

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

**CASE NUMBER: FAIS 03226/12-13/ GP 1**

**In the matter between:**

**ANNA CHRISTINA BOEIJE**

**Complainant**

**and**

**ALESIO MOGENTALE**

**First Respondent**

**INTROVEST 2000 CC**

**Second Respondent**

---

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

---

**A. INTRODUCTION**

- [1] The complaint arises from a failed investment made by complainant into BondCare Trust, on the advice of first respondent.
- [2] In her complaint, complainant alleges that she was advised that BondCare Trust was a suitable investment, safe and capable of producing returns of about 18% per annum. Her funds were to be maintained in the attorneys' trust account and protected by the Attorneys Fidelity Fund.

[3] Complainant maintains that had it not been for respondents' advice, she would not have invested her savings into BondCare Trust.

***About BondCare Trust***

[4] BondCare was marketed to potential investors as an answer to buyers of immovable property, who often did not have the necessary funds to pay the transfer duty and transfer fees. Thus BondCare presented an opportunity for investors to advance their money to these potential buyers at an attractive interest rate, thereby using the money as bridging finance in conveyancing transactions.

[5] According to documentation provided by BondCare Trust, the funds were allegedly transferred into an attorneys' trust account where it would be protected by the Attorneys' Fidelity Fund.

[6] Funds could be withdrawn by way of giving 90 (ninety) days' notice and the investment was said to generate interest of 18 % per annum.

[7] During November 2009 the Registrar of Banks appointed an investigator to establish whether BondCare or any of its associated entities were conducting the business of a bank.

[8] Following the aforesaid investigation, BondCare introduced a new funding model in 2010. As such, two new entities were established known as BondCare Trust Association, t/a BondCare Trust and BondCare Financing CC, (BondCare CC).

[9] The new model however, was nothing more than a smoke screen, since the underlying business model remained the same. Respondent and his colleague, Mr Smit<sup>1</sup> remained at the helm of BondCare CC.

[10] The new model replicated what the original BondCare Trust was doing. For one, it allegedly advanced investor's money to conveyancing attorneys to provide bridging finance for immovable property. The only difference being that in advancing the money to the attorneys, BondCare CC acted as an agent of the investor, for a fee. Investors further became members of the Association and were entitled to receive interest on their investments.

[11] BondCare CC was marketed as a low risk investment and was said to be licensed as a Financial Services Provider with license number 9564. The truth however, is that no entity in the BondCare stable had ever been licensed. Second respondent, being member of first respondent, allowed its license to be used by BondCare.

## **B. THE PARTIES**

[12] Complainant is Mrs Anna C Boeijs, a 67 year old female. Complainant's full details are on file with this office. She resides in Gauteng.

[13] First respondent is Mr Alesio Mogentale, an adult male, key individual and representative of second respondent whose address is the same as that of second respondent.

---

<sup>1</sup> Louis Jeremia Cornelius Smit was at all material times either a director or member of BondCare, BondCare Financing and BondCare Trust.

[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's license number 9564 was withdrawn on 12 May 2015.

[15] For the sake of convenience, I refer to first and second respondents as respondent. Where appropriate, I specify.

### **C. THE COMPLAINT**

[16] On or about 17 June 2010, complainant invested an amount of R450 000 into BondCare. The interest on the investment was to be capitalised annually. Complainant was retrenched during the course of 2010. As a result of the retrenchment, complainant had to sell her property and move to her daughter. The proceeds from the sale of the property was used to invest in BondCare. Complainant utilised the returns that she received to pay for her living expenses. It was only later that complainant started receiving a monthly SASSA pension, which is now her only form of income and not nearly enough to cover her basic needs.

[17] The crux of the complainant's complaint is that following the misrepresentation and false information furnished to her by respondent, complainant was persuaded to invest her funds in BondCare Trust as she was assured that it was a legal financial institution.

[18] Respondents' failure to render financial services in line with the FAIS Act and the General Code of Conduct, which includes respondents' failure to appropriately

advise complainant and disclose the risk involved in the BondCare investment, resulted in the loss of complainant's capital.

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

[19] Complainants seeks payment from respondent of the capital amount of R450 000.

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

[20] During August 2012, the complaint was referred to respondent in terms of Rule 6(b) of the Rules on Proceedings of this Office, (the Rules), to resolve it with complainant. In its response to the office, first respondent indicated that "he does not know what to say, since the matter is being investigated by the SA Reserve Bank".

[21] Further correspondence was addressed to first respondent on 20 September 2012, reminding him of the content of the letter of August 2012 and that his response was due on 27 September 2012. In return, he responded with a letter stating:<sup>2</sup>

*"Please see previous statement and my involvement with the institution.*

*The SA Reserve Bank has frozen the aforementioned institutions' operations by means of a directive in respect of a contravention of the Banks Act (as in Sharemax).*

*There were no other problems with the institution and according to my knowledge, on the contrary, is Bridging Finance a general investment instrument.*

*Further queries indicates that BondCare Trust will be liquidated and a High Court Order had been issued to recover investors' funds. At this time, I also have an investment of R244 000 with the institution.*

*We are all waiting on the SA Reserve Bank for its decision".*

---

<sup>2</sup> Translated from Afrikaans

[22] Included in the aforesaid letter, were the following documentation:

1. A thank you letter for trusting first respondent with the investment into Bondcare and confirmation that he will be managing complainant's portfolio;
2. The BondCare trust contract confirming the investment in the amount of R450 000;
3. A copy of the bank deposit slip for the above amount;
4. A copy of complainant's identity document;
5. A short breakdown of the expected returns on her investment;
6. E-mail correspondence between complainant and first respondent.

[23] On the 15<sup>th</sup> of March 2013, further correspondence was addressed to the first respondent, asking him for a list of documents, which included, amongst others, the financial needs analysis, the record of advice and risk assessment. Instead, first respondent's wife, Mrs Tina Mogentale submitted the same set of documents previously provided, as well as a so-called sworn affidavit made by the first respondent, which provides details of his involvement with BondCare Trust and Mr Smit.

[24] On 26 February 2016, the FAIS Ombud addressed correspondence to respondents in terms of Section 27(4) of the FAIS Act informing them of its intention to investigate the complaint. Respondents were invited to provide their records in order to demonstrate the appropriateness of advice, taking into account the risk involved in the investment and matching that with complainant's circumstances.

[25] Despite the FAIS Ombud's best efforts, no response to the aforesaid letter was received. Respondents were furthermore afforded ample opportunity to give their response to the complaint. The only submission that was made, was an attempt to justify respondent's conduct as far as it relates to the business dealings with Mr Smit. Despite being advised that the said response has not answered the complaint and that a proper response was required, no response was received from respondent and neither were any of the required documents.

## F. DETERMINATION

[26] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of complainant's version.

[27] The issues for determination therefore are:

1. Whether respondent, in rendering financial services to complainant, violated the Code and the FAIS Act in any way. In specific terms, the question is whether complainant was appropriately advised, as the Code demands;
2. In the event it is found that respondent breached the Code and the FAIS Act, whether such breach caused the loss complained of;
3. Quantum.

[28] I refer to the determination of **Lloyd FAIS 05296-12/13 GP 1**, which determination can be accessed from this office's website<sup>3</sup>, in particular paragraphs 29 to 55. For all the reasons articulated therein, which apply *mutatis mutandis* to this complaint, the complaint is upheld.

---

<sup>3</sup> [www.faisombud.co.za](http://www.faisombud.co.za)

## **G. QUANTUM**

[29] Complainant invested an amount of R450 000.

[30] It needs to be mentioned that this Office 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>4</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 the report was compiled, and the prospects of a dividend towards complainants becomes bleak as SARS' claim must be paid in full before any concurrent creditor can be paid. Complainant is part of the many concurrent creditors. To date, complainant has not seen a cent of her capital. The liquidators have however confirmed that the matter is ongoing.

[31] It is fair to conclude that complainant has lost her investment.

## **H. ORDER**

[32] In the premises, I make the following order:

1. The complaint is upheld.
2. Respondents are ordered to pay complainant, jointly and severally, the one paying the other to absolved, the amounts of R450 000.
3. Interest at a rate of 10.25% from date of demand, to date of final payment.

---

<sup>4</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.



**DATED AT PRETORIA ON THIS THE 20<sup>th</sup> DAY OF MAY 2016**

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a series of connected strokes, all contained within a hand-drawn oval.

---

**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**