

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FOC 00888/08-09/GP (5)

In the matter between:

S LOTZ

Complainant

(In her capacity as executrix of estate late T Lotz)

and

MOMENTUM GROUP 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 S Lotz in her capacity as executrix of estate late T Lotz. complainant resides in the Western Cape Province. In lodging this complaint, complainant is being assisted by her brother, a Mr A Hill.

[2] Respondent is the Momentum Group Ltd, a public company duly incorporated in terms of the laws of South Africa and an authorised

financial services provider in terms of the FAIS Act with its principal place of business at 268 West Avenue, Centurion, Gauteng Province.

B. THE COMPLAINT

[3] Complainant is claiming an amount of R260 000,00 together with interest being the damages she allegedly suffered as a result of advice furnished to her late husband by a representative of respondent, one Mr HA Salick. The advice, complainant claims, led to the cancellation of several of the deceased's life policies at a time when the deceased's health militated against such action. It is after the husband's death that complainant realised that several life policies had been cancelled resulting in her suffering financial damages. In this regard, complainant claims that respondent's conduct violated the duty placed on providers to act with due care, skill and diligence when rendering financial services to clients.

C. INVESTIGATION

The following are facts which emerged during investigations conducted by this Office. They are not in dispute:

[4] Complainant's husband was diagnosed with schizophrenia and medically boarded off in 1994. During April 2007, he was diagnosed with stage three

cancer. He died on 8 December in the same year. After the husband's death complainant discovered that a number of his policies had been cancelled and/or surrendered.

[5] It is common cause that the deceased was not a sophisticated man. As such, Salick handled the deceased's financial affairs, ranging from completion of tax returns to pension payouts and ongoing investment advice. Salick and the deceased had previously worked for the same employer, Metro Services Provincial Administration.

[6] There is however no record indicating that Salick had ever assisted the deceased with any risk business be it short term or long term insurance.

[7] On 29 March 2007, the deceased signed a letter addressed to the respondent instructing it to cancel his life policy- a Myriad life policy- issued by respondent with life cover in the amount of R260 000, 00. The letter reads:

' I, Mr Lotz, would like to cancel the above policy as of today's date 29th March 2007. As I am finding it difficult financially as the bond rate increases, and I also have sufficient money in my trust fund in the event I should pass away.' (copied as is)

[8] A diligent search through the deceased's affairs reveals that no such trust ever existed. The letter for the cancellation was received by the respondent on 10 April 2007 and the policy was cancelled with effect from 1 April 2007. On 13 April 2007, Salick assisted respondent to cancel an endowment policy. A letter of cancellation was addressed to the respondent as follows:

'I hereby request my policies (no 864503.....) to be cancelled due to financial strain. Funds to be paid out as follows.....

However, should you have any queries with the above please contact my financial planner.

Hope my request to be granted

Kind Regards

T A Lotz

Financial Planner:

Mr H A Salick (620474)

Cell: 072'

[9] An amount of R60 000, 00 was paid out following the request of 13 April 2007 and the remainder was re-invested into unit trusts. A record relating to this particular financial service states the following as the needs of the deceased at the time:

- (i) Client under financial strain;

- (ii) Client requested funds to be removed, as per letter attached;
- (iii) Client wants the money available (liquid).

The record is poor, to say the least, as it does not shed any light on what alternatives were considered and what led to the conclusion that the cancellation of this particular policy was commensurate with the client's circumstances at the time.

[10] A further complaint which this Office came to know of related to the handing over of an amount of R10 000, 00 by the deceased to Salick during 2007 for an investment the latter had apparently discussed with the deceased. This never materialised. The funds instead were used for Salick's personal benefit. This complaint however was resolved by respondent and complainant without the involvement of this Office in March 2008.

[11] The complainant further requested this Office to investigate the fact that Salick might have taken advantage of the deceased's state of health, inducing him to sign cancellations whilst under the influence of morphine. The record however paints a different picture in that the cancellation of the life policy took place on 29 March 2007 whilst that of the endowment took place on 13 April 2007. The diagnosis came on or about 17th April 2007.

As the cancellations took place long before the diagnosis and the subsequent treatment, this allegation must fail.

[12] According to complainant, Salick's conduct in relation to the R10 000, 00 investment, the cancellation of the endowment and a further policy issued by Old Mutual Life provide a causal link to the cancellation of the Myriad life policy worth R260 000, 00. I disagree. The evidence at hand proves otherwise.

D. RELIEF SOUGHT

[13] Complainant seeks the full payment of R260 000, 00 being what the insurers would have paid upon materialisation of risk.

E. DETERMINATION AND REASONS

The following are the material issues to be decided in this determination:

[14] Is respondent responsible for compensating complainant for the damage she allegedly suffered as a result of the cancellation of the Myriad policy.

[15] In order to answer the above, it is necessary to first consider the sequence of events. The letter addressed to respondent cancelling the Myriad policy is dated 29 March 2007. The letter cancelling the endowment is dated 13 April 2007. I have already pointed out that the R10 000, 00 which the deceased handed over to Salick was resolved between the complainant and the respondent without the involvement of this Office. The resolution came as a result of a lie detector test done by the respondent, the result of which, complainant accepted. A record of the deceased's bank statements was also obtained in order to assist this Office in further investigating the merits of the complaint. The bank statements indicated a history of failure to service policy premiums. As a result a number of the deceased's policies had lapsed due to non- payment of premiums. Based on the sequence of events and the deceased's bank records there is no basis for me to conclude that Salick's conduct had any part in the cancellation of the Myriad policy. The complaint therefore must fail.

F. CONCLUSION

[16] For the reasons stated herein, the complaint fails.

ORDER

I make the following order:

1. The complaint is dismissed;
2. Respondent is hereby ordered to pay case fees to this Office in the amount of R1000, 00 within 30 days of date of this order.

DATED AT PRETORIA ON THIS THE 18th DAY OF DECEMBER 2009



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS