

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FAIS 06649/11-12/ WC 1

In the matter between:

Emile Van Dyk

Complainant

and

Teo Herselman Makelaars BK

First Respondent

Teober Herselman

Second Respondent

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

A. INTRODUCTION

[1] This determination follows a recommendation made in terms of section 27 (5) (c) of the Act on 14 December 2017. Section 27 (5) (c) empowers the Ombud to make a recommendation in order to resolve a complaint speedily by conciliation. The recommendation is attached hereto marked Annexure (A) and is to be read together with this determination.

[2] The respondent's reasons for not accepting the recommendation are dealt with in the paragraphs following below.

B. THE PARTIES

- [3] Complainant is Emile Van Dyk, an adult male pensioner whose full particulars are on file with this Office.
- [4] First respondent is Teo Herselman Makelaars BK, registration number 1995/055067/23, a Close Corporation duly registered in terms of South African law. The Regulator's records indicate first respondent's last known address as No. 42 Church Street, Bredasdorp, 7280. First respondent was an authorised financial services provider with license number 9400. The license lapsed on 22 November 2016.
- [5] Second respondent is Teober Herselman, an adult male member, key individual and representative of first respondent. The Regulator's records indicate respondent's address as No. 42 Church Street, Bredasdorp, 7280. At all material times, second respondent rendered financial services to complainant. I refer to first and second respondents as respondent. Where appropriate I specify which respondent is being referred to.

C. RESPONDENT'S REPLY TO THE RECOMMENDATION

- [6] Respondent's response begins with the claim that complainant has not suffered any loss. In support of this respondent provided a letter from Orthotouch, dated 15 December 2017, which records that complainant's investment is currently worth R51 301.40 and that complainant currently receives a monthly income from the investment of R171.00.

[7] Respondent's case of there being no loss is also premised on the complainant being a member of the Highveld Syndication Action Group ('HSAG'), and that from a statement provided by complainant's attorneys, it would seem that there is an arrangement with the attorneys for a down payment.

D. DETERMINATION

[8] Respondent in referring to the ongoing litigation against PIC, and despite the claims made with regards to an alleged down payment, does not point to any legally enforceable instrument that guarantees complainant's capital. There can be no doubt that complainant has lost his capital.

[9] Respondent in addition to the claims made that complainant has not sustained any losses, did not respond to issues raised in the recommendation. This determination therefore, shall be read in conjunction with the recommendation and shall form part of this determination

E. THE ORDER

[10] In the result, I make the following order:

1. The complaint is upheld.
2. The respondents are ordered, jointly and severally, the one paying the other to be absolved, to pay the complainant the amount of R100 000;

3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.
4. Complainant to cede his rights and title in respect of any further claims in respect of this investment to respondent.

DATED AT PRETORIA ON THIS THE 12th DAY OF JUNE 2018.



**NARESH S TULSIE
OMBUD FOR FINANCIAL SERVICES PROVIDERS**