

**IN THE OFFICE OF THE STATUTORY OMBUD FOR FINANCIAL SERVICES
PROVIDERS**

Case Number: FAIS 05929/10-11 GP3

In the matter between:-

JOHANNES MATTHEUS POTGIETER

Complainant

and

ORANGE INSURANCE LIMITED

Respondent

**DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL
SERVICES OMBUD SCHEMES ACT NO. 37 OF 2004 ('the FSOS Act') READ
WITH SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMDIARY
SERVICES ACT NO. 34 OF 2002 ('the FAIS Act')**

A. THE PARTIES

- [1] The complainant is Johannes Mattheus Potgieter, an adult male of Germiston, Gauteng.
- [2] The respondent is Orange Insurance Limited a registered insurer and financial institution duly incorporated according to the company laws of the Republic of South Africa (registration number 2003/031307/06), with its registered offices at 22 Koelenhof Road, Northcliff, Ext. 19, 1709.

B. INTRODUCTION

- [3] This is a determination pursuant to a complaint against the respondent insurance company. The determination is made in terms of Section 14 (3) of the FSOS Act read with Section 28(1) of the FAIS Act. The respondent insurance company entered into an agreement with a licensed financial service provider known as Fleetsure (Pty). The respondent had entered into a binder agreement with Fleetsure in terms of which Fleetsure was authorised to conduct the business of short term insurance for and on behalf of the respondent. Pursuant to this agreement from the period 1st of June 2008 to 31st December 2008 respondent provided short term cover for a number of Fleetsure's clients.
- [4] A dispute arose between respondent and Fleetsure and as a result respondent refused to pay claims emanating from the short term policies placed by Fleetsure. The complainant in this case is one of many policy-holders who were not paid after claims were made in terms of their policies with the respondent.
- [5] Many policy-holders filed complaints with this office after the respondent refused to pay. The respondent was requested to provide a written response to these complaints. In respect of these complaints the respondent relied on exactly the same response in its letter dated 17th February 2010.
- [6] On the 15th of September 2010, this office made a determination in respect of one of these policy-holders namely, Mr Innocent Sithemba Mthethwa. This determination was made under case number Case Number: FSOS 06362/08-

09/GP 3 and comprehensively dealt with the merits of the dispute between the complainant, respondent and Fleetsure ('the Mthethwa determination'). A copy of the determination is available on the Office web site – www.faisombud.co.za

C. JURISDICTION

- [7] The respondent is not a member of a recognised scheme as contemplated in Section 10 & 11 of the Financial Services Ombud Schemes Act 37 of 2004 ("the FSOS Act").
- [8] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the respondent in respect of this complaint.
- [9] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. THE COMPLAINANT

- [10] The following are the material aspects of the complainant's complaint:
- 10.1 The complainant alleges that the respondent failed to honour a claim arising out of robbery and theft of his vehicle, a 2007 Opel Corsa Utility, 1.7 Dti Club, bearing registration number VZW886GP.
- 10.2 On 27 June 2008, the complainant entered into a comprehensive insurance policy with the respondent through Fleetsure.

10.3 The complainant was furnished with a policy number ZUR000652MOT which was issued by the respondent together with a schedule of insurance. The effective date of the insurance was 01 July 2008.

10.4 On the 9th of October 2008 the complainant's vehicle was hijacked and he duly submitted a claim through Fleetsure.¹

10.5 To date, the respondent failed to honour the complainant's claim.

10.6 The complainant wants the respondent to honour the claim by paying the cost of replacement according to the policy agreement.

10.7 On the 21st of September 2009 the complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.8 It is not in dispute that the complainant entered into a contract of insurance in terms of which he comprehensively insured his motor vehicle. The schedule to the policy that was issued to the complainant records the respondent as the insurer. Nor is it in dispute that after the complainant purchased the policy the insured vehicle was lost in a robbery. The respondent does not dispute that it then received a claim from the complainant.

E. THE RESPONSE FROM RESPONDENT

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point the respondent was requested to submit a reply to the allegations, taking into account the requirements of the FAIS Act.

¹ The hijack was reported at Bramley Police Station under case no. 147/10/2008

[12] The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent policies issued through Fleetsure, with reference to a letter dated 17 February 2010.

The respondent's response can be summarised as follows:

- 12.1 The complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").
- 12.2 The respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the respondent.
- 12.3 The respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.
- 12.4 The respondent further contends that Ms Becker and Zurich failed to comply with statutory requirements prescribed for intended transfer of the Fleetsure Book of Business from Zurich to the Respondent, and as such concludes that the intended transfer was void and of no force and effect.
- 12.5 The respondent further avers that the liability as insurer remained with Zurich and not with them.
- 12.6 According to the respondent Fleetsure was not authorised to use It's logo on documentation and correspondence.

12.7 This Office, according to the respondent, cannot deal with the complaints as the question of its liability is subject to an inspection by the Financial Services Board (FSB). The respondent claimed that the whole matter was *sub-judice* and that any action on the part of this Office will be premature. The respondent requested that this Office stay proceedings pending the outcome of the FSB inspection.

12.8 The reason for non-payment is attributed to a dispute between respondent, Fleetsure and Zurich. This dispute was the subject of an investigation by the Financial Services Board. The respondent insisted on not dealing with this complaint as an individual complaint and stated that the matter was *sub judice* in the hands of the FSB.

12.9 The respondent stated that there was no valid contract of insurance as between itself and the complainant. According to the respondent the complainant was a client of Fleetsure and/or one of the latter's brokers. The respondent submits that it was not at risk as Fleetsure was not authorised to issue policies on its behalf and that it was in any event not aware of the fact that Fleetsure was conducting business on its behalf.

[13] The defences raised by the respondent were dealt with in the Mthethwa case.

F. FINDINGS

- [14] For reasons stated in Mthethwa's case, I find that the respondent was at risk and is liable to pay the complainant in terms of the contract of insurance

G. CONCLUSION

- [15] On the undisputed facts before this Office the following conclusions are made:

- 15.1 The respondent as an insurer was at risk in terms of the policy purchased by the complainant.
- 15.2 Complainant's policy was effected during the period 1st June 2008 and 31st December 2008.
- 15.3 The respondent has provided no legitimate basis in law to avoid paying the complainant's claim.
- 15.4 The complaint is upheld and the respondent is ordered to pay the Complainant's claim.

H. QUANTUM

- [16] The complainant lodged a claim in the amount of R150 000. According to TransUnion's Auto Dealers' Guide the replacement value of the vehicle at the time of loss was R113 100.00. I therefore intend to make an order in the amount of R113 100.00 less excess payable.²

- [17] Accordingly an order will be made that respondent pay to complainant an amount of R101 790.00.

² In terms of the policy the following excess is payable on claims:

'Standard Excess of 5% of claim (minimum R5 000)

'Theft/Hi-jacking' Excess: Additional 5% of claim minimum R5 000.'

[18] The complainant's claim was lodged in October 2008. The complainant expected the amount to be paid by the end of October 2008, accordingly I intend to make an order that interest be paid on this amount from the 1st November 2008 to date of payment.

I. ORDER

I make the following order:

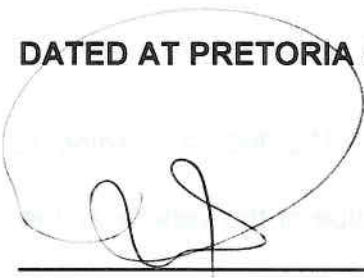
1. The complaint is upheld.

2. The respondent is ordered to pay to the complainant :

2.1 the amount of R101 790.00

2.2 interest on the amount of R101 790.00 at the rate of 15, 5% per annum from the 1st of February 2009 to date of payment.

DATED AT PRETORIA ON THIS THE 15th DAY OF APRIL 2013



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS