

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

CASE NUMBER: FSOS 00406/14-15/ KZN 3

In the matter between:

AARVARN RAJCOOMAR

Complainant

and

PIETER DE WET t/a MODEL INSURANCE COMPANY

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] Complainant is Mr Aarvarn Rajcoomar, an adult male whose particulars are on file with the Office.

[2] Respondent is Pieter De Wet, a sole proprietor who conducted short-term insurance business under the name Model Insurance Company ('Model') with its business address set out as 502 Charter House, 75 Crompton Street, Pinetown, KwaZulu-Natal.

B. FACTUAL BACKGROUND

[3] The determination is made in terms of the FSOS Act¹ read with section 28 (1) of the FAIS Act². The complainant in this matter is one of a number of policy holders who lodged complaints with this Office following the respondent's failure to honour valid claims submitted in respect of policies held by them.

[4] The respondent held himself out to be an authorised short-term insurer and collected premiums from members of the public. It emerged from enquiries with the Registrar of the Financial Services Board, that respondent had never been licensed in terms of section 7(1) of the FAIS Act to render financial services to the public. Respondent had also never been registered to conduct business as a short-term insurer as required by section 7 of the Short-term Insurance Act ('STIA'). In terms of Section 7 of the STIA:

- (1) No person shall carry on any kind of short-term insurance business unless that person –
 - (a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned under this Act; or
 - (b) is authorised under section 56 to do so, and carries on that business in accordance with this Act.'

[5] During February 2012, the Registrar issued a warning, requesting the public not to conduct business with Model Insurance. Despite this warning, respondent

¹ Financial Services Ombud Schemes Act 37 of 2004

² Financial Advisory and Intermediary Services Act 37 of 2002

continued to conduct unregistered insurance business. The Registrar reported the respondent to the Commercial Crime Branch of the South African Police Service and secured an interim interdict in the KwaZulu-Natal High Court to stop the respondent from carrying out short-term insurance business.

C. JURISDICTION

[6] The Respondent is not a member of a recognised scheme as contemplated in section 10 and 11 of the FSOS Act.

[7] Accordingly, and in terms of section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the respondent in respect of this complaint.

[8] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. THE COMPLAINT

[9] The following are the material aspects of the complaint:

9.1 During May 2011, complainant was introduced to Model Insurance by a colleague. He was interested in insuring his vehicle, a 2005 Toyota Run X.

9.2 On 9 May 2011, complainant received the policy wording, confirming that the vehicle was comprehensively covered for its market value, at a premium of R463 per month. Complainant was noted as the regular driver.

9.3 The monthly premium was duly paid.

9.4 On 28 April 2012 complainant was involved in an accident. Complainant duly submitted the claim to respondent on 2 May 2012. In return, respondent on 8 May 2012, provided authorisation to Concorde Panel Beaters to proceed with the vehicle repairs.

9.5 Complainant indicates that an invoice dated 21 May 2012 in the amount of R28 152.56 was provided by the panel beater, following completion of the repairs. However, five months later, respondent had still not made payment to the panel beater.

9.6 Under threat from the panel beater that complainant's vehicle would be sold, complainant had no other choice but to settle the outstanding amount. By then storage fees were also added to the amount due. Complainant reached a settlement offer of R25 000 all-inclusive with the panel beater.

E. RELIEF SOUGHT

[10] Complainant seeks an order compelling respondent to refund him for the repair costs incurred, as well as refund of premium.

F. RESPONDENT'S RESPONSE

[11] On 19 March 2015, a notice in terms of Regulation 7 (1) (a) of the Financial Services Ombud Schemes Regulations was sent to respondent, requesting him to resolve the complaint with complainant, alternatively, furnish this Office with a detailed response. Respondent failed to respond to this request.

[12] Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27 (4) of the FAIS Act. A notice dated 6 October 2015 was sent to

respondent, again inviting him to respond to the matter. To date, no response has been received.

[13] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of complainant's version. From the history of matters³ determined by this Office on prior occasions, it is clear that respondent has no defence against the allegations made against him. This determination therefore must be read with the determination in the matter of Ramraj v Pieter de Wit t/a Model Insurance⁴. The complaint therefore, succeeds.

G. FINDING

[14] From the undisputed facts before this Office, it can be concluded that:

14.1 Respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider.

14.2 Respondent collected premiums from members of the public, but had no financial means to honour claims as they arose.

14.3 Although respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant⁵.

³ See in this regard, Ramaraj v Pieter de Wet t/a Model Insurance, FAIS 01266 12/13 MP 3, available on www.faisombud.co.za/determinations

⁴ supra

⁵ In terms of Section 54(1) of the STIA 'A short-term policy, whether entered into before or after the commencement of this Act, shall not be void merely because a provision of a law, including a provision of this Act, has been contravened or not complied with in connection with it.'

14.4 In terms of the short-term insurance agreement, respondent agreed to indemnify complainant against loss or damage arising out of the use of his vehicle at a monthly premium of R463.

14.5 Respondent was at risk and is liable to pay complainant in terms of the contract of insurance.

H. QUANTUM

[15] Complainant lodged a claim in the amount of R60 000, which comprised the total premiums and the value of the motor vehicle. However, complainant is only entitled to the negotiated amount of R25 000 as explained in paragraph 14.

I. ORDER

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

1. The complaint is upheld.
2. Respondent is hereby ordered to pay to complainant the amount of R25 000.
3. Interest at a rate of 10.25% per annum, from a date seven days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 5th DAY OF DECEMBER 2016



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS