

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

CASE NUMBER: FAIS 09477/10-11/GP3

In the matter between:-

Otto Walter Fourie

Complainant

and

RWP Finansiële Dienste CC t/a Consult Us Brokers

1st Respondent

Willem Lombard

2nd Respondent

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

A. THE PARTIES

[1] The complainant is Otto Walter Fourie, an adult male, residing at 397 Bruce Street, Waterkloof, Pretoria, 0181

[2] First respondent is RWP Finansiële Dienste CC t/a Consult Us Brokers (registration number 1999/047570/23), duly incorporated in terms of South African law, with principal place of business at 44 Platan Avenue, Flamwood, Klerksdorp, 2571. At all material times, 1st respondent was an authorised

financial services provider in terms of the FAIS Act, with license number 4587. The license was issued on 16 August 2005.

- [3] Second Respondent is Willem Lombard, an adult male, a key individual and authorised representative of the 1st respondent. In this determination, for the purposes of convenience, I refer to 1st and 2nd respondent as respondent.

B. INTRODUCTION

- [4] The complaint relates to the rejection of an insurance claim that was instituted with the complainant's insurer. Aggrieved by the rejection, the complainant lodged a complaint with the Ombud for Short Term Insurance ('OSTI'). OSTI however, upheld the insurer's decision but referred the matter to this Office to investigate the conduct of the intermediary (respondent).

C. COMPLAINT

- [5] The complainant's complaint may be summarised as follows:
- a. In 2006, the respondent assisted the complainant to obtain household and vehicle cover. Cover was subsequently placed with Zurich. During or about October 2008, the complainant received a letter from the respondent notifying him that his short-term insurance cover had been moved to BSG Hollard ('Hollard').

- b. The complainant asserts that when his insurance cover was placed with Zurich in 2006, he informed the respondent of all security features at his property. However, when his insurance cover was moved to Hollard, the respondent neither requested additional information from him nor conducted an inspection of his premises.
- c. On 14 November 2009, an armed robbery took place at the complainant's property. The robbers gained access through a rented flat which is adjacent to the insured property ('main house'). The robbers held the tenant and her companion at gun point. After the robbers were informed by the tenant that no one was present in the main house, they made their way to the house by forcing open the front door which did not have a security gate. Shortly thereafter the complainant lodged a claim with Hollard. He was notified that his claim had been rejected due to non-compliance with a security requirement of the policy. The particular requirement was introduced via an endorsement¹. The specific requirement states that all opening windows and all external doors of the insured property had to be equipped with burglar bars and security gates.
- d. The complainant contends that the respondent failed to communicate this particular requirement to him. Consequently, he could neither have complied nor obtain alternative insurance cover.

¹ An attachment to a document that amends or adds something to it. Typically, it is an added provision to an insurance policy. www.investopedia.com

D. THE RELIEF SOUGHT

[6] The complainant seeks an order compelling the respondent to pay him the claim amount of R120 369. The amount represents the amount by which complainant would have been indemnified by the insurer had the respondent properly rendered the financial service to him.

E. RESPONDENT'S RESPONSE

[7] In terms of the Rules on Proceedings of the Office, the complaint was referred to respondent to resolve. As the complaint could not be resolved, the respondent was requested in terms of Section 27(4) of the FAIS Act to provide his response as well as a copy of his file of papers to the Office. The pertinent aspects of the respondent's response are set out below:

- a. According to the respondent, the complainant's insurance cover was moved to Hollard from Zurich. Such cover commenced on 01 October 2008. The premium payable and the terms and conditions applicable to the complainant's Zurich policy applied to the Hollard policy.
- b. The respondent contends that at the time of the theft the complainant was in possession of the latest policy schedule containing all terms and conditions. He states that although the complainant had a linked alarm

system with ADT, he did not have a security gate at the front door of the insured property.

- c. The respondent contends that even though front door of the insured property was not protected with a security gate, in his view the insurance claim remains valid. He contends that Hollard had no reason to reject the complainant's claim. The respondent asserts that he deals with approximately twenty different insurance companies and all of them accept an alarm as sufficient cover even when there is no security gate at the front door of a dwelling.

- d. The respondent further contends that the complainant could not have activated the alarm as there were occupants in the dwelling at the time of the robbery. Furthermore, the complainant '....could not put a steel gate in front of his big front door²' and that to him is the reason complainant had an alarm installed. The armed robbery occurred in daylight. In summation, respondent argues that Hollard should have honoured the claim.

F. ISSUE

[8] The issues to be determined are:

[8.1] whether the respondent properly rendered the financial services to complainant as the Code demands;

² Respondent enclosed a photograph of complainant's front door

[8.2] if it is found that the respondent's conduct whilst rendering the financial services to complainant violated the Code, whether such violation occasioned complainant's damage;

[8.3] the quantum of such damage.

G. DETERMINATION AND REASONS THEREFORE

[10] Investigation conducted by this office revealed that the complainant's policy formed part of a group-take-over. As of 01 October 2008, Hollard became the new insurer of the respondent's clients that were hitherto covered by Zurich. Hollard confirmed that on 31 August 2009, (two months prior to the robbery), the endorsement was communicated to the respondent. The endorsement sought to introduce a material term to the complainant's policy, namely, that all opening windows and all external doors of the insured property be equipped with burglar bars and security gates.

[11] In terms of section 7 of the General Code of Conduct for Authorised Financial Services Providers ('the Code'),

'(1) Subject to the provisions of this Code, a provider...must-

(a) provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision;

(b) whenever reasonable and appropriate, provide to the client any material contractual information...in the possession of the provider;

(c) (vii) concise details of any special terms or conditions, exclusions of liability...restrictions or circumstances in which benefits will not be provided;’ (own italics)

[12] Section 7(1) of the Code clearly placed an obligation on the respondent to have disclosed to the complainant that Hollard had introduced the material term relating to the burglar bars and security gates to his policy. The respondent had to explain to the complainant that as a result of the endorsement it was condition of the policy that all opening windows and all external doors of the insured property had to be equipped with burglar bars and security gates. This would have allowed the complainant to decide whether he was willing to accept the condition added to his policy or find alternative cover. Upon request by the Office, the respondent could not provide any evidence that the disclosure of the endorsement was made to the complainant. The respondent could also not provide any record of the advice that was furnished to the complainant as required by Section 9 of the Code. Although the respondent argued that the complainant received the latest policy schedule, he could not provide proof that it was actually sent to the complainant. In any event, providing a client with a policy schedule is not sufficient to discharge the duty placed on him by Section 7(1) of the Code. It was required of the respondent that he, at the earliest reasonable opportunity, provide the complainant with concise details of the material terms of the policy to enable the complainant to make an informed decision. Although the

respondent was aware of the endorsement, he failed to inform the complainant of the terms introduced by the endorsement.

H. THE CAUSE OF LOSS

[13] It was incumbent upon the respondent to pertinently draw the complainant's attention to the requirement endorsed on the policy schedule so that he could make 'an informed decision' on whether he was prepared to accept the condition added by the insurer. It was as a result of the failure to properly and timeously inform complainant of the insurer's requirement that ultimately led to the rejection of the theft claim by the insurer. I am thus compelled to find that the respondents' conduct occasioned the loss suffered by the complainant.

I. QUANTUM

[14] The complainant alleges that his loss amounts to R120 369 and had provided quotations in support. However, this amount has not been settled by a loss adjuster. I therefore deem it prudent that in this instance the issue of the quantum of complainant's loss be separated from the merits and leave it to the parties to agree on the amount. If they fail to do so, either party may approach this Office to determine the quantum.

J. ORDER

In the premises the following order is made:

1. The issue of merits of the complaint is separated from that of the quantum of the loss suffered by complainant.

2. The complaint on the merits is upheld.
3. The respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant such amount as is agreed between the parties as representing the complainant's loss.
4. If the parties fail to agree on the quantum either party may bring the matter back to this Office for the determination of the amount of complainant's loss.

DATED AT PRETORIA ON THIS THE 16th DAY OF OCTOBER 2012.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS