

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER:FAIS 02048/11-12/ WC 1

In the matter between:

DUDLEY CHRISTOPHER JOHN ABRAHAMS

Complainant

and

GEORGE CATSICADELLIS t/a Investcare

Respondent

**DETERMINATION IN TERMS OF SECTION 28 (1) OF THE FINANCIAL
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('FAIS Act')**

A. INTRODUCTION

[1] The complaint relates to the promotion and sale of Platfields Limited shares to the Complainant by a then registered financial services provider, one George Catsicadellis t/a Investcare.

[2] Catsicadellis was licensed by the Financial Services Board with license number 36955. It is this number that appears on the documentation. The license has since been withdrawn.

[3] The actual promotion and sale of the shares took place through one Simba James, an employee of Catsicadellis.

[4] Platfields was at the time of the sale an unlisted company, with a purely

speculative share price valuation. Platfields listed in late 2010 but the listing on the JSE is currently suspended, the company reportedly having failed to produce its audited year-end and interim results for the period ending February 2013 and August 2013 respectively; the undertone pointing to cash flow being a substantial problem.

- [5] With the shares having been sold to Complainant at R2-60 a share; the listing price never approached this level. Given the suspension they are likely worth a fraction of that. Complainant's Investment at this point in time, is worthless.

B. THE PARTIES

- [6] The Complainant is Dudley Christopher John Abrahams, an adult male whose full details are on file with the Office.

- [7] The Respondent is George Catsicadellis, an adult male and at all relevant times an authorised financial services provider with FSP number 36955; and residing at 24 Lutie Katz Road, Yzerfontein, West Coast, Western Cape, 7351.

C. THE COMPLAINT

- [8] The Complainant was approached telephonically in 2010, by one Simba James, an employee of Respondent.

- [9] The purpose of the call, which came out of the blue, was to promote the sale of Platfields' shares. These shares were being sold by Respondent at a cost of R2-60 per share, and upon listing, were according to James, to increase substantially in value. The listing was to take place very shortly after the call

perhaps?

- [10] Platfields, a platinum exploration entity, was according to James doing very well and hence a safe bet. At no point were any risks of investing in the entity pointed out to the Complainant.
- [11] Whilst Simba took some time promoting the product, he at no stage made any enquiries as to the Complainant's financial status, needs or risk profile.
- [12] Having acted on this recommendation and purchased shares to the value of R5 500; Complainant was promised that he would receive his share certificate in due course from Computershare.
- [13] A month later and not having received the certificate, Complainant followed up with the Respondent who advised him that the certificate was on its way from Computershare. This was not to be and Complainant made numerous follow up calls to the Respondent who in turn tendered various excuses. Complainant did eventually receive the certificate directly from Computershare.
- [14] In the meantime Complainant started to make his own enquiries amongst which were an e-mail directed to the CEO of Platfields, a Mr Bongani Mbindwane. In his reply Mr Mbindwane advised that Investcare had never been a representative of Platfields and accordingly the shares were 'second hand shares so to say.' He went on to state that:

'Please note that Platfields continues to operate its business of looking and exploring for minerals. Our potential listing is only aimed at raising money to do more of this work. This listing is only aimed at raising more money to do more of this work. This listing and our business in general is high risk and long term

investment. Any listing that occurs is no guarantee for your personal wealth at all. A listing is also heavily depended on regulators approving same and providing us with all we require to list.'

[15] Complainant then requested that the Respondent cancel the sale and reimburse his funds. This request was denied by Respondent.

[16] Complainant contends that the Respondent took advantage of his ignorance, and sold him the Platfields shares under false pretences. Accordingly complainant claims the reimbursement of his capital invested along with interest thereon from the day of purchase.

D. DETERMINATION

[17] Whilst the complaint was directed to the Respondent and he was afforded an opportunity to respond thereto he failed to do so.

[18] As a licensed FSP, Respondent is required in terms of section 5 of the General Code to provide his clients, in writing, with full particulars of the following:

(a) Full business and trade names, registration number (if any), postal and physical address....

(b) concise details of the legal and contractual status of the provider, including details as regards the relevant product supplier (or, in the case of a representative, as regards the relevant provider and product supplier), to be provided in a manner which can reasonably be expected to make it clear to the client which entity accepts responsibility for the actions of the provider or representative....

(c) names and contact details of the relevant compliance department....

(d) details of the financial service which the provider is authorised to provide in terms of the relevant license....

- [19] This is commonly known as a Statutory Notice, which must contain all the relevant contact details, chief amongst which is the accountable entity. I make specific mention of this because of the comingling in correspondence of the FSP license in the name of Respondent t/a Investcare and that of a business by the name of Investcare CC, a separate legal entity.
- [20] Complainant understood that he was dealing with a licensed FSP, the relevant licence number and term 'AUTHORISED FINANCIAL SERVICES PROVIDER' being displayed within the correspondence. This license was issued to the Respondent in his personal name. As a representative of the entity Respondent is required in terms of section 2 of the General Code to act 'honestly, fairly, with due skill, care and diligence..'
- [21] Yet there is neither respondent's version, nor even so much as a record of advice as required in terms of section of 9 of the General Code, which would counter Complainant's statement that he was sold Platfields' shares under false pretences.
- [22] Section 3.(1) (a) (iii) of the General Code requires that representations to the client must be adequate and appropriate in the circumstances of the particular financial service taking into account the factually established or reasonably assumed knowledge of the client. In the instance Complainant was denied necessary information to make an informed decision.

- [23] In particular, Platfields' was a speculative and high risk investment; one that had never even traded or made a cent in profit. As quoted earlier, the comments of Mr Bongani Mbindwane, the CEO of Platfields are revealing. None of this was disclosed to the Complainant as required in terms of section 7 (1) (c) (xii) of the General Code.
- [24] Had the commission and fees been disclosed as required in terms of section 3 (1) (vii) of the General Code; in particular the likely huge price differential between the real price of the shares, and the price that Complainant paid, Complainant would have made an informed decision.
- [25] There is no evidence that the advice to buy into a single unlisted and speculative share was in the complainants' interests. Section 8 of the general code which pertains to suitability of advice requires inter alia that the adviser identify the product or products that will be appropriate to the client's risk profile and financial needs. Both on the evidence, and on the Complainant's version no such investigation was conducted.

E. CONCLUSION

- [26] Respondent's aforementioned conduct is a clear failure of the duty to render 'financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry' as required by section 2 of the General Code.

F. QUANTUM

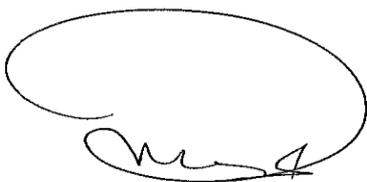
[27] The Complainant purchased 2115 Platfields shares at a price of R2-60 per share, for a total of R5 500.00.

G. ORDER

[28] Accordingly the following order is made:

1. The complaint is upheld;
2. Respondent is hereby ordered to pay to the Complainant the amount of R5 500.00.
3. Interest at the rate of 9 %, per annum, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 30th DAY OF JUNE 2015.



NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS