

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

**PRETORIA**

**CASE NUMBER: FAIS 08784/12-13/ KZN 1**

**In the matter between:**

**Denis Roy Cunningham**

**Complainant**

**and**

**Johann Liversage t/a Liversage Financial Services**

**Respondent**

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

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**A. INTRODUCTION**

[1] This determination follows a recommendation made in terms of section 27 (5) (c) of the Act on 18 December 2017. Section 27 (5) (c) empowers the Ombud to make a recommendation in order to resolve a complaint speedily by conciliation. This determination therefore, shall be read in conjunction with the recommendation and shall form part of this determination.

[2] Respondent's response to the recommendation was received on 15 January 2018. Respondent did not respond to any of the issues raised in the recommendation, and simply forwarded the response originally provided to the Rule 6(b) letter which was received on 17 July 2013.

## **B. THE PARTIES**

[3] Complainant is Mr Denis Roy Cunningham, an 86 year old adult male pensioner whose full particulars are on file with this Office.

[4] Respondent is Johann Liversage, a sole proprietor, trading under the name and style of Liversage Financial Services. Respondent is an authorised financial services provider (FSP) with license number 1734. According to the regulator's records, respondent's business address is No.2 Lantau, 58 Anthony Road, Umgeni Park, 4051, KwaZulu Natal. The license has been active since 26 November 2004.

## **C. RESPONDENT'S REPLY TO THE RECOMMENDATION**

[5] An aspect of the original response that was not addressed by the recommendation was respondent's reference to the Section 311 Scheme of Arrangement and his assurances that complainant would not lose his money. In support of this respondent refers to correspondence received from Frontier Asset Management & Investments (Pty) Ltd on 1 October 2012.

[6] This correspondence confirmed that property syndication companies in which complainant had invested, namely Mont Rouge Holdings Ltd, and Rivonia Holdings Ltd were part of the Scheme of Arrangement in terms of Section 311 of the Companies Act, which had been approved by the High Court on 20 January 2012. Confirmation was provided as to the time frame for the repayment applicable to each property, as part of the repayment schedule, which had commenced on 20 January 2012, as being four years for Mont Rouge Ltd, and ten years for Rivonia

Ltd. Correspondence received from Frontier Asset Managers has confirmed that complainant has to date not received any repayments on either of the investments made with Sharemax.

#### **D. DETERMINATION**

[7] Whilst respondent made reference to the section 311 Scheme of Arrangement, respondent however does not point to any legally enforceable instruments that guarantees complainant's capital. There can be no doubt that complainant has lost his capital. In any event, the Board in the *Siegriest* and *Bekker* appeals (FAIS 00039/11-12/GP1 and FAIS 06661/10-11/ WC 1) ruled that the investors' claims had not been compromised

#### **E. CONCLUSION**

[8] The issues raised in the recommendation have therefore not been disturbed, and based on the information provided in the recommendation it follows that respondent is liable to pay complainant's claim

#### **F. THE ORDER**

[9] 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 R700 000;
3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.
4. Complainant to cede her rights and title in respect of any further claims in respect of this investment to respondent.

**DATED AT PRETORIA ON THIS THE 12<sup>TH</sup> DAY OF JUNE 2018.**



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**NARESH S TULSIE  
OMBUD FOR FINANCIAL SERVICES PROVIDERS**