "they will be in place by" and that Edward Murie were currently drawing them up.

The CHAIRMAN: So you were basically relying on the relationship you had with the finance broker that they would be dealing with you?

Mrs Searle: Yes, we were relying totally on Kim Clifton's word on that, as is written in that document. That is correct.

The CHAIRMAN: Do you know who the put options were to be provided by at all, or any detail like that at all?

Mrs Searle: No.

The CHAIRMAN: The thing that sort of jumped to my mind is, with what we have seen in the finance broking industry, as to whether or not they were from associated entities, or even if there was a real put option, who was it coming from, because I think, looking at some of the other information in this area, there was clearly sort of movement of money from projects to projects and that was why I was wondering if you had any detail at all as to where - - -

Mrs Searle: No. There was no detail in this document, and of course in that stage in 1998 we had no reason to query it, particularly as we had gone to Kim Clifton. Kim Clifton was well versed in what we knew about Global because we went to him and we gave him stipulations that if we put any money his way, it had to be done this way, that way and that way, and he knew, he knew, that we were trying to fight and get a hearing with the Finance Brokers Board at that stage into affairs with Global and he knew of our concerns of Global.

The CHAIRMAN: Did he express a view to you about Global at that time? I guess it is off this point a bit, but in terms of at the - - -

Mrs Searle: At the time, and I am going back now to 1998, he alluded to the fact that Margaria had gone to him several times with incredible deals which he would not touch. There were certain practices that he would not do, because we discussed the practices that were going on at Global, except for one. He did say that they did pay interest out of capital, which we told him we would not tolerate in the case of default.

The CHAIRMAN: That is certainly one of the things that I think will be interesting for the committee as we go down the path, as to, amongst finance brokers, what was the knowledge of what was going on amongst each other.

Mrs Searle: They knew what was going on because we built up a very good rapport with Kim Clifton. We built up a very good rapport with Tim Parker. In fact we have got investments with

Tim. We have had problems of a lesser degree with Countrywide. They have been more administrative problems and paying interest out of capital, but with Tim Parker you could bowl into his office, and indeed at one stage at several times there we did with Kim Clifton. You could bowl into their office and shove a document down and say, "We are not happy with that. We are not happy with that," and he would get it changed, because I think we were one of the rare investors that knew what was going on and could go back and sit down with them and say, "This is what is going on in the industry and we do not like it." Indeed, I have even been to see Barry Barr in his role as president of the Mortgage Association and tried to get through to him that it is about time that the finance brokers themselves came clean about it and tried to clear up their own industry, and I think I make the point in one of these that it is very damning that there is nothing coming from the two professional bodies, and I find that very frightening. It would suggest to me that either they are aware of it and they are protecting, or they are doing it themselves - the bad practices I am talking about.

The CHAIRMAN: Yes.

Mrs Searle: But, yes, I have made it known everywhere I have gone, very openly, very honestly and very matter of factly what is wrong, and I have never, ever hidden from that. Okay?

The CHAIRMAN: Yes. Any other points you want to make on Pieros, or are there questions from either Ray or Graham about Pieros?

Hon RAY HALLIGAN: Just a quick one, if I may. About the valuations, Penny, are they possible market values, not construction values?

Mrs Searle: I am not a valuer, so as a lender I have to take what is presented to me, and other lenders would be in the same boat, unless you have real expertise. I feel I cannot comment on valuations but I have always said, and I will keep saying, that the problems with these deals is not just the valuations. That is one problem. If you come on to D, item D, I list there all the bad practices and if you take any of the investments that we have been in that we have inquired into, you will find it is not just valuations, it is also payment of interest out of capital, in which case the poor lender gets a double whammy because they are paying tax on it and of course they are getting their own capital back, which is crazy, and, wait for it, the finance broker is keeping the higher penalty payment for late payment, so the finance broker is actually making money out of doing it, all right, and that is the point that is overlooked by everybody. It is also the misinformation that you get at the beginning. Like on a lot of these, particularly with Global, by the time you get the title deeds to look that your name is on it, lo and behold there is always another mortgage, a second mortgage that went on that was registered at the same time and date as your first mortgage, and so a deal has been struck and you did not know the land was already mortgaged. That was not told to you. This becomes very important because you have to assess the borrower's ability to pay. That is one of the things you have to weigh up as a lender and you are not given that information. You are not told what other borrowings they have with the finance broker, how much they are up for in interest payments each month. All these things are hidden from you, so when you go to look at these it is not just the valuation, though that is damning in itself. You will find all these other things are present as well.. It is bad practice right across the board and I would say that that is a very valuable - it is part D. It starts at the bottom of page 1 and goes through to almost the middle of page 3. Those and those that are asterisked you will find will occur time and time again; not one but two, three, four or perhaps five or even

six of those will occur in one investment and that is what is damning. To come back to valuations, I cannot make a judgment. I cannot even judge looking and looking at these and going down and having some expertise in the building industry or even my partner who has better expertise at it than I am. I am not qualified to talk about valuations. All I can say is if it is done by a sworn valuer and he has done the research and it comes in a report, we have to take it at face value. Sure, we can go and have a look and say, "Yes, okay, it should be around there somewhere," but that is about all the general public can do.

Hon RAY HALLIGAN: The valuation document itself states the type of valuation beside the amount.

Mrs Searle: Valuations vary.

Hon RAY HALLIGAN: Exactly.

Mrs Searle: A lot of them are just market appraisals. They are not actually sworn valuations. In the smaller developments they are not sworn valuations. What the trick is - yes, Mr Clifton. I have in my possession a valuation saying \$6m but we have asked for it twice. It was the same with Global. I got a valuation. I think at one stage it was a quarter of a million on a shop in a shopping centre. The moment we asked him for that valuation he paid us off. So they do not even submit them. They just say they have them.

Hon RAY HALLIGAN: You asked for a copy of it each time.

Mrs Searle: In the past, no, because I am a professional person. My partner is a professional person. We carry indemnity insurance. We do the right thing. We are in the building industry. We understand the checks and balances that are in the building industry with independent quantity surveyors. We expect, rightly or wrongly, that when we deal with someone and we are their client - despite what other people might say, we are their client. Because we ring them and tell them when we want to invest, we are their client. We expect them to perform and do everything as we ourselves would do it. If that is a failing, I make no apologies for it because if you do not start with trust, you will not do anything. We have to rely, until proved otherwise, that the person we are dealing with is dealing fairly and squarely with us and looking after our interests. This all came as a tremendous shock, but so much so that we found out so much that even though we were bought out of Global, apart from one that went belly-up, he could not buy us out. We knew we had to write that loss off. We knew we could never get money back but we continued because we wanted to bring it out in the public domain and that is why we wanted a hearing with the Board. We could not take our own legal action at the time because until you make a loss, you cannot go to court. Mr Margaria put everything in our way on the one that went belly-up to stop us selling, from gazumping us to getting a neighbouring farmer to crop the land, and we wasted a year trying to off-load a building so we could take him to court ourselves to bring it out in the open because we were very dismayed at the lack of response from the Ministry of Fair Trading and the Finance Brokers Board. All we wanted was to throw it in the public domain and get it tested. That is all we wanted but we never got it. In the end we fired Global. We took over the management of that particular project, the only one that we were still in. We made our loss and on the day we were issuing a writ after serving him a notice - on that very day he put himself into voluntary administration, as we were issuing the writ, and then, of course, he went down, which is what we were trying to achieve to stop investors going in there.

The CHAIRMAN: Those deals that you have talked about that you were bought out of, someone else has replaced you in those.

Mrs Searle: Yes. We had to sign those transfers, yes. That is why we continued.

The CHAIRMAN: Do you know what has happened to those deals?

Mrs Searle: They have all gone wrong. Terrace Road, Toodyay - there is Terrace Road. They are all Casella's. I think some of them will be lucky to get about 20 cents in the dollar. One of the most unpleasant things we have ever done was being forced to sign those transfers.

The CHAIRMAN: At that time that you transferred out of those you had already taken your complaints about the Wyalkatchem deal to the Finance Brokers Supervisory Board.

Mrs Searle: It was because we had taken the complaints there that we think we were bought out, because we had an initial talk with the inspector. We told him what the problems were, particularly with Reilley, Wyalkatchem. Incidentally, Reilley has made himself in the news. This is the gentleman who hit the press on Monday. We have been very frank and open and honest. We made it quite clear to Willers what we had found. We had the photographic evidence which he never asked for and never saw. We hit him with absolutely everything we could. We were fobbed off. We were told to go and get our own legal advice. We wasted a month or two months getting that. It came back. During that period we made an appointment to see Willers. We were adamant we were going to continue. We were adamant we had an agency agreement and that we were a client of Global's, because that is what we got fobbed off with, and we just would not give up and then suddenly just before we were having the first interview with Willers we got a phone call from Margaria one night, which we naughtily and illegally taped, offering to buy us out of the three we were already in. One of our complaints we were already out of because in 10 months he had not put us on the deed of title so we just did not renew that. We were still left in two. On the second interview we had with Mr Willers he said, "You're out of them all except Reilley, the one that has gone bad." "No; no, we're still in one more," and then that day the transfer went through the bank account. So we tried everything. Now, in fairness, if there was any connection between Willers and Margaria, we think he may have done it thinking that if we got our money back, we would be happy. Willers must have totally misunderstood what we were trying to do. We wanted to test what we had found in the public domain and warn investors not to go in.

The CHAIRMAN: I think obviously one of the issues that we will need to look at is whether or not the Board had effectively a policy of if someone was paid out and dropped their complaint - but then that complaint was not pursued.

Mrs Searle: That is the impression that we very strongly got. In fact that was very clear at the second interview with Willers because he got very angry. He got angry with us when we insisted we would continue.

The CHAIRMAN: So that would be your impression.

Mrs Searle: It is in there. It is in the chronological things. We have actually stated that he was

very angry.

The CHAIRMAN: I saw that he was angry, but you actually think that was because they had that policy. Your impression was that the policy was - - -

Mrs Searle: I got the impression that he was probably angry because he probably had tried to get our money back thinking that we would be satisfied and there we were still dissatisfied.

The CHAIRMAN: Then he could write off the complaint and not have to do any more.

Mrs Searle: Yes.

The CHAIRMAN: Everyone in theory should be happy, but the industry does not - - -

Mrs Searle: We could not get through to him that we were fighting a principle here, not a matter of money. Yes, it hurts when you lose money, but there are other things more important.

The CHAIRMAN: Yes, all right. I appreciate that.

