

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

CASE NUMBER: FAIS 04090/11-12/ GP 1

In the matter between:

DELORUS KIES

First Complainant

and

DFF PROPERTY AND INVESTMENTS CC

T/A BERGSMA & VAN HEERDEN BROKERS

First Respondent

HENDRIK LODEWYK ERWEE

Second Respondent

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

A. INTRODUCTION

[1] This determination follows a recommendation made in terms of section 27 (5) (c) of the Act on 2 March 2018. Section 27 (5) (c) empowers the Ombud to make a recommendation in order to resolve a complaint speedily by conciliation. The respondent did not respond to the recommendation. This determination shall be read in conjunction with the recommendation and shall form part of this determination.

B. THE PARTIES

[2] Complainant is Mrs Delores Kies, a retired adult female whose full particulars are on file with this Office.

- [3] First respondent is DFF Property and Investments CC t/a Bergsma & Van Heerden Brokers, a close corporation duly incorporated in terms of South African law, with registration number (1997/012181/23). The first respondent is an authorised financial services provider (FSP) (license number 29085), with its principal place of business noted in the Regulator's records as No. 80 Shannon Street, Noordheuwel, Krugersdorp, 1739. The license has been active since 13 March 2007.
- [4] Second respondent is Mr Hendrik Lodewyk Erwee, an adult male, key individual and representative of the first respondent. The Regulator's records confirm his address to be the same as that of first respondent. At all times material hereto, second respondent rendered financial services to the complainant.
- [5] It appears from the Regulator's records that respondent was licensed to render financial services in connection with shares categorised as 1.8 (described in the FAIS Act as Securities and Instruments: Shares). However, respondent was never licensed in terms of category 1.10 (described in the FAIS Act as Securities and Instruments: Debentures and Securitised Debt). This means that respondent was never adequately licensed to render financial services with regards to Zambezi Retail Ltd syndication (refer to the attached correspondence).

C. CONCLUSION

- [6] Based on the findings set out in the recommendation, which are hereby confirmed, it follows that the respondent is liable to pay complainant's claim

D. THE ORDER

- [7] In the result, I make the following order:

1. The complaint is upheld.

2. The respondent pay complainant's loss in the amount of R500 000 in respect of HS 22 and R200 000 in respect of Zambezi Retail Ltd.
3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.
4. Complainant to cede her rights and title in respect of any further claims in respect of these investments to the respondent.
5. Should any party be aggrieved with the decision, leave to appeal to the Financial Sector Tribunal is granted in terms of section 28 (5) (b) (i), read with section 230 of the Financial Sector Regulation Act 9 of 2017.

DATED AT PRETORIA ON THIS THE 28th DAY OF JANUARY 2019.



NARESH S TULSIE

OMBUD FOR FINANCIAL SERVICES PROVIDERS