

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

CASE NO: FAIS 04946/15-16/ GP 1

In the matter between:

TEDDY MADITSE

Complainant

and

MAGAJANA TRADING AND PROJECTS CC

1ST Respondent

LINDIWE MTASA MAGAJANA

2ND Respondent

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

A. PARTIES

- [1] The complainant is Teddy Maditse, an adult male whose details are on file in this Office.
- [2] The first respondent is Magajana Trading and Projects CC, (registration number 2008/237769/23), a close corporation duly incorporated in terms of South African laws with its registered address as 26 Princeps Crescent, Garsfontein, Pretoria East, Gauteng.
- [3] The second respondent is Lindiwe Mtasa Magajana, an adult female sole member and key individual of first respondent who resides at 26 Princeps Crescent, Garsfontein, Pretoria East, Gauteng.

[4] At all material times the second respondent rendered financial services to the complainant on behalf of the first respondent.

[5] I refer to the first and second respondents collectively as “the respondent”.

B. BACKGROUND AND UNDISPUTED FACTS

[6] In terms of a written agreement between the complainant and the first respondent dated 27 March 2014, the complainant had invested R150 000, with the undertaking that after 12 months the investment would provide the complainant with interest of 15% on the original capital invested.

[7] The complainant was 22 years old at the time and the investment had come from an inheritance the complainant had received of R310 000 from his late father’s estate. The complainant had made the investment with a view to utilising the capital to further his tertiary studies in 2016.

[8] It is important to note at this point that Magajana Financial Services CC and first respondent are one and the same entity, as revealed by the registration number on the agreement, which matches the registration number issued to the first respondent by the Registrar of Close Corporations.

[9] Magajana Financial Services CC was an authorised financial services provider (FSP) with licence number 38060, which licence was withdrawn by the Financial Services Board (FSB) on 12 January 2012 for non-submission of financial statements and compliance reports.

- [10] Magajana Financial Services was therefore an unlicensed entity when this transaction took place, during May 2014, in contravention of Section 7 of the Act.
- [11] Upon the conclusion of the twelve months period the complainant did not receive his capital as promised. Whilst some payments have been made by the respondent totalling R54 000, the remaining balance of R96 000 remains outstanding. As a consequence of the non-payment, the complainant submitted the present complaint to this Office requesting a refund of the R96 000 plus interest at 15% per annum.
- [12] In accordance with the Rules on Proceedings of this Office, (rules) the complaint had been forwarded to the respondent, however no response was received to any communication directed to the respondents. The only interaction this Office had with the respondent was a telephonic conversation on 4 April 2017, which was confirmed in writing with the respondent on the same date. During the conversation the respondent confirmed that she was still indebted to the complainant for the amount of R100 000, and that she was in the process of sourcing funds to repay the complainant. The respondent undertook to make payment by May 2017. No payment was made, notwithstanding the respondent's undertaking.

C. DETERMINATION

- [13] That monies are outstanding is not in dispute; the respondent has, despite several opportunities afforded by this Office, failed to pay the complainant the remaining R96 000.

[14] Furthermore one finds no evidence as to exactly where or how the complainant's funds were invested if at all. One thing is clear, they were not securely invested. In fact all indications at this stage are that the funds may have landed directly with second respondent.

[15] This investment in no way meets even the most basic requirements in terms of the rendering of financial advice, and it is not at all surprising that the respondents' licence was withdrawn by the Financial Services Board.

[16] This brings me to the fact that the respondent, at the time the transaction was concluded with the complainant during 2014, had been providing financial services without the required licence in contravention of Section 7 of the Act.

[17] In addition to not being in possession of a licence, the respondent violated practically every single section of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the Code"), and I name but a few:

17.1 Section 2 thereof requires that 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. There is no evidence that the respondent had even the most basic of infrastructure that is necessary before a provider can collect monies from members of the public. There is no indication that the respondent had a trust account and whether such trust account was protected by law. Likewise, there is no indication whether the respondent

possessed any indemnity insurance of any nature. There is no basis to even infer that the money was used in pursuit of economic activity. I conclude that the respondent's conduct violated section 2 of the Code.

17.2 Section 7 (1) (a) requires that an FSP provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision. There is no evidence that the complainant was informed of the risks involved in participating in the respondent's venture.

17.3 Section 3(1) (vii) requires disclosure of any fees, remuneration or monetary obligations, yet no mention at all is made in the agreement of what the costs attendant to the investment would be.

17.4 Section 8 of the Code, which pertains to suitability of the advice requires, *inter alia*, that the provider identify the product or products that will be appropriate to the client's risk profile and financial needs. These were funds inherited by an individual during matric, which that had been earmarked for tertiary studies, yet it is clear that no attempt was made to identify a suitable product.

17.5 Likewise and despite the requirements of section 9 of the Code, no record of advice was furnished to the complainant.

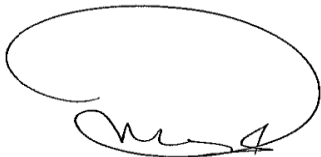
[18] There is a clear and direct link between the failure to heed the requirements of the FAIS Act and the loss of the complainant's funds.

D. ORDER

[19] In the premises, the following order is made:

1. The complaint is upheld.
2. For all the reasons set out in this determination it is necessary that I hold both
The respondents liable jointly and severally, the one paying the other to be
absolved.
3. The respondents are hereby ordered, jointly and severally, the one paying the
other to be absolved, to pay to the complainant the amount of R94 000.00.
4. Interest on the aforesaid amount at a rate of 10, 25 %, per annum from seven
(7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 6th DAY OF JUNE 2017



**NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS**