

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO.:FOC/782/05-06/GP/03

In the matter between:

JOSE ANTONIO DE NOBREGA

Complainant

and

CYBERSURE CONSULTANTS (PTY) LTD

Respondent

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

A. PARTIES

[1] The complainant is Mr Jose Antonio de Nobrega of Plot 233, Vlakplaats, Tarlton, Gauteng.

[2] The Respondent is Cybersure Consultants (Pty) Ltd, an authorised financial services provider of 149, Durban Deep, Roodepoort, Gauteng. Respondent is represented by its key individual Mr Stephen John Louw.

B. BACKGROUND

- [3] The Complainant owned a Volkswagen Caravelle Kombi, which was insured with Renasa Insurance Company Limited through Unify, who were the Administrators. The vehicle was stolen while the complainant was attending a church service on 29th May 2005.
- [4] Complainant duly submitted a claim for his loss but this was repudiated on the grounds that the vehicle was not fitted with a VESA approved self-activating immobiliser or gear lock which was a condition for cover under the theft section of the policy.
- [5] Complainant filed a complaint with the Ombudsman for Short Term Insurance in which he said that he 'always had a visa (*sic*) approved PAOEI-T-LOCK gear lock system fitted....' A copy of the document indicating proof of installation was attached. The complaint was rejected on the grounds that the policy terms and conditions were not adhered to by the complainant. He was referred to this Office on the grounds that he may have a valid complaint against the financial services provider.
- [6] In his complaint to this Office the Complainant alleges that he was never provided with a copy of the schedule or the policy of insurance by the respondent. He was therefore not aware of the requirement that he had to

have a VESA approved gear lock or self-activating immobiliser installed in the vehicle.

The relief sought by Complainant

[7] The complainant seeks compensation for the loss of his motor vehicle.

Investigation by this Office

[8] This Office proceeded with an investigation after it became apparent that the matter could not be resolved between the parties.

[9] The respondent's key individual, Mr Stephen Louw, furnished this Office with a detailed response. He denied that complainant was not aware of the requirements of the insurer. He says complainant was initially insured through Unify from mid-2000 to December, 2003. He was thereafter insured through a company called FSG. In both instances the requirements of the insurer were exactly the same, i.e. installation of a VESA approved self-activating immobiliser or gear lock for cover against theft of the motor vehicle. In October, 2004 respondent moved the complainant back to Unify and once again the requirements were the same for theft cover. It was during this latter stage that complainant's vehicle was stolen.

C. THE ISSUES

[10] The issues are whether the complainant was aware of the requirements for theft cover and whether, in any event, the gear lock that was installed in the vehicle complied with the requirement that it be VESA approved.

D. DETERMINATION AND REASONS THEREFORE

[11] The complainant has given two different versions of the facts – one to the Short Term Insurance Ombudsman (which was forwarded to this Office) and another to this Office. In the former complaint he says he always had a VESA approved gear lock fitted and provided a document as so-called proof thereof.

[12] A perusal of the document reveals that it is defective in several material respects. The document is 'Certificate No. 17206'. It states, *inter alia*, 'This is to certify that a PAOPEI-T-LOCK Has (*sic*) been professionally mounted to this vehicle by an accredited' (*sic*) and below it 'Installer Stamp'. The installer's stamp indeed appears on it. Under the heading 'CUSTOMER' the name, identity number, address and telephone number are called for. None of the details are provided. Under 'VEHICLE' it is identified as a 'VW Caravelle 2.5i' and dated 3-7-97. However, the vehicle 'Registration No.' and 'Key/Card No.' have not been filled in. Provision is also made for the client to sign the certificate 'only if satisfied with installation.' It has not been signed by the client. Finally, the VESA product code is called for; it has not been filled in.

The certificate, in my view, cannot be regarded as proof that the gear lock was VESA approved as contended for by the complainant.

[13] In his complaint to this Office the complainant says the respondent neither provided him with the policy schedule nor the policy wording and he was therefore not aware of the VESA requirement.

[14] The respondent provided copies of the following insurance schedules covering the vehicle for some years prior to it being stolen:

14.1 Brokernet Plus Policy Schedule with inception date 1 February 2000 where it is stated that a VESA level 4a immobiliser is compulsory;

14.2 Unify Policy with effective date 1 March 2001 in which it is stated that installation of a VESA approved immobiliser or gear lock is compulsory;

14.3 Nova Domestic Policy for the year commencing 1 February 2004 in which installation of a VESA approved immobiliser or gear lock is not mentioned;

14.4 Unify Policy for the year commencing 1 November 2004 in which it is stated that installation of a VESA approved immobiliser is compulsory. The claim arose during the period of insurance covered by this policy.

[15] It may be argued that as the Nova policy, which was in effect immediately before the one under which the claim arose, did not require an approved immobiliser or gear lock, that the broker was under a duty to disclose it when it was required again by Unify. It is clear that the complainant knew of the requirement for a VESA approved device; he said so to the Short Term Insurance Ombudsman. It was also a requirement in all but one of his previous policies listed above. The same device which he initially installed in 1997 was in the vehicle when it was stolen.

[16] I am of the view that in the circumstances of the facts of this case the respondent cannot be held liable for complainant's claim.

Accordingly, I make the following order:

A. The Complaint is dismissed.

DATED AT PRETORIA THIS THE 7TH DAY OF FEBRUARY, 2008



CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS