

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FOC 351/06-07/WC (3)

In the matter between:

ISMAIL SLAMANG

Complainant

and

HARNACK & ASSOCIATES (PTY) LTD

Respondent

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

A. PARTIES

[1] The Complainant is Mr Ismail Slamang of 10, Denver Road, Rondebosch East, Western Cape.

[2] The Respondent is Harnack & Associates (Pty) Ltd, an authorised financial services provider, of 2nd Floor, Groote Kerk Building, Church Square, Cape Town. It conducts business as broker for, *inter alia*, short-term insurance.

B. BACKGROUND

[3] On 4 March 2005 Complainant purchased a motorcycle for R85 000.00 from motor cycle dealers, Suzuki South in Wynberg, Cape Town. The transaction was financed by Stannic. A condition of the finance agreement was that the motorcycle be insured before the Complainant took delivery thereof from the motorcycle dealer. Complainant spoke to Ms Leigh Fredericks ('Fredericks') of the Respondent. She provided a quote from New National Insurance Company, which the Complainant found acceptable. A fax was sent by Respondent to both Stannic and the dealer confirming that the motorcycle was insured. It reads, *inter alia*:

'INSURANCE CONFIRMATION ADVICE

THE INSURED: MR. I SLAMANG

...

This serves to confirm we have today as instructed by the above, insured the following item/s'

The motorbike details and amount for which it is insured then follow and thereafter:

'POLICY NO : REFERENCE NO: 04032005/SLA'

The fax is signed by Fredericks.

[4] Complainant then took delivery of the motorcycle.

[5] On 4 July 2005 the motorcycle fell off a trailer while it was being transported by the Complainant from Mossel Bay to Cape Town. The motorcycle was damaged beyond economic repair and as such it was written off.

[6] Complainant submitted a claim, which was forwarded by Respondent to Auto & General Insurance Company (A&G). A&G repudiated the claim because, it said, the motorcycle had not been insured by it. The Complainant eventually submitted a complaint to this office.

The relief sought by the Complainant

[7] The Complainant seeks to be compensated by Respondent for the loss against which he was indemnified.

Issues in dispute

[8] The crisp issues to be determined are whether any entity or individual ought to be held liable for Complainant's loss and if so, who. In view of the decision I have arrived at it is not necessary to determine the quantum of Complainant's damages.

Investigation by this Office

[9] This Office duly investigated the complaint. The Complainant furnished lengthy grievance details. The Respondent furnished me with a copy of its

record of advice and additional information requested by this Office. Auto & General also provided information including taped conversations between the Complainant and two members of its staff. I will revert to the tape recordings presently.

[10] Complainant says when he was told insurance cover was required before the motorcycle could be delivered to him he approached A&G (with whom he had an existing short term insurance policy) for a quote on the motorcycle. A quote was provided but he found it too expensive. The taped conversation provides a different picture. It was the Respondent who approached A&G, which in turn contacted Complainant.

[11] It is common cause that on 4 March 2005 Complainant approached Fredericks of the Respondent, who provided a quote from New National Insurance Company (New National). Fredericks had also informed Complainant that if he added motor vehicle and household contents cover on the New National policy, the premium for the motor cycle would be cheaper.

[12] Complainant found the quote of New National acceptable and Fredericks arranged immediate interim cover for the motorcycle. He also told Fredericks to inform A&G to cancel his policy with them. On the same day Fredericks sent a fax to the motorcycle dealer as well as a copy to the Complainant confirming that cover was in place with New National. Respondent says this arrangement was subject to the Complainant thereafter submitting a completed and signed application form. Complainant failed to return the

completed and signed form. Fredericks, aware of the implications of having issued confirmation of insurance and now faced with the failure of Complainant to return a completed application form, decided not to cancel Complainant's existing A&G policy as she was told to do by him. Instead, she handed over the file to Respondent's compliance officer, a Mr Stuart Collins (Collins). Collins says he then spoke to Complainant who confirmed that he had not returned the completed and signed application forms. Complainant however denies receiving any forms. He says he was also not aware that he was supposed to complete any. Collins further says he advised Complainant that as he wished to take immediate delivery he (Collins) would contact A&G and insure the motorcycle under the Complainant's existing policy instead of cancelling it. Collins says he also informed Complainant that he would be able to negotiate a reasonable premium on his behalf based on his statement that he never had any previous claims history. The Complainant was very happy with the arrangement and Collins immediately contacted A&G and gave instructions to insure the motorcycle.

[13] Collins is of the view that at that stage Respondent had fully discharged its obligation to the Complainant. He was surprised to learn, when the claim arose some months later, that Complainant had declined the cover at A&G. Complainant confirmed to A&G that Collins had spoken to him. This is clear from the tape recording referred to below.

[14] After Collins approached A&G (a Broker's Appointment Note having been obtained from Complainant) one Heidi from A&G telephoned the Complainant

to confirm the instructions from the Respondent. Complainant confirmed the instructions. Heidi then confirmed the details of the motorcycle and quoted a premium. That conversation and a later one relating to the accident were recorded by A&G and this Office has been provided with a copy thereof as well as certain documents.

[15] It is clear from the recording that the Complainant did not accept the quote provided by A&G and told Heidi he had obtained a cheaper quote from Mutual & Federal. Heidi informed him that the A&G quote was in any event valid for 30 days and if he should change his mind he could contact her on her direct phone number, which she gives him. Respondent says neither the Complainant nor A&G informed it that Complainant had declined the cover from A&G.

[16] During a later conversation between Complainant and one Odette of A&G when she queried the claim relating to the damaged motorcycle, she advises Complainant that A&G was not at risk. Complainant responds that as far as he was concerned he was insured with New National.

[17] The Complainant says he had checked his bank account on 1 April 2005 and noticed that –

‘no debit order for the **new insurance policy** had gone through on the due date, but instead, only the **old** Auto & General premium was still being debited (my emphasis).’

He contacted Fredericks who, he says, informed him that she will sort the matter out and attend to the cancellation of the A&G policy. Respondent's version is –

'Ms Fredericks states that she could not have cancelled the "old" (Auto & General policy) unless a new application was received.'

[18] On 1 May 2005 Complainant again noticed that no premium had been deducted. He contacted Fredericks about it and also about the fact that he did not receive his policy document. Fredericks, he says, repeated that he need not worry as she will rectify the situation shortly and the policy would be posted to him. The Respondent says if the motorcycle had been added to the existing policy in accordance with its instructions, A&G would have sent the policy schedule and wording directly to Complainant.

C. DETERMINATION AND REASONS FOR IT

[19] The Complainant provides a lengthy complaint but does not mention that he had failed to complete and return the proposal form for the motor cycle to be insured with New National even though immediate cover was arranged to enable him to take delivery of the motorcycle. He in fact pertinently denies receiving the form whereas Respondent has provided this Office with proof of having faxed them to Complainant. He also refused the cover offered by A&G. Neither he nor A&G informed his broker about it. (Nothing is mentioned about the quote he obtained from Mutual & Federal either.) In spite of these facts he contacts Fredericks regarding the premium not having been deducted.

Fredericks' response that she will 'sort it out' is understandable, given that the Respondent was under the impression that the motorcycle was on risk with A&G.

[20] It is disingenuous of the Complainant to claim to have been under the impression he was insured with New National. The fax confirming cover was subject to the completion of a proposal form which was faxed to him. He failed to complete and return the form. The Respondent clearly acted in good faith when it provided confirmation of cover before receiving the completed form from Complainant. Complainant was expected to reciprocate. He failed to do so. It is clear from the tape recordings that Complainant authorised the Respondent to place the risk with A&G but changed his mind when he was quoted a premium which he found to be too high. He had also in the interim shopped around and obtained a quote from Mutual & Federal. When Heidi telephoned him to confirm his instructions to Respondent he refused the A&G cover and said he had obtained a lower quote from Mutual & Federal, the inference being that he would be insuring with Mutual & Federal.

[21] Complainant says he approached A&G whereas the tape recording shows that it was the Respondent who did so. A&G phoned the Complainant to confirm his instructions to the Respondent. Even if I were to accept his version that he approached A&G and only thereafter contacted the Respondent, by his own admission he found their quote too expensive and did not insure the cycle with them at that stage.

[22] Given all these facts I am of the view that the complaint cannot be upheld and falls to be dismissed.

[23] I would add a note of caution to the Respondent and other insurance brokers who find themselves in a situation of having to provide immediate confirmation of interim cover as happened in this case. It may be common practise in the insurance industry but in the current regulatory environment it certainly is not prudent, nor desirable to provide confirmation of cover without first having obtained at least a signed application or proposal form. Fortunately for the Respondent, this complaint is dismissed for the other reasons stated above.

Accordingly, I make the following order:

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

DATED AT PRETORIA THIS 13th DAY OF FEBRUARY 2008.



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS