

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

CASE NUMBER: FSOS 00238/17-18/ WC 2

In the matter between:

SIPHO NCHUKANA

Complainant

And

AFRICAN COMPASS FUNERAL SERVICES

First Respondent

CEBISILE MFADO

Second Respondent

**DETERMINATION IN TERMS OF SECTION 14 (3) OF THE FINANCIAL SERVICES OMBUD
SCHEMES ACT 37 OF 2004 (FSOS ACT), READ WITH SECTION 28 (1) OF THE FINANCIAL
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 (FAIS ACT)**

A. THE PARTIES

- [1] The complainant is Mr Siphon Nchukana, an adult male whose particulars are on file with the Office.
- [2] The first respondent is African Compass Funeral Services, with its address noted as 32029 Dongwe Street, Makaza, Khayelitsha, 7784. The first respondent states on its official stationary that it is registered in terms of South African Law with registration number 2009/156978/23, however, this registration number belongs to an entity called African Compass Trading 246¹. The first respondent is also not registered as a financial services provider in terms of the FAIS Act.

¹ As per the records of CIPC.

[3] The second respondent is Mr Cebisile Mfado, an adult male representative of the first respondent, with the same address.

[4] I refer to the first and second respondent as “respondent”. Where needed, I specify which respondent is being referred to.

B. FACTUAL BACKGROUND

[5] The determination is made in terms of the FSOS Act² read with section 28 (1) of the FAIS Act³. The complainant in this matter lodged a complaint with this Office following the respondent’s failure to honour a valid claim submitted in respect of a funeral policy for its member, the late Mrs AN Nchukana (the deceased).

[6] The deceased and the respondent had an agreement in terms of which the respondent had to provide funeral benefits to the policy holder against a defined monthly premium. There is no dispute that the premiums were received by the respondent.

[7] This Office could find no evidence that the respondent had ever been licensed in terms of the FAIS Act, or that a valid underwriting agreement existed to ensure the solvency of the fund.

[8] Section 7 (1) of the Long Term Insurance Act provides that registration is required in order to carry on long term insurance business. There is no evidence on file that the respondent complied with this requirement either.

² Financial Services Ombud Schemes Act 37 of 2004. A complaint is defined as “a complaint by a client relating to any agreement with, or a financial service or product of, a financial institution, and in which it is alleged that the client has suffered or is likely to suffer financial prejudice or damage as a result of the financial institution -
(a) having contravened or failed to comply with a provision of any agreement or the law or of a code of conduct subscribed to by the financial institution;
(b) having wilfully or negligently supplied, or failed to supply, a financial service or a product to the client;
(c) having treated the client unreasonably or inequitably; or
(d) having maladministered the implementation of an agreement with, or the supply of a financial service or a product to, the client..”

³ Financial Advisory and Intermediary Services Act 37 of 2002

C. THE COMPLAINT

[9] On 1 August 2016, the complainant added the deceased as a dependent to the policy. In terms of the policy wording, the deceased (the complainant's aunt) qualified as an extended family member, as she was dependant on the complainant to assist with her funeral costs. The policy allows coverage for up to 9 people under Plan D (Society Plan), at a premium of R180 per month for coverage of R20 000⁴.

[10] A document entitled "*Afcom Funeral & Financial Services Scheme Policy Terms and Conditions*" confirms that the basic funeral plan provides for a cash benefit to be paid in settlement of a member his / her spouse, children and adult dependants. (my emphasis).

[11] The deceased passed away on 7 July 2017. The complainant duly registered a claim with the respondent. However, the respondent refused to provide the complainant with the cash benefit of R20 000 as per policy. Instead, the respondent now claimed that no cash are provided to clients, but rather the actual funeral service.

[12] Despite various attempts to resolve the matter with the respondent, the complainant was unsuccessful. The respondent returned the premiums to the complainant, however, the complainant wants performance in terms of the agreement he had with the respondent at the time.

D. RELIEF SOUGHT

[13] The complainant wants the respondent to pay him the amount of R20 000.

E. RESPONDENT'S RESPONSE

[14] On 4 September 2017 , a notice in terms of Regulation 7 (1) (a) of the Financial Services Ombud Schemes Regulations was sent to the respondent, requesting him to resolve the

⁴ Documentation to this effect is on the file

complaint with the complainant, alternatively, furnish this Office with a detailed response. No response to this letter was received.

- [15] Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27 (4) of the FAIS Act. A notice dated 30 October 2017 was sent to the respondent, inviting him to respond to the matter.
- [16] In e-mail correspondence dated 31 October 2017, the respondent advised that he considered the matter resolved, as the complainant accepted the refund of his premium at the time. He further claimed that the complainant understood the product he purchased very well, and knew that the respondent operated as a “burial society” which offers burial services and not cash payments.
- [17] On 29 January 2018, a recommendation in terms of section 27 (5) (c) of the FAIS Act was issued, recommending that the respondent settle the matter with the complainant. The respondent in his reply of 7 February 2018 remained adamant that the matter was resolved, and that the complainant cannot be treated different to the respondent’s other clients.
- [18] The respondent also provided the Office with a different policy document, as opposed to what was provided to the complainant at the time the agreement was concluded. The document was blank and not dated, and seemed to suggest that the respondent only offers burial services. The respondent did not provide any proof that the specific document was indeed provided to the complainant, or that he signed and agreed to it.

F. FINDINGS

- [19] The respondent was never licensed as a financial services provider. The Rules on Proceedings of the Office of the Ombud for Financial Services Providers nonetheless

provides⁵ that the Ombud may entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider.

[20] The complainant was treated unreasonably and inequitably. The respondent collected premiums from the complainant, but failed to honour the claim when it arose. The respondent claimed that the policy never made provision for cash benefits to be paid but only for the actual burial service, however, the policy terms and conditions states otherwise.

[21] The respondent cannot unilaterally change the terms and conditions of the cover he provides to clients. This is not the basis upon which the complainant concluded the original agreement, or what he understood from the product he purchased. The respondent has failed to provide any documentation confirming that changes made to the policy were communicated to the complainant, which would have allowed him an opportunity to make an informed decision about continuing cover or not.

[22] The respondent was at risk at the time of the deceased's passing, and is therefore liable to pay the complainant in terms of the policy, less any outstanding premiums.

[23] The respondents were also in contravention of Section 2 of the FAIS Act which provides as follows:

"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."

[24] The respondent's failure to respond to the complainant's pleas for payment in terms of the policy (as opposed to a refund of premiums) leads to the conclusion that the respondent

⁵ Section 4 (d)

never had the intention to respond to the claim or to conduct any legitimate business of an FSP.

G. ORDER

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

1. The complaint is upheld.
2. The respondent is hereby ordered to pay to the complainant, jointly and severally, the one paying the other to be absolved, the amount of R18 020 (R20 000 – R1980 in respect of the premiums refunded).
3. Interest at a rate of 10% per annum, from a date seven days from date of determination to date of final payment.
4. The matter will also be referred to the Financial Sector Conduct Authority for further investigation into the operations of the respondent which seems to be done without the relevant licenses.

DATED AT PRETORIA ON THIS THE 22nd DAY OF MARCH 2019.



NARESH S TULSIE

OMBUD FOR FINANCIAL SERVICES PROVIDERS