

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

Case number: FSOS 00014/14-15/ NW 2

In the matter between:

KHOTSO PETRUS MEFANE

Complainant

and

BLUE DOT FUNERAL HOME CC

First Respondent

LUCAS NGANGA

Second Respondent

PORTIA MATSHIDISO LEKAU

Third Respondent

MOAGI JEREMIAH MASIKE

Fourth Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('the Act'), READ WITH SECTION
14 OF THE FINANCIAL SERVICES OMBUD SCHEMES ACT 37 OF 2002.**

A. INTRODUCTION

[1] Complainant's grandmother purchased a funeral policy from first respondent. When she passed away, a claim was submitted to respondent which refused to make payment in terms of the policy. Complainant went to the Financial Services Board (FSB) and filed a complaint against first respondent and Matshidiso Funeral Scheme. The Registrar of Long-Term Insurance referred the complaint to this

office as the matter was considered to be within the jurisdiction of this office, being the Statutory Ombud in terms of Act 37 of 2004.

B. THE PARTIES

[2] Complainant is Khotso Petrus Mefane, an adult male who resides at Lekoko Village Mahikeng.

[3] First respondent is Blue Dot Funeral Home CC, a close corporation duly registered according to the company laws of South Africa, having its principal place of business at Laduma Building Office, number 3 Victoria Street, Mahikeng.

[4] Second respondent is Lucas Nganga, an adult male key individual of Matshidiso Funeral Services, and a representative of first respondent whose only known address is that of the first respondent, and 13 Martin Street, Mahikeng 2745.

[5] Third respondent is Portia Matshidiso Lekau, an adult female representative of first respondent, and Matsidiso Funeral Services whose only known address is that of the first respondent, and 2569 Zone 2 Extension, Itsoseng 2744.

[6] Fourth respondent is Moagi Jeremiah Masike, an adult male key individual of first respondent, and representative of Matshidiso Funeral Services whose only known address is that of the first respondent.

[7] This complaint also relates to an entity called Matshidiso Funeral Scheme Services. This scheme operated from the same premises as the first respondent

and was licensed by the FSB under FSP 19584. The license was subsequently withdrawn by the Registrar on 6 May 2009. First respondent described itself as “*Administrators of ex Matshidiso policies*”, an explanation of this appears below. First respondent also described itself as an “*Authorised Financial Service Provider*” with license number, 42040. First respondent’s license was also withdrawn by the registrar on 25 October 2012.

- [8] The second to fourth respondents are known to have conducted the business of both Blue Dot and Matshidiso and are the driving spirits behind the whole scheme. Their exact whereabouts are unknown to this office as they failed to respond to emails and letters sent to them. As will appear below they are also the subject of a criminal investigation.

C. THE COMPLAINT

- [9] On the 8th January 2010, complainant’s grandmother joined, what he calls, “Matshidiso/Blue Dot Funeral Scheme”. Complainant’s grandmother was Motshehoa Elisa Mefane whose identity number was 170521 0094 08 5. Pursuant to joining the scheme, both the grandmother and complainant made monthly payments to the scheme. Payments were made in cash at the above given address of the first respondent; complainant and his grandmother were handed receipts. Some receipts were from Matshidiso Funeral Scheme Services while others were from Blue Dot Funeral Home.

[10] On the 26th May 2012 complainant's grandmother passed away. Complainant went to respondents' office in Mahikeng and was surprised to find that there was no one in attendance. They appeared to have closed and did not leave any forwarding address. No payment in terms of the scheme was ever made to complainant after his grandmother's death.

[11] Complainant went back to the respondents' office in Mahikeng and found that they were still in business. There was a board outside in the street advertising funeral cover. However none of the respondents were ever in the office, only some workers were present. Complainant was unable to get any payment out of the scheme. In total, contributions in an amount of R 6 790 was made. Complainant is in possession of receipts in this amount. Complainant wants a refund of this amount and he states that; "*Matshidiso/Blue Dot Funeral Scheme has failed my family when they needed them most.*"

D. THE RESPONSE

[12] On the 5th August 2014 a letter was dispatched to each of the respondents calling on them to attempt to resolve the matter with complainant in terms of Regulation 7(1) (a) of the Financial Services Ombud Schemes Regulations. The letter also informed the respondents that should they fail to resolve the matter by the 2nd September 2014, they are to revert to this office with a full version of their facts coupled with the complete file of papers relating to this complaint. In addition the letter required all the respondents to provide proof of compliance with section 7(1)

of the Long -Term Insurance Act (proof of authorization) and to inform this office who underwrote the policy, also a requirement of this Act. There was no response to these letters.

[13] On the 14th October 2014 a letter in terms of section 27 (4) of the Financial Advisory and Intermediary Services Act 37 of 2002 (the Act) was sent to each of the respondents. In this letter it was noted that the matter was not settled and called upon the respondents to provide this office with their respective statements in response in terms of section 27 (4) of the Act. The respondents were called upon to furnish all documents in support of their compliance. In addition, the following was dealt with in the letter:

- a) respondents were again referred to Section 7 (1) of the Long-Term Insurance Act and were requested to provide proof of authorization and the details of the underwriter appointed to ensure the solvency of the fund;
- b) this office informed each of the respondents that we were unable to locate any documentation which provided proof of compliance with Section 7 (1); and
- c) a notice that as respondents each of them may be held liable to compensate complainant for the financial prejudice he suffered.

Respondents were given until 28th October 2014 to respond. No response whatsoever came from any of the respondents.

[14] On the 6th February 2015, another letter was written to each of the respondents in terms of Section 27 (4) of the Act. This letter again informed the respondents that

they may be held responsible for the financial prejudice suffered by complainant.

In addition this letter dealt with the following:

- a) respondents were informed that investigations in this office revealed that Matshidiso Funeral Services license had been withdrawn by the FSB on the 6th May 2009. Thereafter all Matsidiso's clients were moved or transferred to Blue Dot. The information received indicated that Mr Nganga (second respondent) had been debarred by the registrar of FSPs. It appeared that respondents merely continued with business as usual under the name and style of Blue Dot Funeral Home CC; and
- b) respondents were informed that they appeared to have contravened section 7 (1) of the Long Term Insurance Act, as Blue Dot's product offering had never been underwritten. Respondents' allegations that their policies were underwritten by Prosperity Life turned out to be false. Respondents were also requested to respond to the fact that they were in contravention of Section 2 of the FAIS Act.

Respondents were given until the 20th February 2015 to respond. There was absolutely no response from any of the respondents.

E. THE FSB

[15] After receiving complaints, the FSB investigated Matshidiso and Blue Dot. The following action was taken:

- a) Matshidiso's licence was withdrawn on the 6th May 2009 on the basis that it submitted fraudulent financial statements to the Registrar of FSPs.

- b) The FSB found that Matshidiso was linked to Blue Dot.
- c) Blue Dot's licence was withdrawn on the 25th October 2012 for its failure to pay FSP levies.

[16] The FSB reported Blue Dot and its representatives to the commercial crime unit of the SAPS in Mahikeng.

F. FINDINGS

[17] When the FSB closed down Matshidiso and debarred second respondent, the latter together with third and fourth respondents transferred all their clients to Blue Dot, located in the same offices they occupied as Matshidiso. They effectively side stepped the FSB and continued with their business under a new name. Hence the Blue Dot letter heads and receipts described themselves as "administrator of ex Matshidiso policies".

[18] None of the respondents responded to correspondence and failed to challenge allegations that they conducted business illegally. This office will therefore treat the complainant's version as undisputed and there is no basis for disputing the action taken by the FSB.

[19] Respondents contravened section 7(1) of the Long-Term Insurance Act. As licensed FSPs they had to comply with the Act and General Code of Conduct. Respondents were in contravention of Section 2 of the 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] In truth, respondents never intended to conduct any legitimate business of a FSP. They set up Matshidiso and Blue Dot to deceive investors. There were no policies nor were there any underwriters. The respondents were merely defrauding people of their money by fraudulently representing that they were selling funeral cover. They preyed on vulnerable people, such as complainant’s grandmother, who did not have the capacity to question the legitimacy of respondents’ operations and business.

[21] Respondents merely defrauded complainant of the money paid as monthly premiums, they had absolutely no intention of making a payment when the grandmother died. Respondents must be held liable for the return of these premiums in the amount of R 6 790.

[22] I strongly recommend that the commercial crimes unit of the Police Services in Mahikeng track down the respondents. I have no doubt that they never stopped selling fraudulent funeral policies and are likely to be conducting business under a different name.

G. CONCLUSION

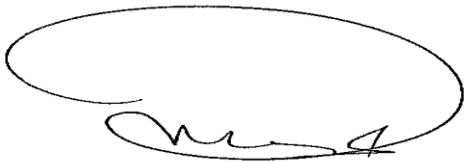
[23] For reasons set out above, I find the respondents liable to pay to complainant the sum of R 6 790.

H. THE ORDER

[24] In the premises, I make the following order:

1. the complaint is upheld;
2. respondents are ordered to pay complainant, jointly and severally, an amount of R6790; and
3. interest at the rate of 10.25% per annum to be paid on this amount to complainant from the 26th May 2012 to date of payment.

DATED AT PRETORIA ON THIS THE 29th DAY OF AUGUST 2016



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