

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

**CASE NUMBER: FSOS 00002/18-19/ NC 2**

**In the matter between:**

**MARTHA MAGDELINE MAARMAN**

**Complainant**

**And**

**BUYS BURIAL SOCIETY**

**First Respondent**

**JEROME BUYS**

**Second Respondent**

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**DETERMINATION IN TERMS OF SECTION 14 (3) OF THE FINANCIAL SERVICES OMBUD  
SCHEMES ACT 37 OF 2004 (FSOS ACT), READ WITH SECTION 28 (1) OF THE FINANCIAL  
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 (FAIS ACT)**

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**A. THE PARTIES**

- [1] The complainant is Ms Martha Magdeline Maarman, an adult female whose particulars are on file with the Office.
  
- [2] The first respondent is Buys Burial Society, with its address noted as 2 Kuku Street, Boshof, Free State, 8340. The first respondent is not registered in terms of South African Law, nor is it registered as a financial services provider in terms of the FAIS Act.
  
- [3] The second respondent is Mr Jerome Buys, an adult male and sole proprietor. His address is the same as that of the first respondent.
  
- [4] I refer to the first and second respondent as “respondent”. Where needed, I specify which respondent is being referred to.

## B. FACTUAL BACKGROUND

- [5] The determination is made in terms of the FSOS Act<sup>1</sup> read with section 28 (1) of the FAIS Act<sup>2</sup>. The complainant in this matter lodged a complaint with this Office following the respondent's failure to honour a valid claim submitted in respect of a funeral policy for its member, the late Mrs Magogodi Elizabeth Maarman (the deceased).
- [6] The deceased and the respondent entered into an agreement in terms of which the respondent had to provide certain funeral benefits to the policy holder, against a defined monthly premium. The agreement commenced sometime during 2015, and is confirmed by the receipts for payment of premiums.
- [7] According to documentation made available to the Office, Buys Burial Society forms part of a group scheme funeral policy named "Peace of Mind Group Scheme Funeral Policy", and is underwritten by Metropolitan, a division of MMI Group Ltd, an authorised financial services provider and registered credit provider, license number 44673. Metropolitan stated that a contract exists between itself and the burial society, and in accordance with the terms and conditions, any claim proceeds are payable to the burial society.
- [8] This Office could find no evidence that the respondent had ever been licensed in terms of the FAIS Act, or that a valid underwriting agreement existed to ensure the solvency of the fund.
- [9] Section 7 (1) of the Long Term Insurance Act provides that registration is required in order to carry on long term insurance business. There is no evidence on file that the respondent

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<sup>1</sup> Financial Services Ombud Schemes Act 37 of 2004. A complaint is defined as "a complaint by a client relating to any agreement with, or a financial service or product of, a financial institution, and in which it is alleged that the client has suffered or is likely to suffer financial prejudice or damage as a result of the financial institution -  
(a) having contravened or failed to comply with a provision of any agreement or the law or of a code of conduct subscribed to by the financial institution;  
(b) having wilfully or negligently supplied, or failed to supply, a financial service or a product to the client;  
(c) having treated the client unreasonably or inequitably; or  
(d) having maladministered the implementation of an agreement with, or the supply of a financial service or a product to, the client.."

<sup>2</sup> Financial Advisory and Intermediary Services Act 37 of 2002

complied with this requirement. Metropolitan advised that the respondent is exempted from the provisions of the FAIS Act, in accordance with Board Notice 43 of 2013, which deals with burial societies and stokvels.

### **C. THE COMPLAINT**

[10] The deceased passed away on the 12<sup>th</sup> of June 2016. The complainant duly registered a claim with the burial society. The claim was however rejected on the grounds that the policy had lapsed, owing to one premium not being paid. The complainant disputed that the premium was not paid, and claims that person who collects the premium on behalf of the society did receive the money, but failed to provide a receipt.

[11] Despite meetings and the submission of further documentation to the respondent, the claim was never paid out to the complainant. However, Metropolitan has confirmed that it received a claim from the burial society, and an amount of R13 462.56 was paid to the respondent on 19 August 2016, which is the amount of R15 000 less arrears premiums.

[12] Metropolitan stated that the respondent was advised to pay the money to the complainant. The respondent however maintains that he will do so upon receipt of proof of payment of premiums. Whilst the respondent has been unduly enriched, the complainant has not received any payment to recover the costs she incurred in respect of the funeral.

### **D. RELIEF SOUGHT**

[13] The complainant wants the respondent to reimburse her the amount due in terms of the policy, alternatively, return her premiums.

### **E. RESPONDENT'S RESPONSE**

[14] On 17 April 2018, a notice in terms of Regulation 7 (1) (a) of the Financial Services Ombud Schemes Regulations was sent to the respondent, requesting him to resolve the complaint with the complainant, alternatively, furnish this Office with a detailed response. The

respondent failed to provide the Office with a response, despite telephonic requests. The respondent informed the Office telephonically that responses to this complaint was provided to the Ombudsman for Long Term Insurance. The Office requested him to forward those responses, which he never did.

[15] Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27 (4) of the FAIS Act. A notice dated 13 June 2018 was sent to the respondent, inviting him to respond to the matter. To date, no response has been received. The respondent has also ceased to take phone calls from the Office.

[16] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of the complainant's version.

## **F. FINDING**

[17] To date, the amount claimed by the complainant remains outstanding.

[18] From the undisputed facts before this Office, it can be concluded that:

18.1 The respondent was never licensed as a financial services provider. The Rules on Proceedings of the Office of the Ombud for Financial Services Providers nonetheless provides<sup>3</sup> that the Ombud may entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider.

18.2 The respondent collected premiums from the complainant, but failed to honour the claim when it arose; even when he received payment for the claim he submitted to Metropolitan. The respondent has therefore been unduly enriched.

18.3 The respondent was at risk and is liable to pay the complainant in terms of the policy, less any outstanding premiums.

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<sup>3</sup> Section 4 (d)

18.4 The respondent has not shown willingness to resolve the matter, despite various attempts to solicit a reply. Apart from disputing the receipt of one premium, the respondent has provided no other reasons why the money he received from Metropolitan, is not due and payable to the complainant.

[19] The respondents were in contravention of Section 2 of the FAIS Act which provides as follows:

*“A provider must at all times 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.”*

[20] The respondent’s continued failure to respond to the complaint, or the complainant’s pleas for payment in terms of the policy leads to the conclusion that the respondent never had the intention to respond to the claim or to conduct any legitimate business of an FSP. Furthermore, despite being unduly enriched after receiving payment from Metropolitan, the respondent still refuses to pay the money to the complainant.

***Metropolitan***

[21] The Office wrote to Metropolitan, specifically requesting information as to whether the burial society held a license, and secondly, why underwriting was provided to an unregulated entity.

[22] In response, Metropolitan stated that it was not aware of a license being held by the burial society. Furthermore, in terms of Board Notice 43 of 2013, burial societies and stokvels are exempted from being registered as an FSP.

[23] The aforesaid arrangement is questionable, as the clients of the respective schemes underwritten by Metropolitan enjoy no protection. Money claimed by the burial society is paid to them directly, without any consideration by Metropolitan as to whether the

claimants receive the benefits they are entitled to. Furthermore, the respondent would appear to fall short in terms of the definition of a burial society in terms of the board notice, and would appear to satisfy this requirement in name only. The matter has been escalated to the Financial Sector Conduct Authority for further investigation.

**G. ORDER**

[24] In the premises the following order is made:

1. The complaint is upheld.
2. The respondent is hereby ordered to pay to the complainant, jointly and severally, the one paying the other to be absolved, the amount of R13 462.56.
3. Interest at a rate of 10% per annum, from a date seven days from date of determination to date of final payment.

**DATED AT PRETORIA ON THIS THE 4<sup>th</sup> OF DECEMBER 2018**



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**NARESH S TULSIE**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**