

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FOC377/06-07/LP (3)

In the matter between:

KHAYROON OSMAN

Complainant

and

NOORD-WES MAKELAARS BK

Respondent

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

A. PARTIES

[1] The Complainant is Mrs Khayroon Osman, an adult female, resident at 4, Flamboyant Crescent, Akasia, Potgietersrus, 0601.

[2] The Respondent is Noord-Wes Makelaars BK (Registration No. CK 90/07103/23) a close corporation duly registered as such and an authorised

financial services provider, of 67, Van Riebeeck Road, Potgietersrus, 0600 and herein represented by Mr Peter Blignaut ('Blignaut').

B. THE BACKGROUND

[3] In September, 2004 the complainant had a BMW motor vehicle insured with Santam through respondent under a short term insurance policy. On 1st November, 2005 she instructed the respondent to have an Audi A3 motor car insured under the same policy. She complains that when the Audi was insured under the same policy, without any authority, instructed Santam to cancel the insurance cover for the BMW. On 28 November 2005 the BMW was involved in an accident. Complainant says it was only when she lodged a claim for the damage to the BMW that she became aware that it was no longer insured and hence received no compensation from the insurer.

[4] The respondent disputes the allegations by complainant. Blignaut says he acted on the specific instructions of complainant's son, Mohammed Osman (Osman), who at all times acted on her behalf. He alleges that it was Osman who had instructed him to cancel the insurance on the BMW.

The relief sought by Complainant

[5] The complainant wants the respondent to compensate her for the damage to the BMW. Two quotations for repair costs were obtained by the complainant for R49 247.17 and R42 399.21 respectively. A Santam assessor assessed the loss at R20 825.74 during a routine investigation of the claim.

Investigation by this Office

[6] Respondent informed this Office that it was appointed as broker for complainant on 1st September 2004. Complainant was represented by her son Osman from the beginning and it was he who signed the broker's appointment on behalf of the complainant. During September 2004 the policy endorsement reflecting the placing of the BMW under insurance cover was sent to the complainant. Respondent says about fourteen months later, on 1st November 2005 Osman telephoned its offices and gave instructions to remove the BMW from the insurance policy and cover an Audi A3 instead. A note (copy of which was provided to this Office) was made by respondent in its file relating to the complainant. Blignaut says he telephonically confirmed these instructions with Osman again on 3rd November 2005. Respondent provided proof of his phone calls to Osman on that date in the form of a copy of its telephone account with Telkom which reflects two telephone calls made by Blignaut to Osman's cell phone number. According to Blignaut, Osman also furnished him with the engine number and VIN (vehicle identification number) of the Audi in one of their telephonic discussions. Blignaut says he received the new policy schedule reflecting the changes on 25 November 2005 and posted it to the complainant.

[7] On 9th December 2005, says respondent, complainant herself telephoned Blignaut with instructions to insure the BMW again. Blignaut says when respondent approached Santam to carry out the instructions it was told that

complainant had already contacted Santam directly the day before and had herself asked it to cover the BMW again.

[8] During the aforesaid telephonic discussion complainant told Blignaut that her son had not been authorised to remove the vehicle from the policy. She also told him not to take any further instructions from her son. Blignaut says complainant also told him that her son denied ever giving instructions to the respondent to remove the BMW from the policy in the first place. Blignaut, seemingly suspicious by then, asked complainant whether there was an accident or any other problem with the BMW. He says '[S]he categorically denied any claim in existence on the 9th December 2005.'

[9] Respondent goes on to say that 'On the 12th December 2005, Mrs K.Osman alleged that she told our Mr Blignaut on the 9th December 2005 that the motor vehicles were (*sic*) involved in an accident. This is categorically denied.' Blignaut says he only became aware on 12th December 2005 that the BMW had been involved in an accident already on 29th November 2005.

[10] Respondent provided this Office with copies of several documents including a fax to Santam with notes thereon, file notes and the abovementioned Telkom account.

C. THE ISSUES

[11] There are a number of factual disputes, *inter alia*:

11.1 The main dispute - whether complainant's son had instructed respondent to cancel the insurance cover for the BMW;

11.2 Another is whether complainant had informed Blignaut on 9 December 2005 that the BMW had been involved in an accident;

11.3 Whether Blignaut phoned her to confirm her son's instructions to insure the Audi and he (Blignaut) did not ask her to confirm the alleged instruction to remove the BMW.

D. DETERMINATION AND REASONS THEREFORE

[12] A file note of the respondent provides:

'1/11/2005 Mohamed Osman Skrap BMW318 1990 FCD 123 N Built up.
Voeg by 2000 Audi A3 FLX 516 N Engine VIN volg.'

Another note of the same date but in a different handwriting states:

'Mev. Osman se seun skrap BMW en voeg Audi A3 by.'

Blignaut explained that after he received the instructions from Osman he passed them on to a member of his staff, one Henriette, to carry them out.

She made this last note, another dated 9/12/05 and two notes dated 12/12/05. These other notes refer to the discussions between complainant and Blignaut referred to in paragraphs [6] to [8] above.

[13] Among the documents provided by the respondent to this Office is copy of a fax sheet (dated 1 November 2005) addressed to Santam in which the message is conveyed that the BMW is to be removed ('skrap') and the Audi added and that interim cover is provided (the inference being that it's for the Audi) until the next day. There is a note to the effect that on 2nd November 2005 Osman was told to furnish the vehicle details by 3rd November as interim cover could not be extended beyond that date.

[14] Respondent says complainant revoked her son's mandate by explicitly telling Blignaut not to act on his instructions any more - but that was on 9 December 2005, after the accident had already taken place.

[15] The question that arises is why would complainant phone Blignaut on 9th December 2005 with instructions to cover the BMW again when, according to a computer print-out from Santam she had herself requested Santam on 8th December 2005 to do so knowing that it was already involved in an accident several days before. If, as complainant alleges, she was not aware that the BMW was no longer insured until she filed a claim, why phone before filing the claim to have the car insured again? In my view the only inference that can be

drawn is that it was an inept attempt to ensure there was insurance cover before filing a claim. The probabilities are that complainant's son had in fact instructed respondent to remove the insurance cover for the BMW and the complaint therefore falls to be dismissed.

Accordingly, I make the following order:

1. The complaint is dismissed.
2. The Respondent is ordered to pay the case fee of R1000.00.

DATED AT PRETORIA THIS 7TH DAY OF FEBRUARY, 2008.



CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS