

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 07303/12-13/ WC 1

In the matter between:

CAROLINA JOHANNA OLIVIER

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 Mrs Carolina Johanna Olivier, an adult female whose full contact details are on file with the office.

[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 Calitz, key individual and member of 1st respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times rendered financial advice to complainant on behalf of 1st respondent. In this

determination respondent or respondents are used interchangeably.

B. THE COMPLAINT

- [4] To put it in complainant's words, she is complaining about her financial adviser of over 20 years who invested her funds with an unregistered entity.
- [5] The initial investment of R340 000, 00 was made on the 28th February 2008, followed up by an additional R100 000, 00 on the 3rd November 2008.
- [6] In 2011 complainant withdrew an amount of R80 000, 00; thereby leaving the balance of R360 000.00.
- [7] On the 13th July 2012 complainant received a call from Calitz advising her that there are problems with RVAF. Suffice to say it was already at that point too late to withdraw her funds as complainant believes she has lost her investment.
- [8] With complainant and her husband being pensioners, the loss of a substantial part of their savings has detrimentally impacted on their income.
- [9] As to background to the investment, complainant states that Calitz has advised her and her husband since 1988. With the retrenchment of her husband in 2002, Calitz advised on the investment of the pay-out as well as a later surrender of the policies and subsequent transfer to a money market account.
- [10] Later a reduction in yield led complainant and her husband to approach Calitz, seeking alternatives. Calitz advised that the RVAF offered excellent growth and return.

[11] Upon enquiring further as to how the money was invested, Calitz advised that they (RVAF) had a bunch of staff who knew what they were doing; apparently they bought and sold shares around the clock. Calitz further informed complainant that he knew Pretorius personally and that they were in fact family friends.

[12] As to the risks, Pretorius assured complainant that the investment was totally safe and that there was no reason to be worried.

[13] A rather insightful document which complainant provided to the office, was a letter dated 8th August 2012 from Calitz' office. Issued by 4i Asset Management (Pty) Ltd, an entity of which Calitz was then a director, this letter is revealing in that it contains the following statement:

'The board of 4i Asset Management wishes to confirm that 4i Asset Management currently manages 4 FSB regulated unit trust funds, all which are managed in full compliance with all relevant legislation including FAIS and the Collective Investment Schemes Act ("CISA"). None of our unit trust funds had any, or will ever have, any exposure to unregulated investment schemes (e.g Herman Pretorius' schemes/funds)..'

C. RESPONDENTS' REPLY

[14] Complainant's investment was done by her husband Mr G J Olivier who visited Calitz at his offices and enquired about Abante Capital as he had been told about it by a friend.

[15] Respondent briefly explained the workings of a hedge fund and that these instruments were not regulated; however, Abante Capital was registered as an investment manager with the Financial Services Board. Complainant thereafter decided to invest with RAAF.

[16] The option to invest in hedge funds was explained and did not contradict complainant's risk profile in that long and short positions make these investments market neutral if managed correctly.

[17] It is pointed out that nothing in the documentation which respondents are required to retain, persuades this Office that complainant was even aware of or could have understood the implications of what she was investing in. In particular there is no mention of the risks of investing in an unregulated entity, one without so much as a set of audited financials.

D. THE DETERMINATION

[18] Reference is made to the determination of *Inch vs Calitz*¹ where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RAAF. Principally the issues pertain to the respondent's failure to understand the entity, (RAAF) and the risks to which he was exposing his clients when he advised them to invest therein.

[19] 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

1. *Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 0497/12-13/MP1*

transferred directly into RVAF without even the protection afforded by a nominee account.

[20] 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, further reinforcing the fact that Calitz himself failed to understand the contracting entity.

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

[22] Complainant as a client of a registered financial adviser, relied on Calitz' advice when making this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Calitz failed in this regard.

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

E. ORDER

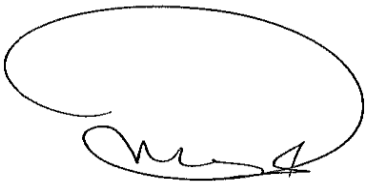
[24] Accordingly the following order is made:

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 R360 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 6th DAY OF AUGUST 2014

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

NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS