

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

**Case Number: FOC 23/07-08 WC (1)**

**In the matter between:-**

**JAN HENDRIK VAN DER MERWE**

**Complainant**

**and**

**MAREE AND ROGERS BELEGGERS (PTY) LTD**

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

**LUKAS MARTHINUS MAREE**

**2<sup>nd</sup> 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. INTRODCUTION**

[1] This is a complaint about an investment made into the Blue Pointer Group of companies. All pertinent details about the Blue Pointer group of companies were comprehensively dealt with in the determination of BERNARD FREDERICK DUDLEY v LIFESURE FINANCIAL SERVICES CC, FAIS Reference No: 04114/08/09 WC 1, ("Dudley"). As such, it follows that this determination must be read with that of Dudley.

## **B. THE PARTIES**

- [2] The complainant is Jan Hendrik van der Merwe, a 73 year old retired male, residing at, Bellville, 7530.
- [3] First respondent is Maree and Rogers Beleggings (Edms) Bpk (Registration No. CM 98/17070/07) a company duly incorporated and registered in terms of the laws of South Africa, with its principal place of business situated at Unit 19, Marshall Chambers, 130 Marshall Street, Polokwane. In his response to the Office, 2<sup>nd</sup> respondent quotes the license number 17202 in the letterhead of 1<sup>st</sup> respondent. However, this license number belongs to 2<sup>nd</sup> respondent's son, Coenraad Frederick Maree. This Office could not find any trace of the 1<sup>st</sup> respondent's license at the time of rendering financial services.
- [4] Second respondent is Lukas Marthinus Maree, a male of adult age, a Director of the 1st respondent. At all times material hereto, complainant dealt with 2<sup>nd</sup> respondent. In this determination, for the purposes of convenience, and where appropriate, I refer to 1<sup>st</sup> and 2<sup>nd</sup> respondent as respondent.

## **C. COMPLAINT**

- [5] During March 2005, pursuant to advice provided by 2<sup>nd</sup> respondent, complainant purchased Blue Pointer Marketing (Pty) Ltd ('Blue Pointer') shares to the value of R60 000.

[6] According to the agreement between the complainant and Blue Pointer income which was characterised as a dividend was payable at the rate of R1 000 per month on the investment.

[7] Complainant received his dividends of R1 000 per month on a regular basis, but early in 2006, Blue Pointer defaulted on the dividend payments. He states that as a pensioner he was dependent on income from his investment of R60 000. All complainant's attempts to have his capital returned have proved unsuccessful.

**D. RELIEF SOUGHT**

[8] The complainant requires the return of his capital in the amount of R60 000 with interest thereon.

**E. RESPONDENT'S RESPONSE**

[9] In terms of the Rules on Proceedings of the Office, the complaint was referred to respondent to resolve. As the complaint could not be resolved, it was accepted for investigation. The pertinent aspects of the respondent's response are set out below:

[9.1] According to the respondent, the investment was made with Blue Pointer, he only acted as the broker.

[9.2] He states that during the first year of the investment, the complainant did not experience any problems as the parties adhered to the

agreement. The problems arose because of malpractices at the Blue Pointer's offices.

[9.3] According to the respondent at the time of advising complainant, three options were offered to him. These were:-

- i) The option to retain the money in the money market in order to receive monthly interest;
- ii) To purchase the Blue Pointer investment, which would generate a higher income, the investment had a term of one year;
- iii) To purchase an investment in PropDotCom 1, which would also generate income. The PropDotCom investment, however, had a longer term.

[9.4] The complainant chose the Blue Pointer investment as the income generated was higher than that of his current investment. In addition, it had a shorter investment term.

[9.5] One year after the investment was made, the complainant informed the respondent that he did not receive his income from Blue Pointer. According to the respondent, he received numerous complaints from investors, which were escalated to Louis Baartman's<sup>1</sup> Office. The respondent also reported Baartman to the Financial Services Board as well as the South African Police Service.

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<sup>1</sup> Louis Baartman is listed in CIPRO records as a director in many of the companies associated with Blue Pointer Group.

## **F. DETERMINATION AND REASONS**

[10] The issues to be decided are:

[10.1] Whether respondent acted in a manner which is not in compliance with the FAIS Act and General Code of Conduct ('the Code) and or negligently;

[10.2] If it is found that 2<sup>nd</sup> respondent's conduct violated the provisions of the FAIS Act and or that he acted negligently, whether his conduct caused the complainant to suffer damage or financial prejudice; and

[10.3] The amount of such damage or financial prejudice.

### **Risk associated with the investment**

[11] It is not in dispute that the respondent invested complainant's capital in order to supplement his retirement income. It is further complainant's version that he could not tolerate high risk.

[12] When asked by the Office as to what steps he took to ensure the risk inherent in the Blue Pointer investment was commensurate with the circumstances of the complainant, the respondent stated that:

- i) The product was introduced by Blue Pointer and complete information of the product was given to brokers during the course of three presentations.
- ii) Property portfolios were always stable portfolios with low risk profiles – and comparable to investments such as Nedcor Commercial Property, Blue Lane Property and the likes of Old Mutual Property etc.

- iii) The portfolio could only be judged on the available information at the time. At the time, he had no information whether the portfolio was managed properly.

[13] The respondent's reference to companies like Old Mutual and Nedcor suggests that the investment risks associated with them are comparable to that of Blue Pointer. However, unlike listed companies, Blue Pointer did not have to publish financial statements that are open to public scrutiny. Blue Pointer had no proven track record. The shares issued by Blue Pointer are unlisted shares. They are illiquid. Bearing in mind that the price of an asset is inextricably linked to its liquidity, it is impossible to understand how the respondent was able to come to the conclusion that the shares offered by Blue Pointer were appropriately priced. There is and was certainly no publicly available information by which members of the public could judge the risk associated with the Blue Pointer shares. No one knew what they owned and what governance structures were in place to look after the interests of investors. Respondent's comparison of Blue Pointer to the two institutions is misleading. The shares would generally be regarded as high risk. The capital can only be redeemed if a willing buyer for the shares can be found. This adds to the risk. The respondent must have known this and was under a duty to disclose this to the complainant. His failure to do so is negligent and in contravention of the Code<sup>2</sup>.

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<sup>2</sup> See Sections 2 and 7 of the Code

## Licensing

[14] The 1<sup>st</sup> respondent describes itself in its papers filed with CIPRO as an entity that has its focus on investments and real estate business. For all intents and purposes, the 1<sup>st</sup> respondent publicly held itself out to be a company that conducts the business of investments and financial advice. The letterhead of 1<sup>st</sup> respondent displays the license number 17202. However, this license number belongs to 2<sup>nd</sup> respondent's son, Coenraad Frederick Maree, who is not authorised to render financial services relating to unlisted shares.

[15] This Office requested the respondent on numerous occasions to provide proof that he was licensed to give advice on shares. The requests were ignored. Verification with the FSB confirmed that respondent was not licensed to give advice on shares at the time that the financial service was rendered to complainant, i.e. March 2005. Respondent knew this and was under a duty to disclose to the complainant that he was advising him about a product he was not licensed to sell. He failed to do so. In addition, respondent can provide no information that suggests that he had the necessary training and capacity to market the type of product offered by Blue Pointer. Nevertheless, the total circumstances of the case lead one to conclude he had no idea of the risk associated with Blue Pointer's shares. Not only was the respondent not licensed to give advice on shares, but he failed to acquaint himself with the intricacies of the product. He was happy to advise and avail himself for commission payable knowing full well that he may have exposed his client to risk. A provider acting in the interests of his client would not engage in such conduct. Neither would a provider acting with due skill, care and diligence as

required by the General Code<sup>3</sup>. I am convinced that had the complainant known that the respondent was not licensed to give advice on shares and that he might lose his capital, he would not have gone ahead with the investment. The respondent's advice to complainant to invest in Blue Pointer was contrary to the provisions of the Code. The consequence of the respondent's conduct was the loss of complainants capital of R60 000.

[16] Although the respondent was asked to provide his full file of papers in support of his response to the complaint, he failed to provide any proof evidencing compliance with the FAIS Act and the Code.

#### **G. QUANTUM**

[17] Complainant has provided proof of the investment of R60 000. The respondent has not denied the amount of the investment. I therefore intend to make an order in the amount of R60 000.

#### **H. ORDER**

In the premises the following order is made:

- 1) The complaint is upheld;
- 2) Respondents are ordered to pay to the complainant, jointly and severally, the one paying the other to be absolved, the amount of R60 000, from a date seven days from date of this order;
- 3) Interest on the amount at 15.5 per cent per annum calculated from seven days after date of this order to date of payment;

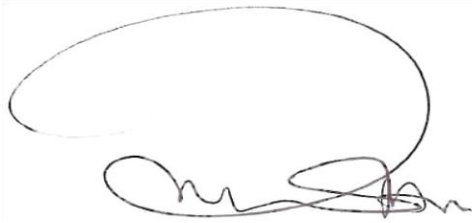
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<sup>3</sup> Section 2 of the General Code



- 4) Respondents are to pay a case fee of R1 000.00 to this Office within 30 days of date of this order.

**DATED AT PRETORIA ON THIS THE 26<sup>th</sup> OF JUNE 2012.**

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a cursive name.

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**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**