

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

**CASE NUMBER: FAIS 01367/09-10/GP3**

**In the matter between:-**

**MOGOBO MALEACH KGOMO**

**Complainant**

**and**

**ABU BENITSIUS INSURANCE CC**

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

**SIPHO GAIPHUS BENITSIUS**

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

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

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**A. THE PARTIES**

[1] Complainant is Mogobo Maleach Kgomo, an adult male, residing as Parkrand, Gauteng.

[2] First Respondent is Abu Benitsius Insurance CC, a close corporation (registration number 1996/18493/23), duly incorporated in terms of South African law, with its principal place of business at 2019 Falcon Street, Lenasia South. At all material times, first respondent was an authorised financial

services provider in terms of the FAIS Act, with license number 27947. The license was issued on 06 December 2006.

- [3] Second Respondent is Sipho Gaiphus Benitsius, an adult male, a key individual and authorised representative of the 1st respondent. At all times material hereto, complainant dealt with 2nd respondent. In this determination, for the purposes of convenience, I refer to 1<sup>st</sup> and 2<sup>nd</sup> respondent as respondent.

## **B. COMPLAINT**

- [4] During October 2007, complainant purchased a motor vehicle, a VW Polo, 1.4 Trendline ('the car'). A few days before collecting the car, he telephoned the respondent to arrange for insurance cover. He was assured by the respondent that cover would be in place by the time he collects the car.
- [5] Complainant states that on the 25<sup>th</sup> October, the day that he took delivery, he was involved in an accident and the car was badly damaged. He contacted respondent who informed him that he was not covered, stating he should have informed him that he was going to collect the car.
- [6] Complainant contends in his earlier telephonic conversation with the respondent he informed him of his intentions to collect the car and had provided the date. Respondent allegedly confirmed it was, 'ok for me to collect the vehicle', clearly communicating that complainant was insured.

**C. THE RELIEF SOUGHT**

[7] The complainant has asked to be paid damages of R72 099, 53 being the amount he paid for repairs.

**D. RESPONDENT'S VERSION**

[8] According to respondent, complainant called at his offices at 41 de Korte Street, Braamfontein on 16 October 2007, with the aim of obtaining an insurance quotation for his Polo.

[9] He managed to secure an insurance quotation from Santam under quote no. 70319292238. A copy thereof was handed to complainant on the said date. However, Santam declined the application on 24 October 2007. Respondent avers that at the time that complainant came to his office, the car had not yet been purchased. Accordingly, he requested complainant to liaise with his office before collecting it. Notwithstanding, complainant decided to take delivery without informing him.

[10] He later heard from complainant telephonically of the accident, which occurred on the same day that he (complainant) took delivery. He then advised him he was not insured.

[11] Respondent further added, *'At the later stage when the car was at Western Crown Panel Beaters, Mr. Kgomo came to our Office and said that he did apply for a bank loan with Standard Bank, the bank wanted a letter from our office stating that he took vehicle without our knowledge so that they can*

*grant him the loan, the letter was send to the bank accordingly and the loan was approved, copy of letter to the bank enclosed for easy understanding'.*

(sic)

## **E. SANTAM'S VERSION**

[12] According to Santam -

[12.1] Respondent requested a quotation for a '*motor only*' policy. The quotation was prepared and respondent was advised on 24 October 2007 that cover could not be granted as the complainant was in possession of '*a C21 license and no previous insurance*'. Respondent was informed that complainant does not fit the criteria for the '*703 motor only*' product, but could seek a quotation for a '*747 policy*' which would also be subject to approval.

[12.2] On 24 October 2007, respondent telephoned Santam's call centre to request a quotation for cover on a '*747 policy*'. He was advised by Santam's representative that if the '*703 policy*' was declined then the '*747 policy*' will also be declined as the criteria is the same. Respondent insisted on the quotation nonetheless, which the representative prepared. Respondent informed the representative that he would get back to him on the morning of 25 October 2007.

[12.3] On 26 October 2010, respondent called Santam to accept the quotation prepared on a '747 policy'. When the representative of Santam asked for the inception date of the policy, respondent answered, '*it should have been yesterday*'. The policy was issued on 26 October 2007.

## **F. DETERMINATION**

[13] What is immediately apparent from the versions of complainant and respondent is the difference as to how they first made contact. According to respondent, complainant called at his business on 16 October 2007. He claims that after he obtained the quotation from Santam, he handed a copy thereof to the complainant.

[14] In contrast, complainant's version is that he telephoned the respondent on 16 October 2007. According to him, it is as a result of this telephone call and that of the 23<sup>rd</sup> October 2007 that respondent faxed a quotation to him for proposed cover on the car. During their telephonic conversation of the 23<sup>rd</sup>, respondent is alleged to have confirmed that cover was in place for the car. Complainant provided the Office with a recording of a telephonic conversation between himself and respondent that took place minutes before that quotation was faxed to him<sup>1</sup>.

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<sup>1</sup> The Office asked the complainant why the conversation was recorded. The complainant responded that he was working at a call centre when he made the call to respondent and that his employer recorded all calls for quality control purposes.

[15] The pertinent parts of the recorded conversation in sePedi may be translated as follows:

Respondent - *Kgomo do you have a fax where you are?*

Complainant - *Yes, I have.*

Respondent - *Please give it to me quickly....I have done cover to start from today.*

Complainant - *(011) 799-1254...How much is the premium?*

Respondent - *R878, 47.....it includes car hire and household contents.*

Complainant - *.....it's fine fax quotation through. You know what; I'm going to fetch my car on Thursday. I was thinking by Thursday everything must be in order.*

Respondent - *It's alright, let me fax it to you.*

Complainant - *What should I do with the fax once I receive it? Should I sign it and fax it back to you?*

Respondent - *No, these days there is no need for you to sign anything.*

Complainant - *So everything is fine?*

Respondent - *Yes, everything is fine.*

Complainant - *Well if that is the case, thanks.*

[16] Although the complainant did not enjoy cover on his car on 23 October 2007, respondent nonetheless informed him that cover would start from on the same date. The Office sent a copy of the recorded conversation to the respondent and asked for an explanation of his conduct. He ignored the enquiry. Later when a further enquiry was made he verbally threatened the Office with court action.

[17] Santam provided the Office with a recording of the conversation between the respondent and their representative that took place on 24 October 2007. The conversation centred around the quotation for insurance for the '*703 policy*' that respondent requested on 16 October 2007. During the conversation, the representative informed respondent that the application for insurance was unsuccessful as complainant was not in possession of a C21 license and had no previous insurance. Respondent was also told that complainant does not fit the criteria for the '*703 motor only product*', but he could request a quotation on a '*747 policy*', which would also be subject to approval.<sup>2</sup> On the same day, respondent contacted Santam's call centre and enquired whether complainant would be able to get cover on a '*747 policy*'. He was informed that if a '*703 policy*' application had been declined, the '*747 policy*' application would also be declined. Respondent nonetheless insisted that he be provided the quotation. An application for insurance cover on a '*747 policy*' was referred to the underwriting department for assessment. Respondent informed call centre representative he would revert to him on the 25<sup>th</sup> October 2007.

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<sup>2</sup> Santam confirmed that the two policies differed substantially in terms of the extent of cover, target market excess structure and rates. Specifically, the 747 targets people younger than 55 who are not interested in self insurance while the 707 is designed to meet the need of a young person. Further the 703 covers vehicles and/or 'personal accidents' while the 747 covers household contents and/or buildings and/or vehicles.

- [18] Complainant contends that respondent failed to inform him that his application for insurance cover for his car had been declined on 24 October 2007.<sup>3</sup> The Office repeatedly requested respondent to respond to the complainant's contention. He ignored the requests.
- [19] On 26 October 2007, one day after the loss, respondent contacted Santam's call centre to enquire about the '747 quotation' requested on 24 October 2007. During the conversation, questions were asked for underwriting purposes after which the application for cover on a '747 policy' was approved. The respondent however, neglected to inform Santam's representative that the car had been in an accident on 25 October 2007. When asked by the representative for the inception date of the policy, he responded, *'it should have been yesterday'*.
- [20] In my view, respondent knew what he was doing was wrong and dishonest. It appears from the recording that he desperately wanted the insurance application to be approved because he had already informed complainant on 23 October 2007 that his vehicle was covered when this was not the case.
- [21] Respondent avers that subsequent to the accident, complainant told him that Standard bank requested a letter stipulating that he collected the car from the dealer without respondent's knowledge. Standard bank allegedly approved the complainant's loan application to purchase the car after respondent sent the said letter. (Copy of letter is attached hereto marked Annexure A)

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<sup>3</sup> This application was done in respect of the '703 quotation'.



[22] This Office requested Standard bank to confirm whether they ever requested and/or received the said letter from complainant or respondent. They responded:

*'We have no knowledge of such a letter or application and we would not validate such a request to apply for a loan or any other facility.'*

[23] Complainant provided the Office with a copy of the cheque and bank statements to confirm the purchase of the Polo from McCarthy Volkswagen Wonderboom on 20 October 2007. His bank statements reflect that the cheque of R125 636 was paid on 20 October 2007. Complainant also provided proof that he paid the panel beater out of his own pocket for the repairs to the damaged car. Clearly, complainant had no need for finance.

## **G. FINDINGS**

[24] It is clear from the evidence presented to the Office that respondent's version of events is fraught with factual inaccuracies. The recorded conversation between the respondent and the complainant that took place on 23 October 2007 stands at this point as unrefuted. This recording confirms complainant's allegation that prior to collecting the car, the respondent advised him that he enjoyed cover. By providing false information to the complainant, respondent contravened several sections of the General Code of Conduct, (the Code) including the general duty set out in section 2 of the Code<sup>4</sup>. Section 3(1)(a)(i)

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<sup>4</sup> The duty to render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry..

of the Code further provides, *'When a provider renders a financial service – representations made and information provided to a client by a provider must be factually correct.'*

[25] The total circumstances of this case indicate that respondent woefully failed to discharge his general duty, when he failed to inform the complainant that the application for insurance cover on the Polo was declined on 24 October 2007. This deprived the complainant the opportunity to obtain alternative insurance cover prior to collecting the car.

[26] Contrary to the respondent's contention, Standard Bank did not request a letter from him stipulating that complainant collected the car from the dealership without the respondent's knowledge. In fact, respondent's fabrication of the story about Standard Bank and the letter, (refer to Annexure A) defies logic and must be dismissed as a senseless act on the part of the respondent.

[27] On a balance of probabilities, had the respondent rendered financial services to complainant in terms of the Code and informed him that his application for cover was declined, complainant would have taken steps to secure alternative cover for his vehicle. He was denied this opportunity as the respondent continued to lie his way through. As a result, complainant collected his vehicle from the car dealership not knowing that he was not covered. He later found himself having to pay for the repairs of his car. Respondent's conduct caused the state of affairs in which complainant now finds himself.

[28] The respondent's conduct is the cause of the complainant's loss.

## H. QUANTUM

[29] Complainant provided proof that he paid R72 099, 53 to repair his vehicle. Based on the policy provided by Santam, they would have indemnified the complainant as follows:

Claim amount -	R72 099. 53
Minus compulsory excess of 5% -	R 3 605. 00
Minus voluntary excess of	<u>R 1 000. 00</u>
	R67 494. 53

I am satisfied that the amount of R67 494. 53 is reasonable to compensate complainant for the financial damage he suffered. I intend to make an order for the same amount.

## ORDER

In the premises the following order is made:

The complaint is upheld;

1. Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R67 494. 53.
2. Interest at the rate of 15.5 %, per annum, seven (7) days from date of this order to date of final payment;

3. Respondents are to pay a case fee of R 1000, 00 to this office within 30 days of date of this order.

**DATED AT PRETORIA ON THIS THE 18<sup>th</sup> OF April 2012.**

A handwritten signature in black ink, consisting of a large, rounded initial 'N' followed by a cursive name.

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**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**