

**IN THE OFFICE OF THE OM BUD FOR FINANCIAL SERVICES PROVIDERS**

**PRETORIA**

**CASE NO: FAIS 05238/12-13/ WC 1**

In the matter between:

**HENDRINA AMEDJE RAUTENBACH**

**Complainant**

and

**IMPACT FINANCIAL CONSULTANTS CC**

**1<sup>st</sup> Respondent**

**MICHAL JOHANNES CALITZ**

**2<sup>nd</sup> Respondent**

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**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY  
AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('FAIS Act')**

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**A. THE PARTIES**

[1] The Complainant is Mrs Hendrina Amedje Rautenbach, a widow whose full contact details are on file with the Office.

[2] The 1<sup>st</sup> respondent is Impact Financial Consultants CC, a close corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5<sup>th</sup> Floor, The Cliffs, Niagara Road, Tyger Falls Belville.

[3] The 2<sup>nd</sup> respondent is Michal Johannes Calitz, key individual and member of 1<sup>st</sup> respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all

material times rendered financial advice to complainant on behalf of 1<sup>st</sup> respondent. In this determination respondent or respondents are used interchangeably.

## **B. THE COMPLAINT**

- [4] The complaint pertains to complainant's various investments in RVAF on the advice of respondents. Initially made in the joint names of complainant and her late husband, his subsequent ill health led to a transfer of the investments entirely into complainant's name.
- [5] The investment amounts as confirmed in letters from Eduard Brand for and on behalf of the 'RVAF EN COMMANDITE PARTNERSHIP' are as follows:
- 5.1. Letter dated 16<sup>th</sup> October 2006, investment of R600 000,00;
  - 5.2. Letter dated 8<sup>th</sup> March 2007, investment of R70 000,00;
  - 5.3. Letter dated 30<sup>th</sup> March 2007, investment of R20 000,00;
  - 5.4. Letter dated 28<sup>th</sup> September 2010, investment of R200 000, 00.
- [6] In addition to the above, GBP £25 000, 00 (R284 700.00<sup>1</sup>) was invested as complainant understood it, in the United Kingdom or international component of RVAF. The funds were transferred as follows, GBP £10 000, 00 on the 16<sup>th</sup> April 2010, a further GBP £10 000, 00 on the 20<sup>th</sup> April 2010 and the balance of GBP £5 000, 00 on the 21<sup>st</sup> April 2010.
- [7] As the purpose of the investment was to provide capital growth and income in their retirement, the complainant and her late husband periodically made

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<sup>1</sup> Calculated at the date of transfer as per the exchange rate reflected on the website of the South African Reserve Bank

withdrawals, which in total amounted to R473 350.00 during the period 1Jan 2008 to 31<sup>st</sup> May 2012.

- [8] They (complainant and her late husband) were introduced to Calitz by their son, who incidentally also knew Pretorius. Complainant alleges they had one meeting with Calitz prior to investing the first R600 000, 00.
- [9] Complainant did not specifically concern herself with the details but recalls being advised by Calitz that Pretorius, a clever investor with an excellent track record, had a team of highly qualified people who invested in a variety of shares in the stock market. Impressed with the team, complainant and her late husband ended up investing well over 50 % of their retirement savings into RVAF.
- [10] Complainant states; 'we trusted Calitz to invest our hard earned retirement capital in safe, gilt edged investments producing an income on which we could rely on in our retirement years. My late husband was always under the impression our money was in shares and/or unit trusts.'
- [11] Complainant denies ever having been advised either that they were investing in a hedge fund or that it was not registered with the FSB; on the contrary, she states that they would not even have understood the ramifications.
- [12] Complainant makes the point that, '*any properly qualified and respected financial adviser would present the client with alternative proposals to enable the client to make an informed decision;*' and that Calitz '*as a FSB registered financial broker should **NOT** in the first place have invested any of our capital with a non registered financial fund*'.

[13] Complainant takes issue with the fact that RVAF had no third-party verification of returns or audited financial statements.

[14] Comprising part of complainant's documentation was an e-mail from the respondents, dated 2<sup>nd</sup> October 2006. Aside from dealing with the applicable notice period on withdrawal, it states that the funds are going to be invested in the RVAF with Abante Capital (Herman Pretorius), with no upfront costs but a 20% share of the profits.

[15] It is pointed out that nowhere in the forms and this includes the bank account into which the funds are deposited, is Abante mentioned. As to the disclosure of commission, it is impossible to ascertain the percentage or quantum accruing to respondents and as such there is a failure to meet the disclosure requirement of section 3 (1) (vii) of the General Code.

[16] Complainant herself makes the point that she had established that '*Abante Capital's business was "specializing" in statistical arbitrage trading strategies – and not lending money to RVAF.*'

[17] According to complainant, neither she nor her late husband, (a medical doctor) were experienced investors. As complainant puts it, her husband was always more concerned about his patients than his money.

### **C. RESPONDENTS' REPLY**

[18] Calitz contends that at no stage was complainant brought under the impression that the investment would be in shares on the JSE and /or unit trusts; in fact, he says, it was explained that this was a hedge fund and that it is not regulated by the FSB.

[19] The option to invest in hedge funds was explained to complainant's husband and was not in contradiction with his risk profile. It must be pointed out that nothing in the documentation which respondents are required to retain, persuades this Office that complainant was even aware or could have understood that they (complainant and her late husband) were investing in a hedge fund.

[20] Subsequent to a second article in Moneyweb on the 5<sup>th</sup> July 2012, Calitz decided to withdraw all his clients' funds from RVAF. Calitz contends that he approached complainant with this advice and she in turn instructed him not to withdraw. Not only is this denied by complainant, it is largely irrelevant given that the horse had by that stage well and truly bolted.

[21] As to the offshore investment, Calitz explained that it was the same as the local fund but in a foreign currency.

[22] Calitz goes on to state that he encloses as part of his investigations into the investment vehicle a copy of the FSB License brochure on '*Abante Capital (managing agent)*', presentations done by Abante Capital and the Risk Disclosure Statement from RVAF.

#### **D. DETERMINATION**

[23] Reference is made to the determination of *Inch vs Calitz* <sup>2</sup> where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RVAF. Principally the issues pertain to the respondent's failure to understand the entity,

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

(RVAF) and the risks to which he was exposing his clients when he advised them to invest therein.

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

[25] 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 a single mention of Abante in the contractual documentation, this further reinforces the fact that Calitz himself failed to understand the contracting entity.

[26] 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.

[27] Complainant as a client of a registered financial adviser, relied on Calitz' advice when he made this 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.

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

**E. QUANTUM**


[29] As detailed in paragraphs 5 and 6 herein, various investments totalling R 1 174 700.00 were made; out of which complainant withdrew R473 350, 00 thereby leaving an amount of R701 350.00

**F. ORDER**

[30] 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 R701 350.00.
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 6<sup>th</sup> DAY OF AUGUST 2014**



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**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**