

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 03818/12-13/GP 1

In the matter between:

FIONA AVERY KING

Complainant

and

IMPACT FINANCIAL CONSULTANTS CC

1st Respondent

MICHAL JOHANNES CALITZ

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 Mrs Fiona Avery King, an adult female whose full contact details are on file with the office.
- [2] The 1st 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 2nd respondent is Michal Calitz, key individual and member of 1st respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times

rendered financial advice to complainant on behalf of 1st respondent. In this determination respondent or respondents are used interchangeably.

B. THE COMPLAINT

- [4] Acting on the advice of Mr Calitz of Impact Financial Consultants CC, complainant invested R300 000, 00 in February 2005 and an additional R398 647, 00 in December 2008 into the RAAF Trust. Calitz according to complainant had dealt with complainant's husbands financial planning since 2005.
- [5] In July 2010, complainant requested a withdrawal of R205 000, 00; which amount was received in August of the same year; thereby leaving a balance of R493 647.
- [6] On the 10th July 2012 complainant was telephoned by Calitz who advised that there had been negative reports in the press about the RAAF and that the Financial Services Board was looking into it. Calitz further advised that she could leave her money in the fund but would thereafter have to deal with RAAF directly or she could withdraw. Complainant chose the latter option and completed a withdrawal form on the 11th July 2012.
- [7] In an unsigned letter dated 27th July 2012 from Impact Financial Consultants CC complainant was informed of the sudden death of Herman Pretorius. Calitz, who knew Pretorius well did not know what had gone wrong.
- [8] Complainant goes on to state that this investment formed the bulk of her retirement savings, which have now been severely jeopardised.
- [9] Later, and in response to being asked to comment on the respondents' version

as set out in section C hereunder, the complainant added the following:

- 9.1. She was neither invited to any presentations nor did she see any brochures or advertising of this fund. Complainant adds that she worked on the basis that Calitz was confident that this fund would suit her risk profile.
- 9.2. In particular, she makes the point that she was invited by Calitz to join this investment scheme.
- 9.3. Additionally the fund appealed in that complainant was told that unlike most other funds, fees would only be charged in the event the fund made money.
- 9.4. Complainant states that she would like to see a copy of the 'Risk Disclosure' which respondents allege she was supposed to have read and acknowledged. In fact had she known that the fund was not regulated by the FSB this would have, as she puts it, given her pause for thought.

[10] Complainant ends this additional correspondence with the statement that *'I find it offensive that it can be said that the victims of these failed schemes are "simply greedy." I have worked extremely hard for my money which I have tried to invest diligently for my retirement. It appears from articles in the media that there is no one taking responsibility from a regulatory perspective to protect the citizens of this country..'*

C. RESPONDENTS' REPLY

[11] An initial discussion with complainant included both the performance of the global equity market and alternative investments such as hedge funds. He (Calitz) briefly explained the workings of a hedge fund and advised that these instruments were not registered, although Abante Capital, which he in inverted

commas terms the 'managing agent', was registered as an investment manager with the Financial Services Board.

[12] Calitz further advises that he invited clients to information sessions with Mr Herman Pretorius. During this and many other presentations Mr Pretorius explained the workings of the investments and there was no reason to believe that this was a fraudulent activity.

[13] Complaint denies attending these presentations. In this regard it is specifically noted that Calitz makes use of the term clients as opposed to complainant.

[14] Calitz goes on to state that he encloses as part of his investigations into the investment vehicle a copy of the FSB License brochure on Abante Capital (managing agent), presentations done by Abante Capital and the Risk Disclosure Statement from RVAF.

[15] He further states that the attached applications by complainant confirm that she had read the Risk Disclosure Statement. The option to invest in hedge funds was according to Calitz explained to Mrs King and was not in contradiction with her risk profile as the long and short positions makes these investments market neutral if managed correctly.

[16] It is pointed out that nothing in the documentation which respondents are required to retain, persuades this Office that complainant was even aware of or could have understood the implications of what she was investing in. In particular there is no mention of the risks of investing in an unregulated entity, one without so much as a set of audited financials.

D. THE DETERMINATION

[17] Reference is made to the determination of *Inch vs Calitz*¹ where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RVAF. Principally the issues pertain to the respondent's failure to understand the entity, (RVAF) and the risks to which he was exposing his clients when he advised them to invest therein.

[18] 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 RVAF without even the protection afforded by a nominee account.

[19] 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.

[20] 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.

[21] Complainant as a client of a registered financial adviser, relied on Calitz' advice

1. *Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 0497/12-13/MP1*

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.

[22] For the reasons set out in the Inch determination, complainant's complaint must succeed.

E. CONCLUSION

[23] Complainant as evidenced, invested a total of R698 647, 00 out of which she withdrew R205 000, 00 leaving a balance of R493 647, 00.

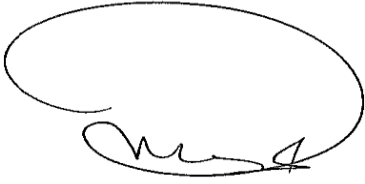
[24] It is noted that the balance remaining as reflected in the RVAF client statements differs materially; however, given that nothing emanating from the fund itself had any basis in reality this Office is compelled to rely only on the verifiable amounts.

F. ORDER

[25] Accordingly the following order is made:

1. The complaint is upheld;
2. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R493 647, 00.
3. 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.

DATED AT PRETORIA ON THIS THE 6th DAY OF AUGUST 2014.

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

NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS