

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

Case Number: FOC1158/06-07/GP (3)

In the matter between:-

NKHELEBENI HERMAN RAKHADANI

Complainant

and

AQUARIUS INSURANCE CONSULTANTS

Respondent

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

A. PARTIES

[1] The complainant is Mr Nkhelebeni Herman Rakhadani of 1034 Klipfontein View, MIDRAND, 1685.

[2] The respondent is Aquarius Insurance Consultants CC (CK 2001/038750/23) a close corporation with its principal place of business at 4 Malteser Road, NORTHRIDING, 2169. Respondent is an authorised financial services provider and is represented by Ms Lorrain Chandler.

B. THE BACKGROUND

[3] During March 2006 the complainant's motor vehicle was involved in an accident in which it was damaged. Complainant duly notified his insurer, Regent Insurance Company ('Regent') of the accident and submitted a claim for the damage sustained by the vehicle.

[4] The claim was repudiated by the insurer on the basis of a breach of a condition of the policy, being the complainant's failure to pay his premium within 15 days of its due date for the month in which the accident occurred.

[5] Respondent had moved the complainant's insurance cover from Santam to Regent shortly before the accident occurred. Whereas Santam charged a monthly premium of R362.63, Regent's premium was R400.66. Complainant alleges that it was the increase in premium that led to the Regent debit order being dishonoured.

The relief sought by complainant

[6] Complainant is of the view that respondent should be held liable for the damages he has suffered.

Investigation by this Office

[7] The following facts are common cause:

- 7.1 In August 2005 the complainant bought a Toyota Tazz motor vehicle from a motor dealer.
- 7.2 The motor dealer requested respondent to provide an insurance quote on the vehicle and after submission of a proposal the vehicle was insured through Santam. The particular scheme was administered by Intellectual Information Services (Pty) Ltd ('IIS'), who in turn had a separate contract with Santam as underwriting managers for the latter.
- 7.3 At some point, IIS informed respondent that it will be moving the latter's "book" (of insured clients) from Santam to Regent. As a result, from 1 March 2006 complainant's motor vehicle was insured by Regent. IIS was the underwriting manager for Regent as well.
- 7.4 Respondent says it was made to believe that the terms of the policy and the premium would remain the same. However, when it was informed of the increased premium, it "prepared" a letter to complainant informing him of the increased premium. It does not state whether the letter was in fact sent to the complainant.
- 7.5 The Regent policy provided for an additional benefit which was not in the Santam policy, namely, that the insured would be provided with a

rental car in the event of accident damage to the vehicle preventing him from using it.

- 7.6 Both the Santam and Regent insurance policies contained identical clauses regarding the consequences of non-payment of a premium on due date:

“In accordance with Legislation, if your premium is unpaid, you have up to the 15th of the month in which the premium was not paid, to make payment and fax or e-mail proof to us. Please check your bank statement after the first working day of the month, to ensure that your premium was paid. The onus lies on you, the insured, to check that your premium has been paid, If a premium is not paid by the 15th, there is no cover from the 1st day of that month and the policy will be cancelled unless prior arrangements have been made.”

- 7.7 The accident occurred on 11 March 2006. The debit order for R400.66 went off complainant’s account on 2 March 2006 but was thereafter reversed by the bank because of insufficient funds in complainant’s account. He had an amount of R225.37 in his account whereas the premium amount was R400.66.

- 7.8 When complainant submitted his claim form on 14 March 2006 the premium remained unpaid but he was within the 15 day grace period. Had he paid the premium within this period cover would have remained in force in accordance with the provisions of the policy.

[8] Complainant says on 16 March 2006 Ms Caria Sawyer (who was assisting him with his claim) was told by one Cindy and a Lorraine, both of respondent, that the increased monthly premium only had to be paid before the 20th of that month. He says respondent had made a misrepresentation in this regard. He paid the premium on 17 March 2006, which was after the grace period stipulated in both the Santam and Regent policies had expired.

[9] Respondent on the other hand says when it discovered that complainant had not paid his premium on time it advised him to do so regardless in the hope that the insurer will waive its rights in terms of the policy.

[10] It is common cause that the insurer refused to do so.

The issues

[11] The issues to be decided are whether respondent was negligent in not informing complainant about the change of insurer and the increase in premium and whether these factors caused complainant not to honour the debit order.

Determination and reasons therefore

[12] The insurance policies of both Santam and Regent were identical save that Regent provided for the insured to utilise a rental car in the event that he could not use the insured vehicle after an accident.

[13] Both policies contained identical clauses regarding the consequences of non-payment of premiums by due date or within the grace period.¹ The clauses were prominently placed at the beginning of the policy where the broker and the parties to the contract and other pertinent details are mentioned.

[14] Complainant had an amount of R225.37 in his bank account when the debit order for R400.66 was presented for payment for the Regent policy. It is immediately apparent that even if the insurance had remained with Santam at the lower premium of R362.63 complainant did not have sufficient funds in his account to meet even that (lesser) amount. He also failed to pay the premium within the 15 day grace period.

[15] Respondent complied with its duty to obtain indemnity cover for its client through Regent. However, it failed in its duty to inform complainant of the higher premium. If the complainant had had enough money in his bank account to meet the original premium amount then respondent may well have been held liable for its failure to inform him of the new higher premium.

¹ Sub-par 7.6 above

However, as I have pointed out, the complainant did not have sufficient funds to meet the original lower premium as well and the policy would in any event have lapsed.

[16] Complainant's allegation that Carla Sawyer was informed on 16 March 2006 by respondent that the premium could be paid by the 20th of that month does not take the matter any further². Assuming that Sawyer was in fact told this by respondent and that it was a misrepresentation as contended by complainant the policy had already lapsed by then. Respondent's submission³ that it had advised complainant to pay the premium in any event and thus try to persuade the insurer to accept the claim seems the more probable. Whether a lapsed policy could have been revived is a moot point and is of no relevance for the purposes of this determination.

[17] In the circumstances, complainant's complaint falls to be dismissed.

THE ORDER

I make the following order:

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

² Par 8 above

³ Par 9 above

Dated at PRETORIA this 11th day of June 2009.



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS