

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

**PRETORIA**

**CASE NO: FOC 1695/06-07 GP (1)**

In the matter between:

**HERMANUS GERHARDUS RAMAN**

Complainant

and

**OLD MUTUAL LIFE ASSURANCE COMPANY**

**(SOUTH AFRICA) LIMITED**

Respondent

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

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**A. THE PARTIES**

[1] Complainant is Hermanus Gerhardus Raman, a pensioner residing at 166 Jakaranda Street, Doringkloof, Centurion, Pretoria.

[2] Respondent is Old Mutual Life Assurance Company (South Africa) Limited, an authorised financial services provider and a duly registered company in terms of the company laws of the Republic of South Africa having a principal place

of business at Mutual Park, Jan Smuts Drive, Pinelands, South Africa. At all material times respondent was represented by Mr Ernie Lottering ('Lottering'), a duly authorised representative of the respondent, based at its Centurion branch.

**B. THE COMPLAINT**

[3] This complaint relates to losses allegedly suffered by complainant, as a result of inappropriate advice and related issues of non-compliance by Lottering when he rendered a financial service to complainant during April 2006. Further facts relating to the financial service are detailed in the paragraphs below.

**C. COMPLAINANT'S VERSION**

[4] Complainant, a 90 year old pensioner at the time of rendering the financial service on 4 April 2006, acting on the advice of Lottering, withdrew R560 000,00 from his Standard Bank savings account and invested it in the Old Mutual 'Dynamic Floor' unit trust fund. Complainant was assisted by his son Mr P. A. Raman who had introduced his father to Lottering. Mr P. A. Raman had earlier invested in the same fund through Lottering.

[5] Complainant's need was for a safe fixed investment to supplement his pension. Lottering promised that this would be complainant's best investment ever with a 90% guarantee on capital and guaranteed income of R5 000, 00

per month.

- [6] The income represented an increase of a R1000, 00 per month on the interest complainant was earning from his existing savings account at Standard Bank. The investment was apparently presented using sophisticated computer presentations, which complainant claims not to have understood. Complainant contends that had he been presented with actual figures, and the attendant risk better explained he would not have invested in the product.
- [7] He explained that whilst the 90% guarantee initially sounded good, given that he did not work with figures on a regular basis he had no comprehension that this meant that only R504 000, 00 was guaranteed.
- [8] Essentially complainant contends that he did not really understand the product; was unaware of the commission of R18 194, 40 or that the investment was in a Unit Trust.
- [9] Complainant received an investment statement dated 17 July 2006, by which date three R5 000, 00 payments had been received by him. He noted that his fund value now stood at R492 836, 16. This represented a decrease of R52 163.84 even after taking into account the R15 000, 00 already withdrawn.
- [10] Complainant wished to disinvest at this early stage, but was convinced by Lottering to remain in the investment. Complainant eventually withdrew from the investment on the 7 August 2008 and received the sum of R450 833, 41

on disinvestment.

**D. THE RESPONDENT'S RESPONSE**

[11] In a written response to the complaint dated 17 October 2006 a Mr. Charles Milne, Deputy Internal Arbitrator, Old Mutual, states the following:

*'Having considered the documentation presented, it is our respectful view that there is insufficient evidence of any negligence or misrepresentation on the part of the Old Mutual Financial Adviser. It is noted further that neither Mr. Raman, nor his son, raised any concerns during the meeting regarding the risk profile or workings of the product, thereby indicating that the investment vehicle was understood and accepted.*

*One must not lose sight of the fact that Mr Raman affixed his signature to the relevant documents, thereby declaring that the product was fully explained to him, and understood by him.*

*With the evidence available to us, it is our respectful submission that by signing (amongst others) the Client Advice Record, Mr. Raman accepted the product after due consideration and was satisfied that a full disclosure had been made.'*

Annexed to this letter were the following documents:

- a. Letter from Lottering to complainant dated 18/09/2006, annexed hereto as Annexure A 1;
- b. Discretionary Investment Risk Assessment, Annexure A 2;

- c. Client Advice Record, Annexure A 3 – A4;
- d. Dynamic Floor Fund Brochure/Fund Fact Sheet, Annexure A 5;
- e. Unit Trust Buying Form, Annexure A 6- A7;
- f. Discretionary Investment Risk Assessment A8.

[12] Annexure A1 on the face of it supports Mr Milne's assessment. According to the document Lottering states that a risk profile was completed and the fund workings explained. Reference is also made to complainant's signature on various documents and the fact that neither complainant nor his son indicated any lack of understanding.

[13] Investigation by the Office led to further responses. Amongst these, an e-mail on 29 November 2007 from a Mr Gerhard de Kock respondent's Internal Arbitrator. This e-mail included certain further responses from a Mr Anton Brits respondent's Centurion Area Manager. The essences of these responses are as follows:

13.1 Complainant's savings account at Standard Bank was not able to meet the objective of providing an income of R5 000, 00 per month and at the same time offer the potential for capital growth;

13.2 To meet this objective complainant insisted on purchasing the same product as his son. Nevertheless a risk profiling exercise was conducted in consultation with complainant, and subsequently the

terms and related risks of the fund were explained to complainant in detail. He was aware that he was investing in a unit trust, given that he signed the form marked 'Unit Trust Buying Form' on three different pages;

13.3 Specific reference is made to the fact that complainant signed on pages where the commission percentage was indicated and the actual amount written down. The significance of this assertion will become clearer later in this determination;

13.4 Complainant was reluctant to divulge information regarding his income and assets, hence the reason for a needs analysis not being conducted. However, complainant did indicate that he had other sources of income;

13.5 Complainant required a medium term investment of between six and nine years and as such it would be premature to calculate any profit or loss at this stage.

Most of the documentation already sent to the Office by Mr Milne (*see para 10 supra*) was duplicated in this response. However an additional document headed 'Unit Trust Buying Form' was attached. It is annexed hereto marked B1 – 2.

**E. DETERMINATION**

**MATERIAL ISSUES**

[14] The following are the material issues for determination in this case:

14.1 Whether in rendering the financial service respondent complied with the provisions of the FAIS Act and General Code of Conduct for Authorised Financial Services Providers and Representatives (Board Notice 80 of 2003) (General Code). In particular the issues are whether:-

14.1.1 the risk profile was a true reflection of complainant's circumstances and in consequence, whether the investment then correctly aligned with the actual position;

14.1.2 the adviser's fee was properly disclosed to complainant.

14.2 Whether the investment was appropriate to complainant's circumstances;

14.3 Should it be confirmed that there were in fact any contraventions of the FAIS Act and the General Code; whether such contraventions led to complainant suffering financial prejudice or damage; and if so the quantum thereof.

**F. ANALYSIS OF THE RELEVANT DOCUMENTATION**

[15] Respondent in essence relies on the annexed documentation to support its claim of proper disclosure, appropriateness of advice and due consideration of all the facts leading up to the recommendation of the financial product eventually sold. Quite simply respondent's case to a large degree turns on whether its version aligns with the evidence as set out in the documentation. Analysis thereof has however raised certain inconsistencies and these will become evident shortly. In reviewing these documents I have also made note of material clauses or sections which must be borne in mind given their relevance further on in this determination.

**[16] The Fund Structure Document- Old Mutual Dynamic Floor Fund - Annexure A5**

16.1 Annexure A5 describes the fund structure of the investment. The fund is described as **moderate risk** (emphasis added) and according to the marketing brochure 'strives for long term capital growth as well as some level of capital protection. The fund invests across shares, bonds and cash moving from shares into fixed interest investments when the fund value drops below a predetermined 'floor'.

16.2 Whilst the aim of the fund is to avoid capital losses greater than 10% over any 12 month period there is no explicit guarantee in this regard.



16.3 Whether the investment carried a guarantee or not links directly to complainant's understanding of this investment.

**[17] The Risk Assessment Document - Annexure A2**

An examination of the Risk Assessment document reveals the following:

17.1 The document reflects complainant as having a **moderate risk profile** (own emphasis). It is signed by Lottering and complainant and dated 4 April 2006;

17.2 The answer to a question as to the time frame within which complainant intends to start withdrawing the money is given as '6 – 9' years. In response to a query from this Office as to why the time frame was given as '6 - 9' years considering that withdrawals would start almost immediately, respondent contends that this relates to a capital withdrawal and not the R5 000, 00 monthly withdrawals;

17.3 Considering complainant's age respondent's answer in itself immediately raises questions and as such I deal with this in section F (*see paragraph 26 below*);

17.4 The primary investment objective is also given as 'Reasonable capital growth beating inflation'. The investment is positioned as representing less than half of complainant's wealth;

17.5 The replies as set out earlier (see *paragraphs 15.2 and 15.4 supra*) were utilised to determine complainant's risk profile and in consequence played a role in the selection of the product. Their relevance will become clearer in my later analysis as to whether this risk profile accorded with complainant's actual circumstances;

17.6 Within the section marked comments I find the following:

*'Mr. Herman Raman do (sic) not want to take a high risk but also wants to get reasonable growth and draw an income of R5000 p/m. Therefore he decided on Dynamic Floor Fund that will give 90% protection on market lows. Dynamic Floor Fund is a Moderate Risk Investment.'*

**[18] The Risk Assessment Document - Annexure A8**

18.1 This is an identical document to Annexure A2 in that complainant's signature is in exactly the same position, and identical in every respect to his signature on A2. At the very top of A8 is a facsimile record reflecting it as having been sent on 11 April 2006. There are however fundamental differences between these documents as set out below:

18.1.1 Annexure A8 is not dated nor does it contain Lottering's signature;

18.1.2 In contrast annexure A2 now has the date and Lottering's signature;

- 18.1.3 It is obvious that the date and Lottering's signature was inserted at some later point.
- 18.2 Whilst both documents are part of the response dated 17 October 2006, A2 was originally attached to a letter from Lottering to complainant dated 18 September 2006 whilst A8 appears to have been part of the Unit Trust Buying Form despatched by facsimile on 11 April 2006 to respondent's head office.
- 18.3 It is evident from the above analysis that the Risk Assessment Document A2 was altered after the fact to include Lottering's signature and add the date of 4 April 2006. The addition of such signature and more particularly the date 4 April 2006 is highly irregular and, as will be seen, evidences a pattern of altering documentation material to this case.
- 18.4 It is evident that this document could not have been signed by Lottering on this date.

#### **[19] The Client Advice Record – Annexure A3 – 4**

- 19.1 Annexure A3 is the Client Advice Record. In contrast to Annexure A2, (*see paragraph 15.1*) this now reflects complainant's risk profile as **conservative** as opposed to **moderate** (emphases added). Respondent's response in this regard is that this was a simple error on Lottering's part. I am not persuaded that is in fact the case. I shall deal

with this apparent contradiction more fully later in my analysis of complainant's risk profile (*see paragraph 33*).

19.2 This document refers to complainant disinvesting from his savings account at Standard Bank to invest in the Dynamic Floor Fund. It confirms that the investment offers 90% protection. It further states that on account of complainant's advanced age he could withdraw more than R5 000, 00 per month.

19.3 No doubt in most respects the comments on complainant's ability to withdraw more than R5 000, 00 per month is consistent with complainant's version. However it must be mentioned that there is a vast difference in security between a unitised investment subject to potentially extreme market fluctuation and a bank account which allows a far more precise calculation of the draw down. This important fact is not mentioned in the Client Advice Record – Annexure A3.

19.4 Complainant's understanding of the risks in general and specifically the term 'protection' is particularly relevant in so far as it relates to his understanding and appreciation of the possible downside of this investment.

19.5 Annexure A4 in a tick box format reflects that the adviser was not able to conduct an analysis as the complainant had not provided all the necessary information.

19.6 What is striking though, is that this document is reflected as having been signed by complainant on the 7 April 2006, by Lottering on 10 April 2006 and by a manager by the name of 'PJ Venter' on 11 April 2006. This is some time after the actual investment was made and as will become evident in the following paragraphs starts to raise serious questions as to whether this documentation is an accurate representation of events or merely an attempt to align the documentation to an investment that had already occurred.

**[20] Unit Trust Buying Form A6 –A7**

20.1 This document dated 4 April 2006 confirms that Lottering is appointed the 'Preferred Servicing Intermediary' with access to all information on complainant's existing financial services products.

20.2 In contrast to what is said here, annexure A4 being part of the Client Advice Record states that 'an analysis could not be conducted because complainant did not provide all the information' (own underlining).

20.3 This apparent contradiction immediately raises questions and as such I deal with it more fully below (*see paragraphs 32 – 38 below*).

20.4 Lottering's commission is reflected on the document as 2.85% of the investment. This percentage excludes VAT. The actual sum as required by the General Code is however not reflected on this document.

20.5 This document was part of a facsimile transmission that has the date 11 April 2006 and Old Mutual reflected at the top of the page.

**[21] Unit Trust Buying Form B1 – 2**

21.1 Annexure B1 – 2 is exactly the same document as annexure A6 – 7, except in two material respects.

These are:

21.1.1 The addition of the commission amount of 'R15960' at the bottom of annexure B1;

21.1.2 The same amount being added to next to the commission percentage on annexure B2.

21.2 Annexure A6 – A 7 was attached to respondent's version dated 17 October 2006. Annexure B1 – B2 accompanied the response from Mr Brits in March 2008 (*see paragraph 12 supra*).

21.3 Brits refers to the commission in his reply and pertinently states 'the client signed page 2 where the commission was indicated as well as the amount written down.'

21.4 The conclusion is therefore inescapable that the commission amount was only reflected on this document some time after the actual

transaction.

[22] It is relevant to mention that respondent avers that all the answers contained in the documentation provided to the Office 'were supplied by the client in conjunction with his son who accompanied him on all appointments.' It is therefore necessary to consider the impact, if any that this had on complainant's understanding of events and the requirements of the FAIS Act. I deal with this below. (*See paragraphs 39 - 40*).

[23] Having analysed all the relevant documentation, I now proceed to consider each of the issues *seriatim*.

#### **G. ANALYSIS OF THE MATERIAL ISSUES FOR DETERMINATION**

**a. Whether or not, in respect of this transaction there was compliance with the provisions of the FAIS Act and General Code. In particular whether:**

i. The risk profile analysis carried out by respondent correctly reflected complainant's circumstances, and if so whether the investment correctly aligned with this assessment. It must then be considered whether the nature and risk structure of the investment was properly explained and understood by complainant.

[24] Prima facie it would appear that all material requirements of the FAIS Act had been complied with. However, a more in depth enquiry paints a somewhat different picture.

[25] Section 8 (1) (a) of the General Code requires that a provider must:

‘take reasonable steps to seek from the client appropriate and available information regarding the client’s financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;’

[26] Sub-section (c) of the same provision requires that the provider must:

‘identify the financial product or products that will be appropriate to the client’s risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement;’

[27] On a consideration of the available facts and after an analysis of the documentation provided, I am not persuaded that the risk profile adequately reflects complainant’s situation.

[28] The term within which complainant intends to start withdrawing money is given as 6 – 9 years. Now whilst one wishes the complainant a long life, given that he was 90 at the time at the time of making the investment the 6 – 9 year time frame is in my view a bit too optimistic.

[29] Respondent claimed that the time frame reflected the stage at which complainant might withdraw the capital amount, meaning the lump sum. However the R5 000, 00 monthly payments are in fact obtained by drawing down on the capital amount, a fact not evident from the documentation. Clearly there was no rational explanation for putting complainant in this



category.

[30] I now deal with the section of the risk profile dealing with the percentage which this investment comprised as a proportion of complainant's total investments.

[31] In response to a question complainant is said to have answered that this investment was less than half his wealth. According to respondent, complainant made mention of other assets and income, but was reluctant to divulge all his investments. It now appears that this is not the case and in fact this investment comprised the majority of complainant's funds.

[32] The question then arises as to whether respondent took 'reasonable steps to seek from the client appropriate and available information regarding the client's financial situation' as required by section 8 (1) (a) of the General Code.

[33] I am therefore unable to reconcile the statement that complainant was reluctant to divulge all his investments as reflected on annexure A4 which states '*I have not provided all the information requested by the financial adviser to do an analysis*' with that on the Unit Trust Buying form where Lottering is given access to all of complainant's existing financial services products. It is strange to say the least that complainant would on the one hand refuse to divulge all his investments and on the other give Lottering authority to access all his policies.

[34] There is no evidence that respondent made use of the authorization on the unit trust buying form to conduct even the most basic of enquiries on the basis of which he could conduct an analysis. Had any steps been taken to ascertain complainant's financial position or, at the very least just his financial services products, it would have indicated that this investment comprised a large portion of complainant's funds.

[35] The net effect of this would undoubtedly be to reflect complainant as a conservative investor, which is exactly where he is placed in the Client Advice Record - Annexure A3. Respondent argues that this was merely a mistake on Lottering's part, given that the risk profiling supposedly indicated a moderate risk. I do not accept that this can simply be explained away as a mistake. In reality, taking all the circumstances into account, I have no doubt that Lottering perceived complainant to be a conservative investor but nevertheless recommended an investment with moderate risk.

[36] What I have stated in the preceding paragraphs must be viewed in conjunction with my analysis of the documentation as set out in section E. This has already revealed that the client advice record was signed by complainant three days after signing the Unit Trust Buying Form.

[37] These alterations compel me to conclude that the record of advice and risk profile cannot be accepted as an honest reflection of events that took place during the rendering of the financial service. Assuming that there had been compliance with the FAIS Act and General Code as contended for by

respondent, the following questions arise:

37.1 Firstly why the need to alter these documents;

37.2 Secondly why does the advice record appear to have been completed three days after the unit trust buying form was signed.

[38] Given that respondent in fact saw complainant as a conservative investor and yet completed the documentation post sale in a manner consistent with a profile of a moderate investor, the only rationale conclusion is that the product was first sold and the compliance documentation completed thereafter in a manner so as to align it with the product. This was done, in my view to make it appear that all formalities had been complied with.

[39] Respondent appears to assume that because the product was good enough for complainant's son that it was good enough for the complainant. This cannot in any way absolve respondent from ensuring that the complainant himself as the client properly understood all aspects of the investment.

[40] Whilst complainant was accompanied by his son it does not mean that there should not have been an adequate explanation of the product, a proper needs analysis and a recommendation based on the outcome of that analysis. It comes as no surprise that complainant is reflected as having the same risk profile as his son and this despite the large age difference between the two.

[41] According to complainant the only product offered was the Dynamic Floor Fund. All too often financial services providers utilise section 8 (4) (a) of the General Code to escape the requirement to carry out a proper needs analysis in order to 'identify the financial product or products that will be appropriate to the client's risk profile....' This provision makes allowances for circumstances in which clients are not prepared to provide all the information to a financial adviser. Regrettably, as in the present instance this is often used as an 'escape route' to avoid a proper needs analysis.

[42] Complainant's lack of understanding of the actual risks involved in the investment is evident from the client advice record - Annexure A3 which states 'Dynamic Floor Fund wat 90% beskerming bied'. Translated, this means Dynamic Floor Fund which offers 90% **protection** (own emphasis). In my view, complainant understood this to mean that 90% of his investment was guaranteed. As discussed in paragraph 14 this is not the case and whilst the fund manager aims to avoid capital losses greater than 10% over any 12 month period no explicit guarantee is offered.

[43] Section 3 (1) (a) (i), and (ii), of the General Code specifically requires that representations made and information provided to a client by the provider:

- (i) must be factually correct;
- (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;

[44] There is no evidence from the documentation that any attempt was made to caution complainant on the potential downside to this investment; specifically that his entire investment was exposed to market movements. Whilst the advice record correctly notes that, given his age, complainant could draw a higher income than the R5 000, 00 per month; no mention is made of the potential impact that such withdrawals would have on capital in the event that the investment did not perform as expected.

[45] This is exactly the reason that the General Code requires in Section 8 (d) that an adviser complete a replacement policy advice record. It is important that a client understands the differences between the original investment and the one under consideration. In this instance the difference between a simple bank account which allowed for the interest to be withdrawn whilst preserving capital and a unit trust with an underlying equity component which exposed the investment to a degree of risk, is a material difference that should have been fully disclosed and properly recorded.

[46] No doubt complainant failed to appreciate the distinction between the terminated product and the replacement product given that respondent did not complete a replacement policy advice record. In addition what documentation was completed was done after the fact or in a manner so as to make it appear compliant.

ii. Was the fee for advice properly disclosed to complainant

[47] Proper disclosure of the advice fee is intrinsically linked to an understanding of the nature and structure of the investment. Section 3 (1) (a) (vii) of the Code requires that:

‘all amounts, sums, values, charges, fees, remuneration or monetary obligations.... be reflected in specific monetary terms’. In instances where the amount is not ‘reasonably predeterminable, its basis of calculation must be adequately described.’

[48] Turning to my analysis of the two versions of the same Unit Trust Buying Form as set out in paragraph 19, clearly annexures A6 – A7 fall short of the FAIS Act as the fees are not ‘reflected in specific monetary terms’. The actual amount in this instance was easily determinable and as such required to be clearly reflected. In B1 – B2 it is evident that the figure of R15 960, 00 was added at a later stage and respondent relies on this altered document in support of its claim that the advice fee was disclosed. This cannot avail the respondent.

[49] The inescapable conclusion is that the documentation was amended to mislead one into believing that necessary disclosures in respect of fees had been made. Regrettably, and in his haste to add the figure of R15 960, 00 respondent failed to take into account the VAT portion of R2 234, 00. The true inclusive cost to complainant was actually R18 194, 00.

[50] This attempt to deceive on Lottering’s part is indicative of a lack of honesty and integrity. Section 16 of the FAIS Act, read with clause 2 of the General

Code requires that:

'financial service providers ...(a) act honestly...in the interests of clients and the integrity of the financial services industry.'

**b. Was the investment appropriate to complainants' circumstances?**

[51] Investment performance related complaints have increased with the economic downturn and care must be taken to differentiate between something that is in essence 'buyer's remorse' as opposed to non disclosure or inappropriate advice. The FAIS Act requires not only that the advice be appropriate but that disclosures 'must be provided in plain language, avoid uncertainty or confusion and not be misleading.' The client must understand what he is purchasing and the risks attendant thereon. In the present case there is no doubt that complainant was not placed in a position to make an informed decision and had the risk profile been correctly completed it would have reflected complainant as a conservative investor.

[52] In all the circumstances this investment was not meant for complainant and it would have been more appropriate to have left him where he was.

[53] There is certainly nothing wrong with efforts to obtain better performance and subject to the requirements of the FAIS Act being met, this Office will not intervene in instances where returns are not as expected. This is certainly not the case in the present instance.

**c. In the event of any contraventions of the Act, whether such contraventions led to a loss, and if so the quantum thereof**

[54] Having already determined that the investment was inappropriate to complainant and that in fact there have been various violations of the FAIS Act it remains to be determined if this in fact resulted in a loss.

[55] The starting point is of course to compare the position complainant would have been in had he remained in the savings account at Standard Bank as at the date he withdrew from the recommended investment on 7 August 2008.

[56] In order to do so Standard Bank was requested to provide a spreadsheet setting out the prevailing interest rates applicable to the account from which complainant withdrew the money to make the investment. As a comparison and given the relationship with respondent a similar request was submitted to Nedbank to provide the figures on a money market account.

[57] Calculations were then performed factoring in the initial investment of R560 000, 00 and monthly withdrawals of R5 000, 00 per month. Unfortunately as the various account charges were not provided the minimal negative impact which these would have on the final figures was not factored in.

[58] Section 28 (1) (b) (i) of the FAIS Act however states; 'the complainant may be awarded an amount as fair compensation (own underlining) for any financial



prejudice or damage suffered.’ When viewed in conjunction with Section 20 (3) which requires that I dispose of complaints ‘by reference to what is equitable in all the circumstances’ it is clear that the term ‘fair compensation’ allows me a reasonable degree of latitude in calculating the damage or financial prejudice suffered.

[59] Turning first to the Dynamic Floor Fund I note that an amount of R450 833, 41 remained at withdrawal on 7 August 2008, at which point the Standard Bank account would have held a balance of R491 192, 46 and the Nedbank fund R511 948, 59.

#### **H. CONCLUSION**

[60] Numerous attempts to settle this matter with respondent have been unsuccessful and hence the matter was finally referred to me for determination.

[61] It is apparent as set out in this determination that respondent’s conduct violated the General Code and as a result complainant suffered a loss.

[62] The complaint is therefore upheld and the monetary value of fair compensation for any financial prejudice or damage suffered that I am prepared to award in terms of Section 28 (1) (b) (i) is the amount he would have earned had he remained at Standard Bank. This amounts to R40 359, 05.

## **ORDER**

The following order is made: -

1. The respondent is hereby ordered to compensate the complainant in the sum of R40 359, 05;
2. Interest on the aforesaid amount shall accrue at the rate of 15.5% to be calculated FOURTEEN (14) days from the date of this determination to date of final payment;
3. The respondent is ordered to pay the case fee of R1 000, 00 plus VAT to this Office.

**DATED AT PRETORIA ON THIS THE 21 DAY OF SEPTEMBER 2009**



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**CHARLES PILLAI**

**OMBUD FOR FINANCIAL SERVICES PROVIDER**