

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

**PRETORIA**

**Case Number: FAIS 04778/13-14/ GP (1)**

**In the matter between:-**

**CLEMENT BEZUIDENHOUT**

**First Complainant**

**MARIA JACOBA BEZUIDENHOUT**

**Second Complainant**

**and**

**ALESIO MOGENTALE**

**First Respondent**

**INTROVEST 2000 CC**

**Second Respondent**

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**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY  
AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')**

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**A. BRIEF SUMMARY ON BONDCARE ENTITIES**

[1] The complaints lodged by the complainants arise out of a failed investment known as BondCare. BondCare Trust, IT 10396/04 (hereinafter referred to as BondCare), was registered in 2004 with its trustees being one Louis Jeremia Cornelius Smit, (Smit) and Alesio Mogental.

- [2] BondCare solicited investments from members of the public in order to advance such funds to conveyancing attorneys as bridging finance. Investors were led to believe that their investments were safe as the money was paid directly into the 'trust bank' account of BondCare and from there into the trust account of the attorneys' firms where the funds would be protected by the Attorneys Fidelity Fund.
- [3] Investors were told that they qualified as beneficiaries of the BondCare trust. As for the return on the investment, this was said to come from the interest paid by the attorneys' clients.
- [4] Invested funds were available subject to a 90 days' notice period. BondCare reserved the right to immediately repay any money obtained from a client in the event it could not successfully negotiate a transaction with an attorney.
- [5] During November 2009 the Registrar of Banks appointed an inspector to establish whether BondCare or Smit or any of the entities associated with BondCare were conducting the business of a bank.
- [6] In 2010, BondCare, allegedly introduced a new business model which resulted in the establishment of BondCare Trust Association, (the Association) t/a BondCare Trust and BondCare Financing CC, (BondCare CC). The modus operandi however, was the same. Alesio Mogentale was the sole member of BondCare CC according to CIPRO records<sup>1</sup>. Similar to BondCare Trust investors' monies were advanced to conveyancing attorneys to provide bridging finance. The difference however was, in advancing the funds to the

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<sup>1</sup> Drawn from CIPRO as at 30 March 2015.

conveyancing attorneys, BondCare CC acted as the agent of the investor for a fee. Investors became members of the Association and were entitled to receive interest on their investments.

Investors were informed that the investment could be withdrawn at any time subject to the 90 days' notice and the availability of funds in the attorneys' trust account.

- [7] Depending on the choice of product selected investors could earn between 15%, and 22% interest. For example, an investor who put in money for two years stood to gain a staggering 18% interest per annum and the investment could be withdrawn at any time in the two years, subject to the 90 days' notice and the availability of funds in the attorneys' trust account.
- [8] The investment was punted as low risk. BondCare CC was said to be licensed as a Financial Services Provider with license number 9564.
- [9] It is now an established fact that none of the three BondCare entities were ever licensed according to the regulator's records. License number 9564 was held in the name of Introvest 2000 CC, an entity that was controlled by first respondent.
- [10] The exotic interest rates that were offered to investors coupled with the liquidity nature of the investment undermined the claims of low risk leading some to question the economic activity that allegedly generated the returns.

## **B. THE PARTIES**

- [11] First complainant is Clement Bezuidenhout, a male retiree whose contact details are on file in this Office.
- [12] Second complainant is Maria Jacoba Bezuidenhout, a female retiree and spouse of first complainant. Second complainant's details are on file in this Office.
- [13] First Respondent is Alesio Mogentale, an adult male and key individual of second respondent whose physical address is 604 Amandelboom Road, Doornpoort, Pretoria, Gauteng Province.
- [14] Second Respondent is Introvest 2000 CC, registration number (1991/002857/23), a close corporation duly incorporated in terms of South African laws, with its business address noted in the regulator's records as 604 Amandelboom Road, Doornpoort, Pretoria, Gauteng. Second respondent was authorised as a Financial Services Provider (FSP No. 9564) in September 2004, which license has since lapsed.
- [15] At all times material hereto, first respondent rendered financial services to complainants.
- [16] In this determination respondent/ respondents must be read to mean the same thing.

## **C. BACKGROUND**

[17] On 20 August 2013, complainants lodged a complaint to this Office against the respondents for the recovery of their full investments including interest against the respondents. The amounts claimed are as follows:

17.1 First complainant invested the amount of R222 643 on 23 September 2009 and R100 000 on 10 January 2011

17.2 Second complainant invested R228 984 on 23 September 2009. According to the contracts signed by the complainants, they were both promised 18 % interest per annum in respect of all three investments. Such interest was capitalised.

[18] In their complaint, complainants alleged that these investments were made in pursuance of the advice of respondent who at the time had advised them that:-

18.1 BondCare was safe investment;

18.2 BondCare was regulated by the FSB;

18.3 All the entities associated with BondCare complied with the applicable laws; and

18.4 BondCare paid an attractive interest rate.

[19] During July 2012, complainants received word that BondCare was experiencing financial difficulties. They took the matter up with respondent requesting that their investments be immediately withdrawn from BondCare and paid out to them. Instead, respondents requested complainants to put more money, advocating that their investment was safe with BondCare.

[20] At the beginning of 2013, complainants received further news of BondCare's financial woes. They contacted respondent and instructed him to withdraw their investment from BondCare. It is at this point that respondent conceded to BondCare's financial difficulties. Allegedly, he persuaded complainants that their monies would be paid with interest eventually, albeit later.

[21] Prior to lodging the present complaint, complainants had written a letter to respondents demanding their money. They later learnt about the investigations instituted by the Registrar of Banks into the affairs of the BondCare entities, the subsequent winding up of BondCare Financing CC and sequestration of the estates of BondCare trust and Smit.

#### **D. RELIEF SOUGHT**

[22] Complainants' claim is that had it not been for the advice of the respondent they would not have invested in BondCare. Accordingly they have requested this Office to order the respondents to repay their investment with interest.

#### **E. RESPONDENT'S VERSION**

[23] On 2 April 2014, this office issued a letter in terms of Rule 6 (b) of the Rules on Proceedings of the Office, (the Rules) requesting respondents to resolve the complaints with their clients. No response was received.

[24] On 25 April 2014, a notice in terms of section 27 (4) of the FAIS Act was referred to the respondents inviting them to furnish the Office with their version of events together with any documents in their possession that may support compliance with the FAIS Act and the General Code. Specifically, respondents were invited

to supply this Office with their records of advice, copies of any needs analysis performed on their clients' and evidence of having determined suitability of the BondCare products in relation to the complainants' circumstances. Respondents were further warned that they may be held liable for the financial damage complained of by the complainants.

[25] To date, no response has been received from respondents notwithstanding the invitation.

#### **F. ISSUES FOR DETERMINATION**

[26] With the respondents having failed to provide their version, what remains is for this Office is to determine the matter on the basis of the facts at hand. The following are issues to be determined:

26.1 Whether there was any violation of the FAIS Act and or the General Code when the respondents rendered the financial services to complainants?

26.2 In the event there was violation, whether such violation is sufficiently connected to the loss complained of by the complainants?

26.3 Quantum.

**Were any of the respondent's duties as a provider rendering financial services to complainant breached?**

*The duty to provide adequate and factually correct information to the client when making representations, taking into account their circumstances and reasonably assumed knowledge.*

[27] Complainants' undisturbed account of respondents' advice to them about BondCare is that:

27.1 Respondents advised them that BondCare was a safe investment, which is regulated by the FSB;

27.2 That BondCare and all the entities associated with it were compliant with the relevant laws

[28] This implied that complainants did not have to concern themselves with the safety of their capital as BondCare and its associated entities were law abiding citizens. Nothing could be further from the truth. To start with, BondCare had never been licensed as a financial service provider. Second respondent, the entity that was led by first respondent was the licensed provider. There is no question whether first respondent was not aware of the license status of Bondcare. Clearly, the claim was made to deliberately mislead complainants to believe they were dealing with a properly licensed entity.

[29] As to the claim that BondCare was a safe investment, first respondent as one of the only two trustees of BondCare Trust was aware that there existed no governance and no controls to manage risk of theft and fraud in the business. Once money was paid into the account of BondCare, clients were at the mercy of Smit and whoever else came into contact with the money. Second respondent knew at the time that a return of 18 % per annum was out of kilter



with what large commercial entities, which had long been in the business of investing money, were paying. Also as an insider, first respondent knew there was no real economic activity to generate the lofty returns.

*The duty to disclose the conflict of interest and to treat the client fairly.*

- [30] Respondents were not only providers of financial services to complaints they were part of BondCare. First respondent the key individual of second respondent was also a trustee of BondCare and the sole member of BondCare Financing CC. This information was not disclosed to complainants. Respondents had a duty to disclose this information. They failed.

*The duty to provide suitable advice to a client*

- [31] There appears to have been no analysis of complainants' needs. From the records furnished by complainants to this Office, respondents appear to have been preoccupied with one thing alone and that is the peddling of the BondCare product whether or not this suited the complainants and their circumstances.
- [32] There are several other violations of the General Code that are apparent from the financial service rendered by respondents to the complainant such that to canvass them all would be a waste of time. Respondents were not concerned with compliance with the FAIS Act and the Code.

## **H. FINDINGS**

- [33] Based on the facts of this case, respondents failed to place complainants in a position where they could make an informed decision about the BondCare investments.

- [34] Respondents failed to disclose the conflict of interest they were confronted with and accordingly failed to treat the complainants fairly.
- [35] Respondents failed to disclose the risk involved in the BondCare product.
- [36] Respondents undermined the Code in selling the BondCare product to complainants in that they knew that the product was not viable and could not meet complainants' needs.
- [37] Respondents failed to appropriately advise the complainants in contravention of the General Code.
- [38] Respondents' failure to comply with the General Code was the sole cause of the complainants' loss.

## **I. QUANTUM**

- [39] Having confirmed complainants' deposits into the account of BondCare, there is no dispute as to the amounts investments. According to the statements issued by BondCare, complainants' interest was capitalised monthly. Respondent was complicit in the lies to attract more business for BondCare in respect of which he had an undisclosed interest. It is reasonable to conclude that the money paid by complainants was never invested in the legitimate sense.
- [40] This Office has communicated with the liquidator, ML Stewart of Bombani Liquidators. According to his report which was submitted at the second meeting

of creditors on 16 September 2014<sup>2</sup>, there was already a shortfall of about R23 million. Add to this the claim by the South African Revenue Services, (SARS) which had not been taken into account at the time this report was compiled and the prospects of a dividend towards the complainants become even bleaker as SARS' claim must be paid in full before any concurrent creditors are paid. Complainants are both concurrent creditors.

[41] The amounts claimed by complaints are:

[42] First complainant: R222 643; and

[43] Second complainant - R222 984 and R100 000, (R322 984) bringing the total amount claimed from respondents to R545 627.

[44] It is reasonable to conclude that complainants' capital has been stolen and was unlikely to be recovered.

## **J. ORDER**

[45] In the premises, the following order is made:

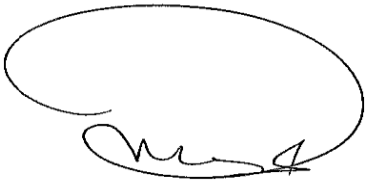
1. Both complaints are upheld;
2. Respondents are hereby ordered to pay, jointly and severally, the one paying the other to be absolved, to first complainant, the amount of R222 643 and the second complainant, the amount of R322 984.

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<sup>2</sup> Report in the matter of the Consolidated Insolvent Estate of Louis Jeremia Cornelius Smit – Master's Reference number T3989/12 BC Trust Association – Master's Reference number T4352/12 BondCare Financing CC (In Liquidation) – Master's Reference number T3976/12 – Pretoria 16 September 2014.

3. Interest at a rate of 9%, from date of demand, being the 12 November 2012 to date of final payment.

**DATED AT PRETORIA ON THIS THE 31<sup>st</sup> DAY OF MARCH 2015.**

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a cursive name, all enclosed within a large, hand-drawn oval.

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**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**