

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

**CASE NUMBER: FAIS 05349/14-15/ NW 1**

**In the matter between**

**PHELADI PATRICIA NAPO**

**Complainant**

**and**

**SILVER SEED CAPITAL (PTY) LTD**

**First Respondent**

**SANDRO MANUEL AZEVEDO VELOZA**

**Second Respondent**

**EDDIE AMARO**

**Third Respondent**

**JOHN LAW**

**Fourth Respondent**

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

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**A. THE PARTIES**

[1] Complainant is Pheladi Patricia Napo, whose details are on file with the office.

[2] First respondent is Silver Seed Capital (Pty) Ltd, registration number 2001/012586/07, a private company duly incorporated in terms of the company laws of South Africa, with its principal place of business at 202 Tyger Lake, Niagara Avenue, Tyger Falls, Bellville, Western Cape. First respondent's license was approved on 14 October 2004 and withdrawn by the regulator on 9 September 2014.

- [3] Second respondent is Sandro Manuel Azevedo Veloza, an adult male representative and key individual of first respondent, whose last known address was 78 Bergshoop Estate, Langeberg Road, Durbanville, Western Cape.
- [4] Third respondent is Eddie Amaro, an adult male representative of first respondent whose last known address was 202 Tyger Lake, Niagara Avenue, Tyger Falls, Bellville, Western Cape.
- [5] Fourth respondent is John Law, an adult male representative of first respondent whose last known address was 202 Tyger Lake, Niagara Avenue, Tyger Falls, Bellville, Western Cape. At all times material hereto, fourth respondent rendered financial services to complainant.
- [6] Respondent or respondents must be read to mean all respondents, unless otherwise stated.

## **B. COMPLAINT**

- [7] On 14 January 2014 complainant invested an amount of R100 000 in a product called “The FixedGRO Option” (FixedGRO), following advice from respondent. The investment was presented to complainant as a product that would provide returns of 30% after 6 months. Complainant was provided with confirmation that she had purchased UG2 Ltd Shares (more about this later in the determination).
- [8] On 19 May 2014, complainant made a second investment into FixedGRO of R40 000. The investment was meant to last until November 2014. The funds utilised towards this investment came from an investment complainant had with Old Mutual.

- [9] When the first investment matured during July 2014, Complainant informed respondent in e-mail correspondence that she would like to reinvest the capital amount for a further 12 months to take advantage of the 30% interest. At the time, respondents were running a further tranche of investments offering 30% on lump sum investments over a six months period.
- [10] Subsequent to the e-mail confirming complainant's intentions to re-invest the R100 000, complainant says she began suspecting that something was amiss. Complainant's suspicion was based on the fact that respondent never sent any record confirming the re-investment. He merely confirmed in e-mails. As a result, during September 2014 complainant requested to withdraw her funds, as she was no longer comfortable with the investment.
- [11] After several e-mail exchanges with empty promises, complainant concluded that she had had enough and filed the present complaint in November 2014. To date, complainant has not received her capital back.

### **C. RELIEF SOUGHT**

- [12] Complainant seeks repayment of her capital amount of R140 000.

#### **Referral to respondent**

- [13] During December 2014, the complaint was referred to respondent in terms of Rule 6 (b) of the Rules on Proceedings of this Office, to resolve it with complainant. No response to this letter has ever been received, despite several requests.

### **Delays in finalising this complaint**

[14] There have a number of complaints involving respondents. The Office, in each instance, receives little or no co-operation from respondents despite repeated invitations to respondents to resolve the complaints with its clients. It appears that after taking clients' money, respondents are not prepared to even liaise with their clients, preferring to provide excuses and stonewall clients.

[15] On 30 November 2016, after waiting to hear from respondents for well over a year, a notice in terms of Section 27 (4) was issued to respondent, advising them that the Office had accepted the matter for investigation and further informing respondent to provide all documents and or recordings that would support its case. The notice further indicated to respondents that in the event the complaint was upheld, they could face liability. Respondents failed to submit any response.

### **D. DETERMINATION AND REASONS**

[16] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of complainant's version.

[17] The issues for determination are:

17.1 Whether the respondents in rendering financial services complied with the provisions of the FAIS Act and the General Code of Conduct, (the Code)

17.2 Whether respondent's conduct caused the complainant's loss.

17.3 Quantum of such loss.

***Whether respondents violated the FAIS Act and the Code in any way while rendering financial services to complainant.***

***Failure to disclose costs and conflict of interests.***

- [18] Complainant purchased unlisted shares in UG2 Ltd. This fact was disclosed to complainant. One of the selling points was that there were no costs of whatever nature payable from complainant's investment<sup>1</sup>. However, hidden in the application form is a statement 'that consultants do not earn in excess of 5% commission on structured investments.' Furthermore, the form states that 'respondents derive more than 30% of their commission from one product'.
- [19] The application form confirms that Silver Seed may have an interest of 15% or more in the company of which shares are being purchased. Following previous investigations<sup>2</sup>, this Office was able to verify that second and third respondents (both directors of first respondent), are in fact directors of UG2 Platinum Ltd, together with two others individuals. Second respondent is noted in the CIPC records as the company secretary of UG2 Platinum Ltd. Respondents were conflicted in this matter and had failed to disclose this to complainant. The vague statement contained in the application form would not assist respondents, as it fails to meet the requirements of section 3 (1) (c) of the Code.
- [20] The application form also states that repayment of capital and return will depend on the ability of Silver Seed to meet its obligation.

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<sup>1</sup> This statement was noted on the FixedGRO Comparative Quote document

<sup>2</sup> See in this regard the matter of KKK Boemah v Silver Seed Capital (Pty) Ltd, FAIS-04229-14/15 NW 1, available on [www.faisombud.co.za/determinations](http://www.faisombud.co.za/determinations)

[21] Section 3 (1) (c)<sup>3</sup> of the Code aims to mitigate the far-reaching consequences of conflict of interest. As will be demonstrated below, respondents disregarded the Code.

[22] Respondents sold the investment on the basis that it would pay a return of 5% per month, which amounts to 30% over a six months period. Nothing was ever mentioned to complainant about risk. What complainant was not aware of was that she had actually gambled her capital. The statement set out in paragraph 20 is plain that payment will depend on the circumstances of respondents. It was not explained to complainant that she was investing in a high risk venture in which her capital was at risk. It gets worse; respondents have not furnished a single document that demonstrates that the risk involved in this investment was aligned to complainant's risk profile and capacity. In the absence of such documents, I conclude that the recommendation that complainant invest in this investment was in violation of the Code.

[23] At the end of six months, complainant was only met with excuses and nothing more.

[24] At the time of making the investment, complainant was employed as a lead metallurgist at a manganese mining company. She heard about Silver Seed Capital from a co-worker, who had also invested with them. Following interactions with fourth respondent, complainant withdrew some savings she

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<sup>3</sup> Section 3 (1) ( c) calls upon providers, at the earliest reasonable opportunity, to:  
(i) *disclose to a client any conflict of interest in respect of that client including*  
(aa) *the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3 A (2), to avoid or mitigate the conflict;*  
(bb) *any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;*  
(cc) *the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest....'*

had accumulated as well as funds from a flexidowment policy at Old Mutual, in order to make the investment. The funds were meant for the education of complainant's children. In violation of section 8 (1) (d) of the Code, there is no record demonstrating that complainant was warned of the material differences between the Old Mutual products and this investment. Respondents merely dangled the 30% return over a period of six months as the carrot and steered clear of dealing with the risk involved in the product.

[25] Complainant on the other hand was under the impression that she was making a legitimate investment in a safe product. Fourth respondent allegedly advised complainant that they were raising capital for small coal mining companies and the latter had contracts to supply coal to Eskom. There is no evidence that the aforesaid was true. Silver Seed simply solicited investments from members of the public on the basis of extravagant guaranteed returns. No one knew what happened to their money after paying it into Silver Seed Capital.

#### **E. CAUSATION**

[26] There is sufficient information to demonstrate that respondent had not been candid with complainant about the nature of the investment, in that she was in fact purchasing unlisted shares. Had respondent explained to complainant the true nature of the investment, as well as the associated risks, she would not have proceeded.

[27] When complainant contacted respondent, she sought a person to advise her. This is evident from the papers provided by respondents to complainant. They (respondents) in advising complainant, were obliged to observe the Code,

otherwise any material breach of the Code would amount to a breach of the contract.

[28] In providing the advice, respondents knew that complainant had no knowledge of investments and was going to rely on their advice. Indeed, when complainant made this investment, she based it solely on the representations made by respondents. Consequently, as a result of respondent's failure to observe the Code, (the failure to appropriately advise) complainant made the investment and ended up with a situation where she lost her capital. Respondents' conduct is the sole cause of complainant's loss.

#### **F. FINDINGS**

[29] Respondent failed to inform complainant that this was a high risk investment where she could in fact lose all her capital. There is also no record as to what happened to complainant's funds.

[30] From the information before this Office, respondent failed to comply with sections 2, 3 (1), 8 (1) and 9 of the Code.

[31] As a result of respondent's conduct, complainant lost her capital in the amount of R140 000. Respondent is liable to compensate complainant for her loss.

#### **G. ORDER**

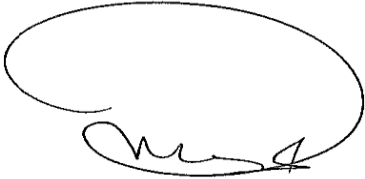
[32] In the premises the following order is made:

1. The complaint is upheld.
2. Respondents are hereby ordered jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R140 000.



3. Interest at the rate of 10.25%, per annum, seven (7) days from date of this order to date of final payment.

**DATED AT PRETORIA ON THIS THE 31<sup>ST</sup> OF JULY 2017**

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a series of connected, cursive letters, all contained within a large, hand-drawn oval.

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**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**