

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

Case Number: FSOS 00073/12-13/KZN (3)

In the matter between:-

MANGIPHILE STANLEY GUMEDE

COMPLAINANT

and

PIETER DE WET T/A MODEL INSURANCE COMPANY

RESPONDENT

**DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES
OMBUD SCHEMES ACT NO. 37 OF 2004 ('FSOS Act'), READ WITH SECTION
28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO.
37 OF 2002 ('FAIS ACT')**

A. THE PARTIES

[1] The complainant is Mangiphile Stanley Gumede, an adult pensioner of Umlazi, KwaZulu-Natal.

[2] The respondent is Pieter De Wet, a sole proprietor who conducted short-term insurance business under the name Model Insurance Company ('Model')

whose address is 502 Charter House, 75 Crompton Street, Pinetown, KwaZulu Natal.

B. BACKGROUND

[3] The determination is made in terms of the FSOS Act¹ read with section 28(1) of the FAIS Act². The complainant in this matter is one of a number of policy holders who lodged complaints with this Office following the respondent's failure to honour their claims.

[4] The respondent held himself out to be an authorised short-term insurer and collected premiums from members of the public. It emerged from enquiries with the Registrar that the respondent had never been licensed in terms of Section 7(1) of the FAIS Act to render financial services to the public. He had also never been registered to conduct business as a short-term insurer as required by Section 7 of the Short-term Insurance Act 53 of 1998 as amended ('STIA'). In terms of Section 7 of the STIA:

- '(1) No person shall carry on any kind of short-term insurance business unless that person –
- (a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned under this Act; or
 - (b) is authorised under section 56 to do so, and carries on that business in accordance with this Act.'

¹ Financial Services Ombud Schemes Act 37 of 2004.

² Financial Advisory and Intermediary Services Act 37 of 2002.

[5] During February 2012, the Registrar issued a warning, requesting the public not to conduct business with Model. Despite this warning, the respondent continued to conduct unregistered insurance business. The Registrar reported the respondent to the Commercial Crime Branch of the South African Police Service and secured an interim interdict in the Kwazulu-Natal High Court to stop the respondent from carrying out short-term insurance business.

C. JURISDICTION

[6] The Respondent is not a member of a recognised scheme as contemplated in Section 10 and 11 of the FSOS Act.

[7] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the Respondent in respect of this complaint.

[8] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. COMPLAINT

[9] The following are the material aspects of the complainant's complaint:

9.1 On 1 September 2011, the Complainant entered into a comprehensive short-term insurance agreement with the respondent to insure his motor vehicle, a 1.3L Toyota Corolla Advanced, a 2010 model. The respondent furnished a confirmation of insurance document³ containing the facility

³ Proof provided.

(policy) number 5551024 to the complainant. The policy inceptioned on the same day. The vehicle is registered and financed in the name of Mrs J Gumede (complainant's wife) and the insurance in the name of the complainant. The two are married in community of property.

9.2 On 22 December 2011, the complainant's motor vehicle was involved in an accident. He duly reported the matter to the South African Police Service ('SAPS') and instituted a claim with the respondent.

9.3 According to the complainant, the respondent informed him that the vehicle was damaged to such an extent that it was uneconomical to repair.⁴ He further states that the respondent authorised his claim however, the settlement amount was never paid to the financier.⁵

9.4 Aggrieved by the respondent's failure to honour his claim, the complainant lodged a complaint with the Ombudsman for Short-Term Insurance ('OSTI') who in turn referred the complaint to this Office.

E. RELIEF SOUGHT

[10] The complainant seeks an order compelling the respondent to indemnify him for the loss suffered due to the vehicle being written off.

F. RESPONDENT'S VERSION

[11] The complaint was sent to the respondent requesting him to resolve it with the complainant, alternatively to furnish this Office with a detailed response. The

⁴ The quote to repair the vehicle is more than its actual value.

⁵ Proof provided.

respondent failed to address this Office on the merits of the complaint. Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27(4) of the FAIS Act and the respondent was again invited to file a response to the complaint. Although the respondent for a second time failed to address the Office on the merits of the complaint, it is worth quoting two e-mails he sent to this Office.

11.1 In response to the Section 27(4) notice the respondent stated:

'I have received the mail... and if I am currently unemployed and unable to pay what then'⁶

'i have on numerous cations tried to get silence for two years and have leased with the registrar at the FSB to find a way forward but was told that i would need 10 million rand in cash for that or hand over the clients to a registered company which i did hand over to Sapcor as i was told , we did pay claims until the FSB warned the public about model insurance and so we started having a lot of cancellations and was unable to pay claims in the last period so at the moment i would like to settle these amounts but cant due to unemployment and would like to make an offer once I have a job'⁷

[12] Given the admissions made by the respondent in the two e-mails, it is no surprise that he did not respond to the merits of the complaint. Quite simply, the respondent has no defence against the allegations made against him. Therefore, the complaint must succeed.

⁶ E-mail dated 20 August 2014. Errors not omitted.

⁷ E-mail dated 21 August 2014. Errors not omitted.

G. FINDINGS

[13] From the undisputed facts before this Office, it can be concluded that:

- 13.1 The respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider;
- 13.2 The respondent collected premiums from members of the public but had no financial means to honour claims as they arose;
- 13.3 Although the respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant;⁸
- 13.4 In terms of the short-term insurance agreement the respondent agreed to indemnify the complainant against any loss or damage arising out of the use of his vehicle at a monthly premium of 550.87;
- 13.5 The respondent was at risk and liable to pay the complainant in terms of the contract of insurance;
- 13.6 The respondent did not dispute any of the complainant's allegations.

H. QUANTUM

[14] According to TransUnion's Auto Dealers' Guide the replacement value of the vehicle at the time of loss was R135 900. I therefore intend to make an order in the amount of R135 900 less excess of R3 250.

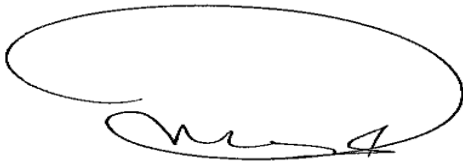
⁸ In terms of Section 54(1) of the STIA 'A short-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.';

I. ORDER

[15] In the premises the following order is made:

1. The complaint is upheld;
2. Respondent is hereby ordered to pay to the Complainant the amount of R132 650;
3. Interest at a rate of 9% per annum, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 11th DAY OF DECEMBER 2014.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS