

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FOC 2869/ 07-08/ KZN (7)

In the matter between:

DHEVDASS NAIDOO

Complainant

and

SOOBARAMONEY PERIMAL Trading as

MANNIES FINANCIAL PLANNING SERVICES

Respondent

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

A. THE PARTIES

[1] The complainant is Mr. Dhevdass Naidoo an adult male residing at 2 Lima Place, Havenside, CHATSWORTH, 4092. This complaint is lodged by him and his wife.

[2] The respondent is Mr. Soobramoney Perimal ('Perimal') an Authorised Financial Services Provider (FSP No.971) in terms of the FAIS Act, and trading as Mannies Financial Planning Services. Perimal's place of business is 407 Doone House, 379 Smith Street, Durban, Kwa-Zulu Natal.

B. THE COMPLAINT

[3] According to the complainant, Perimal was a family friend who had previously assisted him and his wife with their medical aid, life policy and tax matters. On 23 June 2006, when complainant was the victim of a robbery at his house, Perimal offered to assist with lodging the insurance claim as complainant's broker was on holiday at the time.¹ Complainant's broker's secretary faxed the claim forms to Perimal who then assisted complainant in completing the forms. Perimal assured the complainant that he would *'hand deliver'* the forms to the insurer, Mutual & Federal ('M&F'), as his office was *'next-door to [theirs].'* The complainant alleges that all the quotations in support of the claim were obtained by him and not Perimal.

[4] Complainant further alleges that Perimal informed him that Mutual & Federal required a letter of consent signed by the complainant granting Perimal permission to *'act temporarily as [their] broker until [their] broker returned from holiday.'* This letter was drafted by Perimal and signed by complainant.

[5] Complainant states that he wrote to Mutual & Federal requesting that a part of his claim be settled in cash which Mutual and Federal agreed to do. (The other items were replaced.) Perimal however informed complainant that:

¹ Complainant also refers to an investment of R10 000.00 he made through Perimal, who allegedly promised him the investment would double in one year's time and that he has not received any growth nor his capital after the investment was to have matured. However, that ought to be the subject of separate complaint and will not be dealt with in this determination.

'he was arranging for [the] money to be deposited cash into [complainant's] account and that his contact inside M&F would then require 15% of the amount but [that] he had scaled him down to 10%.'

[6] Complainant states that he was shocked and told Perimal that there was no need for this as M&F had agreed to pay him directly. This allegedly angered Perimal who started phoning complainant to find out if he had been paid by M&F. According to complainant, Perimal demanded *'his 10%'* which was allegedly for his *'contact.'* Complainant alleges that Perimal sent *'insulting sms's'* to him and his wife's cell phones. Complainant therefore decided to henceforth deal directly with M&F.

[7] When complainant asked Perimal to return a file which he had, Perimal visited complainant with the requested file. However Perimal had placed a letter in the file and allegedly told the complainant that he was in a hurry to leave and that complainant should contact him regarding the content of the letter.

[8] The letter dated 17 January 2007 reads as follows:

Re: Fees: Claim Mutual & Federal, D Naidoo

I refer to my recent conversation with you wherein you were advised that the matter has been finalized and you were paid out R75 993, 70. With regards to the computers, printers, accessories and cell phones, you have contractually accepted replacements from M & F. Kindly contact M & F and arrange with them to collect the agreed replacement items.

As my mandate is now over I enclose herewith my statement of account for your settlement.

Please let me have your cheque in settlement of the amount of R31 666.92 inclusive of vat by no later than 25th January 2007.

I thank you in anticipation of your kind co-operation and wish to take this opportunity to thank you for having used my professional services in finalizing your claim.

Thank you

[signed]

S Perimal (Mannie)

[9] Attached to the letter is a statement of account which reflects the fees as follows:

Inclusive fees for consultation (all consultations were done at your (sic) house and very long hours were spent at your place during my consultation with you in connection with the claim), taking down instructions and completing the claim forms; personal deliveries; correspondence attendances (emails, photocopies, printing, faxes etc); telephone calls (land lines and cell phone calls and sms); consultation with Insurance Consultants from Mutual & Federal (petrol and traveling expenses to and from Durban central to M & F offices); etc, etc.

<i>Limited to</i>	<i>R27 778.00</i>
<i>Add vat 14%</i>	<i><u>3888.92</u></i>
	<i><u>R31 666.92</u></i>

[10] Perimal also attached a list of telephone calls and visits allegedly made to the complainant's home and Mutual & Federal.

[11] Complainant alleges that when he contacted Perimal to query the account, Perimal '*rudely cut [him] off*' saying that there was '*nothing to discuss.*' On 31 January 2007, complainant received summons from Perimal demanding payment of R31 666, 92.

[12] Complainant then wrote to this Office requesting us to investigate Perimal's conduct.

INVESTIGATION BY THIS OFFICE

[13] The complaint was sent to Perimal on 16 November 2007 requesting him to resolve the matter with the complainant within six weeks, alternatively to revert to this Office with his response to the complaint. The complaint was sent to Perimal's office e-mail address and fax number. It was also sent to Perimal's attorneys by fax. Regarding the summons, Perimal was also requested to hold those proceedings in abeyance pending the resolution of this complaint by this Office. Despite the six weeks period granted, Perimal failed to file a response to the complaint. When he was contacted by this Office on several occasions, each time he undertook to send a response immediately but failed to do so.

[14] On 17 January 2008, Perimal's attorneys wrote to this Office requesting confirmation that the matter had been resolved by it.

[15] On 15 February 2008, a notice in terms of section 27(4) of the FAIS Act was issued. This too was sent through several means. The notice was sent by fax to both Perimal and his attorney. It was also sent by registered post to Perimal and to his attorney. However, despite this Office's request for a response and a copy of his complete file of papers, Perimal failed to provide any information.

[16] I must therefore decide this matter based on the information at hand.

ISSUES FOR DETERMINATION

[17] The issues for determination are as follows:

[17.1] Did Perimal disclose fees upfront?

[17.2] Is Perimal entitled to the fees claimed by him against the complainant?

DETERMINATION AND REASONS THEREFORE

[18] In terms of Clause 2 of the General Code of Conduct for Authorised Financial Services Providers and their Representatives ('the General Code'), 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.

[19] The General Code provides in Clause 3 (1) (a) (vii):

When a provider renders a financial service –

(a) Representations made and information provided to a client by the provider –

(vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms; Provided that where any such amount, sum, value, charge, fee, remuneration or monetary

obligation is not reasonably predeterminable, its basis of calculation must be adequately described..”

[20] Clearly there is a duty on a broker to disclose fees upfront. Whilst we have on record the letter from the broker dated 17 January 2007 demanding fees, there is no evidence that these fees were disclosed prior to this letter. The robbery which led to the claim against M&F, which Perimal assisted complainant with, occurred on 23 June 2006. This was almost six months prior to the letter demanding fees. The letter, in fact makes no reference to any earlier disclosure of the fees payable or any method of calculation thereof. As stated above, it is the complainant’s version that fees were not disclosed to him upfront and further that Perimal had assisted him because of their long-standing friendship. Even more pertinently, in a telephonic discussion on 26 March 2008 with a case manager of this Office, Perimal admitted that the question of fees was not discussed upfront.

[21] Respondent does not explain in his account the basis for stating his alleged fee is *‘limited to R27 778, 00.’* I have examined the schedule of telephone calls and visits allegedly made. In my view, it does not assist the respondent at all. Firstly, I cannot imagine that fees to assist in completing claim forms, alleged visits to the complainant and M&F and the making of phone calls, faxes and sending e-mails could justify the fees respondent is attempting to recover. In fact, I may go so far as to say that the bulk of the work of processing the claim must have been done by the insurer. According to the annexure to his account styled *‘VISITED CLIENTS AT HIS/HER HOME – M & F CLAIM’* he spent just under 63 hours visiting the complainant and his wife in connection with the claim! In addition he is supposed to have made some 68 phone calls (including 51 to the complainant

and his wife) with regard to the claim. This is in spite of the fact that the complainant at a certain point took it upon himself to deal with M&F directly, much to the chagrin of Perimal.

[22] In my view, the attempt to claim the exorbitant amount of fees is nothing more than an attempt to fleece the complainant after his claim has been paid. This type of conduct impacts on a financial services provider's *'fit and proper'* status. Ironically, respondent's letterhead is styled *'Mannies Financial Planning Services'* with the strap line underneath which says *'for fit and proper financial fitness counseling.'* A copy of this determination will be sent to the Registrar of financial services providers in terms of Rule 10(a) of the Rules on Proceedings of this Office.

[23] It is also my view that a copy of this determination should be placed in the relevant file of the court from which summons was issued by the respondent against complainant.

[24] It is my finding that by not disclosing fees upfront, Perimal failed to comply with the relevant provisions of the General code of conduct and his claim for the fees should be disallowed.

[25] Finally, Rule 7(b) (v) provides that the Ombud may summarily dismiss a complaint where *'the subject of the complaint is pending in court proceedings;'* The question may therefore arise why I have entertained this complaint when summons has been issued by the respondent against complainant. I can do no better than to refer the reader to my determination in the matter of *Garry La Vatte*

v Robert Steven Spendley and Another FOC/600/05/EC where I have comprehensively dealt with the issue.

ORDER

I make the following order:

1. The complainant's complaint is upheld.
2. The respondent's claim for fees from the complainant is disallowed.
3. The respondent is ordered to pay the case fees of this Office in the amount of R1 000.00.
4. A copy of this determination is to be forwarded to the Registrar of financial services providers.
5. A copy of this determination is to be placed in the relevant case file of the court from which summons was issued by the respondent against the complainant.

DATED AT PRETORIA ON THIS THE 31ST DAY OF MARCH 2009



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS