

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

CASE NO: FAIS 04032/12-13/ WC1

In the matter between:

NATALINA NATALI

Complainant

and

IMPACT FINANCIAL CONSULTANTS CC

1st Respondent

MICHAL JOHANNES CALITZ

2nd Respondent

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

A. THE PARTIES

- [1] The complainant is Natalina Natali, a female retiree of Durbanville, Western Cape.
- [2] The 1st respondent is Impact Financial Consultants CC, a Close Corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5th Floor, The Cliffs, Niagara Road, Tyger Falls, Belville.
- [3] The 2nd respondent is Michal Johannes Calitz ('Calitz'), key individual and member of 1st respondent, who resides at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times rendered financial services to complainant on

behalf of 1st respondent.

B. THE COMPLAINT

[4] The complainant's case may be summarised as follows:¹

4.1. Following the passing of her husband in 2002 complainant decided to relocate to Cape Town. Complainant's need for short-term insurance cover led to an introduction by her daughter to Calitz.

4.2. Following the initial contact Calitz, in October 2004, recommended to complainant that she invest in RAAF. Complainant states that Calitz was very persuasive and reassuring in his presentation that RAAF was a very low risk investment.

4.3. Following Calitz' advice, complainant made the following investments in RAAF:

- 08/10/2004 - R100 000
- 05/04/2005 - R 50 000
- 10/10/2005 - R50 000
- 06/09/2006 - R50 000
- 11/09/2007 - R50 000
- 01/04/2010 - R60 000
- 31/01/2011 - R60 000
- 21/07/2011 - R50 000
- 02/07/2012 - R50 000

1. The complaint includes submissions made by the complainant in response to further enquiries made by the Office. The complainant is Italian and not fluent in English. She was assisted by her daughter to file her complaint.

R520 000

Over time, complainant made the following withdrawals:

- 01/12/2007 - R200 000
- 01/10/2009 - R200 000

R400 000

4.4. Complainant asserts that Calitz neither explained the RVAF investment to her, nor did he disclose the commission he earned on the investments. No risk assessment was carried out to establish her risk tolerance, nor was there any needs analysis done to establish her needs. Calitz merely asked complainant to sign the necessary papers to effect the investments in RVAF.

4.5. In July 2012, the complainant was shocked to learn from her daughter that RVAF was being sequestrated. Angered by the loss of her capital and the invidious financial position she found herself in, complainant filed a complaint with this Office. Complainant claims she relied entirely on Calitz' advice in making the investment and seeks relief against him.

C. RESPONDENTS' REPLY

[5] Complainant was introduced to him by her daughter, Ms Hansen ('Hansen').² During the complainant's first visit to Calitz in October 2004, they discussed the global equity market including alternative investments, such as hedge funds. The discussion led to complainant investing R100 000 in RVAF.

² Hansen was a client of Calitz. See determination of Loredana Hansen v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 03575/12-13/WC1.

- [6] Calitz invited complainant to attend information sessions and presentations that were held by Herman Pretorius ('Pretorius') in order to further educate her on the nature of hedge funds. During these presentations Pretorius explained the workings of the RVAF investment.
- [7] Calitz asserts he is only aware of the complainant's investments in RVAF up to 2007. He claims that all investments post 2007 were not made on his advice. Calitz' version in this regard is refuted by the facts at hand and amount to misleading this Office as complainant has provided proof of deposit slips,³ which were faxed to Calitz each time she invested. In addition, Calitz provided RVAF statements to the complainant which reflects him as her broker. He was also paid on-going commission on the investments.
- [8] Calitz adds that the applications signed by the complainant attest to the fact that she read the Risk Disclosure Statement and in any event, the option to invest in hedge funds was explained to the complainant and was not in contradiction with her risk profile.

D. DETERMINATION

- [9] Reference is made to the determination of Inch vs Calitz⁴ where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RVAF. Principally the issues pertain to the respondent's failure to understand the entity, (RVAF), and the risks to which he was exposing his clients when he advised them to invest therein.

³ Complainant provided proof thereof.

⁴ Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 04971/12-13/MP1

[10] Evident therein are the material deficiencies in the application forms; the latter lacking in substance or form, it is difficult to understand who or what the complainant was dealing with. Yet in spite of these failings, funds were transferred directly into RVAF without even the protection afforded by a nominee account.

[11] In attempting to support his version, Calitz stated that he enclosed as part of his investigations into the investment vehicle, a copy of the FSB License brochure on 'Abante Capital (managing agent)' and presentations done by Abante Capital. Yet there is not so much as a single mention of Abante within the contractual documentation, which further reinforces the fact that Calitz himself failed to understand the contracting entity.

[12] Quite simply, no prudent adviser would have recommended this product as a suitable component of any investment portfolio had they exercised the required due skill, care and diligence.

[13] Complainant as a client of a registered financial provider, (FSP) relied on Calitz' advice in making this investment. When rendering financial services to clients, FSPs are required to act in accordance with the FAIS Act. Calitz failed in this regard.

[14] For the reasons set out in the Inch determination⁵, complainant's complaint must succeed.

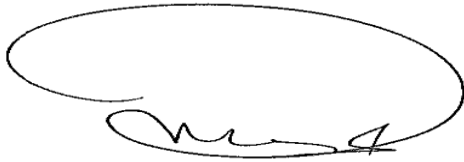
⁵ Excluding those provisions which only became applicable post the initial advice in accordance with Board Notice 89 of 29th August 2007.

E. ORDER

[15] Accordingly the following order is made:

1. The complaint is upheld;
2. The respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R120 000, 00.
3. Interest on the aforesaid amount at the rate of 9%, per annum seven (7) days from the date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 26th OF SEPTEMBER 2014



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS