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# Victims of collapsed agribusiness investments still pursuing financial advisor over losses

ABC Rural / By Sarina Locke

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Naomi Halpern protested outside an emergency Senate hearing in Melbourne about the ANZ's role in the collapse of Timbercorp calling for compassion from the bank on November 12, 2014. *(ABC News: Clare Rawlinson)*

Eight years after the collapse of managed investment schemes (MIS) in timber, fruit and other projects, attention is again focused on the financial advisors who recruited investors.

A Royal Commission, a judicial inquiry, a reopening of the Australian Securities and Investments Commission's investigation are options being discussed by former investors and their advocates.

But the Government has ruled out a Royal Commission into financial services, despite a host of banks, individuals and companies under investigation.

## Despairing and broke

Naomi Halpern has become a voice for victims, presenting evidence of their shame and despair to the Senate Inquiry last November into the failed agribusiness schemes.

Victims of failed agribusiness schemes and bad financial advice seek justice and a Royal Commission. Investigation by Sarina Locke *(Sarina Locke)*

"The first I realised that things were going wrong was in November 2008 when the global financial crisis (GFC) hit and I started to get emails for margin calls," she said.

"The share portfolio had collapsed, loans for agribusiness I didn't know I was in.

"I started to get phone calls from creditors saying you're behind in your repayments. It was a total nightmare.

"I was absolutely terrified."

The people who had a stake in the failed agribusiness schemes are not all wealthy city lawyers, or doctors but office managers, mechanics, animal carers, teachers, and small business owners, like Greg White who owns the newsagent near Shepparton.

"I thought I'd save all my money and have a comfortable retirement early, rather than spend all my money early on."

Those hopes were dashed by 2008.

Mr White claims he was a victim of bad financial advice.

His trusted Melbourne accountant convinced him to borrow against his shares, to buy more shares, in a margin loan portfolio.

He also signed him up to managed investment schemes.

The lure was a tax deductable slice of agricultural projects, with high returns growing olives, mangoes, avocados, timber, grapes and wine.

"So from 1999 to 2001-2003 I took on three schemes," he said.

"I had a lovely set of blue gums in Tasmania, several hectares of olives at Boort in Victoria, and a share in a nice winery in Margaret River Western Australia, which all sounded very nice. He [the advisor] said I'd be helping local producers, and it was great to be investing in Australian agriculture."

Part of the problem was Mr White did not understand what he had invested in; he did own the blue gum trees but not the land they grew on. He didn't own the olive trees at all, just a share of the harvest profits if ever the trees fruited, and the wine grape profits never materialised.

In fact Mr White alleges his adviser hadn't told him all sorts of things about MIS agribusiness schemes by the time they crashed in 2008.

"But what he never said to you was that if the trees don't grow that fast or the olives don't have flowers, you could be locked into this scheme virtually forever and in all the cases, none of them ever lived up to what he promised them to be."

Mr White also signed up for margin loans, which are borrowings against his equity in shares used to invest in a portfolio of more shares.

But by the end of 2008 he lost everything. His agribusiness schemes were broke, his blue chip shares all sold with, he said, no warning from his financial adviser.

"There was actually nothing left. The shares by the end of 2008 would barely cover the loans," Mr White said.

But why didn't Greg White seek a second opinion about the risks his adviser might be getting him into?

"For many years it was sheer growth; everything he had done for me while the share market was going well, but he never gave us any real information, you just trusted what he gave you," Mr White said.

"It was not until the global financial crisis that you began to question the possible risks involved.

"Because again we were never informed of any risks. There was never any talk of downside."

Like Mr White and hundreds of others who invested in the doomed Timbercorp agribusiness, Ms Halpern from Melbourne didn't understand the package she bought through her adviser.

"What he recommended we do was first of all, get an investment loan against equity in our houses, and then a margin loan that would match the investment loan to buy shares," Ms Halpern said.

"We've just heard this story time and time again, 'what I'm doing is safe and conservative, we'd never put your home at risk'."

"In terms of agribusiness, he put me in an agribusiness in 2001, he'd tell me they were government endorsed, government backed schemes, they were helping the economy grow and rural areas and farmers."

What is galling for Ms Halpern is that she did seek an expert second opinion but she too trusted her adviser.

"He had been working in accountancy in the tax department for many years, he was very qualified and had credentials on the wall," she said.

"It's a bit like going to a doctor. If a doctor recommends a treatment, you think this is the expert and this is what has to be done."

## Lucrative commissions from MIS to financial advisers

Timbercorp and other agribusiness schemes were promoted as tax deductible investments in rural Australia.

> "ASIC found that Mr Holt failed to have a reasonable basis for the advice he gave to retail clients.
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> Further Mr Holt failed to meet his disclosure obligations to disclose the costs and benefits that may be lost in switching a client's superannuation and failed to ensure the business maintained professional indemnity insurance."

At the time, upfront commissions for those promoting them were lucrative and it wasn't unheard of for them to be paid 10 per cent of the investment.

One of the advisers heavily involved in promoting Timbercorp, Peter Holt of Melbourne, was banned from offering financial advice for three years in 2012 by the Australian Securities and Investment Commission after it reviewed six complaints from clients.

"ASIC found that Mr Holt failed to have a reasonable basis for the advice he gave to retail clients," the ASIC ruling said.

"Further, Mr Holt failed to disclose the costs and benefits that may be lost in switching a clients' superannuation and failed to ensure the business maintained professional indemnity insurance."

Mr Holt can resume as a financial planner in September, and the leniency of ASIC's ban has been slammed by Federal politicians.

Labor's Senator Sam Dastyari used parliamentary privilege in June 2014 to name Mr Holt, saying his clients who suffered terrible losses were mechanics, trade teachers, animal carers and retirees.

Senator Dastyari told the Senate Timbercorp agribusiness schemes were made to sound idyllic, and "Peter Holt assured his victims that, while their investments had a level of risk, of course their homes would be safe, knowing full well that these families were putting their property, lives and livelihoods on the line."

After Timbercorp collapsed in 2009 some clients who found their homes were on the line and their savings gone tried to sue Mr Holt.

But they withdrew on finding he only had $2 million in indemnity insurance.

By 2011 Mr Holt went bankrupt, as he too had invested heavily in Timbercorp schemes, owing $2.5 million.

ASIC said Mr Holt's bankruptcy, owing $27 million to a range of creditors in 2011, was so large as to raise a serious question about he ability to manage his own financial affairs.

## Bankruptcy's flow on effects

Other victims of the collapse of Timbercorp are still being pursued to pay the debt owed on their loans by liquidators Korda Mentha.

One of those is David Jakimiuk of Melbourne.

"I have two young children. I'm in my late 40s staring down the barrel of bankruptcy, and if that were to be the case, [I'd be] unable to continue in my work," he said.

As a small business loan broker, banks will not regard him highly if he is bankrupt.

Mr Jakimiuk's case was one of six that ASIC referred to in its three year ban on Mr Holt.

Given Mr Holt's ban runs out in September 2015, Mr Jakimiuk is not happy.

"That's an appalling result. There is no question about the wrong doing of Mr Holt," said Mr Jakimiuk.

"For him to sit by the sidelines and be banned for three years, when there's universal acceptance he's done the wrong thing, is just a farce."

Mr Holt has a new accountancy firm in East Kew in Melbourne and has declined to comment for this story.

But he did respond to the Senate Inquiry hearing in Melbourne last November in a submission.

"The MIS industry was the fault of terrible legislation, which allowed 'responsible entities' to do as they wish without appropriate investor protection," wrote Mr Holt in November 2014.

"As far as Holt Norman and thousands of other advisers who recommended Timbercorp were concerned, the recommendations were based on a product that the Government encouraged by providing tax breaks, the ATO supported by providing product rulings, ASIC approved via acceptance of Product Disclosure Statements and independent experts assessed as investment grade."

## ASIC confirms it is reviewing more material on Peter Holt

"Well at the moment we are looking at the information we've received from investors and the Holt Norman Baker Action group and just assessing whether there's basis for reopening," said Commissioner Greg Tanzer.

Stung by criticism it is not doing enough to protect people from questionable financial advice, Mr Tanzer said ASIC banned 57 financial advisers last year.

"Just earlier this year, we achieved a sentence of over six years for a criminal case for a financial adviser Melinda Scott, for defrauding 150 of her clients of over $5.9 million."

Independent Senator Nick Xenophon who sits on the Senate Committee said the Government needs to compensate failed agribusiness investors who lost so much money because they were tax incentive schemes.

"We basically know what needs to be done, and that is the victims of these failed schemes, Timbercorp and Great Southern, need to receive compensation to get their lives back on track. But right now that doesn't exist and there needs to be a political will to help those individuals rebuild their lives," Senator Xenophon said.

But the Federal Assistant Treasurer Joshua Frydenberg said there is no plan to hold a Royal Commission, nor offer individuals compensation.

"The Government is committed to raising the professional, ethical and education standards of financial advisers," said Mr Frydenberg.

"We have established an enhanced public register of financial advisers. This register will enable consumers to verify adviser credentials, increasing transparency and accountability in the sector."

But on the Coalition's backbench is Nationals Senator John Williams, who has consistently called for a Royal Commission into the financial services industry.

He said the ASIC registry should also list black marks.

"I put it to ASIC, we should be going to that registry and say if you've been banned for a period of time that must clearly be on the website of your history, so that when anyone searches the history of financial advisers they can get the wrongdoings as well as the right-doings," Senator Williams said.

"One of my goals is to make ASIC a feared, effective regulator and they're a long way from there now."

Senator Williams crossed the floor to support a Greens motion in June 2015 for a Royal Commission into financial services.

The motion failed, but Senator Williams said the push is growing.

"I've called for that for many years, since we began our inquiry into the liquidators, and I think as we go along the strength and muscle for a Royal Commission will grow and grow.

"I feel sorry for the good financial advisers and there are thousands of them. They put their customers' interests first.

"But there are rogues that have been highlighted throughout our inquiry and they have to be taken out of the industry.

"One of my concerns is the crazy financial products from Storm Financial, Timbercorp, Great Southern, Trio Capital. It cost hard-working good Aussies billions, and we have to look at the financial products that are out there as well."

ASIC completed investigations on Peter Holt in 2012 and banned him from financial advising for three years for 'failing to disclose costs and benefits that may be lost switching a client's superannuation' and 'failing to maintain indemnity insurance.'

The ABC can reveal the details of ASIC's 2012 findings based on the evidence of six of his clients.

Two clients were women on low salaries of around $30,000 who sought advice on retirement and paying off their homes.

Mr Holt recommended they borrow against their homes and invest in shares through margin lending.

> ASIC weighed up that "Mr Holt submitted that Mrs X's goals were ridiculous in light of her income and expenses. "Mr Holt noted that while Mrs X was advised of the risk, including the risks associated with a call on her margin loan, with the benefit of hindsight, he should not have tried to assist her," wrote ASIC.
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> "Notwithstanding how well-meaning Mr Holt may have been in assisting Mrs X by creating a plan to seek to achieve her desired goals; based on her income of $36,000 her assets and her risk profile..... I am satisfied that the advice to borrow against her home; use her cash savings and take out a margin loan and invest in shares, was not reasonable in view of her personal financial circumstances."

Another client wanted Peter Holt to assess whether a paint shop business was worth buying.

He recommended taking out loans to invest in Timbercorp's avocado and fruit projects, inconsistent with the client's wishes. After following Mr Holt's advice, that client had debts over half a million dollars, including the existing home loan of $300,000.

> "I have difficulty in reconciling the earlier advice given by Mr Holt that they invest $32,000 into the Timbercorp 2007 avocado and fruit project to be funded by a loan of $32,000 from Timbercorp Securities, with his submission that they needed a cash flow stream and a portfolio of blue chip shares, geared at a 50 per cent loan to value ratio. The recommendation is not consistent with the client's objectives," the ASIC report said.

Another couple with a combined salary of $110,000 as a technician and a teacher were after a holiday and a caravan.

Mr Holt recommended in 2004 they invest in five agribusiness schemes, including Timbercorp and take a margin loan against equity in the home to invest in the stock market.

That couple started with assets of $360,000, liabilities of $29,000.

By following Holt's advice into the margin loan and MIS schemes, they had loans of over $420,000.

ASIC reports on another client who wanted a holiday and to be set up for retirement, and was told to take out margin loans, take up Timbercorp avocado, fruit and almond lots.

ASIC found that Mr Holt failed to inform each of these clients of the inherent risks with agribusiness schemes and the ongoing costs and fees of margin loans.

ASIC also reports the size of Mr Holt's bankruptcy on 10 June 2011, owing $27 million, raises a serious question about his ability to manage his own financial affairs.

It lists among his creditors, $1.45 million owed to a Margaret Holt, $3.7 million owed to Holt Norman Pty Ltd, and $1.8 to Holt Norman and Co.

It also refers to a deal Holt and William Norman established with Dapal Ltd, agreeing to raise $15 million for a proposed agribusiness project in the Goulburn Valley.

Mr Holt and Mr Norman would receive a commission of $3.75 million under the agreement," summarised ASIC.

But if that deal were to fail, then "Holt and Norman would be personally liable to Dapal for $15 million."

## Timbercorp's liquidators also pursuing Peter Holt

Of the 14,500 investors who borrowed from Timbercorp Finance to grow trees from 1992-2008, thousands are yet to pay back their loans.

Liquidators Korda Mentha have set up a hardship process to help those facing bankruptcy to reduce their crippling debt.

But Korda Mentha is also pursuing Mr Holt to try to recover $2.5 million he owes Timbercorp Finance, and it has replaced Mr Holt's former bankruptcy trustee with Nick Mellos from the firm Grant Thornton.

Mr Mellos has announced it is opening a public examination into Mr Holt to begin in the Federal Court in Melbourne on July 24th.

He wrote on Friday to all the creditors and former clients of Mr Holt asking for information about his assets that might help the investigation.

The case expects to hear evidence before the Fedeal Court from Mr Holt's wife and former company.

In its submission to the Senate Inquiry Korda Mentha said Timbercorp paid a total of $200 million in commissions to all the financial advisors who spruiked its products.

## Response from Peter Holt

Mr Holt's submission following the Senate Inquiry hearing in Melbourne last November said he was "totally compassionate to all of the victims of Timbercorp."

"It may be easy with the benefit of hindsight to suggest that the MIS industry was all a Ponzi scheme, however if there was no money in large scale farming there would be no food in the supermarkets," wrote Mr Holt in his submission from the 27 December 2014.

Mr Holt rejected evidence presented to the Senate Inquiry that he received commission of 10 per cent or higher for promoting Timbercorp.

"It was always eight per cent paid to HNC (his company Holt Norman)," he wrote in his submission.

"HNC was the only group that successfully drove the meetings to remove Timbercorp/Korda Mentha as the 'responsible entity' of a number of their projects in an attempt to protect the growers [investors] interests. The exercise was fully funded by the financial planners in the group without any request from growers [investors] for contributions."

But the class action brought by McPherson and Kelley Lawyers failed with the Judge Judd dismissing the case in September 2011.

The judge said the lawyers for the investors ran "an elaborate and sometimes illusive web of allegations."

That loss paved the way for liquidators Korda Mentha to pursue more than 2,000 investors, many of whom had stopped servicing their debt in expectation of a favourable outcome from the court case.

In a letter seen by the ABC, McPherson and Kelley Lawyers encouraged clients of Mr Holt to join the class action in May 2009.

"Macpherson and Kelley has a strategy which would provide welcome relief especially for growers who took out loans from Timbercorp Finance Pty Ltd in 2008 and possibly even in 2007. The strategy will allow you to hold onto your cash that you would otherwise be using to meet repayments on those loans," the letter to investors said.

"The strategy is based on the failure of Timbercorp Securities Limited to disclose to growers the extremely poor financial position of the Timbercorp Group," the letter continued.

That made already bad debts worse, according to Korda Mentha and Senators on the inquiry.

Mr Holt has not responded to the ABC for this investigation.