

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

Case Number: 00750/11-12/GP 3

In the matter between:

MICHELLE COLLARD

Complainant

and

HENRY GRUNDLING MAKELAARS CC

First Respondent

HENRY GRUNDLING

Second Respondent

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

A. INTRODUCTION

[1] The complainant sought the assistance of the Short Term Insurance Ombud after her insurer, Santam, repudiated a claim in respect of her motor vehicle which had been stolen. The Ombud, after investigating the matter, concluded that the insurer did no wrong but that the broker was possibly to blame for complainant's loss. The matter was then outside their jurisdiction and they referred the complaint to this Office.

B. THE PARTIES

- [2] Complainant is Brigitte Michelle Collard an adult female residing at 17 Dulles Place, Bomaelo Park, Gauteng.
- [3] First respondent is Henry Grundling Makelaars CC, a close corporation duly incorporated according to the company laws of South Africa, with a registered address situated at 30 Tugelalaan, Petersfield Extension, Springs, Gauteng. First respondent is an authorised financial services provider (FSP) with license number FSP 11564.
- [4] Second respondent is Henry Grundling, an adult male FSP who owns 100% of the member's interest in first respondent and who is also the latter's key individual.

C. FACTUAL BACKGROUND

- [5] At all material times, respondents were complainant's insurance brokers. In December 2008 complainant purchased a new car being an Opel. At that time she also owned another car being a VW Citi Golf. This car was insured with Santam through the services of her broker, the respondents. At the time of purchasing the Opel, the insurance policy in respect of the VW was still in force and effect that complainant had paid her premiums.
- [6] When complainant purchased the Opel she intended to sell the VW. She called the respondents and insured her new car. At that time she also informed second respondent that she was selling the VW but will keep the vehicle registered in her

name till the vehicle was paid off. She had agreed to terms with the purchaser. She gave the second respondent the purchaser's details including the address where the car will be kept as well as the purchaser's identity number. Second respondent informed complainant that the policy will be updated to include the new information and that she should continue to pay the premiums. Having been assured by second respondent that her car was covered, complainant continued to pay the insurance premiums.

- [7] During September 2009, the VW was stolen whilst in the possession of the purchaser. The vehicle was parked in the latter's yard from where it was stolen. The theft was reported to the police in Benoni and the vehicle was never recovered. Complainant, through first respondent, filed a claim against the policy for compensation for her lost vehicle.

Rejection

- [8] After the claim was made, the insurer appointed an assessor. The assessor found that the vehicle had been sold and was stolen from the possession of the purchaser and not from complainant who, according to the insurer's records, was in possession of the vehicle. The assessor raised the question of insurable interest and change in risk.
- [9] The policy in terms of which the vehicle was insured contained an exclusionary clause. This exclusion provided that if the vehicle was sold or hired out for money, there will be no cover provided.

[10] On 26 November 2009, and in writing, complainant was informed by the insurer that her claim had been rejected. The insurer relied on the terms and conditions of the policy which provided that in the event of a sale of the vehicle, cover will cease. It further transpired that the insurer was not aware that the vehicle had been sold. They were not informed of this by the respondents.

D. THE COMPLAINT

[11] Bearing in mind the above factual background, complainant was dissatisfied with her insurer as well as her brokers.

[12] In her complaint she states the following:

- a) At the time of change of insurance to cover the new driver, she was not informed of any issues;
- b) Santam accepted the policy changes and the premiums she was paying;
- c) At no time was she informed that her vehicle was not properly covered;
- d) That she was an “outstanding” member of Santam for many years with only one claim;
- e) She did everything correctly and yet was not covered. She states that Santam should have contacted her and she would have done whatever was necessary to ensure that her vehicle was properly insured.

[13] It must be borne in mind that complainant initially complained about Santam to the Ombudsman for Short Term Insurance, (OSTI). At that time she was not aware of

the fact that her broker did not inform Santam of the changed circumstances around the sale of the vehicle. Santam only found out about the sale after the claim was made from the assessor's report and not from the broker.

[14] It was the short term insurance ombud who informed complainant that the cause of the problem was the actions or lack thereof by her brokers. Complainant concludes by claiming that she wants the full insured value of the vehicle to be paid to her in an amount the amount of R15 200 less the excess.

E. THE RESPONSE

[15] On 25 May 2011, the complaint was referred to the respondents, for the attention of second respondent, and notice was given for the parties to attempt to resolve the dispute in terms of rule 6 (b) of the rules of proceedings in this Office. This letter also informed respondents that in the event that the matter is not resolved by the 7th July 2011, a full version of their facts together with a complete file of papers relating to the complaint must be forwarded to this Office.

[16] On 18 October 2011 this Office sent an email to respondents pointing out that complainant had made a full disclosure of all the circumstances regarding the vehicle to her broker. The respondents were then invited to make a reasonable offer to resolve the matter. This email further informed respondents that if the matter was not resolved by 26 October 2011, the provisions of section 27 (4) (a) of the Act will apply.

[17] On 18 October 2011 there was a response from a certain Liana Grundling who, in an email, stated as follows:

“Unfortunately I would not be able to assist in resolving this matter and the business that was dealing with this client, HENRY GRUNDLING BROKERS CC, is no longer in operation.”

[18] This Office does not know in what capacity Liana Grundling was acting in responding as she did. This email was the last time this Office heard anything from the respondents.

Complainant informed this Office that the respondents did not stop operating. In fact the business is in operation and the son of second respondent is in charge of the business.

F. RESPONDENTS’ CONDUCT

[19] This Office, since 18 October 2011, was unable to get any response from the respondents. They are certainly aware of the complaint and the allegations of unprofessional or negligent conduct against them. On 4 May 2012 a further email was sent to respondents giving them until 7 July 2012 to respond. This email was ignored and no response ever came. This Office is left with no choice but to treat complainant’s version as undisputed by respondents.

[20] An investigation was carried out into the status of first respondent. This investigation revealed that second respondent failed to conduct his business in a professional manner. Of significance is that the Financial Services Board (FSB)

withdrew first respondent's license being FSP 11564. The reasons for the withdrawal of the licence was given by the FSB as follows:

“Failure to submit the financial statements for the financial years ending 2008, 2009.

Failure to pay the outstanding balance on the licensee's levy account, which includes interest accrued monthly, amounting to R4565.30 at 13/06/2011.”

[21] A CIPC search revealed that the first respondent was “in business” and second respondent was an “active member” holding 100% of the member's interests.

[22] I now turn to the merits of the complaint. The following are the undisputed facts:

- a) Second respondent was the complainant's broker and provided financial services in the form of short term insurance for the latter's vehicle;
- b) Second respondent, over a period of time, placed the cover with Santam insurance. The latter provided cover under policy number 89210901205;
- c) At all material times, complainant complied with her obligations in terms of the contract of insurance and paid her premiums;
- d) In December 2008, complainant sold the vehicle to a certain J H Du Plooy in terms of an instalment sale agreement. She wanted the vehicle to be covered by insurance until the purchaser paid off the full amount, in the meantime the vehicle remained registered in her name;
- e) When this transaction took place, complainant called second respondent and informed him and requested that the vehicle remain covered by insurance. She

- gave second respondent full details of the purchaser as well as the address where the vehicle will be kept;
- f) Second respondent informed complainant that he will inform the insurer and that she may accept that the vehicle was covered. Complainant was informed to continue to make premium payments to Santam;
 - g) Respondents failed to inform Santam of the change in risk and further failed to inform complainant that there was an exclusion in the contract in the event the vehicle was sold;
 - h) On 3 September 2009 the vehicle was stolen from the possession of Du Plooy. At this stage complainant was satisfied that the vehicle was insured as she believed that respondents had amended her policy to account for the change in possession of the vehicle and she had paid all her premiums;
 - i) At all material times, Santam was unaware of the change in risk and were within their rights, in terms of the policy, to reject the claim.

G. FINDINGS

[23] As licensed FSPs, respondents were subject to the Act and the General code of conduct for FSPs. In December 2008, when complainant called second respondent to inform him of the sale of the vehicle, respondents as competent FSPs acting in the interests of their client ought to have done the following:

- a) To immediately draw complainants attention to the exclusion in the policy;
- b) To immediately inform Santam of the change in risk and enquire whether they will continue to provide cover and on what terms and conditions;

- c) In the event that Santam refused to provide cover, to immediately inform complainant and to advise her of how best to protect her interests in so far as cover for the vehicle is concerned.

[24] On the undisputed facts before this Office, the following findings can be made:

- a) Respondents failed to carry out the steps stated above; and
- b) Actively misled complainant into believing that Santam was informed and that the policy was amended and complainant was covered.

Respondents' conduct caused complainant prejudice in that she paid premiums in the false belief that her vehicle was insured against theft and damage.

[25] Respondents failed to carry out their general duties as FSPs and contravened the provisions of Section 2 of the general code which provides as follows:

“A provider must at all times 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.”

[26] In addition, and on the undisputed facts before me, respondents contravened the following provisions of the General Code:

- a) Section 3 (1) (a) (i), (iii) and (iv);
- b) Section 3 (1) (d);
- c) Section 7 (1) (a) and (b) and
- d) Section 8.

Cause of the Loss

[27] Complainant lost her vehicle and was unable to make a successful claim against her insurance policy. This was all as a result of respondents' conduct in contravening the General Code of conduct. Respondents were unprofessional and negligent in providing financial services to the complainant. But for this conduct complainant would not have suffered the loss.

H. QUANTUM

[28] In calculating the amount of complainant's loss, this Office contacted Santam and inquired as to how much would have been paid if the claim was not been rejected. Santam referred this Office to the assessors report and pointed out that the amount stated therein would have been acceptable to them.

[29] The retail value of the vehicle was R14 200 which was subject to an excess of R3 000. The insurer would have paid an amount of R11 200. I accordingly determine complainant's loss in an amount of R11 200.

I. CONCLUSION

[30] For reasons set out above I find that respondents are liable to pay complainant the amount of R11 200.

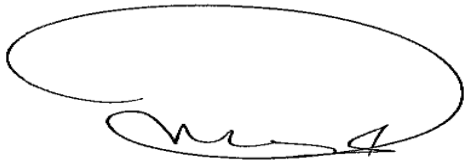
J. ORDER

[31] I make the following order:

1. The complaint is upheld;

2. Respondents are ordered to pay complainant, jointly and severally, an amount of R11 200;
3. Interest on this amount at the rate of 10.25% from the 26th November 2009 to date of payment.

DATED AT PRETORIA ON THIS THE 7th DAY OF SEPTEMBER 2016.

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature appears to be 'Noluntu N Bam'.

NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS