

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

CASE NUMBER: FAIS 00796/10-11/GP 1

In the matter between:-

HENDRIK CHRISTIAAN THESSNER

Complainant

and

REGINALD WILLIAM LYNTON RABIE

Respondent

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

A. THE PARTIES

- [1] The complainant is Hendrik Christiaan Thessner, an adult male whose details are on record with the office.
- [2] The respondent is Reginald William Lynton Rabie, the managing director of iBear Global Investment Strategists (Pty) Ltd ("iBear"), registration number 2002/019651/07. Rabie's last known address was 9 Muscadel Street, Wellington, Western Cape.
- [3] iBear's address was reflected as Suite 6, Private Bag X22, Tygervalley, 7536. According to CIPC's records iBear's only director was Dennis Jacobus Bishop. iBear's final deregistration was effected on 17 April 2009. At all material times hereto, Rabie acted on behalf of iBear.

[4] Rabie was also a director of Merlin's Private Equity Fund Ltd, the investment entity into which complainant's funds were supposedly invested. I say supposedly, in that whilst investment statements for the Private Equity Fund reflect its registration number as 2002/031403/07, CIPC does not have a record of the entity. However, the registration number appears to be allocated to a deregistered entity called Wild Break 209. The only director on the record is Dennis Jacobus Bishop who is also a director of iBear. The status of the Private Equity Fund and iBear are dealt with comprehensively in a previous determination.¹

[5] According to the FSB's records, iBear was never authorised as an FSP. Rabie was allocated an FSP number (20870) but failed to submit the application forms. The number was subsequently cancelled.

B. COMPLAINT

[6] According to the complainant, in February 2007 whilst acting on the recommendation of Rabie he invested R20 000.00 in Merlin's Private Equity Fund.

[7] Upon attempting to withdraw the investment in February 2010 he encountered a litany of excuses along with unanswered e-mails, telephone calls and text messages.

¹ AB Bowen v DS Catsicadellis and RWL Rabie Case number 00195/10-11/WC 1 determination issued 15 February 2012.

[8] Unsurprisingly, no funds were ever forthcoming and accordingly the complainant approached this Office.

C. DETERMINATION AND REASONS

[9] Rabie was afforded several opportunities to state his case but failed to do so. Accordingly the matter stands to be decided on complainant's unchallenged evidence.

[10] The investment was made on the recommendation of Rabie whilst acting on behalf of iBear. iBear was not registered as a Financial Services Provider, (FSP) and the supposed investment entity, Merlin's Private Equity Fund does not even appear to be registered as a company much less a FSP.

[11] The FAIS Act in Section 7(1) requires a person to obtain a licence before acting as a financial services provider. However, notwithstanding this lack of approval, subsection (2) ensures that Rabie cannot escape the provisions of the FAIS Act. Transactions concluded without the requisite authorisation are nevertheless enforceable.

[12] Section 2 of the FAIS Act requires that '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. Given Rabie's track record from previous complaints that this Office dealt with it is fairly safe to say that Rabie was rather more intent on fleecing investors than caring about the interests of his clients.

[13] Section 3(1) (vii) requires disclosure of any fees, remuneration or monetary obligations, yet in this instance there was no disclosure of any fees. Despite being afforded ample opportunity to account for the investment Rabie has yet to explain what happened to the funds, leading one to conclude the entire sum ended up in Rabie's hands.

[14] It is simply superfluous to go on about the various contraventions of the FAIS Act; the simple fact is that Rabie never had any intention of complying with a single provision thereof, which conduct directly resulted in the complainant's loss.

[15] In fact given not only in this case but in this Office's previous interactions with Rabie there is clear prima facie evidence of criminal conduct; for one, the failure to acquire a license as required by section 7(1) of the FAIS Act is an offence in terms of section 36 of the FAIS Act punishable by a fine not exceeding R1 000 000 or to imprisonment not exceeding 10 years or to both such fine and such imprisonment. In addition, despite repeated invitations, Rabie has never once provided this Office with any evidence that the funds had actually been invested. Statements furnished to clients were prepared by closely intertwined entities over which, Rabie either had control or substantial influence.

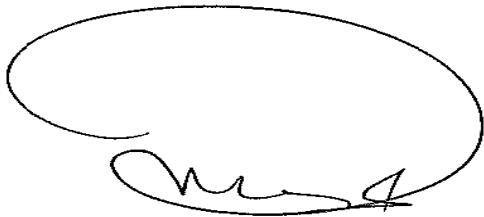
[16] Accordingly and in addition to the order which follows I deem it necessary to refer a copy of this determination to the South African Police Services.

D. ORDER

[17] The complaint is upheld;

1. The Respondent is hereby ordered to pay complainant the sum of R20 000;
2. Interest at the rate of 15.5% per annum from a date, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 14th DAY OF APRIL 2014

A handwritten signature in black ink, enclosed within a large, hand-drawn oval. The signature is cursive and appears to read 'Noluntu N Bam'.

**NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS**