

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 04550/12-13/ WC 1

In the matter between:

JOHANNES JACOBUS MATTHYS COETZEE

Complainant

and

IMPACT FINANCIAL CONSULTANTS CC

1st Respondent

MICHAL JOHANNES CALITZ

2nd Respondent

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

A. THE PARTIES

[1] The Complainant is Mr Johannes Matthys Coetzee, an adult male whose full contact details are on file with the office.

[2] The 1st respondent is Impact Financial Consultants CC, a close corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5th Floor, The Cliffs, Niagara Road, Tyger Falls Belville.

[3] The 2nd respondent is Michal Calitz, key individual and member of 1st respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times

rendered financial advice to complainant on behalf of 1st respondent. In this determination respondent or respondents are used interchangeably.

B. THE COMPLAINT

- [4] Initially having been introduced by a friend in October/November 2007, Calitz invested complainant's pension fund monies in unit trusts and a money market fund in February of 2008.
- [5] A year later in February of 2009 and arising out a visit by complainant to Calitz' office to discuss the performance of these funds, Calitz advised complainant to disinvest R500 000, 00 and place it into the RVAF Trust. The investment was confirmed in a letter from the RVAF En Commandite Partnership dated 6th February 2009.
- [6] Whilst contractually employed for a couple of additional years, complainant was, one could say, on the cusp of retiring fully.
- [7] Complainant makes mention of having exclusively relied on the advice/recommendation of Calitz when making this investment. Additionally he emphasises that he had no prior knowledge of the RVAF fund and that neither the risks nor the product were explained, only that Calitz stated that he knew the RVAF and that he (presumably complainant) will see how it performs. In subsequent meetings with Calitz, complainant was advised that he should remain with RVAF as the gains were good.
- [8] On the 12th July 2012 he was contacted by Calitz in respect of negative publicity surrounding the RVAF and Mr Pretorius; complainant was at this point assured

by Calitz that there were no risks and that he need not retrieve his investment. Complainant then on the 20th July 2012 e-mailed Calitz with a request that Calitz urgently provide both written feedback on the allegations against the RVAF along with advice on the continuation of the investment. According to complainant he received no response to this particular request.

[9] Questioned as to his risk profile by this Office, complainant stated that this had been established as conservative/moderate during the initial rendering of advice in February 2008. As to the purpose of the investments, complainant's expectation was that his investments were to provide an income for him and his wife during their retirement.

[10] Complainant additionally commented on the fact that although Pretorius was taking in millions of rands' in investments, he (Pretorius) was not registered with the FSB; further the RVAF never produced any financial statements, was not audited nor did it have any third party verification of returns.

[11] According to complainant the consequence of having invested in RVAF as opposed to a credible fund with moderate risks and reasonable return are serious in that his retirement income will be materially compromised.

[12] Complainant makes the following points:

12.1 'it is my firm belief that Mr Calitz did not properly apply his mind when he advised me to switch a substantial amount of my investment to the Fund of Mr Pretorius.'

12.2 'as a professional adviser he should have properly investigated and assured himself of the credibility of the Relevant Value Arbitrage Fund

amongst others, the following:

- i) Registration of the late Mr Pretorius with the FSB
- ii) That the Fund had 3rd party verification of funds invested
- iii) That the fund prepared financial statements
- iv) That the financial statements were audited
- v) That there were appropriate checks and balances that applied to credible investments.'

[13] The complaint itself can be best summed up in the complainant's own words namely; *'I wish to lay stress on the fact that my complaint is about my financial advisor, a professional, selling me an investment without explaining the product and/or discussing any risks involved..'*

[14] As part of the complaint, complainant provided this Office with a letter dated 8th August 2012 which was forwarded to him by Calitz' office. Issued by 4i Asset Management (Pty) Ltd, an entity of which Calitz was then a director, this letter is revealing in that it contains the following statement:

'The board of 4i Asset Management wishes to confirm that 4i Asset Management currently manages 4 FSB regulated unit trust funds, all which are managed in full compliance with all relevant legislation including FAIS and the Collective Investment Schemes Act ("CISA"). None of our unit trust funds had any, or will ever have, any exposure to unregulated investment schemes (e.g Herman Pretorius' schemes/funds)..'

C. RESPONDENTS' REPLY

[15] During a visit by the complainant to respondents office on the 26th January 2009 the performance of the global equity market and more specifically the fall of the

market in 2008 was discussed. Alternative investments such as hedge funds were then discussed.

[16] Respondent states that he briefly explained the workings of a hedge fund and that these instruments were not regulated, but that Abante Capital itself was registered as an investment manager with the Financial Services Board. Complainant thereafter decided to invest with RVAF. Respondents refer to Abante Capital as the managing agent.

[17] I point out that nothing in the documentation which respondents are required to retain, persuades this Office that complainant was even aware of or could have understood the implications of what he was investing in. In particular there is no mention of the risks of investing in an unregulated entity, one without so much as a set of audited financials.

[18] Respondent further states that regular statements were sent to complainant and that there was no reason to believe that the investment was not above board.

[19] The option to invest in hedge funds was not in contradiction with complainants' risk profile as the long and short positions make these investments market neutral if managed correctly.

D. THE DETERMINATION

[20] Reference is made to the determination of *Inch vs Calitz*¹ where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RVAF.

1. *Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 0497/12-13/MP1*

Principally the issues pertain to the respondent's failure to understand the entity, (RVAF) and the risks to which he was exposing his clients when he advised them to invest therein.

[21] Evident therein are the material deficiencies in the application forms; the latter, lacking in substance or form it is difficult to understand who or what the complainant was dealing with. Yet in spite of these failings, funds were transferred directly into RVAF without even the protection afforded by a nominee account.

[22] In attempting to support his version, Calitz stated that he enclosed as part of his investigations into the investment vehicle a copy of the FSB License brochure on 'Abante Capital (managing agent)' and presentations done by Abante Capital. Yet there is not a single mention of Abante in the contractual documentation, this further reinforces the fact that Calitz himself failed to understand the contracting entity.

[23] Quite simply, no adviser would have recommended this product as a suitable component of any investment portfolio had they so exercised the required due skill care and diligence.

[24] Complainant as a client of a registered financial adviser, relied on Calitz' advice when he made this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Calitz failed in this regard.

[25] For the reasons set out in the Inch determination, complainant's complaint must succeed.

E. ORDER

[26] Accordingly the following order is made:

1. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R500 000, 00.
2. Interest on the aforesaid amount at the rate of 9%, per annum seven (7) days from the date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 6th DAY OF AUGUST 2014



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OMBUD FOR FINANCIAL SERVICES PROVIDERS