Hon G.T. GIFFARD: You were asked a few minutes ago about the put option, the identity of the people who were providing that, and you said you did not - - -

Mrs Searle: There was absolutely nothing. What is printed in here is verbatim out of the document of offer, absolutely verbatim, and at that stage we had no reason to question. Our eyes were not turned at Clifton. Our eyes were only turned at Global.

Hon G.T. GIFFARD: Did you ask who would be providing it? Is your evidence that you simply did not know?

Mrs Searle: We accepted what was in that document. We signed; we put our moneys in. We took everything in that document on trust. We did not check anything in that document. We have gone to Ken Clifton, spent two hours in his company telling him what we did not like about Global; we trusted.

Hon G.T. GIFFARD: Do you think that was a reasonable action on your part to consider what was contained in that document and to not satisfy yourself that you knew who essentially was providing that option. Was that an important consideration, do you think, in that arrangement?

Mrs Searle: It was important to know that three units had the option there that if they were unable to sell, it would trigger, and therefore three units were spoken for because at that stage I think it represented something like 50 per cent of the value. Yes, that was an important criteria and in fact I would suggest when you look through the document, you will see it is actually emphasised because it actually appears in three different areas. It is very much emphasised in here and I have taken it verbatim into the document here that you have before you.

Hon G.T. GIFFARD: You did not take that any further at the time?

Mrs Searle: No, because we were under the impression that Murie and Edward was actually drawing up the documents ready for stamping, okay?

Hon G.T. GIFFARD: Based on the wording of those provisions in that?

Mrs Searle: That is correct.

Hon G.T. GIFFARD: It did not occur to you that you were lacking any rigour in your assessment of this by not establishing that?

Mrs Searle: No, and in fact everything that is presented, until proven otherwise, we take in good faith. That is correct.

Hon G.T. GIFFARD: Do you think a reasonable person would say that is satisfactory or do you think - - -

Mrs Searle: It gets very difficult because in looking at these, if you were at the initial stage having to pull it to pieces and go and check everything, you will be spending an enormous amount of time and a fair degree of money, particularly if you are starting to get valuations done yourself. It defeats the object of even going in them and it would certainly be beyond the scope of the average investor, because do not forget one of the things about small investors - they are small investors and in the main they are not professional people like us. They are, in the main, self-funded retirees using super funds. The cost of actually going through and checking a document like this in that kind of detail really prohibits, I would say, the average person from going in and doing it. Why bother? You may as well just put the money in the bank, get a lesser return of interest and not have to do anything and hope the bank does not tumble, because let us face it, we have seen some of those too. All right?

The CHAIRMAN: So you rely on the fact that you are working with a licensed professional person?

Mrs Searle: What did come as a shock to us was we did not know or realise that in fact they did not carry professional indemnity insurance. That came as a shock to us. When we hinted to John Margaria on the meetings we had with him, "Please explain," and trying to put things right, we sat down with him meeting after meeting, which we minuted, and suggested that he notify his insurers of a possible potential claim; it came as a shock to us that in fact they do not carry professional indemnity insurance, because believe you me, no client will take us on without it and it depends on what size of project you have got as to how much we have to carry, and that came as a shock.

Hon RAY HALLIGAN: What is your understanding of the word "supervisory" in the name Finance Brokers Supervisory Board?

Mrs Searle: I understand, as administrator, about costs, particularly administrative costs. In the name of supervisor, one would think that it means someone stands over and literally watches. Now, I know that one cannot go that far. I would have thought perhaps spot checks. I would have thought with that word "supervisory" that the moment there was an allegation - and bear in mind we fronted not with one complaint, we fronted with six. Despite what Mr Shave says in

Parliament, we fronted with six separate individual complaints, two of which alluded to trust funds, serious dealings with trust funds, and we actually supplied the statement of account. Based with that, I would have thought "supervisory" - "Okay, we will go in there and we will go and look at the trust funds and we will go and see what is happening there," but it did not happen, not until December, the 18th and 22nd, after we had started at the beginning of the year to get there. We would have thought with the word "supervisory" - okay, you have not got the resources to go and do spot checks and to literally stand over the finance brokers in the normal course of running, but surely to goodness if they get complaints of that nature, and with all due respect, and perhaps I should not say this but I will, but presented from people such as ourselves, professional people, I would have expected that they would have marched in pretty quickly.

Hon RAY HALLIGAN: When you say you provided a statement of account, what type? Was this the trust account ledger card?

Mrs Searle: Global had a problem inasmuch as I gather that the trust account was just one account rather than separate trust accounts for each project.

Hon RAY HALLIGAN: What do you mean? Within their own books or in the bank?

Mrs Searle: Within their own books, okay, so Global had to lift off and manually type the statement of accounts to give us. Now, bearing that in mind, it still showed debit balances. They were that confident that no-one would take any action that they dared to do that and send it to us, and they were right, no-one did look at it, and in fact Mr Willers under oath at the Gunning Inquiry admitted he never saw the trust account.

The CHAIRMAN: Penny, just in terms of your comments - and I am just trying to pick up a date here - about trust accounts and supervision, would it surprise you to learn that one of the companies you have referred to having had dealings with today, and I am not going to mention them at this stage, that in their first audit of their trust accounts provided to the Finance Supervisory Board it was found to be in debit balances and it is probably not - - -

Mrs Searle: I have sat through practically every session of the Gunning Inquiry and I would suggest you are probably referring to Global. Yes, that came as - - -

The CHAIRMAN: No, I am not.

Mrs Searle: All right.

The CHAIRMAN: It is actually -

Mrs Searle: I was not aware that there was a past record with Global, for instance. I am horrified to know now that in fact there was qualified accounts on Global prior to us lodging complaints, which then raises the question, why on earth did they not listen to us if that was already known to the Ministry of Fair Trading at that time, or is the Ministry of Fair Trading so spread out that communication lines are very bad? I mean, you get Reilley. We put in a complaint about Reilley with the finance brokers yet there has been no information passed to the Builders Registration Board, because one of the things we pick out in the Reilley one that we presented to the Ministry of Fair Trading was this guy was operating as a builder when he was

unregistered and our one has just gone belly-up and we have just lost 16 grand, but here we are two years on and here is Mr Reilley still going around. I mean, we find the lack of communication could well be a problem within the Ministry of Fair Trading, but it seems strange that we can isolate and to have Global actually type manually and give us the statement of account that shows debit balances - I mean, they are not going to be lying, are they? They would not do that.

Hon RAY HALLIGAN: I would not necessarily call that their trust account. It is purely a statement.

Mrs Searle: I see what you mean. Okay, I see where you are coming from. I beg your pardon.

Hon RAY HALLIGAN: That is purely a statement they have provided you with.

Mrs Searle: Yes.

Hon RAY HALLIGAN: I accept your point that certainly question marks would arise as to their statement of the movement of the moneys and to end up in a debit balance. I would agree with that.

Mrs Searle: But also with Reilley, we also pointed out that in fact there was a mortgage on the land prior to raising the money for the building, which was what we invested in. That mortgagee agreed to go second mortgagee at John Margaria's request, which was hidden from the investors coming in for the building costs, on the promise that he would be replaced with somebody else later down the track, which happened, and so therefore there were no funds from the second mortgagee and the funds from the first mortgagees, when the borrower did not pay interest for the first eight months of the loan - did not pay any interest, and yet the second mortgagee got paid interest out of the first mortgagee's funds.

Hon RAY HALLIGAN: Without contributing any capital?

Mrs Searle: Exactly. That is also there.

Hon RAY HALLIGAN: Which makes me wonder about these first, second, and you mentioned previously about a fourth mortgagee as well. Were not the first, second and third mortgagees consulted about a fourth mortgagee in that other instance?

Mrs Searle: No. The only time it has ever happened was - Countrywide was the only finance broker, and we have invested with about five over a period of time - Countrywide was the only one who ever notified us that there was going to be another mortgage.

Hon RAY HALLIGAN: Might I suggest, and it is something I need to check, I am not sure it is just a matter of notification. It is asking your approval.

Mrs Searle: No, they never asked, no, but they did notify us.

Hon RAY HALLIGAN: No, I think they had to ask your approval for these additional mortgages.

Mrs Searle: I believe that should be the case, yes, but nine times out of 10 you do not become aware that there is another mortgage on there and it is all done at the same time that yours is registered.

Hon RAY HALLIGAN: But again that should alert you, as soon as you do obtain that information - - -

Mrs Searle: Too late by then. It is already in.

Hon RAY HALLIGAN: Know that you have not been asked as distinct from notified.

Mrs Searle: When this happened, and it happened on Global time and time again, we would phone Global's solicitors, Hyland and Watts, Trevor Watts, and we would always make it a habit to phone him and say, "Trevor, there is a second mortgage on here." "Do not worry. It does not affect. You have got first call, no problems." We would raise it time and time again, and again that is all through our documents, because everything we did we documented.

Hon RAY HALLIGAN: There are solicitors involved in all of this.

Mrs Searle: Yes.

Hon RAY HALLIGAN: Solicitors that act on behalf of the finance brokers.

Mrs Searle: Yes.

Hon RAY HALLIGAN: That you have made contact with in this regard.

Mrs Searle: Yes. We have had queries with Cliftons. We have rung Murie and Edwards on many occasions, on many matters. We did the same tactic with Global and indeed we have done it right from the beginning. The very first investment we ever tried of theirs was a Fermanis one. We never went back to him after that. We did not lose anything but we just did not like the way it was operated and we got to know Craig Coulson who was acting, the solicitor. Craig said, "We really act for the investor despite the fact that our fees are paid for by the borrower. Any queries, always ring me. I will always make sure you are okay." We never went into another Fermanis one but we learned from that, so when we moved over to Global, as I said, the first couple of years with Global there were no problems. We were in and out on the title deeds; everything was hunky-dory - absolutely no problems, so we started putting more in. Then things started to slow down and then we were on the phone to Trevor Watts, to Trevor Watts, to Trevor Watts. I would have spoken to Trevor Watts I do not know how many times on the phone and at some stages we actually wrote to them. Towards the end, everything we wrote we always sent them a copy as well.

Hon RAY HALLIGAN: Certainly you have documented everything very, very well, so you have covered yourself in that regard.

Mrs Searle: Yes. I am an administrator.

Hon RAY HALLIGAN: Getting back to that word "supervisory" in the name Supervisory Board, you would have read the Act as well? I mean, you told me what you believed it could mean but have you seen what the Act requires of that supervisor?

Mrs Searle: I did read the Act. It would have been some time in 1998. I got a copy of it. It is not exactly scintillating reading. If you were to question me on it now, I would be struggling. I know the ones governing trust accounts. I did read it but I would not say I am totally au fait with it. I have got it in my possession but as far as the Act is concerned, I really believe that the Act needs updating and tidying up in places; that basically it in itself is sound and is workable from a lender's point of view, whereas the new Federal legislation I will not touch now. It is a shame that we could not have a situation where there is only one licensing entity. I do not like the idea that finance brokers have to be licensed in two different places to operate. That is unwieldy and unfair. It would be nice to have a single entity and someone who can do spot checks and communicate with finance brokers and keep them informed, as well as keeping lenders informed, of what to look out for, to make sure both parties are covered, whereby all the things that I point out here are covered and protected and valuations are given on an as-stand basis, as well as a conceptual basis, so you know what the land value is before anything starts because that is missing in all these valuations. That is not there.

Hon RAY HALLIGAN: What - the unimproved capital value of the land?

Mrs Searle: Yes. What is the land worth exactly now; you know, what is the downside if, say, nothing gets built on it? We have put money in it. What is the land actually worth now? No valuation has that. I have not seen one that has actually got that in. That is what I call an as-stand basis valuation in there. If you meet all those criteria - that you have one body, be it Federal or State, but the State Act is a better Act to have - that to me would be ideal and perhaps confidence would go back and people would get back into the industry because otherwise people will invest their money elsewhere. We are going to lose it out of this State. It is a very valuable, very important part of the economy here for getting small and medium sized buildings up and running; otherwise if we lose that interstate or overseas or on the share market, wherever else they are going to invest, that will be a very great pity.

Hon RAY HALLIGAN: Unlikely to go through banks, do you think, if the brokers - - -

Mrs Searle: Banks have not exactly been user friendly lately, have they?

Hon RAY HALLIGAN: That is true, but you mentioned about the valuations that quite a number of them were in fact market appraisals.

Mrs Searle: Yes.

Hon RAY HALLIGAN: One might expect with a new project that it would be extremely difficult to give a market value if there was nothing of a like nature nearby. You could give an appraisal of what in some instances each unit might sell for.

Mrs Searle: Yes.

Hon RAY HALLIGAN: But I would not consider that personally a valuation.

Mrs Searle: No, I agree. I would agree with that, but you have to take a punt to some degree because if you are doing a development that of its type in that area has not been done before, it is even I would imagine very difficult for a valuer to come up with these examples that they do, that they have to do. It would be very difficult but basically building values do not change greatly. We have not seen a slump in building, so providing you give a conservative estimate, shall we say, and the value of the money that is being put in a trust account equates with the value of the building works that has gone into it, and your ratio is low or kept within a reasonable level, your capital should be safe.

Hon RAY HALLIGAN: I understand what it is that you are saying. You are taking any number of other things into consideration and I agree with you that they would need to be, but to go from the sublime to the ridiculous if you built a palace out in the middle of the Simpson Desert, you could say, "I put in \$15m. I can see \$15m worth of construction" but there may be no buyers.

Mrs Searle: There may be no buyers out there.

Hon RAY HALLIGAN: Exactly.

Mrs Searle: I agree. One of the things we do when we look at it - what kind of project is it? I mean, Meadow Springs attached to a golf course; Mandurah. That is very feasible. We would not invest in something that you have said but we would invest in that. We also knew that Broad Constructions would be involved in it. We also knew that Ralph Beattie Bosworth would be involved in it. We know from the building side the controls would be there and the construction accounting would be handled extremely well, the same to some degree with Pieros. We know there was an independent quantity surveyor. I think it was because we insisted that there would be one. I know there was one project we had with Clifton Partners. We insisted we wanted an independent quantity surveyor and got it. Therefore you know that the checks and balances are in place for the actual building. Then of course you have still got to on-sell but if it is viable - I mean, if we like it and we think, "If we had the money, we would buy there" - then we think there is probably a good chance that the average person would as well, so you are also looking for that.

The CHAIRMAN: So long as your land valuation is accurate to what the land valuation in that area is and the money that is then spent on capital improvements, or the money lent for capital improvements to that land is actually spent on that property - - -

Mrs Searle: That is right.

The CHAIRMAN: You may take some loss at the end of it, but it would be a very small loss, not the sort of losses that we have seen up to date.

Mrs Searle: It would normally be your interest that would suffer. Normally you would just squeeze in on your capital but if there has been a default and accrued interest - when we look at interest, that is the risk factor. The risk factor is whether you get your interest or not, but the risk factor should never include your capital because the loan ratio and the value of the land - this is

why I say the value of the land should now be given. There should be an as-stand basis because that has been missing in those valuations. That is perhaps the missing thing that perhaps we needed probably to pin it more accurately.

Hon RAY HALLIGAN: Using Meadow Springs as an example, and being a golfer I have played down there, I know that that remained mainly undeveloped for some considerable years.

Mrs Searle: Yes.

Hon RAY HALLIGAN: So the value of the land would not have increased anywhere near as much I would expect as other areas during that period.

Mrs Searle: Yes.

Hon RAY HALLIGAN: I am sure that things have changed now. My understanding is that there has been a lot more development down there.

Mrs Searle: Yes, there has but we still think on that one that it would have held, given the figures that were given in there. We still felt it was viable, viable to the loan ratio that was given at that time. Indeed it should still hold, even with this lesser valuation coming in now. It should still be comfortable.

Hon RAY HALLIGAN: I understand the difficulty. You said very early in the piece that you are not a valuer and therefore you could not tell us - - -

Mrs Searle: Every lender has that problem. This is where the ASIC legislation, the Federal legislation, is probably better than the State in this instance. They are very hot on full disclosure up-front, very hot. Everything must be fully disclosed. They are very, very hard on that. That is probably where they have got the edge on the State legislation as far as that is concerned. That will eradicate some but where you have got deliberate manipulation like in the case of Global and the Riley matter where people, you know, swapped from a first to a second mortgage and deceitfully hid that, you cannot obviate that. All you can do is, "Okay, the penalties are so stiff if you do that, you are never going to be in the business again or you are going to be had up by the fraud squad as a deterrent," and you just need those deterrents as a final line, "You do something wrong and you are out. You will never be able to trade again."

The CHAIRMAN: I would have thought the other thing you would need is a Board that, if they get those sort of allegations given to them the first time, will pursue them till they can see whether that is what someone is doing and if they are, get them out of the industry at that stage so that they only ever get to do it once.

Mrs Searle: Yes, and once the industry are aware that someone has been, if you like, hauled up and dumped, they will start looking - at the moment the ridiculous situation perceived through my eyes and my opinion is other finance brokers are laughing and they are saying, "We're still going to continue because no-one can get us, can they?" That is the perception we are getting. It is not exactly told to me to my face when I got and meet them but it is suggested, "Penny, these are standard practices that we do. It's normal. It's what we do." The documentation that we have is so immense and very detailed, particularly when you come to section C. It is really a matter of

wanting to know what you need and what you want to know what to submit, but everything that is recorded in here where it says there is a letter or there is a fax, you can trust me there is. There is even a journal from the fax machine with the fax numbers and the dates on confirming that they were faxed. I have brought a fair bit with me at the moment, but if there is anything that you want, I will supply it.

The CHAIRMAN: There was just one other question I just did want to raise. I am trying to find where it was mentioned. It may have been either in your submission or in some of the evidence you gave to the Gunning inquiry. You talked about these brokers advertising in newsletters.

Mrs Searle: Yes, this is the concern that we had with Global because all the time we were trying to get complaints heard, they continued advertising. It was advertised every Wednesday, and I think, in "Have a Go" which is the publication of the elderly. In the left-hand top of the page I think they advertised in there very regularly. I do not subscribe to it, despite my age. I do remember seeing it on many occasions, but they used to regularly appear Wednesdays and Fridays in The West.

The CHAIRMAN: I guess that is the question I was just going to ask you. So "Have a Go" new and The West Australian were the two major ones that you are aware of.

Mrs Searle: Correct.

The CHAIRMAN: Did you ever raise concerns about that with anyone at the time?

Mrs Searle: I have not brought a copy of it here. When we were not getting anywhere with the Ministry of Fair Trading and the Finance Brokers Board, we asked to see the Minister in about August, I think it was, of 1998. He deemed not to see us. We saw Mr Rowe, Mr Buchholz and Mitchell and we actually gave a copy each, left it on the table for them, the chronology of our trying to get - our chronology, which is a computer diary that I kept up to the date of the meeting, I actually took off the compute and then I actually printed a summary. It is in my records and in fact it is in the Gunning inquiry's records. We printed a summary and in the summary we quoted our concerns about Global still advertising and pulling in lenders. We raised the issue. In fact we quoted to them a letter we had received from John Margaria dated 23 April 98 saying, "We have \$60m of loans brokered on our books involving some 800 investors in some 120 investments," and we actually left that and we actually talked about that at the meeting explaining why we were trying to expedite our complaint matters. We said that that money could be in jeopardy. We did the same again when Allanah MacTiernan rang us one day out of the blue and said, "How are you going with your complaint?" "Not getting anywhere." "There's a debate on the House we're stopping," and I went to listen to that debate and I was appalled to find out that no action had been taken regarding our complaints from there so I got straight on the phone and I blasted Mr Mitchell and demanded to see the Minister and again we got a letter from the Minister saying, "It's inappropriate for me to see you," and we were referred to Mr Patrick Walker. We went to that meeting with Mr Patrick Walker and Mr Buchholz and again we took along our chronology up to the date of that meeting, dropped it off there and that summary was put on there warning that Global was still advertising and that we had grave concerns for \$60m of people's money, and they were actually tabled there. We did this verbally with Willers every time we met him. We tried everything. Short of going out to the media and probably being sued

by John Margaria, there was not anything else we could do.

The CHAIRMAN: So other than in that letter to the Minister, you did not raise it with - I think I noted somewhere where you said you had to leave before the Minister for seniors spoke in the House on the motion. You did not raise it with the Minister for seniors or anyone else like that at all.

Mrs Searle: No; no, unfortunately I had a business appointment straight after that. I went and, I think from memory, it took me a couple of days to get hold of Mitchell. It might have been one day and six phone calls or something to get hold of Mitchell so I could blast him.

The CHAIRMAN: I am sure it is all in here anyway.

Mrs Searle: Yes.

The CHAIRMAN: It is very detailed.

Mrs Searle: The fact that I blasted him is not in there.

Hon G.T. GIFFARD: No, I do not recall reading that.

The CHAIRMAN: Did that you get a response at all?

Mrs Searle: I think Mr Mitchell did not quite know how to handle me, my telling him off.

The CHAIRMAN: It is often easy with the benefit of hindsight to see what was going on then, but just in terms of trying to reflect on at the time - - -

Mrs Searle: I had been given undertakings at the meeting with Mitchell in the office when we first asked to see the Minister that this matter would be attended to. That debate came as a tremendous shock to me to find out that our complaint matters had not progressed.

The CHAIRMAN: I guess in terms of the demeanour and the response from people like that at the time, did you get the sense that they were genuinely concerned and worried about what was happening and trying to resolve it?

Mrs Searle: No, it was pat, pat, pat over there sort of thing.

The CHAIRMAN: Not a problem.

Mrs Searle: No, I felt that they were just being polite, listened, and this is probably one of the frustrations that we had. We felt we had to be careful. We could not rant and rave. We had to present professionally, as indeed is the way we prefer to do it anyway. We felt that getting up Mr Willers' nose would not achieve anything or even lodging a complaint about him would not achieve anything. We tried to do it as nicely as we could but we kept insisting. We kept being extremely persistent. We would not give up. We responded to everything. We kept writing. I mean, the records are like that. We just tried to do it in the nicest way we could and there were a couple of stages along the line where I am afraid our patience just ran thin and that phone call to

Mitchell was one of them. I could not understand why reasonable, intelligent men - there were not ladies we came up against. They were all men. I could not understand why reasonable, intelligent men could not understand the enormity of what we were presenting, or was it that they just did not want to know, they did not know how to deal with it and they thought if they kept a lid on it, it would not matter; it would go away? I do not know, but I could not understand why we did not get a better response because we approached it in every logical, reasonable way we possibly could to the detriment. I do not know how many investors went in from April, when we tried this, until the following February when Global went down. God knows how many other investors went in there that need not have been there. You could not save the ones that were already in there, but you could have stopped the ones that were going in. We could not. If we had gone to the media, we would either done our case against Global or we would have been sued by Global. We were stymied. We had to use the correct and proper channels. That was all that was open to us. In fact even the stuff on Clifton I have had to bring here. I cannot bring it out in public for fear of being served with a writ.

The CHAIRMAN: So you felt you were giving enough information that would clearly have shown the enormity of it.

Mrs Searle: I have got a bagful here.

The CHAIRMAN: At those meetings with people like Mitchell and Buchholz and the like, you felt you were giving enough information to clearly show the enormity of the situation at that time.

Mrs Searle: Yes.

The CHAIRMAN: It was not that they were saying, "Hang on. We still need this point or that point."

Mrs Searle: With them, they probably did not see as much of the documentation as we tried to get Willers to see. I mean, the very first meeting we had with Willers we took all our files. All he did was take a copy of the lawyers' letter, the legal advice that we got. I think he took the letter of offer from Global in the Reilley case and he said, "I will tell you if I want any more." He did not look at the photographs we took. He did not look at the report of the building that we had got. He did not look at the documentation. The second time we met with him we took all the files back again and again he did not want to see anything. He just sent us away and said, "Go and get your lawyer to go and do a full report and present it with all the things." We thought, "Okay. This is what he wants" so we went. I believe it has been handed in to Jan. There is an 80-page bound thing, just on the Reilley one alone, with all the supporting documents in that. I mean, what more can you want? We went and did that at our own expense and time and that got us nowhere. That was presented to the Board in - what is the date on the front?

The CHAIRMAN: 12 August.

Mrs Searle: Thank you. Where did it get us? We were told to do that. That is on Reilley investment alone.

The CHAIRMAN: Those matters are still pending.

Mrs Searle: We did have a Clayton's hearing.

The CHAIRMAN: 12 July I think was the last date in your chronology.

Mrs Searle: Yes. The first one was open and shut in a five-minute wonder but the second one lasted a little longer because we did a presentation with that one but again it was adjourned. I do not know why they cannot - whether John Margaria is a fit and proper person to hold a licence, which we put to them.

The CHAIRMAN: Which would not even go to the matters under the code of conduct that is before -

Mrs Searle: The matters that Margaria has been charged with are all relating to loans with Sadek. They are nothing to do with the complaints that we have lodged.

The CHAIRMAN: There were a number of occasions when the Ministry indicated to you that they were sending off their comments. You would provide them with your complaints and they would send them off to Global.

Mrs Searle: A post box.

The CHAIRMAN: I mean, did you ever question that? I have a background as a customs officer. Just reading that, I found that was a very strange way of conducting an investigation - to get the complaints. Did you ever question that?

Mrs Searle: I did. I think on the second request, Mr Willers rang asking if he could use pages 4 to 17 I think from that document to them. I queried why he wanted to use it but I did not want to hold anything up. I wanted action and if that is the way he was going to do it and he was working on it, then I would go along with that. I wanted action but, yes, I found it very strange, particularly when I found out at the Gunning Committee of Inquiry that he actually did it literally - totally that. He did not draw it into any of his correspondence. He just used that with just a covering letter. I was amazed at that.

The CHAIRMAN: Did you raise it with anyone in terms of, say, the meetings later on?

Mrs Searle: No, because I was not aware of how he was using it. All I got was the request. The first one was a request for the list of complaints that we lodged at the first meeting, which had been the first file on that one. We were asked whether he could use that and so we gave permission for him to do that. That is okay. It is just a list of points. We thought that he would have incorporated that into his letter. I am not quite sure what he did with that. Then later on when we produced that big report, we then got asked if he could use pages whatever it is to 17 and we gave permission for that. but I did ask him why did he want it. I thought, "Okay, if it means I have saved him time and work and he is going to get the thing done." I okayed it. My main concern was to get some action, whatever action. Yes, I did raise my eyebrows and then of course when I went to the debate in the House I realised then he was just really a post box between the letters going backwards and forwards. That is all he did until that stage.

The CHAIRMAN: Following that debate, you came back to the phone call you had with Mitchell. You must have obviously raised the concerns about the Minister's response to the debate.

Mrs Searle: I wrote to the Minister. I wrote a letter to the Minister.

The CHAIRMAN: Did you sort of suggest that you felt he was being misled by the department?

Mrs Searle: I think on the bottom of the first page I put something like, "Respectfully I get the feeling that we are just being fobbed off, Minister" or words to that effect. It is actually in the letter.

The CHAIRMAN: So that was you as an investor or you and - - -

Mrs Searle: Everything was done in the name of PenLas Pty Ltd.

The CHAIRMAN: Obviously the intent of your phone call was to try and highlight to the Minister if he believed - - -

Mrs Searle: I was asking to see the Minister again. That is what I was phoning Mitchell for. I demanded to see the Minister.

The CHAIRMAN: I understand that but I guess in terms of the correspondence and the phone calls, were you raising the fact that the Minister's responses were clearly not accurate and trying to highlight to the Minister that the information he was providing to the House, if that is what he was getting told by the Ministry, was incorrect.

Mrs Searle: I did have several goes at trying to correct the only two complaints lodged in 1998 against Global because we had lodged six, so I do not know where they got two from, and Lens makes seven but, no, not really. The main thing is that we wanted to see the Minister to say, "Look, do something. This man is still trading. He is still going on." That was really our focus. We were not interested in politics. We do not care what colour the Minister is. In fact we still to this day are apolitical. We do not care. All we wanted was someone to test what we have got and if it is found to be upheld, that there are serious allegations and they are upheld, this man has got to be stopped because people are going to lose money because we already knew we were losing on Reilley and liquidated that loss in November 1998. We knew the others. The others we had been paid out of - we knew they were going to go down. We had the evidence. We knew they were going to go down.

Hon G.T. GIFFARD: Can I ask a question in relation to part C? You say in the last bit of the second paragraph of the summary, "We also feel that we have been penalised by the Ministry of Fair Trading" and you go on to explain the basis on which you think you have been penalised. Can you just explain to me what you mean by "penalised"?

Mrs Searle: In the early stages of dealing with Mr Willers, I was trying to assess Mr Willers as to why it was that we did not seem to be getting anywhere or the enormity of what we were suggesting to him or putting before him was not being taken due cognisance of. I wondered at

one stage because I know this does happen, probably to a fault sometimes. I am very efficient. Everything is nicely done. This sometimes does cause slightly antagonistic feelings with people who are probably not of the same ilk. I wondered at one stage - because every time I presented something to Willers, in my inevitable style it was all there, all nicely done - whether in fact this was creating a barrier. That is where that comment has come from, and again perhaps with other people within the Ministry or the Minister's office. Every time we went there, we would follow up - "Our understanding of what was said at the meeting was this. Can you please confirm your understanding?" We do all that sort of thing which you need on a construction site, on large construction. You need to make sure everything is tied up nicely. I wonder whether this sort of administrative way that we operate might not have caused just a ripple or two of, if you like, not bad feeling - that is too strong - but resentment, so we were trying very hard to be as pleasant and as nice, to try to overcome the fact that we are probably very efficient. If they said they were going to do something and they had not done it by that day, we were on the phone or writing to them saying, "Where is it?"

Hon G.T. GIFFARD: It sounds to me like they probably did not enjoy these meetings with you on the basis of what you are saying to me and maybe they were fobbing you off. I mean, I pick up on the word "penalised". I just wonder what you mean by that.

Mrs Searle: Certainly with the inspector we had that view. We never got to meet the Minister so I cannot answer for him. I only ever saw him, if you like, through the people who were in his office when we had the meeting there. I got the feeling at one stage that perhaps what we were presenting - maybe they did understand the enormity of what it could mean but they just did not want to face it. Certainly at the early stages we had that and hence the fact of the offer to buy us out. We got the feeling that perhaps we might stop at that once we were not financially involved; that we would just walk away and not worry about others, but I am afraid we could not do that. I am not afraid. We could not do it. I am proud we could not do it. I am just sorry we did not succeed. We did not save people's money.

The CHAIRMAN: Do you have any other questions?

Hon G.T. GIFFARD: No, that is all.

Hon RAY HALLIGAN: Not at this point.

Mrs Searle: Thank you.

The CHAIRMAN: I think, unless there is anything you want to say in conclusion, Penny -

Mrs Searle: No. You have given me a good run, have you not?

The CHAIRMAN: Yes. We appreciate you coming in today, and the information and the evidence you have provided this morning and in your written submissions. We appreciate the offer of access to any other documents that you have, if we need them. I would just sort of again reiterate in terms of some of the comments about some of the evidence you have given to us today that if you believe it should go to the fraud squad, I think the best way would be for you to bring it to their attention.

Mrs Searle: Okay.

The CHAIRMAN: We are liaising with them so we will mention it to them and make sure it is mentioned to them, but I think if you have got the documentation, it is probably best for you to lay the complaint with them. Once again, thank you very much for coming in today.

Mrs Searle: Thank you for your time.

The CHAIRMAN: That is all right.

Mrs Searle: All I can say is that I am very sorry there has to be an inquiry such as this; that things have had to go this far. It is a shame it could not have been stopped in the early stages.

Committee suspended from 12.48 pm to 1.18 pm