

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

**CASE NO: FAIS 03575/12-13/ WC1**

In the matter between:

**LOREDANA HANSEN**

**Complainant**

and

**IMPACT FINANCIAL CONSULTANTS CC**

**1<sup>st</sup> Respondent**

**MICHAL JOHANNES CALITZ**

**2<sup>nd</sup> Respondent**

---

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

---

**A. THE PARTIES**

- [1] The complainant is Loredana Hansen, an adult female of Durbanville, Western Cape.
- [2] The 1<sup>st</sup> respondent is Impact Financial Consultants CC, a close corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5th Floor, The Cliffs, Niagara Road, Tyger Falls Belville.
- [3] The 2<sup>nd</sup> respondent is Michal Johannes Calitz ('Calitz'), key individual and member of 1<sup>st</sup> respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times rendered financial advice to complainant on

behalf of 1<sup>st</sup> respondent.

## **B. THE COMPLAINT**

[4] The complainant's complaint may be summarised as follows:<sup>1</sup>

4.1. According to the complainant, in 2002 she was introduced to Calitz by her husband (her fiancé at the time). Her husband wanted Calitz who was his financial advisor to take care of all their financial services requirements.

4.2. The complainant decided to follow her husband's recommendation and met with Calitz. She asserts that Calitz discussed Leaderguard and RVAF as potential investments. He told her that he personally investigated Leaderguard and RVAF and considered them to be good investments. Furthermore, he had invested his own money with the entities, the investments produced very good returns and were low risk. No other long standing investment and well-known companies were offered to the complainant

4.3. Following Calitz's advice the complainant made the following investments in RVAF:

- 01/04/2004 - R50 000<sup>2</sup>
- 29/10/2004 - R50 000
- 01/11/2007 - R150 000
- 02/08/2010 - R150 000
- 25/02/2011 - R60 000

---

1. The complaint includes submissions made by the complainant in response to further enquiries made by the Office.

2. This investment was made prior to the coming into operation of the FAIS Act. In total complainant invested R680 000 of which R630 000 was invested when the FAIS Act was already in operation.

- 30/05/2011 - R50 000
- 16/05/2012 - R100 000
- 18/05/2012 - R70 000<sup>3</sup>

The complainant asserts that she never made withdrawals from the investments as she was saving for retirement. She adds that she was satisfied with the returns reflected on statements.

- 4.4. Calitz neither explained R VAF to her nor performed a risk assessment exercise to establish her risk tolerance. He merely told her that R VAF was the best investment available with good returns, low risk and was stable.
- 4.5. The complainant asserts that R VAF sent statements to Calitz; in turn, Calitz recompiled the statements and sent her quarterly reports written on his company's letterhead. Calitz never disclosed commission to the complainant. It was only later when complainant received statements directly from R VAF that she learnt of commission paid to Calitz. Calitz subsequently admitted to the complainant that he received commission.
- 4.6. The complainant asserts that on 30 July 2012, she received a letter from Progressive Administrators stating that R VAF was to be placed under sequestration. She immediately contacted Calitz for an explanation, but was told that he was in a meeting. Calitz returned her call after three days, explaining that there was conflict between Herman Pretorius ('Pretorius'), a

3. The last five investments were made to save for complaint's daughter's university fees

trustee of the RVAF Trust and his ex-business partner, Julian Williams. As this conflict made him (Calitz) nervous, he attempted to withdraw all his clients' funds in RVAF at the beginning of July 2012. However, he was unsuccessful.

4.7. Complainant states that she is not a risk taker and had placed all her trust on Calitz to give her the best possible advice. She asserts that she completed and sign forms as directed by Calitz. Although the forms included a disclaimer about RVAF not being regulated, complainant claims she had no idea what that meant as it was never explained to her by Calitz.

4.8 Angered by the loss of her hard earned money due Calitz' alleged ill advice, complainant filed a complaint with this Office.

### **C. RESPONDENTS' REPLY**

[5] According to Calitz, complainant first visited his office in 2004 with the intention to invest R50 000. During the visit, they discussed the global equity market and also alternative investments such as hedge funds. The discussion led to complainant investing R50 000 in RVAF.

[6] Calitz invited complainant to attend information sessions and presentations that were held by Pretorius in order to further educate her on the nature of hedge funds. Complainant informed the Office that she attended one information session, however, she did not understand much as the session was conducted mostly in Afrikaans, which is not her first language.

- [7] Calitz goes on to argue that the initial investment of R50 000 was done prior to FAIS being applicable. The subsequent investments, he says, were not made on his advice. Calitz's version is not supported by the evidence. The complainant was required to fax deposit slips<sup>4</sup> to Calitz each time she invested in RAAF. Not only did Calitz provide RAAF statements to the complainant, he also received ongoing commission on the investments.
- [8] Calitz adds that the applications signed by the complainant attest to the fact that she read the Risk Disclosure Statement. The option to invest in hedge funds was explained to the complainant and was not in contradiction with her risk profile.

#### **D. DETERMINATION**

- [9] Reference is made to the determination of Inch vs Calitz<sup>5</sup> where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RAAF. Principally the issues pertain to the respondent's failure to understand the entity, (RAAF) and the risks to which he was exposing his clients when he advised them to invest therein.
- [10] Evident therein are the material deficiencies in the application forms; the latter lacking in substance or form it is difficult to understand who or what the complainant was dealing with. Yet in spite of these failings, funds were transferred directly into RAAF without even the protection afforded by a nominee account.

4. Complainant provided proof thereof.

5. Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 04971/12-13/MP1

[11] In attempting to support his version, Calitz stated that he enclosed as part of his investigations into the investment vehicle a copy of the FSB License brochure on 'Abante Capital (managing agent)' and presentations done by Abante Capital. Yet there is not so much as a single mention of Abante within the contractual documentation, further reinforcing the fact that Calitz himself failed to understand the contracting entity.

[12] Quite simply, no adviser would have recommended this product as a suitable component of any investment portfolio had they so exercised the required due skill care and diligence.

[13] Complainant as a client of a registered financial adviser, relied on Calitz' advice when making this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Calitz failed in this regard.

[14] For the reasons set out in the Inch determination<sup>6</sup>, complainant's complaint must succeed.

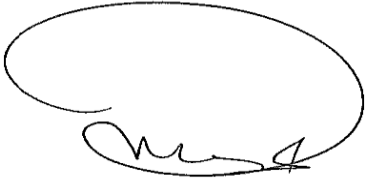
## **E. ORDER**

[15] Accordingly the following order is made:

1. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R630 000, 00.
2. Interest on the aforesaid amount at the rate of 9%, per annum seven (7) days from the date of this order to date of final payment.

6. Excluding those provisions which only became applicable post the initial advice in accordance with Board Notice 89 of 29th August 2007.

DATED AT PRETORIA ON THIS THE 04<sup>th</sup> DAY OF AUGUST 2014

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a series of connected, cursive letters, all contained within a large, hand-drawn oval.

---

**NOLUNTU N BAM**  
**OMBUD FOR FINANCIAL SERVICES PROVIDERS**