

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

HELD AT PRETORIA

FOC 537/05/GP/ (1)

In the matter between:

NAUDE EN SEUNS VERVOER

Complainant

And

ABSA BROKERS

Respondent

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

[1] Pursuant to the Recommendation made by this Office, the Respondent offered and Complainant accepted the amount of R66 000.00 (sixty six thousand rand only) in full and final settlement of its claim.

[2] Kindly Take Notice that the Ombud hereby makes the following order:

[2.1] That the Recommendation dated 19 October 2005 and accepted by both parties, becomes a final determination of this Office as contemplated in section 27 (5) (c) of the FAIS Act; and

[2.2] Respondent pay the case fee of this Office in the sum of R1 000.00 plus Value Added Tax thereon.

DATED AT PRETORIA ON THIS 9th DAY OF NOVEMBER 2005.



CHARLES PILLAI
OMBUDSMAN FOR FINANCIAL SERVICES

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

HELD AT PRETORIA

CASE NUMBER: FOC 887/05 GP (5)

In the matter between:

NAUDE EN SEUNS VERVOER

Complainant

And

ABSA BROKERS

Respondent

RECOMMENDATION IN TERMS OF SECTION 27 (5) (c) OF THE
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT ('FAIS Act')

Introduction

[1] Respondent rendered certain financial services, namely the sale of short-term insurance cover, to the Complainant. The financial services were rendered against the following factual background.

Context

[2] During October 2004, Complainant, duly represented by Mr Johan Naudé, met with Mr Piet Greyling, an employee and duly authorised representative acting in the course and scope of his employment with Respondent at ABSA Wesselsbron. Complainant requested Respondent to prepare a quotation for short-term cover for a Isuzu KB280 LE LWB vehicle. Complainant was satisfied with the quote and

therefore moved their entire short-term insurance portfolio over to Respondent.

- [3] Complainant subsequently approached Respondent for a quote on a truck, a Volvo FM 12 460, with the following to be covered:
 - [3.1] the truck and Superlink in the amount of R1 300 000.00;
 - [3.2] goods in transit for R300 000.00;
 - [3.3] reduced excess and loss of use;
 - [3.4] tyres and sails; and
 - [3.5] SASRIA.

- [4] The Topsure policy ('cover') was sold to Complainant by Respondent. The cover was taken with Beyonda Group ('Beyonda') underwritten by Nova Risk Partners ('underwriter') and commenced on 9 November 2004. The policy documents were posted by Beyonda to Respondent's branch at ABSA Wesselsbron on 24 November 2004. A copy of the policy schedule was only faxed to Complainant by Respondent during February 2005.

- [5] On 29 December 2004 the truck was involved in an accident with damages amounting to R111 465.43. The claim process commenced on 7 January 2005 after Beyonda Group received outstanding information regarding the accident from Respondent.

- [6] Simpson and Associates Approved Commercial Vehicle Assessors ('assessor') was appointed on 10 January 2005. A letter dated 1 February 2005 was addressed by the assessor to Beyonda. In this letter the assessor informed Beyonda that the claim form has not been signed by the insured and the driver. The assessors awaited a response from Beyonda and on 15 February 2005 the underwriter authorised the repairs and the clearance certificate was issued on 1 March 2005.

- [7] Respondent allegedly informed Complainant that 'loss of use' cover was in place at the rate of R6 000.00 per day. It later transpired that cover was only for R6 000.00 per week.
- [8] Complainant alleges that Respondent failed to inform them that 'loss of use' cover was calculated on a weekly basis.
- [9] As a result, Complainant alleges that it suffered a loss in the amount of R252 000.00, calculated at R6 000.00 per day (excluding Sundays) for seven weeks.
- [10] Beyonda paid as settlement for the 'loss of use' cover the amount of R30 000.00 (R6 000.00 for six weeks less excess of R7 000.00) to Complainant.

Contravention or Non-Compliance with the FAIS Act

- [11] In rendering the financial services as set out above, the Respondent:
- [11.1] Acted in contravention of the Financial Advisory and Intermediary Services Act 37 of 2002 ('FAIS Act'); and
- [11.2] Failed to comply with the FAIS Act
- in the following respects.
- [12] The Respondent failed to take into account the financial needs of the Complainant, in that *inter alia*:
- [12.1] It failed to take into account Complainant's financial needs in order to identify an appropriate financial product or products;

[12.2] It failed to fully disclose fully the actual and potential financial implications, costs and consequences of the financial product sold to the Complainant;

[12.3] It failed to make relevant and material disclosures to the Complainant prior to selling the financial product to him, so that Complainant can make an informed decision as required in Part II, Section 3 (1) (a) (iv) and Part VI, Section 7 (1) (a) of the General Code of Conduct for Authorised Financial Services Providers and Representatives.

Conclusion

[13] Had Respondent properly informed Complainant that the 'loss of use' cover would apply as follows:

[13.1] the insured chooses a specific amount per week;

[13.2] minimum R2 000.00 per week and minimum 5 weeks;

[13.3] maximum R8 000.00 per week and maximum 12 weeks; and

[13.4] total cannot exceed R96 000.00,

Complainant would not have laboured under the impression that 'loss of use' cover was calculated on a daily basis.

[14] An e-mail was sent to Elizabeth from Beyonda on 28 January 2005 by Respondent stating:

'Jammer ek pla maar ek ken jul produk nie so goed nie.

Mnr Naude wil graag die volgende vrae beantwoord hê:

1. Wanneer begin die verlies van inkomste inskop?
2. ...
3. Wat sou sy bybetaling gewees het indien hy nie die afkoop van bybetaling gehad het nie.'(my italics)

[15] In a further e-mail dated 7 April 2005 to a certain Mr Tim Allen from 'Absolute', Respondent again enquired about the 'loss of use' cover stating under paragraph 7 of the e-mail:

'7. Currently the Loss of Use section provides for R8 000.00 per week for a maximum of 6 weeks. What will the maximum benefit be with Absolute? How exactly does this work?'

[16] From these e-mails it is clear that Respondent had no knowledge of the product that was sold to Complainant. The question then arises, whether it was expected from Complainant to have known all this, if his financial adviser had no knowledge of the product.

[17] The striking feature of these e-mails is that both were written long after the financial service was rendered by Respondent.

[18] The allegation is confirmed that Complainant laboured under the impression that 'loss of use' cover was offered on a daily basis. The situation was only rectified when the claim was paid by the Beyonda.

Recommendation

[19] In order to settle this matter in terms of Section 27 (5) (b) of the FAIS Act, it is deemed appropriate that Respondent make a reasonable offer to Complainant for the loss suffered as a result of Respondent's failure to comply with the FAIS Act.

[20] The Respondent pay the case fees of the Office of the Ombud for Financial Services Providers in the sum of R1 000,00 plus Value Added Tax thereon.

KINDLY TAKE NOTICE that in terms of Section 27 (4) (c) of the Financial Advisory and Intermediary Services Act 37 of 2002, the parties are required to confirm by close of business on 28 October 2005 whether or not they accept the recommendation contained in paragraphs 19 & 20 hereof.

TAKE NOTICE FURTHER that any party not accepting this recommendation is required to give reasons therefore in writing, such reasons to reach the Office of the Ombud for Financial Services Providers, by close of business on 3 November 2005.

DATED AT PRETORIA ON THIS THE 19th DAY OF OCTOBER 2005



CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS