

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 00168/12-13/ EC 1

In the matter between:

ALEXANDER JORDAAN

Complainant

and

D S CATSICADELLIS

1st Respondent

RWL RABIE

2nd 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 Alexander Jordaan, an adult male, whose full and further details are on file with the Office.

[2] The First Respondent is Deolene Susan Catsicadellis ('Catsicadellis'), previously McMaster, an adult female, residing at No 7 Teuton, Melkbosstrand, Western Cape.

[3] The Second Respondent is Reginald William Lynton Rabie, ('Rabie') an adult male residing at 9 Muscadel Street, Wellington, Western Cape.

B. BACKGROUND

- [4] Relevant to this complaint is the existence of several corporate entities, namely, Blue Platinum Investments (BPI), Global Call Centre Solutions (GCCS), Merlin's Private Equity Fund Ltd (Merlin), also known as Merlin's Diamond Fund, and iBear Global Investment Strategists (Pty) Ltd (iBear).
- [5] The roles of Catsicadellis as a director of BPI and Rabie as the controlling mind behind iBear have already been addressed in prior determinations¹ emanating from this Office. As will become clear later on, neither of the entities mentioned herein were lawfully registered nor were they actively engaged in any kind of economic activity.
- [6] BPI was never authorised as a financial services provider. Its application was rejected by the Financial Services Board (FSB) on the basis that Catsicadellis, who applied to be recognised as a key individual, did not comply with the requirements of personal character, honesty, integrity, competence and operational ability.
- [7] Further, in 2009, the Minister of Trade and Industry ordered an investigation into the affairs of GCCS, from date of its inception, in terms of section 258 (2) of the Companies Act. The objective of the investigation was to establish whether the GCCS operations were conducted in a manner that is calculated to defraud its creditors. An extract from the findings that came out of that investigation, which are already a matter of public record, points to amongst others:

¹ EM Nel vs DS Catsicadellis and V Badenhorst 2908-08-09 KZN 1; see also N Higham 4935-09-10 WC 1

- i) the fact that BPI, which acted as a broker for GCCS, sold shares to members of the public without a valid prospectus;
- ii) that BPI, to the prejudice of the investors and in violation of the agreement between it and GCCS, withheld an excessive 60 % of the proceeds of the sale of the shares as commission, which was way beyond the agreed 10 %;
- iii) that GCCS traded recklessly in terms of section 424 of the Companies Act;
- iv) that GCCS misrepresented, amongst others, the following to its shareholders:
 - that GCCS would list on the JSE, within a specified time frame and that following such listing, its share price would increase by one rand; in fact GCCS never listed;
 - that GCCS would utilise the funds obtained from shareholders to further the business objectives set out in the prospectus, when the funds obtained from the investors were in fact used to defray operating expenses.

[8] The Financial Services Board, on the other hand, carried out an inspection into Blue Platinum and Associated Institutions in terms of section 3 of the Inspection of Financial Institutions Act No. 80 of 1998.

[9] The report of that inspection pointed that *'McMaster is the person responsible for managing and overseeing BPI's activities on a day-to-day basis.'* The DTI report indicates the same and in fact, Catsicadellis, when asked about the excessive

commissions during the investigation, indicated that BPI's agreement with GCCS did not actually record the true intention of the parties.

[10] Blue Platinum is no longer registered according to the Companies and Intellectual Property Registration Office and it appears to have ceased to exist.

[11] With regard to Merlin's Private Equity Fund Ltd and iBear Global Investment Strategists (Pty) Ltd, it has been revealed in several documents submitted in the many complaints that have been determined by this Office that Rabie was a CEO of the former and managing director of the latter.

[12] Needless to say neither of these entities was ever registered as a financial services provider.

[13] In all the dealings with respondents, complainant dealt with Pastor James Potgieter, (Potgieter) an adult male who was at the time in the employ of the respondents as a representative.

C. COMPLAINT

[14] In May 2007 complainant purchased shares through Potgieter in GCCS and Merlin. In his complaint, complainant says he blames Potgieter, Rabie and Catsicadellis for all the losses he suffered as a result of his dealings with the entities.

[15] In his undisputed version, complainant states that he met Potgieter in 2005. At the time complainant was a senior pastor and Potgieter part of a separate travelling ministry group. Since meeting in those gatherings, the two kept in

contact on a regular basis for the purposes of advancing matters relating to their respective ministries.

[16] In 2006 Potgieter moved from Magaliesburg to Melkbosstrand and soon announced to complainant that he had commenced work with BPI. His direct line of reporting was Catsicadellis. In persuading complainant to invest in BPI Potgieter told complainant one of BPI's offerings, namely, Merlin was offering a return of 30% per annum by way of interest. On the other hand, complainant was told that GCCS was about to list on Alt X and that as soon as it listed, the share price would increase by one rand.

[17] In reasoning these representations, in particular the return of 30 % per annum, complainant says he concluded, '*As a man of God and a Christian, James would never lie, because he is standing as God's representative*' even whilst doing business with them'.

[18] In May 2007 complainant made his first investment in Merlin in the amount of R10 000. On 2 and 5 July 2007, the amounts of R50 000 and R20 000 consecutively were invested into GCCS. All deposits were made into BPI's account at ABSA bank.

[19] During the period leading up to the investments, complainant states that Potgieter made much of GCCS's annual general meeting (AGM) which was meant to be held in July 2007. The AGM however, was postponed to August, then to September and then November.

[20] Complainant says that already by July he had a feeling that something was amiss, pointing to the first postponement of the AGM. He wrote to the

respondents asking for the withdrawal of his full investment, which was met with a variety of excuses from Catsicadellis and her colleagues. Complainant says Catsicadellis assuaged him by stating that his investment was accessible at any time, only that complainant would need to follow proper procedure.

[21] It was not long thereafter when complainant came across an article on Media 24 website, which complainant describes as making his investment nightmare a reality. Complainant says he penned a missive to Potgieter advising him to get out because he was involved in a scam.

[22] Potgieter's response was not forgiving, for complainant was soon labelled as 'not a Christian'; his wife and brother were told complainant was in need of urgent psychiatric help and a man known as Glen Brisler, (apparently involved with one of the entities) referred to complainant as delusional and deranged.

[23] In December 2007 the AGM was finally held at Melkbosstrand, which was followed by an emergency AGM of July 2008, where it was made plain to investors that GCCS had no funds and that investors had to accept the situation. No reasons were advanced. Certificates evidencing 1000 shares were later issued to all GCCS shareholders; nothing was ever said about Merlin and no money was paid either.

[24] As at the time of filing his complaint with this Office, complainant had not seen a cent of his money.

D. RESPONSE

[25] This Office referred the complaint and its attendant documentation to respondents with a request that they address the allegations made by

complainant, in light of the requirements of the FAIS Act. In addition they were required to provide copies of their complete file of papers relating to this matter.

[26] Neither respondent replied thereto. Although the complaint was acknowledged by one Lefras Strydom, (whom complainant says is an *alias* for Rabie), no other response was ever received. Strydom simply wrote, 'Mr Rabie is not dealing with this matter. Furthermore this matter has been resolved and Mr Jordaan's funds shall be remitted to him. He has been advised accordingly. We trust this settles the matter.' Complainant denied this, stating his money has never been paid.

E. DETERMINATION

[27] As already stated, none of the entities continue to exist. In addition, apart from several letters penned by Rabie to complainant during the year 2009 about the possible threats to his investments due to the imminent elections and attendant violence, there is no evidence that any of these entities were ever involved in any economic activity. What the letters point to though, is that behind the scenes, Rabie was actively involved in the administration of complainant's investments alongside Catsicadellis.

[28] None of the respondents ever responded to the allegations made by complainant. Notwithstanding that Catsicadellis and Rabie were never recognised as key individuals, they were *de facto* conducting the day to day management of the entities involved as respondents in this complaint. As detailed in the determination of E Barnes vs D Risk Insurance Consultants cc and Deeb Raymond Risk FAIS 6793/10-11/GP1(2) at paragraphs 32 to 35, it is the key individual or controlling individual in a registered entity that is responsible to satisfy the registrar that they are fit and proper. Authorization is approved

through the key individual themselves. This being the very reason which excluded Catsicadellis and Blue Platinum from approval as an authorised financial services provider in the first place.

[29] In this case whilst Catsicadellis and Rabie were not approved as key individuals, they acted as such by being in control of the entities involved. Their contempt for the provisions of the FAIS Act and the illegality of their actions cannot allow them to escape the responsibilities that follow from attempting to assume such a position. It is for this reason they are cited as parties in this determination.

[30] Whilst an offence in terms of section 36 (a) of the FAIS Act, section 7(2) thereof provides for the enforceability of a transaction that is entered into between a client and a financial services provider even though the provider had no authority to enter into such a transaction.

[31] Turning first to Catsicadellis, as already detailed, the reasons for citing her personally is that she was responsible for managing and overseeing BPI's activities on a daily basis.

[32] As mentioned in paragraph 18 complainant's funds were deposited into Blue Platinum's bank account. In this regard Blue Platinum was not authorised to accept funds in such a manner.

[33] Catsicadellis, as the controlling force behind Blue Platinum, had a responsibility to answer the allegations. Rabie's role as the administrator of the investments is undisputed and is evidenced by the numerous statements and information he sent to the complainant.

[34] Clearly, when advising complainant to invest in the two entities, there was no

compliance with the FAIS Act and the General Code. All the relevant paperwork relating to the transactions complainant entered into has been submitted to this Office. There is no indication whatsoever that Potgieter was concerned with the FAIS Act and the General Code.

[35] The risks inherent in the Merlin's Diamond Trading Fund and GCCS or just how these two suited complainant's needs were never discussed. On the evidence it is glaringly obvious that this investment, and Potgieter's conduct in recommending it were clearly inappropriate and in blatant disregard of the FAIS Act.

F. CONCLUSION

[36] Both respondents played their part in inducing complainant to invest. Whilst Potgieter acted on behalf of Catsicadellis, he would have done so under the direction of Catsicadellis who controlled Blue Platinum.

[37] The documentation and its projected returns, as well as the narrative regarding the supposed fluctuation of the investment values, emanated from Rabie. Yet Rabie has not even attempted to explain what has happened to complainant's funds.

[38] Had complainant been made aware that none of the entities he was dealing with were above board, and the guaranteed promise of 30 % return was nothing more than a sales pitch, he almost certainly would not have made the investment.

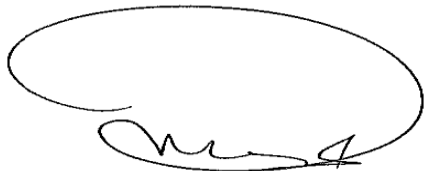
[39] There can be no doubt that complainant was intentionally misled by both respondents, and as such they must be held jointly accountable for the loss.

[40] As for the quantum, the R70 000 was deposited into Blue Platinum's account during the months of May and July 2007. Not only has complainant lost his capital but any interest which he might have earned from this point had the money been invested in a legitimate investment.

G. ORDER

1. The complaint is upheld.
2. The respondents are ordered to pay, jointly and severally, the one paying the other to be absolved the sum of R70 000.00 plus interest at the legal rate of 15.5% to be calculated from seven (7) from date hereof to date of final payment.

DATED AT PRETORIA ON THIS THE 8th DAY OF JULY 2014



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS