

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

CASE NUMBER: FSOS 00129/17-18/ WC 2

In the matter between:

MLAMULI HAWARD SIDINANA

Complainant

and

EYODIDI FUNERAL UNDERTAKERS

First Respondent

CHRIS STALI

Second 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] The complainant is Mr Mlamuli Haward Sidinana, an adult male pensioner whose particulars are on file with the Office.
- [2] The first respondent is Eyodidi Funeral Undertakers, with its address noted as 17 Hostel Street, off Spine Road, Khayelitsha, 7784. The first respondent is not registered in terms of South African Law, nor is it registered as a financial services provider in terms of the FAIS Act.
- [3] The second respondent is Mr Chris Stali, an adult male and managing director of the first respondent.
- [4] I refer to the first and second respondent as “respondent”.

B. FACTUAL BACKGROUND

- [5] The determination is made in terms of the FSOS Act¹ read with section 28 (1) of the FAIS Act². The complainant in this matter lodged a complaint with this Office following the respondent's failure to honour a valid claim submitted in respect of a funeral policy held by him.
- [6] The complainant and the respondent entered into an agreement in terms of which the respondent had to provide certain funeral benefits to the policy holder, against a defined monthly premium. The agreement commenced on 13 May 2012. The complainant duly performed in terms of the contractual agreement by paying his monthly premiums. Proof of such payments were provided to this Office.
- [7] This Office could find no evidence that the respondent had ever been licensed in terms of the FAIS Act, or that a valid underwriting agreement existed to ensure the solvency of the fund. Section 7 (1) of the Long Term Insurance Act provides that registration is required in order to carry on long term insurance business. There is no evidence on file that the respondent complied with this requirement.
- [8] Despite the fact that the provider is not licensed, the Rules on Proceedings of the Office of the Ombud for Financial Services Providers nonetheless provides³ that the Ombud may

¹ Financial Services Ombud Schemes Act 37 of 2004. A complaint is defined as "a complaint by a client relating to any agreement with, or a financial service or product of, a financial institution, and in which it is alleged that the client has suffered or is likely to suffer financial prejudice or damage as a result of the financial institution -
(a) having contravened or failed to comply with a provision of any agreement or the law or of a code of conduct subscribed to by the financial institution;
(b) having wilfully or negligently supplied, or failed to supply, a financial service or a product to the client;
(c) having treated the client unreasonably or inequitably; or
(d) having maladministered the implementation of an agreement with, or the supply of a financial service or a product to, the client.."

² Financial Advisory and Intermediary Services Act 37 of 2002

³ Section 4 (d)

entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider⁴.

C. THE COMPLAINT

[9] The complainant's granddaughter, Ms Mihle Haward Sidinana was a beneficiary under his policy. She sadly passed away on 6 June 2017. The family utilised the service of Almoe Jaahiedoon Burial Society for the funeral.

[10] The complainant duly submitted a claim to the respondent for the cash benefit of R3000 to which he was entitled in terms of their agreement. The documentation included the following:

10.1 Notice of death (DHA-1663 A official form). This form contains, amongst others, the particulars of the medical practitioner and the funeral undertaker.

10.2 Burial Order. This again confirms the identity of the funeral undertaker as the recipient of the burial order and the authority that can remove the corpse for burial.

10.3 Birth and death certificate of the deceased, as well as her identity document.

[11] Despite submitting the aforesaid documentation, the respondent has refused to settle the amount claimed. The respondent stated that the documents provided are incomplete, and that he requires a confirmation letter from the funeral parlour that attended to the funeral that it was in possession of the deceased's body.

⁴ Reference is made to section 14 (3) of the FSOS Act which provides that the statutory ombud must deal with complaints contemplated in subsection (2) in the manner and in accordance with the procedures, applied with the necessary consequential changes, provided for in Part I of Chapter VI of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002).
As such, the provisions of the FAIS Act and the General Code of Conduct will apply.

D. RELIEF SOUGHT

[12] The complainant is claiming the cash benefit he was entitled to in terms of the agreement. Although there was initially a dispute about the amount claimable, the documentation on file confirms that the benefit the complainant is entitled to, is R3000.

E. RESPONDENT'S RESPONSE

[13] On 6 July 2017, a notice in terms of Regulation 7 (1) (a) of the Financial Services Ombud Schemes Regulations was sent to the respondent, requesting him to resolve the complaint with the complainant, alternatively, furnish this Office with a detailed response. The respondent failed to reply.

[14] A further notice in terms of regulation 7 (1) (a) was sent on 8 June 2018, granting the respondent a further opportunity to resolve the matter. The only response received from the respondent, was alluded to in paragraph 11 above. The respondent has however not provided any substantiation for such a request, since the documentation provided to him already included sufficient confirmation of what he required.

[15] Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27 (4) of the FAIS Act. A notice dated 2 July 2018 was sent to the respondent, again inviting him to respond to the matter. To date, no response has been received.

[16] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of the complainant's version.

F. FINDING

[17] To date, the amount claimed by the complainant remains outstanding. The respondent has provided no substantive reasons for refusing to pay out the cash benefit to the complainant.

[18] The respondent has also failed to indicate that a letter confirming that the funeral undertaker was in possession of the body, would make a material difference to the outcome of the matter. This especially in light of the fact that official documentation required by the Department of Home Affairs (burial order and notice of death) had been submitted, which confirms who the body was released to.

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

19.1 The respondent collected premiums from the complainant, but failed to honour the claim when it arose, even though the complainant's premiums were paid to date and the complainant with all reasonable requests in terms of the documentation it was required to submit.

19.2 The respondent was at risk and is liable to pay the complainant in terms of the policy.

19.3 The respondent has not shown willingness to resolve the matter, despite various attempts to solicit a reply. The respondent appears intent on frustrating the resolution of the complaint by this Office.

[20] The respondents were in contravention of Section 2 of the FAIS Act which provides as follows:

"A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry."

[21] The respondent's continued failure to properly respond to the complaint, or the complainant's pleas for payment in terms of the policy which he diligently paid for, leads to only one conclusion: the respondent never had the intention to respond to the claim or to conduct any legitimate business of an FSP.

G. ORDER

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

1. The complaint is upheld.
2. The respondents are hereby ordered to pay to the complainant, jointly and severally, the one paying the other to be absolved, the amount of R3 000.
3. Interest at a rate of 10% per annum, from a date seven days from date of determination to date of final payment.

DATED AT PRETORIA ON THIS THE 4th DAY OF DECEMBER 2018



NARESH S TULSIE

OMBUD FOR FINANCIAL SERVICES PROVIDERS