

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

CASE NUMBER: FAIS 07215/11-12/KZN 1

In the matter between:-

ERNST HARTMUT NOLTE

Complainant

and

DEOLENE SUSAN CATSICADELLIS

First Respondent

REGINALD WILLIAM LYNTON RABIE

Second Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')**

A. BACKGROUND

- [1] The complaint concerns four investments to the value of R300 000, which were made by the complainant between 2005 and 2006.
- [2] The investments were made through three entities viz. Blue Platinum Investments, Equity Options, both controlled by Deolene Catsicadellis ("Catsicadellis"), and iBear Global Investment Strategists, controlled by William Rabie ("Rabie").
- [3] According to the complaint, a Blue Platinum employee, one Antoinette Beattie ("Beattie") sold the products to Complainant.

- [4] The investments went into three funds viz. the Merlin Private Equity Fund, (hereinafter referred to as the Private Equity Fund), the Merlin Diamond Trading Fund, (Diamond Fund) and iBear Growth Opportunities Trading fund, (iBear).
- [5] None of the entities involved in the transactions were ever licenced as Financial Services Providers (FSPs) as required by the FAIS Act.

B. THE PARTIES

- [6] The complainant is Ernst Harmut Nolte, a 71 year old pensioner, residing in Shelly Beach in Kwazulu-Natal.
- [7] The First respondent is Deolene Susan Catsicadellis. Catsicadellis was also previously known as Deolene Susan McMaster and as Deolene Susan Brockman. Catsicadellis' residential address is listed as 7 Teuton Road, Melkbosstrand, Western Cape.
- [8] At all material times hereto, Catsicadellis was the sole member of an entity known as the Equity Options, and the Managing director of Blue Platinum Ventures 80 (Pty) Ltd, trading as Blue Platinum Investments ("Blue Platinum").
- [9] Blue Platinum is a private company with registration number 2005/006557/07. With its registered address being 7 Teuton Road, Melkbosstrand, 7441 – the same address as Catsicadellis.

[10] At the time the financial service was rendered, the Companies and Intellectual Property Commission's (CIPC's) records show Catsicadellis (reflected as Deolene Susan Brockman) as the only active director of Blue Platinum.¹

[11] Neither Equity Options nor Blue Platinum were ever licenced as financial services providers. It appears that Catsicadellis' application for an FSP licence for Blue Platinum was rejected by the FSB on the grounds that she had failed to demonstrate the requisite honesty and integrity.

[12] The Second Respondent is Reginald William Lynton Rabie, the managing director of iBear Global Investment Strategists (Pty) Ltd ("iBear"), registration number 2002/019651/07. Correspondence from iBear reflects the address as Suite 6, Private Bag X22, Tygervalley, 7536. According to CIPC's records iBear's only director is Dennis Jacobus Bishop. iBear's final deregistration was effected on 17 April 2009. At all material times hereto, Rabie acted on behalf of iBear.

[13] Rabie was also a director of Merlin's Private Equity Fund Ltd, (Private Equity Fund) and represented Merlin's Diamond Trading Fund, (Diamond Fund), a sub-fund of Merlin's Private Equity Fund in correspondence to the complainant.

[14] According to the FSB's records, iBear was never authorised as an FSP. Rabie was allocated an FSP number (20870) but failed to submit the application forms. The number was subsequently cancelled.

[15] Investment statements for the Private Equity Fund, reflect its registration number as 2002/031403/07. CIPC does not have a record of the entity.

¹ Catsicadellis' co-director was PD Botha who appears to have played no active role in management and control of Blue Platinum.

However, the registration number appears to be allocated to a deregistered entity called Wild Break 209. The only director on the record is Dennis Jacobus Bishop, who incidentally was listed as an active director of iBear. The status of the Private Equity Fund and iBear are dealt with comprehensively in a previous determination.²

[16] According to CIPC records, Equity Options, Blue Platinum and iBear have all been deregistered. The roles of Catsicadellis and Rabie in the above entities are set out in two previous determinations issued by this office³ - suffice to say that both Catsicadellis and Rabie were responsible for the managing of day-to-day operations of the respective entities.

C. COMPLAINT

[17] According to the complainant, in March 2005 he was approached by Antoinette Beattie, an employee of Blue Platinum to invest money in certain ventures, which he was assured would yield high returns. His money, he was informed, would be invested in various blue chip shares and commodities on the JSE.

[18] The breakdown of the investments is:

1. R50 000 – invested on 24 March 2005, through iBear, into the Diamond Fund; funds however went remained in iBear’s account;
2. R50 000 - invested on 28 April 2005 through Equity Options, into the Private Equity Fund;

² AB Bowen v DS Catsicadellis and RWL Rabie Case number 00195/10-11/WC 1 determination issued 15 February 2012.

³ EM Nel v DS Catsicadellis and V Badenhorst Case number 02908/08-09/KZN1 determination issued 17 March 2011. AB Bowen v DS Catsicadellis and RWL Rabie Case number 00195/10-11/WC 1 determination issued 15 February 2012. N Higham v DS Catsicadellis and RWL Rabie Case number 04935/09-10/WC 1 determination issued 15 February 2012.

3. R100 000 - invested on 16 September 2005, through the Blue Platinum Investments into Private Equity Fund.

4. R100 000 invested on 13 February 2006, through Blue Platinum Investments into iBear.

[19] In 2007, iBear took over the 'clerical work' of all the investments. It was at this point that Complainant started liaising with Rabie, who was the Managing Director of iBear.

[20] In September 2007, Complainant informed Rabie that he needed to withdraw R120 000 from his investments. Although Rabie initially informed him that the money was not available, after Complainant threatened Rabie with legal action, the R120 000 was eventually deposited into Complainant's account.

[21] In May 2011, Complainant once again contacted Rabie and requested a withdrawal from his investment. In October 2011, Rabie wrote to Complainant undertaking to pay funds by December 2011. However, despite several promises and even the offer of a written settlement agreement, Rabie has not paid back the funds. The contents of the settlement agreement will be dealt with later in this determination.

[22] Complainant alleges that Rabie informed him that should he take this matter to court or the South African Police Services, he would not pay Complainant any of his funds, but that he would use Complainant's money to pay for his legal costs.

[23] Even though Complainant enlisted the assistance of his attorney to recover his funds from the iBear, all further attempts to contact Rabie have been unsuccessful. This eventually led to Complainant lodging his complaint with this Office. In his complaint, Complainant alleges *inter alia* that:

1. He was never informed by Antoinette Beattie, (Beattie) that the persons or entities involved were either not licensed with the FSB or had been de-registered by the Registrar of Companies;
2. Beattie never advised him about the risks involved in the investments of the investments. He asserts that he had instructed Beattie to invest his money in various Blue Chip companies on the JSE;
3. Complainant believes that his funds have been lost as Rabie repeatedly promised to make payment to him but failed to do so;
4. Rabie and Catsicadellis acted with deliberate malice and intention to mislead and defraud him. As a result their conduct, (Rabie and Catsicadellis), he has suffered financial loss.

D. RELIEF SOUGHT

[24] Complainant invested R300 000 in total. In August 2007, upon Complainant's instructions, Rabie paid to Complainant R120 000. Complainant seeks payment of the remainder of the monies due to him.

E. RESPONDENT'S RESPONSE

[25] The complaint was sent to both Respondents requesting each to provide this Office with proof of their compliance with the FAIS Act and General Code of

Conduct, (the Code) at the time the financial service was rendered. To date, neither has replied.

F. DETERMINATION AND REASONS

[26] As mentioned earlier, both respondents were granted an opportunity to present evidence of their compliance with the FAIS Act and to refute the complainant's allegations. In spite of this opportunity, neither complied with the request. As a result, I have no option but to determine this matter only on the merits of the complainant's version. The issues to be determined therefore are:

(i) Did the Respondents render financial services in contravention of the FAIS Act and/or General Code of Conduct?

[27] There is no doubt that both Catsicadellis and Rabie rendered financial services to the complainant. Blue Platinum through its representative, Antoinette Beattie, advised Complainant to invest in the entities. Later, Rabie took responsibility for providing complainant with updates/progress/feedback on the performance of the investments. Rabie was effectively rendering an intermediary service to the Complainant.

[28] I have already stated that neither Catsicadellis, Rabie nor any of the entities were ever authorised as financial services providers. However, in the application forms used to purchase the investments, Blue Platinum, Equity Options and iBear are reflected as the "brokers" on the investment.

[29] None of the above entities ever obtained authority to render financial services to the public. There is also no evidence that the Merlin Funds, (the Private Equity and Diamond Funds) ever existed. Yet the investment application forms state that the complainant is applying to purchase shares in the Merlin Fund subject to the memorandum & articles of association of the company – a non-existent company.

[30] Clause 3(1)(a)(i) provides that representations made and information provided to a client by a provider must be factually correct. Yet, Complainant was advised to invest through unlicensed companies into the unregistered entities.

[31] Clause 5.(d) of General Code of Conduct ('the Code') requires that the provider furnish details of the financial services which the provider is authorised to provide in terms of the relevant license and of any conditions or restrictions applicable thereto, yet the representative, Beattie, who rendered the financial service to the complainant failed to disclose to Complainant that these entities were in breach of section 7 of the FAIS Act in that iBear, Blue Platinum and Equity Options were not authorised FSPs.

[32] Rabie who 'took over' the administration of Complainant's investments from Blue Platinum and Equity Options, explained in a letter to Complainant dated 16 August 2007 why he had to 'take over' and what their role was as iBear. In the letter Rabie makes interesting statements against Blue Platinum and Equity Options:

"As discussed with you we were perturbed by the actions of Blue Platinum, on various matters including their commission structures, and have ceased to

allow them to market any of our investment products or services for some time now. We continue however to serve their existing clients but with our direct input, and direct liaison with the client to enable the client to continue with good investment performance but also to receive good advice and service. Unfortunately this contact was not allowed previously as they retained all the information, and we did not have the necessary contact details until a few clients became unhappy and were summarily passed on to us. This included sending out statements of which we did not have any knowledge etc... Henceforth we should like to discuss matters direct with you.

[My emphasis]

[33] Blue Platinum in turn states that the figures quoted were based on financial information received from iBear.

[34] Notwithstanding the conflicting statements from both Respondents, at this point, Rabie does not alert Complainant to the fact that neither him nor Catsicadellis are acting with the requisite authority. This is a contravention of the FAIS Act.

[35] Rabie continued updating complainant on his investment's performance all the way to October 2011, this despite the fact that iBear itself was deregistered in April 2009.

[36] The FAIS Act in Section 7(1) requires a person to obtain a licence before acting as a financial services providers. However, notwithstanding their lack of approval as key individuals, subsection (2) ensures that Catsicadellis and

Rabie cannot escape the provisions of the FAIS Act. Transactions concluded without the requisite authorisation are nevertheless enforceable.

[37] Clause 2 of the General Code provides that 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. [my emphasis]

[38] In rendering the financial service to the Complainant (albeit unauthorised conduct), the Respondents were obliged to act in Complainant's interests, i.e. to render the financial services in accordance with the General Code. This included providing complainant with material information on, *inter alia*, the nature and status of the entities he was investing in. There is no evidence that either Respondent did so.

[39] This Office has not been furnished with any proof that either Respondent disclosed to the complainant that they were acting without an FSP licence, that his funds were invested in unregistered entities or what the inherent risks in such products are.

(ii) Did the Respondents' conduct result in Complainant's loss?

[40] Under no circumstances can advice to invest in an unregistered entity be justified without proper disclosure; primarily because no protection is afforded to investors in an unregistered entity and investors need to know this.

[41] Clause 8 (2) of the General Code obliges FSPs to take reasonable steps to ensure that their client is in a position to make an informed decision.

[42] It was up to the Respondents to draw the complainant's attention to this fact – something both respondent's failed to do. Instead they lured the complainant into the investments and when he started complaining threatening legal action, (see para 21 where Rabie states the he will use complainant's money in court) Rabie initially offered to transfer the investment into a better-performing fund and later offered to repay the complainant's investment. Of course, none of these materialised. At no point did either Respondent take responsibility for their actions. Rabie purported to make good on the investments. However, this came to nought.

[43] There is no doubt that Respondents were dishonest in their dealings with Complainant and had Complainant been aware of the true nature of the investments and the Respondents lack of authorisation, it is unlikely that Complainant would have invested his funds.

Liability

[44] As already mentioned Catsicadelis controlled Blue Platinum and Equity Options. It was an employee of Blue Platinum who induced complainant to invest in an unlicensed entity/funds. Rabie was the controlling force behind iBear, being both reflected as the Managing Director of iBear Global Investment Strategists, and the author of the correspondence exchanged with Complainant regarding the status of his investments. It is on this basis that both Catsicadellis and Rabie are cited as respondents in this matter.

[45] Both Respondents were complicit in persuading the complainant to invest in the unregistered entities and when questioned by the complainant, were happy to

string the complainant along with promises of better returns. When payment was due, both were unavailable to the complainant. Despite the investment having been made in 2005/2006, the complainant has to date not been able to establish the whereabouts of his money.

[46] Both Respondents were repeatedly invited to refute the allegations and place their version on record, but failed to do so.

[47] I find that both Respondents rendered financial services to the complainant and were both responsible for the deceit which saw complainant invest in unlicensed and unregistered entities. This they did in total disregard of the provisions of the FAIS Act.

Proposed Settlement Agreement

[48] In an email to Complainant and his attorney, Rabie records the following:

“We have mutually agreed to suspend legal matters thus preventing we consider may be unnecessary legal costs as we are all wishful of pursuing an amicable conclusion. Mr Nolte’s one investment, EH Nolte 002, is coming due at the end of October 2011... Mr Nolte is desirous of having this investment paid out when due. As we have discussed it Mr Nolte is halting legal action on his side as are we, pending this re-payment and settlement.... The instruction for cancellation has been submitted and the investment will be paid out when due. This has been confirmed with Mr Nolte...We are wishful of pursuing an amicable conclusion to the matter.

Regards

Willaim Rabie”

[49] Attached to Rabie's email were two proposed settlement agreements. The first agreement states that Merlin's Diamond Trading Fund will pay Complainant R199 104.30 on or before 11 November 2011 in full and final settlement of any claims that might arise. In the second agreement, the fund would pay Complainant R203 564.24 on or before 16 December 2011 in full and final settlement of any claims that might arise from the investment. The agreements go on to prohibit either party from any making any further claims or instituting any action or charges originating from any agreements between the parties prior to concluding the settlement or originating from any investment made prior to and relating to the investments. Both parties were called upon by the draft agreement to keep the settlement confidential.

[50] On his attorney's advice, Complainant never signed the agreement.

[51] Notwithstanding the offer outlined in the settlement agreements, at the time of this determination, no payment had been received by the Complainant from Rabie. Complainant and his attorneys have had no success in contacting either Rabie or Catsicadellis.

[52] I have no hesitation in concluding that the Rabie had no intention of abiding by the agreement and that Complainant's money is lost.

G. QUANTUM

[53] Complainant invested R300 000 in total. In August 2007, complainant was able to recover an amount of R120 000 from Rabie, leaving the balance of R180 000.00, which remains outstanding to date.

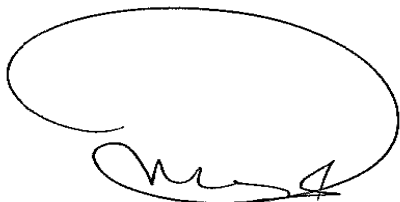
[54] It is clear that having been actively misled by both respondents, Complainant has lost his remaining capital and any interest which he might have earned had his funds been placed in a legitimate entity.

H. ORDER

[55] In the premises, the following order is made

1. The complaint is upheld;
2. The Respondents are hereby ordered to pay complainant, jointly and severally, the one paying the other to be absolved, the sum of R180 000;
3. Interest at the rate of 15.5% per annum from a date, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 17th DAY OF MARCH 2014



**NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS**