

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

Case Number: FAIS 00036/12-13/ GP 1

In the matter between:-

NTOMBENDLEKO JANUARY

Complainant

and

MAGAJANA FINANCIAL SERVICES CC

First Respondent

LINDIWE MTASA MAGAJANA

Second 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] Complainant is Ntombendleko January, an adult female whose full particulars are on file with this office.

[2] First respondent is Magajana Financial Services CC, a close corporation duly incorporated in terms of South African laws, with its registered address noted as 26 Princeps Crescent, Garsfontein, Pretoria East, Gauteng.

[3] Second respondent is Lindiwe Mtasa Magajana an adult female and a sole member and Key Individual of first respondent who resides at 26 Princeps Crescent, Garsfontein, Pretoria East, Gauteng.

B. BACKGROUND

[4] On 7 October 2010 complainant paid an amount of R100 000¹ into what she believed was an investment entity that was operated by the respondents, on the understanding that the capital would generate a return of R750 per month, which was payable as and when she requested. Complainant states in her complaint that throughout the presentation, first respondent was represented by second respondent, a key individual and sole member of first respondent.

[5] A background check as to the license status of respondents indicates that first respondent was licensed as a Financial Services Provider with license number 38060 until the registrar withdrew the license on 12 January 2012.

[6] The agreement between complainant and respondents, which was submitted with the initial complaint states:-

- (i) Interest in the amount of R750 is payable to complainant as and when requested;
- (ii) A further 10%² is payable upon withdrawal; and
- (iii) Notice of 60 days is required for all withdrawals.

¹ Proof of deposit has been provided

² It is not clear from the agreement whether the additional 10% is on the R750 or the capital amount.

[7] According to the complainant, she wrote to the respondents on 31 January 2011 giving them notice (as stipulated in their agreement) of her intention to withdraw from the investment. In terms of the agreement, the capital and whatever interest due had to be paid at the end of March 2011 but, it was not paid. Instead respondents made numerous promises, which were not kept until complainant filed the present complaint on 2 April 2012.

Referral to respondents

[8] In terms of the Rules on Proceedings of the FAIS Ombud, (the Rules) the complaint was referred to the respondents with a request that they resolve the matter with the complainant.

[9] Upfront, respondents acknowledged their indebtedness to complainant and promised to pay the amount outstanding in instalments. It would appear that the complainant had accepted the arrangement but respondents have not lived up to their promises to the complainant. Instead respondents have been making payments into complainant's bank account as and when it suits them. The last payment was made on 23 September 2014. To date, the total of such payments stands at R75 000. There is no proper computation of the amount of interest that is due to the complainant. Despite all efforts, respondents have refused /neglected to put forward a proper computation of the amount outstanding and have failed to pay such amount.

C. ISSUES FOR DETERMINATION

- [10] There is no question whether respondents are indebted to complainant at all. Likewise, there is no dispute regarding the essence of the agreement. It is apparent from the agreement and the complaint that complainant was lured into the so called investment policy by what appeared to be reasonable interest.
- [11] Apart from the six lined investment agreement between complainant and the respondents, it is difficult to see whether there was ever any third party who was responsible for the safe keeping of the client's funds. What is clear though is that the payments are coming directly from second respondent's personal bank account. This means the safety of the client's funds would have been compromised from the start as there is no proper infrastructure in place to safeguard monies collected from clients.
- [12] It is also not clear what exactly generated the returns that were promised to client by the respondents. To sum it up, there is no indication that there was a money market investment in the true sense.
- [13] Complainant clearly trusted the information furnished by the respondent and parted with her funds. Despite being a licensed financial services provider, (which would have aided respondents in persuading members of the public), there is no indication that respondents either had any idea or were interested in complying with the FAIS Act or any law that is designed to protect members of the public in such instances.

[14] Respondents have paid the amount of R75 000 to the complainant. Accordingly the complaint must succeed for the remaining R25 000.

D. ORDER

[15] The following order is made:

1. The complaint succeeds.
2. Respondents are ordered jointly and severally, to pay the complainant the sum of R25 000 within seven (7) days from date of this order, to date of final payment.
3. Interest at the rate of 9 % on the said amount from 31 January 2011 to date of final payment.

DATED AT PRETORIA ON THIS THE 7th DAY OF MAY 2015.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS