

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

Case Number: FAIS-05279-10/11 GP 1

In the matter between:

NELIA BARNARD

Complainant

and

HENDRIK JOHANNES VAN REENEN

Respondent

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

A. INTRODUCTION

[1] This determination follows from a recommendation made in respect of section 27 (5) (c) of the Act on 20 March 2018. The respondent did not reply to the recommendation. This determination shall therefore be read in conjunction with the recommendation, and shall form part of it.

B. THE PARTIES

[2] The first complainant is Nelia Barnard, an adult female whose particulars are on file with the Office.

[3] The respondent is Hendrik Johannes van Reenen, an adult male whose last known address according to the Regulator's records are 1215 Cornelia Street, Suiderberg, 0082. The respondent was an authorised financial services provider with license

number 26030 which lapsed on 13 December 2010. At all material times, the respondent rendered financial services to the complainant.

[4] The respondent marketed the Bluezone investment as a representative of Bluezone, in terms of Section 13 of the FAIS Act. The respondent submitted documentation confirming his appointment on 24 July 2007 as a representative of Bluezone.

[5] At all material times the respondent rendered financial services to the complainant.

C. FINDINGS

[6] Having regard to the information provided in the recommendation, I reiterate that the complainant finds herself in her current position, owing to the inappropriate advice of the respondent.

[7] The respondent further violated the following provisions of the Code: sections 2, 7 (1), 8 (1) (a) to (c), and 9.

D. CAUSATION

[8] The question that has to be answered, is whether the non-compliance of a provision of the Code can give rise to legal liability, whether in contract or delict.

[9] I refer in this regard to the decision of the Appeals Board¹ in the matter of *J&G Financial Service Assurance Brokers (Pty) Ltd and another v RL Prigge*². The Board noted the following:

"The liability of a provider to a client is usually based on a breach of contract. The contract requires of a provider to give advice with the appropriate degree of skill and care, i.e., not negligently. Failure to do so, i.e., giving negligent investment advice, gives rise to liability if the advice was accepted and acted upon, that it was bad advice,

¹ Effective 1 April 2018, the Board is now called the Financial Sector Tribunal

² FAB 8/2016, paragraphs 41 - 44

and that it caused loss. And in deciding what is reasonable the Court will have regard to the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which the practitioner belongs.

In the case of a provider under the Act more is required namely compliance with the provisions of the Code. Failure to comply with the code can be seen in two ways. The Code may be regarded as being impliedly part of the agreement between the provider and the client and its breach a breach of contract. The other approach is that failure of the statutory duty gives rise to delictual liability.

In both instances the breach must be the cause of the loss.....”

[10] Had the respondent truly appreciated what he was advising the complainant to invest in, he would have considered other more appropriate alternatives. Not only was the loss to investors reasonably foreseeable, it was inevitable.

[11] For all the reasons mentioned in the recommendation, the investment was high risk and inappropriate for the complainant.

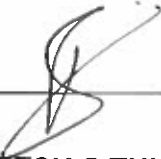
[12] The findings made in the recommendation letter are hereby confirmed.

E. THE ORDER

[13] In the result, I make the following order:

1. The complaint is upheld.
2. The respondent is ordered to pay the complainant the amount of R200 000.
3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.

DATED AT PRETORIA ON THIS THE 15TH DAY OF JUNE 2018.



NAREESH S TULSIE

OMBUD FOR FINANCIAL SERVICES PROVIDERS