

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Case Number: FAIS 08606/12-13/ NW 2

In the matter between

THE REFORMED CHRISTIANS FOR TRUTH CHURCH Complainant

and

MERIT LEGAL AND FUNERAL COST

ASSISTANCE (PTY) LTD

First Respondent

MOETI MICHAEL MATLAUPANE

Second Respondent

**DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES
OMBUD SCHEMES ACT NO. 37 OF 2004 (“the FSOS Act”) READ WITH
SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY
SERVICES ACT 37 OF 2002 (“the FAIS Act”).**

A. THE PARTIES

[1] The complainant is the Reformed Christians for Truth Church, as represented by Pastor Paul Teko Mosadi. The address of the complainant is Stand E3102, Kgomola, Gauteng Province.

- [2] The first respondent is Merit Legal and Funeral Costs Assistance (Pty) Ltd, (Merit) (registration number 2012/029829/7) a private company duly incorporated in terms of South African laws with its principal place of business situated at 265 Nooitgedacht Village, Gauteng.
- [3] The second respondent is Moeti Michael Matlaupane, an adult male, and a pastor, whose address is the same as the first respondent's. The second respondent is a director and an authorised representative of the first respondent.
- [4] For the sake of convenience, I refer to both respondents as "the respondent". Where necessary, I specify the respondent.

B. COMMON CAUSE FACTS

- [5] The complainant and the respondent entered into an agreement in terms of which the respondent had to provide certain funeral benefits to members of the complainant, (hereafter referred to as "the congregants"), against a defined monthly premium.
- [6] Information furnished to the complainant right at the beginning of the parties' dealings was that the first respondent was underwritten by the South African Insurance Company, ("SAFRICAN") and that the first respondent was licenced by the Financial Services Board in terms of the FAIS Act to render financial services to the public, with licence number 15123. This Office however, could find no evidence that the respondent had ever been licensed. Further, the licence number 15123 belongs to SAFRICAN.

- [7] It was further agreed between the parties that upon lodgement of a claim, money was to be paid to a claimant within a period of 48 hours.
- [8] The complainant duly performed in terms of the contract by paying to the respondent the agreed monthly premium.
- [9] During December 2012, one of the complainant's congregants passed on, whereupon the complainant duly lodged a claim to the respondent for payment of the benefit.
- [10] By January 2013 the said benefit had still not been paid. Upon an enquiry by the complainant as to when the claim would be paid, the respondent could not respond with certainty.
- [11] Following the complainant's own investigation, the complainant related to this Office how he established that no such insurance cover was ever in place. Consequently, the complainant lodged the present complaint with this Office.
- [12] On 22 February 2013, this Office referred the complaint to the respondent in terms of the Rules on Proceedings of the Office of the FAIS Ombud, ("the Rules"), directing the respondent to resolve the matter with the complainant.
- [13] The letter further requested the respondent to revert to this Office with a response in which it addressed the complainant's allegations, in the event it could not resolve the complaint within the defined period.

On 9 April 2013 this Office received a letter from the respondent admitting all the allegations made by the complainant. It is worth quoting the letter in full:

'INSURANCE CLAIM

1) We acknowledge receipt of your correspondences from the "OMBUDSMAN" regarding the above matter and would like to advise as follows:

2) We are not disputing any allegation against us and are fully prepared to settle this matter with you amicably as mentioned to you through the sms which we do not remember the date thereof.

3) We have been advised by the "AMBUDSMAN" to finalize the dispute before or by the 30/04/2013 and as such agree to abide by the same.

As such, we promise to settle you in full and final settlement before the date mentioned above and we very much hope that you shall be reasonable enough to give us the chance till the mentioned date.

Hoping and trusting that our plea shall meet with our favourable consideration.' (Copied as is from the letter)

The letter is signed by the second respondent.

C. RELIEF SOUGHT

[14] The complainant seeks the return of all premiums that were paid to the respondent, which it claims, amount to over R18 000.

D. INVESTIGATION BY THIS OFFICE

[15] This Office has since established that to date, the amount claimed by the complainant remains unpaid. This, despite the undertaking made by the respondent that it intended to make full payment by the 30th of April 2013.

[16] Further, the second respondent no longer takes calls from this Office. Several attempts were made to contact the second respondent during the months of

January and February 2014. However, such attempts have come to nought.

The respondent has not shown willingness to resolve this matter and appears intent on frustrating the resolution of the complaint by this Office.

[17] As such, this Office could not establish the basis for the first respondent's claims to the complainant that it was licensed as an authorised financial services provider. Having said that, a few things remain uncontroverted at this stage:-

(i) It is clear from the facts of the case that the church paid a composite premium on behalf of its congregants for the purpose of funeral cover;

(ii) The respondent rendered financial services to the church under the following circumstances:-

(a) That the first respondent was licensed with the Financial Services Board as a financial services provider in terms of the FAIS Act;

(b) That their business as a funeral scheme was underwritten by SAFRICAN.

[18] From the investigations conducted by this Office, neither the first respondent nor the second were registered with the Financial Services Board, nor is there evidence that the second respondent was ever registered as an agent of a licensed financial services provider.

[19] The above leads to the inescapable conclusion that the second respondent made these statements knowing that he was acting illegally and that he had no intention of ever meeting any of the insurance claims.

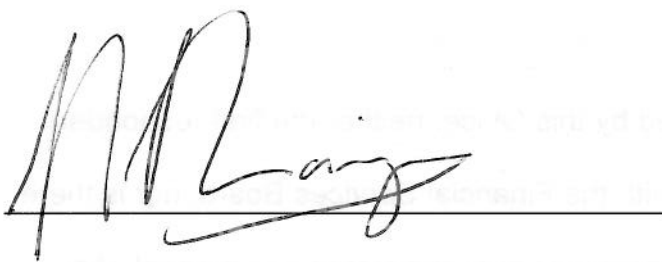
[20] The second respondent's conduct is not only illegal in terms of the FAIS Act, his conduct is also unlawful in terms of the common law and amounts to fraud. On that basis alone, the second respondent must be held personally liable for the entire amount claimed.

E. ORDER

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

1. The complaint is upheld.
2. The first and second respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay complainant, the full amount of R18 000 within SEVEN (7) days from date hereof;
3. Interest on the amount of R18 000 from a SEVEN (7) days from date hereof to date of final payment;

DATED AT PRETORIA ON THIS THE 1st DAY OF APRIL 2014

A handwritten signature in black ink, appearing to read 'Sydwell Shangisa', is written over a horizontal line.

SYDWELL SHANGISA

DEPUTY OMBUD FOR FINANCIAL SERVICES PROVIDERS