

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Case Number: FAIS 08133/12-13/KZN1

In the matter between:-

ZANELE ERNESTINAH MNTAMBO

COMPLAINANT

and

NGWENYA YAMANZI TRADING AND PROJECTS

t/a MILLION POUND INVESTMENT (IYTP)

1st RESPONDENT

SPHIWE CORNELIUS NGWENYA

2nd RESPONDENT

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')**

A. THE PARTIES

[1] The complainant is Zanele Ernestinah Mntambo, an adult female of Newcastle, Kwazulu-Natal.

[2] The 1st respondent is Ngwenya Yamanzi Trading and Projects a closed corporation (registration no. 2009/186475/23) trading as Million Pound

Investment (IYTP)¹ with its registered address at 10 York Street, Maguey Medical Centre, Newcastle, 2940.

- [3] The 2nd respondent is Sphiwe Cornelius Ngwenya, an adult male, a member and authorised representative of 1st respondent, who resides at 65 Sutherland Street, Newcastle, KZN Province. At all material time, the complainant dealt with 2nd respondent. For convenience, and where appropriate, I refer to 1st and 2nd respondents collectively as respondent.

B. SUMMARY OF COMPLAINT

- [4] According to the complainant, on 07 February 2012, she invested R2 000 in a company called Macrotrade on the advice of the respondent. The agreement was that the monies together with interest would be returned after a period of six months.

- [5] The complainant asserts that she contacted the respondent telephonically after a period of six months demanding the return of her capital of R2000 together with interest.

The respondent refused to take her calls and also ignored numerous letters sent to him.

¹ Hereinafter referred to as Million Pound Investment.

[6] Complainant claims it became clear to her that she had not been advised properly by the respondent and concluded she may have lost her capital. She then turned to this Office for assistance.

C. RELIEF SOUGHT

[7] The complainant claims the return of her capital together with interest thereon.

D. RESPONDENT'S RESPONSE

[8] Following the referral of the complaint in terms of Rule 6 (c) of the Rules of this Office, the respondent filed a one page response which may be summarised as follows:

8.1 According to the respondent, the complainant invested in a United Kingdom based company called Macrotrade. According to his knowledge, the company was closed down as according to him, it operated as a Ponzi scheme.

8.2 The respondent asserts that Million Pound Investment was linked to Macrotrade *'in the sense of exchanging South African Currency into Dollar Currency in order for the client be able to participate into the program'*. Furthermore, it was disclosed to all clients by means of 'Condition bulletins' that Macrotrade is a high risk investment.

8.3 Then respondent changes his story by stating that Macrotrade was a well-known company and investors' money was lost due to the Global crisis of 2007/2008.

Section 27(4) of the FAIS Act

[9] As the complainant's complaint remained unresolved the respondent was informed in terms of Section 27(4) of the FAIS Act that the matter had been accepted for formal investigation. The respondent was invited to furnish a full response to the complaint and to provide the Office with *inter alia* the following information:

- a) Proof that he was licensed to render financial services;
- b) Proof that he performed a due diligence on Macrotrade before the investment in question was made;
- c) A copy of the record of the advice given to the complainant as required in terms of Section 9 of the General Code of Conduct;
- d) Proof that he conducted a risk analysis and needs analysis which would have enabled him to identify an appropriate product;

[10] The respondent failed to adhere to the Section 27(4) notice. Notwithstanding, being granted an extension to file his full response, he still failed to furnish the response.

Further investigation

[11] A glance at the respondent's web site² shows the following marketing statement to members of the public: *'Million Pound Investment advises clients*

² www.ingwenyayamanzitradings.wozaonline.co.za

on financial related matters such as short and long terms investments that's includes Offshore Investments. Investors receive 2% per day of amount invested. Let Your Money Work For You!!!! What are you waiting for start today and earn extra money.

We also specialize in Security Services, VIP, Household and Physical Guards.

Protecting your business while you rest is our game!!!

We also focus on Logistics and Freight, Cross Boarder only.'

[12] The Office made enquiries with the Registrar as to the license status of the respondent. The Registrar confirmed that the respondent had never been licensed to render financial services to public.

E. DETERMINATION AND REASONS

Findings

[13] On his own admission, the respondent invested complainant's funds into a company that turned out to be an illegal scheme.

[14] The respondent publically promised investors interest at 2% per day. Glaringly absent is information about the economic activity that generates these supposed immaculate returns. There is no doubt in my mind that the high return promised is clearly a scheme designed to fleece unsuspected members of the public.

Cause of the Loss

[15] Apart from the glaring acts of violation of the FAIS Act, I simply cannot find any evidence from the papers to justify investing complainant's funds in a high risk

fund, as is claimed by respondent. It is also hard to believe respondent's claims that complainant's money was invested. Nevertheless, I have no hesitation in concluding that it is the respondent failure to act with due skill, care and diligence and in the interests of the complainant which caused complainant's loss. On his own version, complainant's funds were invested in a Ponzi scheme. I therefore intend to make an order in the amount of R2 000.

F. ORDER

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

1. The complaint is upheld;
2. Respondents are hereby ordered to pay to complainant, jointly and severally, the one paying the other to be absolved, the amount of R2 000;
3. Interest at a rate of 15, 5% per annum, seven (7) days from date of this order to date of final payment;

DATED AT PRETORIA ON THIS THE 9th OF APRIL 2014



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS