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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION SIREN

Reference: Operation E09/1228

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 21 SEPTEMBER 2010

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR PAYNE: Just before we start Mr Stevenson has something he wanted to put on the record, Commissioner.

THE COMMISSIONER: Yes, Mr Stevenson.

MR STEVENSON: I want to inform you of a development. This morning one of my instructing solicitors located a small bundle of documents that we think have not been previously provided to the Commission. Against that possibility, I telephoned Mr Payne as soon as I was made aware of that fact and have arranged for a copy of the documents to be delivered to him here. I have a copy myself but I've hardly had a chance to glance at it. I'm asked to give this assurance to the Commissioner, it was something which occurred at Mallesons and as soon as we found about it we've made it clear to those assisting you.

THE COMMISSIONER: I have restrained myself from commenting previously on the quality of the production of documents and from my examination of the material, the fault does not lie with Sydney Water and this seems to be yet another aspect of an incorrect appreciation of what's privileged and what is not. But we will ride with the punches, Mr Stevenson.

MR STEVENSON: On my quick perusal of the documents, there's no privilege issue and I don't wish to - - -

THE COMMISSIONER: Well, I just don't know why they weren't produced. But anyway, I, I assume that it was all done in good faith and accept it on that basis.

MR STEVENSON: Yes.

MR GORDON: Commissioner, can I just raise one small matter.

THE COMMISSIONER: Yes.

MR GORDON: I'm having some difficulty hearing counsel in the front row. The background noise from the air conditioning not insubstantial and we're all having some difficulty. I would ask you, please if you could bear that in mind, I'd be grateful.

THE COMMISSIONER: Yes. I'm sure they will, Mr Gordon.

MR GORDON: Thank you.

MR PAYNE: Commissioner, if Mr Harvey could come back into the witness box.

MR McILWAINE: Can the declaration be made yesterday (not transcribable)

THE COMMISSIONER: I beg your pardon?

MR McILWAINE: Would you continue the declaration notice?

THE COMMISSIONER: Yes. The Section 38 order continues to apply.

10

MR PAYNE: Mr Harvey, when we broke yesterday I had asked you some questions about the Outdoor Advertising issue and in particular the invoices which you had arranged for payment to Mr Makucha. Do you remember that?---Yes, I do.

10 And for most of those invoices you suggested that an amount of \$18,000 would be an appropriate amount for each of the invoices reflecting the monthly invoice which was to be provided to you. Correct?---That's correct.

And you knew, I take it from what you told me yesterday that for professional services contract involving Outdoor Advertising that first of all if over \$50,000 was to be spent in relation to that contract, that was outside your delegation?---That's correct.

20 And you understood didn't you that for any contract involving a sum in total of more than \$50,000, Sydney Water's delegations required you to have a written agreement with Mr Makucha rather than the oral agreement you told the Commissioner about yesterday?---That's correct.

So that from the outset in relation to this Outdoor Advertising matter, you decided that you wouldn't follow Sydney Water's processes in those two respects. Firstly oral agreement rather than written agreement as was required. Correct?---Correct.

30 Secondly, an agreement for an amount over and above the \$50,000 that you knew would be within your delegation if it was otherwise permissible. Correct?---Correct.

And thirdly you arranged to split the invoices so that each of them at \$18,000 was under an amount which you thought might attract scrutiny from your accounts department?---It certainly, in terms of the amount, that was an amount which we'd agreed. I'd agreed with Mr Makucha. It was I thought was a reasonable amount but, you know, look certainly it was, you know, I didn't think it would go on for so long, so I - - -

40 Did you tell Mr Makucha that you were setting out on a process to deceive the Sydney Water accounting department in this way?---No, I didn't.

Did you ever have any discussion with him about the amount of \$18,000 and its relationship to your authority?---No, I didn't.

Were you surprised when, that the invoices that you've had submitted in relation to Outdoor Advertising on a regular basis throughout the second

half of 2009 were paid by Sydney Water?---I think certainly towards the end I was.

You were surprised that in effect that you, that these false or misleading statements you were making to your accounts department weren't being picked up?---That's correct.

10 THE COMMISSIONER: Excuse me, Mr Payne. Mr Gordon, I think that if you have, if any particular question or answer you can't hear you feel at liberty to say so.

MR GORDON: Commissioner, I'm grateful, I am having problems on a continuing basis at the moment.

THE COMMISSIONER: Mr Payne, if you could - - -

MR PAYNE: I'll speak up, Commissioner.

20 THE COMMISSIONER: Can something be done to the microphones? Perhaps if we, if someone from the Commission's staff can please look at the microphones to turn the - - -

MR MAKUCHA: They only have to have the microphone closer.

THE COMMISSIONER: We have counsel here who is appearing for you and who will speak for you, Mr Makucha.

MR MAKUCHA: Forgive me.

30 MR PAYNE: Mr Harvey, I now want to turn to another topic. Do you still have volume 2 in relation to your statement? Perhaps if that could be shown together with volume 4 because there's some documents from each I want to ask you some questions about. The first documents I want to ask you about are in volume 4. Can you go to page P1322 in that volume?---Yes.

That's a document called the Karcher agreement?---That's correct.

You signed that on 17 November, 2009?---That's correct.

40 That's a little over two weeks before you ultimately signed the Business Implementation and Confidentiality Agreement being the two volume agreement. Correct?---Correct.

I take it when you signed this agreement you knew you had no authority to commit Sydney Water to anything in relation to a pilot water bottling plant in Germany?---That's correct. I, I think at the time I thought this wouldn't take place until we had the necessary approvals.

But you agree that you were committing Sydney Water to something in relation to a Confidentiality and Business Implementation Agreement which had not then been signed?---That's correct.

Which on your evidence would only be signed after the board of Sydney Water had approved it?---That's correct.

10 And yet here you are some weeks prior to that being signed you're committing Sydney Water to at least meeting certain costs in terms of an agreement yet to be reached. Correct?---That's correct.

And what, if anything, did you know about pilot bottling water plants in Germany at the time you signed this agreement?---Nothing in particular in Germany. I knew of Karcher as a company, it was involved in water bottling and the industry and the purpose of pilot plants, I understood, where a necessary precursor to approving up the viability of bottling plants and so I saw it as being one of those necessary things to do which obviously still need to be costed and brought into the business plan.

20 But you were happy to commit Sydney Water to pay Mr Makucha's costs to conduct these investigations even without board approval you say?---If there was any cost, because I think I said to Mr Makucha at the time, you know, I can't agree to any travel or anything like that until we've got the board approval.

Did you say that when you signed this Karcher agreement on 17 November, 2009?---I can't be sure but, I, I think so.

30 Turn over the page to P1323, a document called the BNP Paribas agreement, that's a handwritten correction you've made to the name of the merchant bank at the top of the page is it?---That's correct.

And again, you are committing Sydney Water to meet Mr Makucha's costs of attending a meeting in London to provide instructions for various valuations for intellectual property and goodwill as contemplated by an agreement yet to be entered. Correct?---That's correct.

40 Now, you knew, didn't you, Mr Harvey, at this time that at least in part the purpose of these valuations was that under the agreement to be entered Mr Makucha would be entitled to rely on those valuations to have Sydney Water make payments to him of 20 per cent of those valuations for various items of intellectual property, correct?---Correct.

And so you knew under this agreement, as yet to be signed, that potentially at least a large sum of money, perhaps in excess of millions of dollars, would become payable by Sydney Water to Mr Makucha in relation to these valuations?---That's correct.

Mr Harvey, can I just ask this, given what you've told me about the limits of your authority and what you believed about the necessity for Sydney Water's board being involved in any decision, what led you to agree to pay the costs of Mr Makucha obtaining a valuation which might result in Sydney Water having to pay many hundreds of thousands if not millions of dollars to him?---I saw it as part of the overall valuation of the, the business case and ultimately the joint venture.

10 Which wasn't then approved but you were, you were happy to pay for Mr Makucha to travel to London to obtain this evidence which would ultimately lead to the payment of money by Sydney Water Corporation to him?---Again on the same lines as I commented before, I wasn't in a position to, to approve any of those funds at that particular time until the joint venture was approved.

And at the time that you signed the BNP Paribas agreement did you say anything to Mr Makucha about that topic?---I think it was in the same, at the same time as the Karcher agreement so it was, the same comments I believe were conveyed.

20

Who was present when you signed these legal agreements? Do you remember?---Mr Makucha.

And only Mr Makucha?---That's correct.

Please turn over to P1324, a document described as the Sitka Blue Lake Agreement?---Yes.

30 Again, you, you agreed in this document on behalf of Sydney Water to Mr Makucha and his nominees attending meetings with government, local council and municipal representatives in Alaska to negotiate a long-term water supply contract for water to be supplied from Alaska to Sydney?  
---Correct.

Mr Harvey, you knew didn't you, in November 2009 that the prospects of the board of Sydney Water agreeing to ship water from Alaska to Sydney were nil, didn't you?---I can't say I knew it was nil, sorry.

40 Can you point to any piece of paper or any conversation you have ever had with any person in the world other than Mr Makucha which led you to believe it was possible that the board of Sydney Water might be persuaded to take up the opportunity provided by the Sitka Blue Lake Agreement?  
---No one apart from Mr Makucha.

Can you turn over the page to P1325 please?---Yes.

This agreement apparently was a bridge too far for you on 17 November, 2009. It was the only one you refused to sign?---Correct.

That was an agreement where Mr Makucha asked you to authorise him on behalf of Sydney Water to attend a meeting with the Commonwealth government to negotiate tax free status of Sydney Water bonds, do you see that?---That's correct.

10 Now, you knew at that time that part of the proposal or the opportunity as you put it yesterday that Mr Makucha was offering to you was that in addition to the Sydney Water bank that we discussed yesterday, Sydney Water would issue bonds to members of the public?---That's correct.

And that as you understood it Mr Makucha's proposal was that he be permitted to meet officers of Treasury of the Commonwealth of Australia to try and have the Income Tax Assessment Act 1936 or 1997 amended to permit these bonds to be issued tax free?---That's correct.

20 Do you know whether such an arrangement in relation to bonds made its way into the Business Implementation and Confidentiality Agreement which you ultimately signed?---I can't be sure but that was certainly, I, that was one of the key aspects I would've brought if that was one of the proposals about bonds so I, it would've needed to be explained, covered.

And when you say one of the key proposals, as you understood it Sydney Water would issue these bonds and receive money from the public?---I believe so, yeah.

30 Agree to pay some coupon rate on those bonds and use the money for some sort of housing projects. Is that as you understood it?---I don't know whether it was just housing it was basically to fund future infrastructure.

Infrastructure generally?---That's correct.

In anywhere in particular?---I think certainly within the Sydney Water networks.

40 What was it that made you think that the Sydney Water Corporation might be at all interested in becoming an infrastructure provider generally in New South Wales other than sewer and water issues?---I don't think I believed that, I, I think what I was trying to say was that it was Sydney Water's infrastructure in upgrading of the, the water, waste water systems rather than borrowing.

Well, issuing bonds is borrowing isn't it?---Sure. Yeah. Instead of the normal traditional way of through Treasury. Well within Sydney Water's own financial capabilities.

What did, Mr Harvey, what did you know about Sydney Water's traditional borrowings through the New South Wales Treasury if anything?---I was

aware of it, I didn't know the details, I knew that certainly there was a large reliance by Sydney Water for State Government support for the major capital works projects especially like the desalination plant, that didn't come directly from Sydney Water's internal funds.

Mr Harvey, I want to be fair to you. Have you ever heard of a body called the Loan Council?---Yep.

10 You know don't you that that is the Commonwealth Treasury, the Treasurer of each of the states of the Commonwealth of Australia. Correct?---Correct.

You know that that body monitors how much money is borrowed by the Commonwealth and the various State Governments. Correct?---Correct.

You know that New South Wales Treasury on behalf of government departments and state owned corporations keeps a close eye on the borrowings of those bodies because it affects New South Wales in a vital way in relation to, amongst other things, Loan Council matters?---Yeah.

20 Mr Harvey, how could it be that you thought that Sydney Water would be permitted to go outside of those arrangements with New South Wales Treasury?---I didn't know particularly that it was, it was an option which was worth pursuing in my mind.

Other than what Mr Makucha told you did you have a conversation with any person or can you point to a single piece of paper you were aware of in 2009 which suggested that Sydney Water had any interest or was free in creating its own market for bonds?---No.

30 Can I then take you to the agreement itself, it's in two volumes, you can close up volume 4 and I don't need that anymore, you will need volume 2 briefly.

THE COMMISSIONER: I understand we can't increase the volume of the microphones any further than they are now because that produces feedback in the noise of the transcription service.

40 MR GORDON: May I say it's much improved. I think it all depends where is his voice.

THE COMMISSIONER: His vocal chords might not stand it but he will shout for the rest of the day as best he can no doubt.

MR GORDON: Thank you.

THE WITNESS: Excuse me, Commissioner, I need to have a toilet break. Sorry about that.

THE COMMISSIONER: Adjourn for five minutes.

**SHORT ADJOURNMENT**

**[10.30am]**

MR PAYNE: Thank you, Commissioner. Mr Harvey, I'm now going to ask you some questions about the business implementation and confidentiality agreement that you signed. It was over five volumes and they fit into two lever arch volumes?---Yes.

Can Mr Harvey be shown that agreement, please. Now, Mr Harvey, that's not the executed copy because that's with the Supreme Court of New South Wales. I'm going to show you the execution page and ask you to assume that that document that I'm showing you is otherwise identical to the document in the Supreme Court. That's your signature?---It is my signature.

And on 3 December, 2009 you executed that two volume agreement by that signature?---That's correct.

Commissioner, I tender the two volume agreement and I separately tender the execution page.

THE COMMISSIONER: Well, folder 1 containing part of the two volumes, containing the first volume of the two volume agreement is Exhibit P132.

**#EXHIBIT 132 - FOLDER 1 CONTAINING 1ST VOLUME OF BUSINESS IMPLEMENTATION AGREEMENT**

THE COMMISSIONER: And Exhibit P133 is folder 2, being the second volume of the two volume agreement.

**#EXHIBIT P133 - FOLDER 2 CONTAINING THE 2ND VOLUME OF BUSINESS IMPLEMENTATION AGREEMENT**

THE COMMISSIONER: And P134 is the execution page, page 57 of the agreement.

**#EXHIBIT P134 - THE EXECUTION PAGE (PAGE 157) OF THE AGREEMENT**

MR PAYNE: Now Mr Harvey, can I just ask you some questions about that agreement at a high level first of all. Prior to signing the agreement on 3 December, you had occasion to look at drafts of that agreement didn't you?  
---That's correct.

But I think as you told me yesterday, other than perhaps one or two very minor matters, you made no suggested changes or corrections to that agreement did you?---That's correct.

10

And as you understood it, the agreement was being drafted by a lawyer, Mr Stafford, from Eakin McCaffery Cox. Correct?---That's correct.

And as you understood it, he was acting for Mr Makucha. And Mr Makucha alone. Correct?---That's correct.

He was not acting for Sydney Water or for you or for any joint venture company. Correct?---I'm not sure about the joint venture companies. But in my understanding he was acting for Mr Makucha.

20

THE COMMISSIONER: The joint venture companies didn't exist yet?  
---No, that's right. Yeah.

MR PAYNE: And there were corporate vehicles which had been created but they were all owned and controlled by Mr Makucha. Sydney Water had nothing to do with them. Correct?---Correct.

Well, we went through that yesterday. There were a number of companies Sydney Water P, Sydney Water N, et cetera and you knew that they had been incorporated and that Mr Makucha was the sole shareholder and director. Correct?---That's correct.

30

And you knew that before those companies could have anything to do with any joint venture, this agreement needed to be executed. Correct?---That's correct.

And you knew didn't you that upon execution of this agreement, various sums of money became payable by Sydney Water to Mr Makucha?---That was my understanding, yes.

40

And just if we can track that down. I know you have a lot of paper in front of you, but perhaps the quickest way to do it is to go back to volume 2 of your statement if you still have that there and open it to page P646, which is a letter from Eakin McCaffery Cox actually this time addressed to you rather than any General Manager of Sydney Water. Do you see that?---Yes, that's right.

That's dated 25 January, 2010, which is some weeks after you signed the agreement and I'm going to take you through this agreement and ask you to agree or disagree or whether you knew if not the precise amount, the effect of what you were doing by signing the 3 December agreement so far as payments due from Sydney Water to Mr Makucha were concerned. Do you understand?---Yes.

Just looking at the, the table contained in this letter. It goes over four pages. Do you agree?---That's correct. Yes.

10

And it contains a number of columns. The first column, description of payment and then who the payment was to be made by, who the payment was to be made to, the amount, the due date and a reference in the agreement to where it was that that obligation arose. Do you see that?---I do.

And let's just deal with them one by one if we could. You understood when you signed the agreement on 3 December, 2009 that you were committing Sydney Water to make a payment to PMH. Now was that Mr Makucha personally or was that Paul Makucha Holdings or don't you remember?---I don't remember. I, I'm assuming its Paul Makucha Holdings.

20

So either to Mr Makucha or his interests anyway.

THE COMMISSIONER: PMH is defined at the heading, Mr Payne.

MR PAYNE: I'm sorry, Commissioner, you're quite right. So Paul Makucha Holdings Pty Limited is the payee - - -?---Correct.

30

- - - rather than Mr Makucha. And you understood you were committing Sydney Water to pay an amount of between 100,000 and \$1 million as agreed within two weeks of you having signed that agreement on the 3<sup>rd</sup>? ---I, I was going to say I wasn't aware of that. I didn't read the document. I was assuming I think that it was really just acknowledgement of another draft.

40

Well, I thought you'd agreed with me a little earlier that when you signed the agreement on 3 December, you understood that that committed Sydney Water to make various payments to Mr Makucha or his interests?---I understand now. I don't know whether I did at the time, sorry.

I see. When do you say you first became aware that by signing the document on 3 December, 2009 you had purportedly committed Sydney Water to paying sums of money to Mr Makucha or to Paul Makucha Holdings Pty Limited?---I think it was certainly blatantly obvious once I received this letter here on 25 January.

Were you surprised at all when you received this letter of 25 January, 2010?---I think surprise is, you know, an understatement.

Well, just look at the last page of the document P649. You have acknowledged the document and its contents by your signature there?  
---That's correct.

10 You haven't made any remarks, at least in writing in this document about any problem you had with the payments there recorded?---Like I think at this time I was under tremendous stress, concern, I don't know what I was thinking. I, you know, Mr Makucha asked me to acknowledge receipt of it and that's, that's what I did. I, you know, my state of mind at that time, I was just completely confused and depressed as to what was, was going on.

You understood didn't you when you read this letter and when you signed it that you were creating a documentary record for Mr Makucha of your knowledge of the matters contained therein. Correct?---I don't know what I thought, sorry.

20 You don't know. Do you tell the Commissioner that you read this letter at the time?---I, I can't recall. I certainly looked at the letter. I think I saw some of the, just the first page was enough to, you know, but my understanding was that none of this would proceed until we'd received a, the executive summary and board approval. So it was really, I saw it as premature, but it was certainly a great concern to me that, that I'd committed those sorts of amounts. If I had committed, I saw that the document I received as being a draft, another draft. Because lacking the executive summary, I know it certainly reading it further on there was some reference to the executive summary that would come at a later date. But  
30 that was the key document in my mind at that time was being able to get the executive summary which would be, enable that evaluation and final submission to the board.

You tell the Commission, do you, that when you read this it came as a surprise to you, did it, that you had committed Sydney Water Corporation purportedly to pay a then deregistered company, Paul Makucha Holdings Pty Limited, between 100,000 and \$1,000,000 within two weeks of your having signed the agreement?---That's correct.

40 Perhaps close that document and can I just go back to P134 which is the one page I handed you with your signature on it. Do you still have that?---(NO AUDIBLE REPLY)

Can we just examine the answers you've just given me for a moment. Your signature you've agreed with me appears on that document at the top?  
---That's correct.

Mr Makucha and his solicitor or you tell me, who, who was present when you signed it?---Mr Makucha.

And only Mr Makucha?---That's correct.

10 THE COMMISSIONER: Mr Stafford's name appears as a witness?---He certainly didn't, he wasn't there when I signed the document, Commissioner. I don't know whether he's purporting to witness Paul Makucha's signature. Again, I saw this as being, you know, it's certainly not an execution document in the normal way and even the terms of, it wasn't a complete document, its, you know, in terms of the attestation clause its not the normal document we would see so I just, any documents I would have normally executed as a legal agreement would have been done under a power of attorney.

What, what was not normal about it?---Just the way that, that, the way that the execution was set out.

20 Well, can you explain, I don't see anything that on its face cries out as being abnormal. What is it that's abnormal?---Well, to my mind it, as I said, normally any legal documents which I executed from a property point of view had, it was two, it was under a power of attorney, it had specific book and volume numbers and normally it was two signatures.

I see that this one mentions the book number, the instrument of delegation and book number but the book number's left blank?---That's correct.

30 Did you notice that when you signed it?---I can't recall, Commissioner, I think certainly I have now and I don't know whether it was, whether I went looking at that, I just saw that well, this is just another draft that needs to be more along those lines of acknowledgment. I certainly, at that time I didn't think I was committing Sydney Water to, to what's set out in the, the other letter.

Just explain to me the position of the power of attorney please. Do you say that when you ordinarily sign a contract you, on behalf of Sydney Water you have to have a special, a specific power of attorney?---There's, there's a power of attorney for property related matters, yes.

40 Is that a general power of attorney or a power of attorney relating for each, relating to each contract that you sign?---No, it's a general one which is related to real estate matters which I would normally deal with and its, and its two signatures, there's I think about five officers who have got the authority to execute documents.

And when you say two signatures, what do you mean? Do you mean two people have to sign - - -?---That's correct.

- - - on behalf of Sydney Water?---That's correct, yes.

And what relationship does the general power of attorney bear to the instrument of delegation which has a book number?---None at all. That was a term I hadn't seen before.

What is the term you haven't seen before?---This reference to instrument of delegation.

10 And book number?---Well, normally a book number, that's related to, as I said, there's a book and page number I think for, on the power of attorney one which I use but I just, there's no reference.

But is the power of attorney contained in a book?---No, I think it's a registered power of attorney and there's a book and page number which is the reference to the Land Titles Office where it's registered.

I see. Thank you.

20 MR PAYNE: Mr Harvey, you see that P134, it says its executed as an agreement and do you see immediately above where you have signed you have said that you've signed by Sydney Water Corporation by its authorised representative who has delegated authority to sign for and on behalf of Sydney Water Corporation and bind Sydney Water Corporation. Did you say anything to Mr Makucha at the time you signed this which qualified what appears in that attestation clause in any way?---I can't remember the exact conversation but it was along the lines, I said, look, we really need board approval before I can sign this and I think it was along the lines that  
30 Mr Makucha indicated well, just, just acknowledge, it's acknowledging the agreement, we still need to produce the, I said, well, we still need, the key document in my mind was the executive summary to support the whole proposition.

Mr Harvey, I want to be as clear as you can be about this, what you've just told me, do you say that Mr Makucha, upon being told that you needed more documentation in order to take it to the board said words to the effect just sign it anyway?---Look, I can't be completely clear. I really don't know, sorry, I - - -

40 And - - -?---Obviously I think I had concern at the time because I think it was, you know, I saw this as just being another draft of the, of the document. It was certainly expanded a lot since the time I'd seen it before and it was certainly acknowledged that the executive summary wasn't there and that was the, to be the accelerated task through December to finalise the executive summary document.

THE COMMISSIONER: Do you normally sign drafts?---Not normally, no.

So why did you sign this one?---I don't know, I think it was at the request of Mr Makucha.

There's nothing about this that suggests that it's a draft expressly is there? There's nothing in it in other words that says, it's not stamped draft, there's no word "draft" on it. What made you think it was a draft?---I think the fact that it was lacking the executive summary.

10 You haven't mentioned the fact that it wasn't to be signed, there's no provision for it to be signed under a power of attorney by two people as you've previously explained?---No.

That didn't bother you then?---Well, it didn't bother me then because I think certainly if it was going to be executed it would be, it wouldn't have been executed under that power of attorney, it'd be some other, either the seal of Sydney Water or other, other attestation.

20 MR PAYNE: Did you say anything to Mr Makucha about the seal of Sydney Water being required?---I don't believe so.

Did you say anything to Mr Makucha to the effect that you just told the Commissioner that this was an unfamiliar attestation clause because of the absence of any power of attorney and two signatures?---I don't think so.

Did you see when you signed it as well as it's executed as an agreement that, this, this wording at the bottom "final agreement" was written on there?

---No, I didn't, no, I didn't.

30 Mr Harvey, I want to suggest to you that you did have, that your intention in signing this agreement was to commit Sydney Water to continue to make payments to Mr Makucha or Paul Makucha Holdings, do you agree?---No, I don't.

You were given organisational charts at or about the time you signed the agreement which you placed with your papers?---I believe so, yes.

40 Can I show you two colour photocopied documents which you may have been in court were handed to me by Sydney Water only this morning through their solicitors which are, I'm told, came from your papers at Sydney Water. Can you identify for me first of all the document that's called annexure 20 in the top left-hand corner?---Yes.

Is that a document you recognise as containing your handwriting?---That's correct.

And you were given this prior to the time that you signed the agreement on 3 December, 2009?---I'm not sure of the timing but I believe it was prior to that, the 3, 3 December.

10 And it was, as you understood it, prepared by Mr Makucha or on his behalf in order to explain to you the corporate structure?---That's correct. This was part of the, the key documents associated with it to explain the arrangements and to link it across with the Executive Summary each of those numbers I believe like was referenced where there would be specific documentation or explanation of each of those boxes and how they interrelated and it was also endeavouring to show the flows of funds or whatever so there was a number of coloured arrows which were an attempt to try and convey the arrangements.

And you understood when you were given this explanation that this was the explanation of the lengthy documents contained in the Business Implementation Agreement which you were asked to and did sign on 3 December, 2009. Correct?---(NO AUDIBLE REPLY)

20 And if we could just, a few of the things that you've written there if we can just examine them. In box number 5 there is a water trademark company Sydney Water P, you knew at that time that was owner controlled by Mr Makucha. Correct?---That's correct.

And that was the thing that was going to be valued by BNP, that's the French merchant bank that you had signed the document authorising Mr Makucha to go to London to conduct?---Yeah.

30 There's a diabetes clinic that you've written that in box 11?---Yes.

And that was explained to you by Mr Makucha was it?---These, these were comments as I was, as we were running through it to explain what, it was my notes as to what they actually purport to be. This was in the absence of not having detailed explanations for each of those boxes.

40 So you agree that prior to sitting down and signing the final agreement on 3 December Mr Makucha took you through this organisational chart and explained to you what was in this agreement that you were being asked to sign?---Yeah, at the time I don't think I was aware it was within the documentation, the agreement, I saw this as being one of those key documents to explain the arrangements so I was looking for a, a greater depth of detail to, as part of the guidance in preparing this Executive Summary.

And you've written here, so for example, "Borrow money on bonds" in box 29, that's Sydney Water Hong Kong Pty Limited?---Yeah.

That's some sort of financial engineering that was contemplated by the agreement that was explained to you?---It would appear so, yes.

And you've drawn a line from the Sydney Water Corporation Limited by hand, Bond Interest Income to the Makucha Foundation - Society Good Deeds?---Sorry, where is - - -

In annexure 20, are you looking at the same document?---Yes.

10 Can you see the line from that down to the very bottom of the page, says SWC Bond Int. Income?---Okay, that's Mr Makucha's writing.

I see, Mr Makucha wrote that not you. It was on the document when it was given to you?---I can't recall, like I think I'm missing the, underneath Society Good Deeds I can't read the blue, that's been, hasn't copied across.

You've written something there you think?---I can't, I can only see a very small portion of it so I don't know whether it's my writing, it looks like, if it's done in blue it's a fair chance it is mine.

20

At the very least it was explained to you by Mr Makucha that under this arrangement there was going to be a trust created?---I believe that had been discussed, yes.

And that you were going to become a trustee of that trust?---I know that was the proposal, I said those arrangements are subject to Sydney Water board approval.

30

And you were going to be paid money for acting in that capacity \$25,000 a year while Mr Makucha was alive and \$75,000 a year upon his death. You agree?---That's what I've seen in the subsequent documentation. I, as I said I hadn't agreed to that, I said that's up to Sydney Water to nominate directors in those arrangements.

When you first went to Sydney Water and explained this matter to them you spoke to a Mr Sesel didn't you?---That's correct.

And did you tell Mr Sesel that why you'd got involved in this was to obtain those monies for acting as a trustee?---I can't recall the conversation.

40

Bear with me one moment. Commissioner, while that's being looked for I tender those two pages of structure diagrams.

THE COMMISSIONER: Yes. The organisational chart marked Annexure 20 is Exhibit P135 and the organisation chart marked Annexure 20B is Annexure P136.

**#EXHIBIT P135 - THE ORGANISATIONAL CHART MARKED ANNEXURE 20**

**#EXHIBIT P136 - THE ORGANISATIONAL CHART MARKED ANNEXURE 20 .B**

10 MR PAYNE: Thank you, Commissioner. I'm going to put a conversation to you, Mr Harvey, that I'm suggesting to you you had with Mr Sesel when this matter all came to light on 27 January, 2010, that's this year. I suggest to you Mr Sesel in the course of this conversation said to you, "So, Ed, what was in it for you?" And that you said, "I was to become a trustee of one of the companies." Do you agree that that was said?---Probably 'cause what I, what I had done was in that intervening period with all this documentation and that's where, that certainly wasn't my intention but that's what appeared to be the thrust of it.

20 I see. I suggest to you that he said, "So that means there was to be a personal benefit to you." And that you said, "Yes."?---What I said, it was a very stressful time, I was under, yeah, I think, I, I, I can't recall what the conversation was all I know I was asked by Gary Inberg to go and see Jonathan and explained 'cause I had some of the documentation with me so I could pass that across and one of them was that business agreement which identified that so that was my real concern that I had potentially locked myself into that, that certainly wasn't my intention but all the way along I was relying upon the final approval of the Sydney Water board.

30 And I suggest to you at the conclusion of this conversation Mr Sesel asked you, "Was there any other benefit to you?" And you said, "No, but I know I've done the wrong thing,." He said, "It's good that you've come forward and spoken to us." And in fairness to you he recollects that you said, "I now realise that I've done the wrong thing." Do you tell the Commissioner that that conversation took place?---I think words along that line, yes.

40 And finally he said to you, "Isn't the reason you've come forward because accounts payable sent you an email querying a payment and saying that they'll be contacting your manager?" And you replied, "Yes, that's right."?---I don't know whether they said they'd be contacting my manager, I think, I'll have to refresh my mind but I think it was along the lines that I would need to get my manager's approval. I could be mistaken but that's, that's my, my recollection of that document.

And it is the case isn't it that you got an email from a Ms Valentine from your accounts department about the last invoice that you'd submitted on behalf of Mr Makucha which he'd asked for \$100,000, you'd crossed it out by hand and written \$50,000 and that was the invoice where your accounts

department put together this order splitting that I asked you about first thing this morning and raised it with you?---Yes.

And just so we're clear, Mr Harvey, I suggest to you that when you signed the agreement on 3 December, 2009 you understood that you were being asked by Mr Makucha to commit Sydney Water to the full range of initiatives or ideas or opportunities that he had been discussing with you over the preceding year which are reflected in those two volumes of documents that are before you now. Do you agree?---Sorry, I missed the  
10 first part of the question, sorry.

Do you agree with me that when you signed P134 which is this single page attestation that you were purporting to commit Sydney Water to these complex arrangements set out in the diagrams that had been explained to you previously by Mr Makucha?---I think at all times I've indicated that the whole arrangements were subject to Sydney Water board approval. This started off as a confidentiality agreement, I was prepared to, and it certainly morphed into this Business Implementation Agreement, I saw this as being  
20 predominantly a confidentiality, well, that was the original intention it was a confidentiality agreement until it got to the board for approval. But certainly I agree it morphed into a much larger document and that obviously concerned me. I, as I said before I saw it as one of those continuing drafts.

THE COMMISSIONER: Did you know who was going to pay the legal fees for this very bulky agreement?---Mr Makucha said he had some arrangements, some of the funds I was providing (not transcribable) the arrangements which he had with Stafford, I wasn't sure.

MR PAYNE: The \$55,000 invoice that you had paid for Mr Makucha, you  
30 knew that he took that money and paid the accountants with that didn't you?---The 55?

Yes, 50,000 of that he took and paid Mr Malacco from Hall Chadwick. You knew that didn't you?---I'm not quite sure which payment we're talking about.

Do you, do you tell the Commission that so far as the legal fees were concerned that we won't find amongst your papers various bills that the lawyers had issued?---I don't believe so. I can't, I can't recall paying  
40 directly Stafford, but - - -

THE COMMISSIONER: Do you know how much the fees were, Mr Stafford's fees were for this agreement?---No, I don't.

No idea?---I, I can't remember seeing an overall fee, fee proposal. But it could've been included in all the documentation. There was so much documentation over the 12 month period, I just, you know, it's a bit difficult for me to remember everything.

MR PAYNE: And I suggest to you that when you signed the agreement on 3 December, you knew that you were purportedly committing Sydney Water to make payments to Mr Makucha and his related companies. Do you agree?---I think at the time I didn't realise it, that I was committing those sorts of funds. I just saw it as it's an ongoing, as part of the ongoing documentation until we could get it to the board. So I, I saw that certainly I wasn't in a position to commit those sorts of monies. That was well outside anything I would've envisaged trying to achieve. It was certainly a high level approval required for that.

I want to suggest to you, Mr Harvey, that you had been paying considerable sums of money to Mr Makucha for over a year prior to this without any authority from Sydney Water. You agree with that don't you?---I do. I do.

And I want to suggest to you that by the time 3 December comes that you took the view that you were in too deep and that you were going to sign this agreement and if, if Mr Makucha could obtain funds from Sydney Water in relation to these structures, then, then so be it. Do you agree?---I don't think I can agree. I just, the intention basically was, I think at around about this time Mr Makucha had issues with a creditor that's why he had an urgent requirement for funds to try and resolve that. And that was something which certainly came out of the blue. There was a creditor, and I suppose that was all I was trying to achieve at that point of time was some resolution of that. Not, not an ongoing flow of funds until, until we had some high level approval.

The last thing I want to take you up about Mr Harvey is we spoke about your RailCorp employment yesterday?---Yes.

And I want to suggest to you that whilst at RailCorp you were put under a performance management process. Do you agree?---That's correct.

And a template was developed for that process which identified the actions activities required of you and you were required to be tested by reference to that template?---That's correct.

And that there were a number of performance review meetings, perhaps three?---Yeah, there was a number. I don't know how many.

And at the end of that process a recommendation was that your employment be terminated by RailCorp?---That's correct.

And when you applied for your position with Sydney Water, to the best of your knowledge, did you disclose that you had worked at RailCorp at some time in the past?---Yes, I had.

And to your knowledge was anybody from RailCorp contacted by Sydney Water prior to this offer of employment by Sydney Water being made to you?--I don't know. But I know there was a, a requirement for them to send out a form as part of a reference checking and certainly that, that

eliminated my immediate manager at that time. So whether he was contacted I don't know.

You told them who your immediate manager was at RailCorp and you don't know whether that person was contacted?---That's correct.

10 Do you agree with me, Mr Harvey that, that looking back in your role at Sydney Water, given your training and experience you were completely unsuited to be the person that was conducting any negotiations whatever with Mr Makucha?---In hindsight, yes. I think certainly in terms of the, the way that this business implementation was. I think certainly in terms of the property management issues, I was, I was O.K.

And just lastly, that superior you were talking about at RailCorp was an Anne Terry?---That's correct.

Yes, subject to the matter raised at the outset, I have nothing further for Mr Harvey.

20 THE COMMISSIONER: Yes, thank you, Mr Payne. Mr Stevenson?---Sorry, Commissioner, before we go on, could I just have another break.

THE COMMISSIONER: Yes?---I must apologise to the Commission.

Yes. (not transcribable) We'll adjourn for five minutes.

### 30 SHORT ADJOURNMENT

[11.16am]

THE COMMISSIONER: Mr Stevenson.

MR STEVENSON: Mr Harvey, I'm the barrister for Sydney Water as I think you know?---Yes.

You knew, didn't you, that Sydney Water was a state owned corporation?---That's correct.

40 And you knew, didn't you, that its shareholders were the Treasurer and the Minister for Finance for New South Wales?---I understood it was just the state of New South Wales but - - -

You understood that it was a state-owned organisation?---Yes.

And you understood that the area of operations of Sydney Water was in these four areas, the storage, storing and supplying of water?---Yes.

The provision of sewerage services?---Yes.

The provision of stormwater drainage systems?---Yes.

And the disposal of waste water?---Yes.

10 And nothing else?---I'm not sure of nothing else because I was aware that certainly there was other, in the past that Sydney Water had operations overseas through the, what was called the, I can't remember the name of the company, I knew they had overseas operations, consulting as well.

You were not aware of any activity of Sydney Water in Australia beyond the four matters I've put to you, namely the storage and supply of water, the provision of sewerage services, the provision of stormwater drainage systems and the disposal of waste water?---That's true, yes.

20 And certainly in your role as property asset manager you didn't ever see a hint did you of Sydney Water engaging in any activity in Australia beyond those four matters?---Not in my time, no.

You didn't hear a hint of it, didn't see any sign of Sydney Water engaging in any activity beyond those four matters?---I don't believe so.

And were you aware that Sydney Water conducted its affairs under the auspices of an act of the New South Wales Parliament called the Sydney Water Act 1994?---Yes.

30 And you were aware, weren't you, that there was a provision in that act which provided that the area of operations of Sydney Water would be in the four areas I've just mentioned to you?---I wasn't aware of the particulars.

Now if I can show you this document. You've seen the logo depicted on that document before haven't you?---I have.

And leaving aside the problems caused by the printing you recognise that as the Sydney Water logo?---I do.

40 And you understood that that logo was a trademark owned by Sydney Water?---I can't say I was fully aware it was a trademark but I assumed so.

Well, you had no doubt in your mind, did you, that Sydney Water owned whatever rights might be associated at law with the mark you see on that piece of paper?---I certainly wasn't aware of the rights but - - -

You didn't think anyone else apart from Sydney Water had any rights in relation to that mark did you?---That's right.

You've seen it every day on correspondence you've written?---Yes.

You're aware that it was featured on every piece of Sydney Water infrastructure in the Illawarra, the Blue Mountains and in Sydney, correct?  
---Yes.

And you didn't think for one moment, did you, that Mr Makucha had any entitlement to use that mark, did you, at any stage?---I, I can't really answer that. Look, I, there was a lot of discussions about registration of trademarks, that sort of thing, so I, whether, I was purely acting on what Mr Makucha  
10 was saying to me, that there was a potential, as to what was, whether there was any shortcomings in the registration or trademark, I'm not, I can't recall the - - -

Well, did Mr Makucha tell you that there was some loophole was there in the trademark system that he could go through to use this mark himself?---I don't know what they'd call a loophole but there was, I'm really not sure of the technical description of it. I wouldn't have called, thought - - -

THE COMMISSIONER: What was the effect of what he said to you?  
20 ---Sorry, Commissioner?

What was the effect of what he said to you about this mark, Sydney Water?  
---That there was the potential to register it for a bottled water operation.

Potential to whom?---Well, to a joint venture company.

MR MAKUCHA: Can I explain it?

MR GORDON: No, please don't.  
30

MR STEVENSON: Mr Harvey, I just want to put this to you fairly and squarely now, we'll come back to the detail later, but you understood, didn't you, that by whatever legal process Sydney Water owned this logo, didn't you?---Yes.

And you knew that Sydney Water marketed its various services with this logo?---Yes.

You knew that every time Sydney Water sent a water bill to its customers  
40 that logo was featured on it?---Yes.

And you know that every time you wrote a letter to Sydney Water it was under that logo?---That's correct.

So it was obvious to you, wasn't it, that unless Sydney Water took some step Mr Makucha would have no right in any circumstance to use this logo, that was obvious to you, wasn't it?---I don't know whether it was obvious to me, sir.

It's obvious to you now?---Oh, it is now, yes.

And I want to suggest to you, and we'll come back to this in detail, but at all times it was plain as day to you that Mr Makucha had no right to use this logo unless you or someone else purported to give him that right, do you agree?---No. I think at the time I, I saw there was a potential for a joint venture using this logo for, for water bottling purposes.

- 10 Only if Mr Makucha got permission from someone authorised to give it?  
---True.

And that was, and you never thought you had that authority, did you?---No, I saw that certainly ultimately it was the board of Sydney Water to do that.

Well, leaving aside ultimately, at all times, every single day you dealt with Mr Makucha you knew you did not have authority to permit Mr Makucha to use that mark in any circumstance, didn't you?---That's correct.

- 20 If it would assist the Commission I'll tender that so that the record would reveal that I've showed it to Mr Harvey.

THE COMMISSIONER: The Sydney Water mark is Exhibit P137.

#### **#EXHIBIT P137 - SYDNEY WATER MARK**

- 30 THE COMMISSIONER: Is this, is this the mark that's on the uniforms of Sydney Water employees?---There's various, there was an earlier version of this logo which had a line underneath Water. So I think there's some vehicles still getting around with the old, old logo. So it had, I'm not quite sure when it was changed, about two or three years ago.

And, and also those yellow uniforms that the employees wear, that has this logo on it too doesn't it?---Generally, that's the yellow safety vests, yes.

- 40 MR STEVENSON: Throughout the time you were dealing with Mr Makucha, this was, as you understood it, as you knew, the Sydney Water logo?---Yes. See, I'm not quite sure when the transition from the underscore to this one without the underscore. It was certainly, I think I had, it had been pointed out, I remember pointing it out that it had changed from the underscore to the, to this current one.

You wrote letters to Mr Makucha with a letterhead featuring this logo in P137 didn't you?---Yep. That's right. Yes.

Now you understood as an employee of Sydney Water that you had a duty to serve its interest faithfully didn't you?---That's correct.

And you knew as an employee of Sydney Water you had no authority to make payments to Mr Makucha or any entity associated with him unless proper procedures were followed?---That's correct.

10 And you know, well you agree don't you, that what you did throughout 2008 and 9 was to contrive with Mr Makucha that he would send invoices that you would organise to be paid?---That's correct.

And you knew that each of those invoices did not reflect a genuine, did not reflect genuine services that Mr Makucha or any entity of his had conveyed to Sydney Water or provided to Sydney Water?---That's correct.

And you had, you knew you had an obligation that you should not commit Sydney Water to any areas of operation outside your delegation?---That's correct.

20 And you shouldn't, you knew you should not commit Sydney Water to any matter which was outside Sydney Waters areas of operations?---That's correct.

Now you were dismissed from Sydney Water in February this year were you not?---That's correct.

30 And that was a couple of weeks after things all came undone in January this year?---Yeah, I think it was, I spent three or four weeks working with, with Mallesons to prepare some documentation to explain what had transpired and - - -

Okay?--- - - - yeah, so I was, yeah, I think it was about three or four weeks I think and then once the Supreme Court determination came down, that was the trigger for my dismissal, I understand.

40 I want to suggest that there were three essential features of your relationship with Mr Makucha. The first one is that until December, 2009 you only met Mr Makucha in the lobby or public areas of Sydney Waters premises?---Not only. We had earlier meetings were within Sydney Water building when we were dealing with the, the lease matter on the, with Sparke Helmore. There was a number of meetings internally. But generally it was in the foyers, yes, and then latterly in the, in some of the meeting rooms at Parramatta once the documentation volume increased.

For the most part the meetings you had with Mr Makucha were in the foyer weren't they?---That's correct.

At Bathurst Street to start with?---That's correct.

And then when Sydney Water moved out to Parramatta, in the foyer there?  
---That's correct.

And you had 50 or 60 meetings with Mr Makucha in those circumstances, that is in one foyer or another didn't you?---I, I don't know the exact number, but it was, yeah, numerous.

10 This is the case isn't it that in your statement you've said that unless you expressed or stated otherwise, every meeting you had with Mr Makucha was in the ground floor lobby of Sydney Waters office either at Bathurst Street or out at Parramatta?---Not every meeting but I think on recollection it was some of the earlier ones were within the offices at Bathurst Street. But generally regarding this matter, you know, we were certainly in the foyers.

Certainly from the time that Mr Makucha started trying to, well started speaking to you about some kind of joint venture, all those meetings from that point on were in the lobby of one building or another?---That's correct.

20 First Bathurst Street and then Parramatta?---Yeah, apart from, after December, like I said, there was a number of meetings after December.

The second feature of, a second feature of your arrangement with Mr Makucha was that every letter that he addressed to Sydney Water was delivered to you personally?---That's correct.

Even though they were all addressed to the Managing Director, Dr Schott?  
---Yes.

30 So far as you know none of them got anywhere near her desk did they?  
---No.

You made sure of that?---Well, they were addressed to my attention, so they were intended for me.

And not just that, they were handed to you?---That's correct.

By Mr Makucha?---Yes.

40 And the third feature of your dealings with Mr Makucha was that over and again he insisted that his dealings with you remain secret between the two of you?---Yes. That's right.

You've never had an experience in your life as a public servant in New South Wales with any person other than Mr Makucha where you agree to keep all your dealings secret have you?---No.

And you knew didn't you that it was wrong and dangerous of you to embark upon a relationship with Mr Makucha in circumstances where he was insisting and you were agreeing that everything remain secret?---In hindsight, yes.

You knew that at the time didn't you?---Look, I, I'm not sure of my state of mind at the time. But I think certainly I was aware that I had concerns that -  
- -

10 Concerns what? That, did you think that you might be discovered?---That's, well, that it wasn't going through the proper process.

Well you knew didn't you throughout your relationship with Mr Makucha, at least from the end of 2008 on that it was entirely irregular?---Some aspects of it I'd say yes, but certainly meeting in foyers I didn't see as being irregular.

20 Keeping your dealings with Mr Makucha secret from everybody else at Sydney Water was irregular?---Yep. True.

THE COMMISSIONER: So why did you meet in foyers?---Mr Makucha was happy to do it that way. I was quite happy to meet in meeting rooms or whatever, but, yeah, it was - - -

Whose idea was it that you should meet in the foyer?---Mr Makucha's.

And did he explain why?---No.

30 Did you know why?---No particular, no, I didn't know, I can't say I knew the reason why.

Well there's a reason that screams to my mind and that's, the two of you didn't want, didn't want Sydney Water to see that you were meeting?  
---Well, I think it was in a very public position. It certainly was apparent to many people that anyone walking past would see the meeting, the conversation. So it certainly wasn't designed to be secret.

40 (not transcribable) quite inconvenient to meet in a foyer?---Not, not necessarily. It was - - -

You had no desk, you had no desk or table there did you?---Oh, there was a coffee table I believe, yes.

No telephone facilities?---No.

So why do it?---It was convenient to Mr Makucha.

What was inconvenient about coming to your office?---Nothing inconvenient from my point of view, no.

Did you ask him?---I don't think so, no. I was happy to go along with his request.

Why?---Well I didn't see any real issue with it. It was in public so it was - - -

10 Have you ever met with other people in the foyer on a regular basis?---Not on a regular basis, but I've certainly had - - -

So why, what was it about this transaction that required you to meet on a regular basis in the foyer?---No, there was nothing in particular required.

MR STEVENSON: You did it because Mr Makucha insisted?---I don't know whether it was insisted, but he was happy to do it. So it set a pattern and it was continued.

20 Now you met Mr Makucha in I think 2007?---Maybe late 2006, I'm not quite sure.

And that was in the context of Sydney Waters attempts to regain possession of its property at Baxter Road at Mascot?---That's correct.

And originally as you understand it, the communications between Sydney Water and Mr Makucha about that matter went via solicitors, Sparke Helmore?---They were certainly involved, they were engaged at a certain point prior to that was handled within Sydney Waters legal team. And - - -

30 But ultimately in 2007, I think Sydney Water retained Sparke Helmore to commence proceedings to recover possession of Baxter Road?---That's correct.

And had you had dealings with Mr Makucha before Sparke Helmore were engaged?---I think there may have been one or two meetings leading up to that. I'm not quite sure, there was certainly some correspondence, I can't, I think the first meeting I met Mr Makucha was in the company of Sparke Helmore.

40 In 2007 Sparke Helmore were attained to take proceedings in the Supreme Court to get possession of Baxter Road?---Yeah.

And as I think Mr Payne took you to yesterday an order was made on 11 September, 2007 by consent giving Sydney Water possession of the property?---That's correct.

And of course you know don't you Mr Makucha had not left the property when you were dismissed in February this year?---That's correct.

Now, at some point after 11 September, 2007 an order was made you started to have direct dealings with Mr Makucha didn't you?---That's correct.

And when did that happen? For example was it after the date of the judgment for possession 11 September, 2007?---Would've been about the same time, yeah, it's, the chronology is a bit hazy.

10

Did some rapport arise in your mind between you and Mr Makucha?---Yes.

Did you ever see him socially?---No.

Not once?---I, I'd met him once at Fraser Suites and that's when I, maybe twice I think, that was, one was December when the agreement was, was signed and I think once earlier in September as a precursor to meeting the accountants and the lawyers at separate meetings.

20 September 2008 is it?---Not sure. It was towards, yeah, I think probably 9.

And over the period 2007 to 2009 you've had many, many meetings with Mr Makucha haven't you?---That's correct.

Fifty or 60?---I don't know the numbers but there was quite a few (not transcribable).

And the stage then developed didn't it where Mr Makucha was contacting you daily?---Towards the end, yes.

30

Several times a day?---Would be, yes.

And did you find him a beguiling personality?---Sorry, beguiling?

Beguiling. Persuasive?---Yeah, I'd say so, yes.

Insistent?---Yes.

Certainly persistent?---Yes.

40

Overbearing?---I wouldn't say at times but not, not all the time.

And when did he first suggest to you an idea of some joint venture with Sydney Water?---I think it was, it was some time in 2008, I think it was, I don't know the exact time.

So this is a man who Sydney Water was seeking to remove from Sydney Water premises proposing to you a joint venture of the kind we've been discussing?---That's correct.

He developed a practice didn't he of speaking to you about opportunities for Sydney Water?---Opportunities and ideas, yes.

10 And they're words he used are they, opportunities, ideas?---I don't know whether that's the best way of describing it, I don't know whether ideas or opportunities were, yeah, I think the appropriate - - -

And he made proposals to you about what he thought Sydney Water should do arm in arm with him. Was that the idea?---I think there was quite a few proposals, yes.

20 And he developed a practice didn't he with you that he would speak to you about a proposal or an opportunity and then would follow that conversation up with a letter in which the proposal was changed to a deal that, according to his correspondence, you'd agreed to?---I didn't think there was a follow up letter, I don't know what you mean by changed.

I want to suggest this to you. Time and time again Mr Makucha would float some proposal to you in conversation?---Yes.

30 And then follow up that conversation with a letter where according to the letter you'd agreed to the matter that he proposed to you?---I'm not, I, I, generally as I said before I would acknowledge receipt of these proposals or letters as a precursor to the development of a final executive summary which detailed the whole, all the proposals.

Just focus on what I'm putting to you. What I suggest to you is that Mr Makucha over and over again would float some proposal to you in a conversation and then write to you in terms which suggested that you had agreed to that which he had simply proposed. Correct?---Correct.

And often you'd sign that document acknowledging at least receipt of it. Correct?---Yes. That's right.

40 Now, weren't you alarmed at that tendency of Mr Makucha to make a proposal to you and then write a letter to you which according to its terms confirmed your agreement for that which he had simply proposed?---I don't know whether it was alarm because I saw it as an ongoing development of ideas or opportunities, whatever you want to call them, it was continuing to, to develop so it was a - - -

THE COMMISSIONER: I don't understand that answer, Mr Harvey?  
---Sorry.

If Mr Makucha first orally proposed something to which you did not agree or disagree but simply listened - - -?---Yeah, my - - -

Just a moment. And then became interested?---Yes.

And then he would write to you confirming what he said but also said that you had agreed to it, that would be saying something that wasn't true wouldn't it?---Well, in terms of agreeing I think what I was agreeing to was the progression of that idea so I'm not quite sure - - -

10

You agreed with Mr Stevenson that Mr Makucha would on a continual basis, with great frequency make proposals to you orally?---Yes.

To which you neither agreed nor disagreed, you listened to and were interested in?---Yeah.

That would be followed by a letter from Mr Makucha to you recording that you had agreed to it?---In some cases, yes.

20

That would not be true then would it?---That I'd agreed?

Yes?---Yeah, in some cases that's right.

So why did that not alarm you?---Look, I can't really explain that, Commissioner.

30

If somebody wrote to you telling you something that wasn't true but involving you in the transactions in a way that wasn't true and in a way that actually far exceeded your authority I don't understand how you can just let it go by without doing anything about it?---As I said before my main thrust was to get to a stage where there was a, a document which was clearly setting out what the overall objectives were and the cost benefit.

So you didn't mind him writing to you and setting out things that weren't true?---Look, in hindsight I suppose I did mind but at the time I saw, as I said before it was a continuing development of ideas.

40

Were you flattered by the idea that he'd propose these, these really extraordinary things to you that would involve hundreds and thousands if not millions of dollars and you were the person dealing with it?---I, I don't think I was flattered all I could say I think I saw all the potential and could see the potential (not transcribable) Sydney Water.

If that was all you saw why didn't you tell your superiors?---Well, again unfortunately I'd agreed to keep things secret.

Is that because you were flattered?---No, I think, I suppose it acknowledged that potentially ideas could be stolen.

Yes, Mr Stevenson.

MR STEVENSON: Were you looking for some post-retirement activity when you were dealing with Mr Makucha?---No.

Did it not occur to you that he was perhaps trying to trap you by writing letters to you saying you'd agreed to things when you hadn't?---Well, again I think, all I'm saying is that I saw this whole arrangement - - -

10

THE COMMISSIONER: Just answer the question please?---Sorry, could you repeat the question again, Mr Stevenson?

MR STEVENSON: Did you not think that Mr Makucha was trying to trap you by as it were verballing you in correspondence and saying you'd agreed to things that you say you haven't?---I, I, no, I didn't have that indication, no.

20 You couldn't see any danger ahead?---I suppose at times I could see danger but I saw potentially it getting to a point where there'd be a clear indication of whether the whole arrangement was viable.

Well, I want to take you to a few examples. Could Mr Harvey be shown Exhibit 126, P126. This is one of the folders of documents I think that you've been taken to. Could you please turn to page 291?---Sorry, what page again?

291?---291. Yes, I have that.

30 Now, Mr Payne has taken you to this and I'm not going to go over old ground but you see the paragraph numbered 1?---Yes.

Mr Makucha says that Sydney Water, represented by you and Mr Makucha, have agreed to enter into legally binding relations. Do you see that?---Yes.

And that was false to your knowledge, wasn't it?---It certainly was, yes.

And you hadn't?---I hadn't, no.

40 You hadn't agreed or even purported to agree to enter into any agreement at all, let alone a legally binding one?---That's correct.

Now, couldn't you see trouble ahead when Mr Makucha wrote a letter like that to you which so misrepresented what in fact had passed between you? ---Again, I think I saw this, one of these letters as part of the ongoing development of concepts, a lot of it was based on previous discussions or Mr Makucha's ongoing ideas of how things could, could potentially move forward.

But so far as you were concerned that statement that you and Mr Makucha had agreed to enter into legally binding relations was false to Mr Makucha's knowledge, wasn't it?---I'm not quite sure what Mr Makucha's knowledge was but I, I - - -

Well, you knew it was false?---I, well, certainly I did, yes.

10 And you saw no basis upon which Mr Makucha could possibly have thought it true?---Unless he was thinking about, certainly the intention was if the, if the deal was acceptable and approved by Sydney Water the legally binding relations would, would occur.

No, but what he's saying to you here and I think you can see this, what he's saying to you is it's a done deal, you and he have entered into a legally binding relationship?---Well, I think certainly at this time I didn't see it as that.

20 Looking at it now it's obviously false, isn't it?---Yes.

And surely, Mr Harvey, you thought it was false when you received the letter, at a glance can I suggest to you?---I don't know at a glance but - - -

It's just wrong, isn't it?---It's certainly wrong.

And you knew it then and you know it now, surely?---Yeah.

30 And paragraph 2, paragraph 3, sorry, Mr Makucha says, "This document is a legally binding document upon which the parties in the Makucha Group and Sydney Water shall be paid a deposit within seven days." Now, you knew that was false, didn't you?---Well, in terms that it wasn't a legally binding document, yes.

Weren't you concerned that Mr Makucha was laying a paper trail that would suggest that you had entered into agreements with him that you say you hadn't?---Look, I don't think it crossed my mind at that stage, no.

40 Well, just so we understand, you read this letter when you received it?---I believe so, yes.

The handwritten annotations that we see through the pages 291 and 295 were there, were they not, when you received it?---I believe so, yes, yes.

And Mr Payne has taken you through the various subparagraphs at the top of, sorry, the bottom of page 293 and over to 294, you recall that?---Yes, I do.

And did you not think that the proposals that Mr Makucha was making in those subparagraphs 13(1) to (11) were fanciful?---I'm not sure. I think, again, as I explained previously, I thought they had potential subject to quantification. They were sort of broad ranged strategic ideas so I didn't dismiss them, you know, out of, instantly.

Mr Payne's taken you through those so I won't do that again?---Yes, okay.

10 Could you please turn now to page 366 of the bundle. Now, you see in paragraph, the opening paragraph what Mr Makucha says is that this letter confirms the following, do you see that?---Yes.

Now, this is typical of the way Mr Makucha wrote to you, wasn't it, he'd have a conversation with you, I'll withdraw that and start again. This was typical of the way Mr Makucha dealt with you, wasn't it? First of all, he'd have a conversation with you and then he'd write a letter which purported to confirm the discussion?---That's right.

20 All right. Well, looking at paragraph 2, had you agreed that a meeting would take place with Mr Kenney and at that cost?---No, I don't think I had.

And looking at paragraph 8 - - -?---I'm sorry, sir, I just need another, to have a toilet break, sorry, I apologise to the Commission.

THE COMMISSIONER: We'll adjourn for five minutes?---Sorry.

#### **SHORT ADJOURNMENT**

**[11.56am]**

30

MR STEVENSON: Mr Harvey, you still have the letter on page 366 and 367 in front of you there?---I do.

40 That's a letter to you from Mr Makucha of 27 March, 2007. If you go to the second page of the letter, paragraph 8 for example. Was it true that in a phone call on 26 March, 2009 you had told Mr Makucha that Sydney Water would pay all of the costs of Hall Chadwick Accounts, Mr Kenney and any other costs including legals?---I can't confirm that but I think typically I would've, when it came to engagement of advisors that it was subject to a fee proposal under my approval I, it's unlikely I'd agree carte blanche to pay all the costs.

THE COMMISSIONER: Did you have authority to pay those costs, to agree to pay those costs on behalf of Sydney Water?---No. No, I didn't.

So would you have agreed without authority?---Would I have agreed without?

Having the authority to agree?---Not without a fee proposal and knowing what the quantum was, no.

Well, I don't understand that. If you had no authority to agree at all why do you want to know, why do you want to get a fee proposal and know the quantum?---Just so that I know the magnitude of what, whether it's fair and reasonable.

10 Even though you had no authority to agree to it in the first place?---That's correct, yes.

MR STEVENSON: Paragraph 8 contains a statement by Mr Makucha to you that you knew to be false when you received the letter?

THE COMMISSIONER: I'm not sure if he's - - -

THE WITNESS: No, I - - -

20 THE COMMISSIONER: I don't know if his evidence is to that effect, Mr Stevenson.

MR STEVENSON: I'll do it step by step. You hadn't agreed had you with Mr Makucha that Sydney Water would pay all of the cost of Hall Chadwick, Mr Kenney and any other costs including legals had you?---I don't believe so, I, I, I can't recall at the time but I, I, as I said before without knowing what the quantum is I'd find it unusual.

30 Well, you know full well don't you that you had not entered into an agreement with Mr Makucha of the kind that he asserts in paragraph 8 on page 367 don't you?---Look, I am not sure, I, I just don't, I can't, I can't recall at that time back in March 2009 what, what I may have indicated to Mr Makucha.

Do you think that in March 2009 you agreed with Mr Makucha that you would pay all legal costs of Mr Makucha?

THE COMMISSIONER: Sydney Water would.

40 MR STEVENSON: Sorry, thank you.

THE WITNESS: Look, I find, as I said before I, I, it would be unusual that I would agree to pay all of the costs not knowing what the costs are so I, on that basis I could say look, I think it is a false statement.

MR STEVENSON: Well, weren't you concerned that Mr Makucha was, as it were, verballing you in correspondence like this?---I'm not sure.

Couldn't you see trouble ahead?---I think I could see trouble ahead but I think with a well developed business case that indicated the benefits that would overcome some of those, that was my state of mind, I think that was the hope that I was having that, that, you know, it was a really profitable arrangement which could be entered into.

10 So you saw no danger where Mr Makucha wrote you a letter saying that you had on behalf of Sydney Water agreed to pay all of the costs referred to in paragraph 8 when you haven't?---I think in hindsight but I think at the time I, I, look, I just can't recall what comments I may have made, I, I don't have my documentation in front of me so I, I, to help me in that so I'm just going on recollection.

Well, I'm showing you documents that were addressed and sent to you?  
---Sure.

20 This is your documentation in that sense isn't it?---Yes. Well, that's right so, but I can't see where I've made any notes on this one so I don't know whether it's, whether it was on my file or, or not so - - -

Right. You can close that bundle and could Mr Harvey be shown Exhibit P127. Can you go to page 420 and Mr Payne asked you some questions about this?---Yes.

Now, you may have been asked this before, I'm sorry if I'm asking you again. This is a document you saw is it not around May 2009?---If it was on my files I would've seen it, yes.

30 Mr Makucha gave it to you?---That's where it would've come from.

You see at the bottom, I'm sorry. You didn't prepare it?---No.

No. You see at the bottom there's a notation that the structure above was to be, was agreed by you and Mr Makucha?---That's what it's saying, yes.

And you haven't signed it I see?---No.

40 Weren't you concerned that Mr Makucha was suggesting by giving you this document that you should agree to that sort of structure?---I think I saw it as a draft 'cause it was, it certainly wasn't in its final, final format, it was an indicative start of the executive summary document of how it would all be structured together and you saw the previous larger one where this had grew from a number of boxes to multiple boxes so it, I saw it as ongoing development of, of a precursor for an ultimate executive summary document.

You see it's dated on the top right-hand corner 1 May, 2009?---Yes.

You see there's a reference GMHCO4, do you recognise what that's about?  
---I assume its GM is Gino Malacco from Paul Chadwick.

Did Mr, did the Commissioner tell you this is something which Mr Malacco had prepared?---Well, that's what it's saying up the top, structure advice from Gino Malacco of Paul Chadwick.

10 But did Mr Makucha tell you that this was Mr Makucha's version of Mr Malacco's advice or did he tell you that this was something Mr Malacco had prepared himself?---I, I can't remember any specific words, I'm assuming that it was prepared jointly by the two gentlemen.

Well, you could see from this document couldn't you that what was being proposed at this early stage 1 May, 2009 was something very much beyond the confidentiality agreement?---I don't know if at this stage it was part of the confidentiality agreement, it was part of an executive summary document to try and explain how, how the whole proposal would fit together.

20 Did you turn your mind as to who in Sydney Water you should go to to make some sort of inquiry as to whether these sorts of ideas would be attractive?---I'm not sure, I saw this obviously as what had been called an unsolicited proposal. I think at the time I spoke to the financial manager for Asset Management Division as to whom I refer something like this on to.

Who was that?---The gentleman was Todd Daly.

When did you speak to him do you say?---I beg your pardon?

30 When did you speak to him?---I don't, I don't know. It would've been some time in early 2009, I think.

And you certainly didn't show him this document did you?---No, I didn't. No.

Can you turn to page 452 in that folder?---Yes.

40 And this is another example isn't it, the letter of 12 May, 2009 from Mr Makucha to you purporting to confirm matters. See that?---Yes.

Looking at paragraph 6, he says that you had agreed to, it says to further cost to be paid to Sydney Council in the trademark goodwill matter?---I can see that.

Was that true? Had you agreed to do that?---I don't recall. You know, I can't even remember a discussion on, there'd been some discussion about engaging advice on trademark goodwill, but at this stage this was again part

of the costs which needed to be quantified to go into the executive summary.

I'm looking at, for example at paragraph 17 on page 454 of the bundle?  
---Yes.

Mr Makucha asserts that you had agreed that it was important to register the trademark Sydney Water and goodwill immediately. See that?---Yeah. I can see that.

10

That wasn't true was it? You had not agreed to do that?---I don't believe so, no.

No?---Not immediately. I saw that as being an action further down.

Because you assumed didn't you that the mark Sydney Water was already registered as a trademark did you not? That is registered by Sydney Water as its trademark?---As to whether it was registered, I wasn't sure.

20

Well, you had no doubt that Sydney Water was the owner of the intellectual property associated with the Sydney Water logo that we've seen on Exhibit P127?---Well, that's right, but whether it was a registered trademark I didn't know.

What did you think perhaps Sydney Water hadn't registered its trademark and Mr Makucha would himself register the same mark in Mr Makucha's name?---Oh, look I don't know. All I know is I don't know whether it was registered as a trademark, that's all.

30

Well, do you agree that you had not, as at 12 May, 2009 agreed with Mr Makucha that it was important to register the trademark Sydney Water and the goodwill immediately?---Yeah. Certainly in my mind it was an action which would take place following board approval.

The board approval of Sydney Water?---That's correct.

And weren't you concerned that there would be, no, I'll withdraw that and start again. Did you keep these letters from Mr Makucha in a file?---Yes.

40

And did you create a file for his correspondence?---Yes.

And what did you call that file?---I think it was a continuation of the, the Baxter Road.

It just went into the getting possession of Baxter Road file?---That's correct.

And weren't you concerned that someone from Sydney Water might see that you had a document in your file which said you'd agreed to something which you hadn't?---It hadn't crossed my mind.

THE COMMISSIONER: I beg your pardon?---It hadn't crossed my mind at the time, I think.

10 MR STEVENSON: Well, did it concern you as an executive of Sydney Water that there would be a document in a file kept by you which (not transcribable) and stated something to say that you had agreed to something when you hadn't?---It would be a concern.

Well, were you concerned as at 12 May, 2009?---I'm not exactly sure.

THE COMMISSIONER: Mr Harvey, you've been taken through many documents both Mr Payne and Mr Stevenson and set out several agreements by you or (not transcribable) agreements by you on many, many issues raised by Mr Makucha?---Yes.

20 Did you, and this is a serious question, did you ever reject any proposal made by Mr Makucha?---Not that I can recall, but it always had the, the caveat that - - -

No, I understand that?---Sure.

But you never in all your negotiations with him you never rejected anything he suggested?---I can't honestly remember.

30 Just tell me, anything that you, that you rejected?---Well there was an example with the, that proposal to see the, the Commonwealth government about the tax.

That's one?---Yes, that's which springs to mind.

Anything else?---I think there was a number of occasions where there was proposals from with lawyers which were open ended. I said we need specific fee proposals rather than just an hourly rate.

40 Did you put this to Mr Stafford?---I don't think it was in relation, I can't, I think it was when we were looking at engaging solicitors for the patents, that sort of thing. I don't know whether it was the general legal one.

The impression I get, we've never asked you this question. Is there a, I get the impression that you're in a sense under Mr Makucha's domination. Is that right?---I don't know whether it was domination. I think certainly it was, in some aspects I think I found it difficult to say no. But again I thought that it was getting it to a point where it was a clearly understood arrangement which had been reasonably well thought out and justified so we

could, could get final approval. I was relying upon, I saw a lot of work to be done - - -

I know all this?--- - - - in getting the executive summary.

That's not what I'm asking you about?---Yeah, look I don't think I was dominated. I think certainly Mr Makucha is a, as Mr Stevenson said, has got a number of traits. But I think we developed a certain rapport and a lot of his arguments in my mind were, were valid.

10

Were you ever able to resist his will?---Apart from, well only the ones which spring to mind, I just, things were happening pretty, pretty quick and so - - -

And do you accept today that many of the things to which you apparently agreed are quite extraordinary?---I do.

20

And do you think that in your, so what's your explanation for doing it if you, if you're saying that you weren't under Mr Makucha's will?---Look, as I've indicated before, I've certainly been diagnosed with a number of medical complaints, and one of those is depression, which I think does make it difficult to make, with so much occurring in your mind - - -

Are you saying you didn't have the requisite mental balance to deal with issues of this kind?---I think that was one of the challenges I was facing, yes.

30

Well, what's your answer? That you didn't have the requisite balance or that you're not sure or that you did?---I'm not sure. I think it was a contributing factor. I was certainly under a lot of stress both related to this, this matter and other matters at Sydney Water.

Yes, Mr Stevenson.

40

MR STEVENSON: I'm going to ask you about what you just said, and I do ask these questions respectfully, because we all understand the burdens of depression. When were you diagnosed with, sorry, have you been diagnosed as having clinical depression?---Yes, after when this whole matter came to, in fact I sought advice from a psychiatrist.

So that was after everything unravelled in January this year?---That's correct. Yes.

So had you been seeking treatment from any psychiatrist or any other medical person for depression before then?---No, I hadn't.

Were you taking any medication?---Well, there was a range of medication, not specifically for depression, but - - -

Well, are you on medication for depression now?---Yes, I am.

And the medication that you've been prescribed for depression different, different from the medication you were taking last year?---Yes.

THE COMMISSIONER: Did you say that it was clinical depression?  
---Yes.

10 MR STEVENSON: I certainly won't be suggesting to you, Mr Harvey, that that's not a great disability but I nonetheless have to ask you questions about what happened as you well understand. Can you go to please page 509 of the bundle, that is of volume 2. That is a letter to you from the Hilton Hotel about Mr Makucha's accommodation at the Hilton?---Yes.

Now, did Mr Makucha, what do you know about the circumstances in which the Hilton Hotel came to know that it should write to you?---I think unbeknown to me that Paul had, Mr Makucha had moved to the Hilton due to him needing a, a better work environment than Baxter Road.

20

He was living in the, so far as you could tell, in the container?---In the containers, that's right. There was some problem about paying the account and Paul had asked me whether I could speak to them and I think this letter was one of, and Paul may have indicated that they could write to me.

Did Mr Makucha ask you whether you could get Sydney Water to pay his hotel bill?---That's right and I said I can't pay accommodation directly.

But you could do it indirectly?---That was an option.

30

Well, you knew it would be somewhat (not transcribable) Mr Makucha was asking you whether you could ask his hotel bills, that's the first thing, correct?---That's correct.

You said well, I can't do that directly, we'll have to find some surreptitious way of doing it, would that be the effect of it?---Well, along those lines, yes.

Looking at page 512, that's an email to you, isn't it, from the front office manager at the Sydney Hilton?---Yes.

40

And you see he says in the first paragraph he's been trying to contact you and then on the second paragraph he says the reason is that a guest of our hotel has informed us that Sydney Water is going to settle in effect the bill?  
---Yes.

Did Mr Makucha tell you that he told the Hilton that Sydney Water was going to pay Mr Makucha's hotel bill?---I can't really remember. I know

there was an issue, whether Mr Makucha had told them that, but that's certainly what this email is indicating.

And Mr Makucha asked you, didn't he, whether you would organise for this bill to be paid?---Or funds which would enable him to pay some, yes.

And Mr, the front office manager in the second last paragraph tells you that Mr Makucha's bill is overdue and he'll be evicted if it's not paid shortly, you see that?---Yes.

10

Police involvement is threatened?---Yes.

If you turn the page to 573 and this is a draft, well, this is a letter you prepared to go to the Hilton?---Yes.

You composed that, did you?---Yes.

20

Was it sent?---Yes. Look, I'm not sure whether it was sent because I think this problem went away. Mr Makucha moved somewhere else so I don't know, I'm not sure, there was a number, looking at the following documentation I think there was some clarifications.

So is that your handwriting, sorry, for the transcript, we're now on page 514?---Yes.

Is that your handwriting on that second version of the letter?---That's correct, yes.

30

And you were taking dictation from Mr Makucha there weren't you?---I think so, yes.

Well, these are words he suggested you add in?---Yeah.

And turning over the page to 515 you did as he said?---Yes.

Added the words in he'd suggested, right, so Mr Makucha's dictating to you correspondence you should send to the Hilton on Sydney Water letterhead? ---It appears that way.

40

You understood that you had no authority to write to the Sydney Hilton in these terms?---Yes.

And you were doing it why, because of Mr Makucha's insistence?---That's right, he was in a financial situation and I conceded.

A very persuasive fellow, is he?---Well, he is, yes.

And you sent this letter to the Hilton did you at 515?---I believe so, yes.

And the payment of \$12,600 which you say Sydney Water will be making to Mr Makucha, that wasn't a payment that you believed Mr Makucha was entitled to, was it?---Not for that purpose, no.

Well, not for any purpose?---I think, yeah.

Don't you agree, not for any purpose?---I agree.

10 So you're writing, let's get this right, you wrote this letter on Sydney Water letterhead as a favour to Mr Makucha, agreed?---At a request, I don't know whether you'd call it a favour, I - - -

At his request?---Yeah.

And you made a statement on Sydney Water letterhead you knew to be false?---I don't know whether the, the statement in itself is incorrect but I think certainly the, you know, it's my word saying that we'll be making a payment, it's not necessarily a false statement per se I don't think.

20

Well, it is false, isn't it, because there was no proper basis upon which you could say Sydney Water will be making a payment of \$12,600 to Mr Makucha?---No.

And you knew the figure of \$12,600 was the amount the Hilton would charge for two months' accommodation, didn't you?---That's correct.

Had Mr Makucha put some kind of spell on you by now, Mr Harvey? How do you explain behaving in this way?---I can't explain it.

30

The truth is that you were in effect by May 2009 taking dictation from Mr Makucha, weren't you, as to what you should say and do?---In some matters, yes.

And in some cases you were literally taking dictation from him, weren't you, in that he would suggest to you the words that you should use in correspondence to be written on behalf of Sydney Water?---That's correct.

40 And the document we see at 515 is an example of that, isn't it?---That's true.

And there were others were there not, were there not?---Yeah, I think so.

Did you find him an overbearing personality in his dealings with you?---I wouldn't say overbearing but look, at times, yes but overall he was persuasive, he was focussed on achieving an arrangement which we both believed was beneficial to both parties.

Well, in fact, you purported to commit Sydney Water, didn't you, to an arrangement when you knew you had no authority to do so?---As I said, I, you know, the overall arrangement still needed the approval of the Sydney Water board, that was always the, what I'd indicated to Mr Makucha.

All right. On the question of your authority, can you just close that folder and could Mr Harvey be shown Exhibit 166. If you go to page, I hope it's 57.

10 THE COMMISSIONER: I beg your pardon?

MR STEVENSON: 57.

THE COMMISSIONER: It's P126.

MR STEVENSON: P126, yes, Commissioner. So 59, the document I'm after is a document called Senior Manager's Employment Agreement? ---Yes.

20 That's page 59?---Yes.

And if you go to page 76?---Yes, I have that.

That should be a document headed Position Description?---That's correct.

And adjacent the words, word Purpose is a description is it not of your tasks as property asset manager?---At a higher level, yes.

30 Yes. But, and if you go to page 93, it's chart which sets out, amongst other things, your delegations so far as committing Sydney Water to contracts. And- -?---P93, is it?

P93, yes?---That's the flow chart.

Yes. In the middle there's a diamond?---Yes.

And it says  
\$50,000 to \$500,000 through written quotes?---Yes.

40 That represented as you understood it your instructions that you were to get written quotes if you were to commit Sydney Water to any matter in the range of \$50,000 to \$500,000?---That's correct.

And it was because of that instruction that you arranged, didn't you, for all or most of the invoices that Mr Makucha sent to you to be under \$50,000? ---That's correct.

And over on page 96- - -

THE COMMISSIONER: Did you tell Mr Makucha that?---No, I didn't.

Did he know that?---I don't know.

MR STEVENSON: Did he ask you why, for example, in relation to the, no, I'll come back to that. On page 96, see halfway down the page there's a heading, B, Three Quotations?---Yes.

10 That's an exposition in writing, isn't it, of your instructions as you understood them in relation to getting three quotes for any expenditure between \$50,000 and \$500,000?---That's correct.

And at page 103 you see there's heading, Quotes Required, and there's an elaboration on- -?---Yes.

- - -what I've just put to you and you understood those matters were serious conditions of your employment throughout your time in Sydney Water?  
---That's correct.

20 Mr Payne asked you some questions relevant to that, touching on a conversation you had with Jonathan Sesel earlier this year. Remember those? (not transcribable) questions?---Yes.

And one of the things you said to Mr Sesel was, "I've spoken to Gary Inberg this morning and he has said I should come up and speak to you. I've entered into a contract with Paul Makucha without delegation." You said that, didn't you?---Yes.

30 That was true, that is that- -?---I said that, yeah, along those lines, yes.

And it was true that you had, or sorry, was it true in your mind that you had entered a contract with Mr Makucha without delegation?---On the face of the documentation, yes.

So it wasn't true, was it, for you to say earlier that you didn't understand that the document you signed on 3 December, 2009, was a contract with Mr Makucha?---Sorry, I- - -

40 Which is it? Is it your state or mind or was it your state of mind in January 2010 that by signing up with Mr Makucha on 3 December, 2009, you'd entered into or you'd purported to enter into a contract on behalf of Sydney Water with him?---On, on reflection looking at the documentation after, yeah, I certainly, it would appear that I entered into a legally binding agreement, but if you read the words, at the time I think when I signed it I said I thought it was acknowledging it, but looking at it subsequently, that's what really, and I think seeing the letter from, from Stafford setting out the obligations, that really sort of galvanized my real concerns and worries.

And the letter from Mr Stafford is the one that Mr Payne showed you- - -?  
---That's correct, yes.

- - -earlier today?---7 January, I think it is.

The exhibit number of which I don't have. All right. And, all right. So you said to Mr Sesel, "I have entered into a contract with Paul Makucha without delegation." Do you agree with that?---Yep.

10 He asked you what it was for?---I believe so, yes, and I showed him the documentation.

And for the record, the document I just referred to as being from Eakin McCaffery Cox is at page 646 of Exhibit 127. Right. So just going back, Mr Sesel said to you, "What's this contract for?"---Yes.

And you said something like this, "It was for consulting services on outdoor advertising. There was also an intellectual property venture and confidentiality agreement. In terms of the arrangement I had with Paul  
20 Makucha I was going to become a trustee of one of the companies involved in the scheme. I now realise that I've got sucked into something wrong." That's what you said?---Ah hmm.

You need to say yes or no?---Yes.

What was the company of which you were to become a trustee?---I think it was, I can't remember what company it was but it was set out in that confidentiality business implementation agreement. One of the trustees I think for the trusts which Mr Makucha was going to, was proposing to set  
30 up ah, ah, ah, to administer his estate (not transcribable).

Where you to be paid remuneration?---Well, looking at the documentation it was suggesting 25,000 per annum.

Well, did Mr Makucha speak to you about that? You must have had- - -?  
---Well, I think I've said previously, yes, he had, and I said, "Look, those arrangements are subject for Sydney Water Board approval."

And going back to the conversation with Mr Sesel, he said to you this, "Are  
40 you aware this is beyond your delegation or authority?" And you said, "Yes." You fessed up straightaway?---That's correct.

And Mr Sesel asked you, "Did you inform your manager of this?" And you said, "No, I have not told anyone at Sydney Water?"---That's correct.

Tell me if you agree with this, that nothing in your employment agreement or as you understood it as part of your duties, suggested to you that you had any role or function relating to any of these matters (not transcribable)?

---That's correct.

Sydney water's intellectual property, that was nothing to do with you, was it?---No.

Particularly trademarks?---No.

Or its corporate name?---No.

10 You had no role or function or authority as you understood it about any new ventures that Sydney Water might enter into?---No.

Such as a bottling plant. Do you agree with that, no role in that?---Not, not within my delegations, no.

You had no, it was no part of your duties to engage in any activity about any proposal to market water in the Sydney Water name or logo?---(NO AUDIBLE REPLY)

20 These were all Mr Makucha's ideas, weren't they?---Yes.

You knew it was outside your authority?---That's correct.

It was no part of your duties to engage in any, any of the activities described on the confidentiality and business implementation agreement, was it? ---No. But what I was saying, I was happy to be a conduit to put those proposals forward.

30 So it was no part of your authority to deal with diabetes analysis?---No.

Supply of drinking water from an Alaskan lake?---No.

A nuclear powered desalination plant?---No.

An LPG-powered desalination plant on board a ship?---No.

And do you agree with this, that nothing in your job description or authority as you understood it allowed you to even negotiate agreements along to that effect without- -?---That's correct, yeah.

40

Let alone negotiate documents to be presented to the board at some future time. You were completely outside your jurisdiction, weren't you?---Yes.

Now, did you tell, did you meet, did you meet, meet Mr Stafford?---Once.

You met Mr Malacco I think?---Once. I may have met Mr Stafford twice. I can't be, there was a brief visit to his office (not transcribable)

And where did you meet Mr Malacco at his office?---At his office, yeah.

And did you have a discussion with either Mr Stafford or Mr Malacco about whether you had authority to sign-off on any agreement with Mr Makucha or any company associated with Mr Makucha?---I don't believe so, I think certainly it was raised as to the timeframe and I indicated it depends on how long it takes to get a submission to the board.

10 Didn't you tell Mr Malacco that as a matter of fact you didn't to your knowledge have delegated authority to sign any agreement with Mr Makucha or any company associated with Mr Makucha?---I can't recall that.

You don't deny it do you?---I don't deny it but I just can't recall.

20 Now, you tell us in your statement that time and time again you told Mr Makucha you had no authority to commit Sydney Water to any binding arrangement?---I believe so, I said subject to board approval, that was the, but I did make some statements where I said I had delegated authority to deal with the matter, that was in my mind leading up to a board approval and that was incorrect.

Well, I'll just take it step by step. You say you told Mr Makucha you had delegated authority to do certain things?---That's correct.

And that was false?---That's correct.

To your knowledge?---Yes.

30 And you say you made it very clear to Mr Makucha that the one thing you didn't have authority to do was to sign-off and commit Sydney Water to any arrangement?---That's correct.

40 Well, just help us. Why was it then that you signed the Confidentiality and Business Agreement on 3 December, 2009? Was it because you misunderstood what it was?---That was one of the factors, yeah. I think, you know, I saw it as a draft without the, the executive summary, it wasn't a complete document, it was more of acknowledgement of receipt. That's all I can explain.

What was your thought process that led you to conclude that the absence of the executive summary you had some impact on whether the document that you signed was legally binding? How did that work in your mind?---Well, I saw the executive summary being an integral part of the arrangements.

Did you say anything to Mr Makucha about that?---I, I, yeah, I think this needs, the executive summary needs to be finalised and there was a real push in December by Mr Makucha to put words to and amounts to the, to

those flowcharts and explain, I think as I said each, each of those boxes needed a detailed explanation as to what the purpose and the costs and the benefits of each of those entities might be.

Now, Mr Makucha sent you invoices from time to time?---Yes.

10 And the first five invoices added up to the figure of \$27,500 that you recognise as being referred to in the orders in 2007. Correct? Agree?---No, I think in the orders it was 25,000 deposit, \$27,500 was the agreed value of the improvements.

Thank you, you're quite right. Could Mr Harvey be shown Exhibit 126. Do you have folder 126 in front of you there?---Yep.

Can you go to page, I think its 237?---Yes.

That should be a letter from Sydney Water to Mr Makucha 29 October, 2008?---That's correct.

20 Now, this was an offer you made to Mr Makucha to pay him \$27,500 to do the things that you set out there?---That's correct.

That's in full and final payment of fill, compaction, bitumen and chain wire fencing?---That's correct.

And you made it clear in this letter that that payment would only be made if the conditions that you set out in the second paragraph are met?---That's correct.

30 Namely removal by Mr Makucha of all containers and portable buildings and other goods by 6 November, 2008?---That's correct.

And you say Mr Makucha signified this agreement to that proposition at the bottom of the page?---Yes. Yes.

If you go to page 250, 2-5-0?---Yes.

And that's your letter of 21 November, 2008 to Mr Makucha?---Yes.

40 And on the second page of that letter page 251 of the bundle you set out there don't you or you recite Mr Makucha's acceptance of your 29 October, 2008 offer?---That's correct.

And you say a payment of \$27,500 will be made within seven days of receipt of a tax invoice but more importantly removal of the containers, portable buildings and so on?---Yes.

So this deal done with Mr Makucha that he will be paid \$27,500 if he took the steps described in your correspondence wasn't just something which Mr Inberg instructed you to do was it?---Mr Inberg had certain input into the, was put in conjunction with Sparke Helmore and myself and Mr Inberg.

But the person who actually negotiated the deal with Mr Makucha was you wasn't it?---That's correct. Yeah.

10 And it was obvious to you wasn't it that according to the deal you've done Mr Makucha didn't get the \$27,500 until he removed all his gear from the site?---That's correct. That's correct.

And you know that the containers and portable buildings and the like remained on the site when you were dismissed in February of this year? ---That's correct.

Nonetheless you agreed didn't you with Mr Makucha to make payments totalling the figure of \$27,500?---Yes.

20 And you had no authority from Sydney Water to do that did you?---No. No.

Do you agree with that?---I agree.

And you devised with Mr Makucha didn't you a fiction whereby he would send you five invoices ultimately totalling \$27,500 so that you could procure payment to him or that amount despite the fact that the conditions precedent to payment to which you had agreed had not been met?---That's correct.

30 And each time you, as it were, put a requisition in to the accounts department you misrepresented didn't you to the accounts department that these payments were proper payments to be made by Sydney Water? ---That's right.

And could Mr Harvey be shown P127. Can you look at page 493?---Yes.

Do you recognise that as an invoice that Mr Makucha had sent you?---Yes.

40 Being an initial deposit for entering into the joint venture agreement of \$20,000?---Yes.

You didn't pay that did you?---I don't believe so.

What did you make of the fact that Mr Makucha had sent you this invoice? Did you see there was a bit of a try-on?---Obviously it was premature.

Did you see it as Mr Makucha testing the waters to see whether you'd be, whether you would pay?---I don't know, it may have been, I don't really know.

Because you tell us in your statement, do you have your statement there?  
---No, I don't.

In paragraph 142?---Yes, I've got that.

10 Now, Mr Makucha said, I've got some issues with the Hilton. Would it be possible to get some additional funds?---Yes.

So he was asking you for money so he can pay his hotel bill?---That's correct.

Nothing to do with any value that he might be conferring on Sydney Water. Correct?---Correct.

20 An entirely improper request on his part you thought?---Yes.

But your response was not, no that's out of the question. It was, well, what are you proposing? Do you see that?---Yes.

And he said, you say, I'll look at the options, but here's an invoice for you?  
---Yes.

And you said, Well I'll look at the invoice when you submit it?---Yes.

30 And the invoice was the one at page 493 wasn't it?---I don't know.

Don't you?---I don't, no I'm not sure of the chronology. You know, given it was, yeah, I don't know.

Well, let's look at the chronology. 142 of your statement you say that the conversation was on 25 May, 2009?---Sorry, which paragraph are we looking at?

142?---142. So shortly before May 21.

40 Yes. And, so have you got that?---Yes, I've got that.

And then at paragraph 144, you say following that conversation - - -?---Yes.

- - - he provided you with an invoice of \$20,000?---That - - -

That's the one we're looking at isn't it?---That's, yep, that's certainly, you know, that's what my statement is saying. You know, it looks like the

chronology. I, I certainly recall it specifically, but that's how the chronology works out.

It's what you say in your statement?---Yes.

What you've sworn is true?---Yep.

Right. So is this how it went? Mr Makucha said he wanted some assistance with rent to pay his bill at the Hilton?---Yes.

10

You said, send me an invoice?---Yes.

And you were contemplating weren't you that if the invoice passed muster in your mind, and you caused it to be paid?---True.

To help Mr Makucha out with his Hilton rent bill?---That's correct.

And that's following upon the correspondence I've taken you to earlier that you had with the gentleman at the Hilton?---Yes.

20

Where the gentleman at the Hilton said that if Mr Makucha's hotel bill wasn't paid he'd be chucked out. Do you agree?---Yeah.

So were you still under Mr Makucha's spell at this point that you were contemplating the possibility of using Sydney Water money to pay Mr Makucha's hotel bill?---As I said before, I, I knew I couldn't pay it directly and I was looking at options how I might be able to pay it. So whether I was under his spell, I, look I looked at his requests and, and came to an arrangement.

30

Well, you know you had to dress it up some way didn't you? Sorry, I should've made that question clearer. You knew that if there was a bill of payment from Sydney Water Corporation to help Mr Makucha out with his hotel bill, it would have to be disguised in some way?---That's true. Yes.

Obviously you couldn't go to the accounts department at Sydney Water and say, would you mind paying Mr Makucha's hotel bill for me?---That's correct. Yes.

40 Was out of the question of course?---Yes.

And the way you worked it was this, if you go to page 507 of the bundle? ---Yes, I have that.

That's Mr Makucha's invoice to Sydney Water of an amount of \$19, 500 for an air conditioned office and an ablution block?---Yes.

And isn't that what you arranged with Mr Makucha he should send in to Sydney Water to get him money to pay his hotel bill?---That's correct.

And you knew that it was quite improper conduct on your part did you not?  
---I agree.

If you go to page 556 of the bundle. Sorry, and I should say, and you caused the \$19,500 to be paid to Mr Makucha didn't you ?---That's correct.

10 And what's the physical process you undergo to do that? Out at Parramatta you, so were you at Parramatta at this stage?---June 2009, yes.

And - - -?---So I placed a stamp, fill out the details and email to one of the accounts payable people, depending on I think, generally it was Jim Paramythis, he was one of the accounts payable people. And he would process it and advise me when the payment would be made.

All right. And you from to time you asked Mr Paramythis to process these invoices for Mr Makucha urgently didn't you?---That's correct.

20

Not on every occasion?---Not on every occasion, but - - -

Mostly?---I don't know whether it was, you know, whether it was mostly, but it was certainly a number of times.

And with that invoice, that Mr Makucha sent you for \$19,500, he asked for the money to be paid to Mascot Administration Services Pty Limited?  
---That's correct.

30 You at all times understood that that company had nothing to do at all with any proposal that Mr Makucha was making to you about what you or Sydney Water should do?---I know it was one of Mr Makucha's company's. Whether it was ultimately involved in the joint venture, I can't recall.

You don't know?---I don't know.

If I suggest to you it was not, are you able to comment on that?---No, I couldn't comment.

40 All right. Looking at page 556, this is another invoice from Mr Makucha to Sydney Water care of you?---Yes.

And again hand delivered to you was it?---I believe so. That's what is stated there.

And in the, in the ground floor lobby at Smith Street, Parramatta?---That's correct.

And just before he sent you this invoice, looking at your, have you got your statement there?---(NO AUDIBLE REPLY)

At paragraph 189?---Yes.

You say that Mr Makucha said, I require more funds. I propose that I sell Sydney Water the security air conditioned building and the guardhouse on the property, that's the property out at Mascot?---Yes.

10 Is it possible you could buy those for \$6,000. Do you see that?---That's correct. Yes.

And you agreed?---I did.

And you knew didn't you that the purchase by Sydney Water of that security air conditioned building and guardhouse conferred upon Sydney Water no benefit at all?---I wouldn't say no benefit because they always had demand for demountable facilities on a lot of sites. These portable buildings are transportable readily.

20

All right. But you understood that Mr Makucha was proposing the purchase of the demountables as a device to permit you to cause money to be paid to him?---Well, that was certainly part of it, yes.

Well, it was all of it wasn't it? It was a contrivance?---Well, Sydney Water did gain an asset. That's - - -

30 THE COMMISSIONER: Well, wasn't there an earlier agreement whereby Mr Makucha was going to remove all of this from the site?---That's correct. Yes. Yes.

So on the basis of that agreement Sydney Water have no possible reason to retain that equipment (not transcribable) they'd agreed to Makucha to remove it?---Well, that's right. That was because of the potential loadings on the sewer. It doesn't mean they're not a valuable asset.

Well, it does mean that, at that time, Sydney Water didn't want it?---Well, the objective was to remove the, the buildings from the, from the property.

40 Nothing had happened to lead you to believe that Sydney Water suddenly had a need for those buildings had it?---Not a sudden need, but certainly they did utilise - - -

I beg your pardon?---But certainly they did utilise these types of buildings on many - - -

What, in the general course of business?---Yes.

Yes. But no one told you that Sydney Water was looking for one of those?  
---No, they didn't.

MR STEVENSON: And just (not transcribable) before lunch, you were aware weren't you that there was a procedure, a proper procedure for you to go through as an employee of Sydney Water if Sydney Water wish to acquire assets of this nature?---Yes.

10 And it certainly wasn't doing an agreement on the side with Mr Makucha was it?---No, it wasn't.

I see the time, Commissioner.

THE COMMISSIONER: Yes. We'll adjourn until 2.00pm.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**