

**IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS
PRETORIA** **CASE NO: FOC 1488/06-07/GP/ (5)**

In the matter between:

JOHANNA HELENA LENZ

Complainant

and

HAMILTON SOLUTIONS LTD

Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) (a) OF THE FINANCIAL
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 (FAIS Act)**

A. THE PARTIES

[1] Complainant is Johanna Helena Lenz, a female of adult age, a bookkeeper whose address is 65 Spoorlyn Road, Rhodesfield, Extension 7, Kempton Park, Gauteng Province.

[2] Respondent is Hamilton Solutions Ltd, a company duly registered and incorporated in terms of company laws of South Africa, with its principal place of business at Closemore Building, Corner CR Swart and Monument Streets, Kempton Park, Gauteng Province. At all times material hereto, respondent was conducting the business of a financial services provider. Its licence was, however, not yet finally approved by the Registrar of the Financial Services Board. It was thus operating, at all material times, in terms of an exemption granted to it in terms of Section 44 of the FAIS Act. Respondent was represented by its representative, Rensia Bothma, ('Bothma').

B. THE COMPLAINT

[3] Complainant is seeking to recover from respondent an amount of R60 000 together with interest which was invested, in a failed investment business conducted by a company known as Leaderguard Spot Forex (LSF), which was registered was in Mauritius. Investment products of LSF were sold in South Africa through its affiliate company, Leaderguard Securities (Pty) Ltd.,(LS). LS has since been finally liquidated in terms of a High Court order dated 19 July 2005. At all times material hereto, LS was represented by its representative, one Marc Marx, (Marx) then an employee of LS.

C. BACKGROUND

[4] Complainant and Bothma have known each other for years. Bothma assisted complainant with an investment with ABSA Bank which complainant was very pleased with. Complainant however needed to move an investment she had with Old Mutual which she was not happy with in search of an investment that could give her better returns. Complainant had occasion to speak to Bothma about her intention to move her investment from Old Mutual. Bothma allegedly mentioned that should complainant be interested there were two investment options, namely, Sharemax and Leaderguard Spot Forex. She added that should complainant want to know more about the latter investment option, she would need to go LS's offices in Pinmill Farm, in Sandton with her (Bothma). An invitation by Bothma was soon extended to complainant to visit LS's offices which complainant declined due to her work schedule.

[5] The next time complainant and Bothma met was during early March 2005 when Bothma brought Marx to complainant's offices. A discussion ensued between Marx and complainant in which Marx took complainant through the investment. As part of the complaint, complainant had favoured this office with a document written on an A4 sheet of paper on which Marx had written during their discussion. (I shall return to this document in due course.) After the discussion, a proposal form was left with complainant to complete at her own leisure. Complainant did complete this proposal form a few days later. She then gathered the various documents and duly drew a cheque which was made payable to

Investec. This was her single premium for the investment. On 11 March 2005, complainant telephoned Marx to call at her offices to collect the proposal form together with the signed cheque. On 10 April 2005, complainant read an article in the Rapport that 'Leaderguard went bankrupt'. She immediately telephoned Bothma but Bothma knew nothing about the article. Bothma later telephoned complainant advising her that it 'seemed true'.

Complainant's case

[6] Complainant's case against respondent is that she was misled into purchasing the investment in LSF by Bothma. Bothma however, denies ever rendering the financial service which led to the purchase of the investment from LSF and alleges that it was Marx who rendered the service. Bothma contends that all she did was to mention the investment as an option to complainant. She also states that the investment she was prepared to talk to complainant about was Sharemax. According to her complainant showed no interest in this investment product.

The relief sought

[7] Complainant seeks payment of her capital of R60 000 together with interest.

Respondent's case

[8] This complaint would ordinarily have been referred to LS, the then employer of Marx. However LS no longer exists. Respondent whose license was declined also no longer exists as a financial services provider. Bothma however, because she was made aware of the complaint initially, decided to provide this office with her version of events. According to Bothma she did not render the financial service pertaining to the investment purchased from LSF.

D. DETERMINATION AND REASONS

[9] The critical question is whether Bothma rendered the financial service as claimed by complainant. It is not necessary to decide any further matter due to the decision I reach on this issue.

Conflicting versions

[10] There clearly is a dispute of fact as to whether Bothma rendered the financial service to complainant. However, that dispute can be overcome on the basis of the paperwork submitted to this office. Complainant insists that it is as a result of Bothma's suggestion that she invested in LSF, while Bothma denies rendering financial services to her. Sent along with the complaint were two vital supporting documents to complainant's case, namely a cheque and the document written on an A4 page where information about the investment is set out. It has to be

remembered that barely thirteen days after complainant made out her cheque to Investec, LS was provisionally wound up. At that point, she had not received any document acknowledging her contribution of R60 000. In her letter of complaint she makes the following statement:-

'I would like to get my investment of R60 000 back plus interest, because this money is kept in a bank (Deutsche Bank Offshore) and never went into the investment pool. Somebody is reaping the benefit of my investment at the moment.'

[11] Ordinarily there would have been an initial letter from LSF confirming the investment. In this letter the intermediary who is taking responsibility for the transaction would be mentioned by name. The same intermediary would be paid commission. This office does not have the benefit of that letter acknowledging the investment because the entity was wound up. One other piece of evidence available to assist me is the scribbled note written on the A4 sheet of paper, mentioned earlier. In the note, there is reference to risk, return, and the various options available at the time. Reference is also made to terms available for selection and something about 80% and 20 % is scribbled without anything written next to the percentages. The names of the various entities associated with LS like Saxo Bank, Deutsche Bank and KPMG are scribbled on. There are also percentages relating to what appears to be projected returns. The A4 page, no doubt would have formed part and parcel of the discussion that complainant had with Marx. It is not in dispute by both Bothma and complainant that Marx did the writing and the talking when they visited her at her offices. Complainant

thereafter completed the proposal form and duly asked Marx to collect the form and the cheque.

[12] There is no doubt in my mind that the form was used to support the information conveyed to complainant by Marx during the rendering of the financial service. Accordingly, it follows that Marx and not Bothma rendered the financial service. The facts indicate that Bothma did no more than mention the investment to complainant and referred complainant to go to LS's Pinmill farm office so she could get more information about the investment. An arrangement was then made by Bothma for Marx to visit complainant in her offices. Bothma also came along to visit complainant. As I have already pointed out, the first respondent does not exist any longer. It is against first respondent that the complaint ought to be directed.

E. ORDER

[13] The complaint is dismissed.

DATED AT PRETORIA ON THIS THE 20th DAY OF OCTOBER 2008



**CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS**