

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

**PRETORIA**

**Case Number: FAIS 05116/12-13/ MP 1**

**In the matter between:-**

**MARIA CATHERINA VAN STADEN**

**Complainant**

**and**

**ALESIO MOGENTALE**

**First Respondent**

**INTROVEST 2000 CC**

**Second 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. INTRODUCTION**

[1] Complainant, desirous of starting a savingsplan for her retirement needs, heeded advice provided by first respondent to invest in BondCare Trust, IT 10396/04 (hereinafter referred to as BondCare).

[2] BondCare was registered in 2004. The two people who exercised control over BondCare were Louis Jeremia Cornelius Smit, ('Smit') and first respondent; the only trustees noted in the Deed of Trust.

- [3] BondCare solicited investments from members of the public in order to advance to conveyancing attorneys as bridging finance in immovable property transfers.
- [4] Investors were told that their funds were safe in that money was paid directly into the 'trust bank account' of BondCare, from there, into the attorney's trust account, where it would be protected by the Attorneys Fidelity Fund.
- [5] Invested funds could be made available subject to a 90 days' notice period. BondCare reserved the right to immediately repay any money obtained from a client, in the event it could not successfully negotiate a transaction with an attorney.
- [6] During November 2009 the Registrar of Banks appointed an inspector to establish whether BondCare, Smit or any other entities associated with BondCare were not conducting the business of a bank.
- [7] In 2010, BondCare, allegedly introduced a new business model, which resulted in the establishment of BondCare Trust Association, t/a BondCare Trust (hereinafter referred to as the Association) and BondCare Financing CC, (referred to as BondCare CC).
- [8] The new model was nothing more than a farce as the underlying business model remained the same. Respondent and his colleague, Smit, remained at the helm of BondCare CC as the only members.

- [9] In the new model, which essentially mirrored what the original BondCare Trust was doing, investors' monies were advanced to conveyancing attorneys to provide bridging finance. The only difference being, in advancing the monies to the attorneys, BondCare CC acted as agent of the investor for a fee. Investors became members of the Association and were entitled to receive interest on their investments.
- [10] Investors were informed that the investment could be withdrawn at any time subject to a 90 days' notice and availability of funds.
- [11] Depending on the choice of product, investors could earn between 15%, 18% and 22% interest per annum. For example, an investor who invested money for two years could make 18% interest per annum and the investment could be withdrawn at any time in the two years, subject to the 90 days' notice and the availability of funds in the attorneys' trust account.
- [12] The new scheme was punted as low risk including claims that BondCare CC was a licensed Financial Services Provider with license number 9564.
- [13] In truth, no entity in the BondCare stable had ever been licensed. A little unknown entity known as Introvest 2000 CC, registration number 1991/002857/23, the members of which were first respondent and his wife Tina Mogentale, allowed its license number to be used by BondCare in their expedition to defraud investors.

[14] During 2013, a request was made to the regulator to lapse the FAIS license.

## **B. THE PARTIES**

[15] Complainant is Maria Catherina van Staden, an adult homemaker, whose details are on file in this Office.

[16] First Respondent is Alesio Mogentale, an adult male and key individual of the second respondent whose physical address is 604 Amandelboom Road, Doornpoort, Pretoria, Gauteng Province.

[17] Second Respondent is Introvest 2000 CC, registration number (1991/002857/23), a close corporation duly incorporated in terms of South African laws, with its business address noted in the regulator's records as 604 Amandelboom Road, Doornpoort, Pretoria, Gauteng. Second respondent was authorised as a Financial Services Provider (FSP No. 9564) in September 2004. Respondent has since made a request to the regulator to lapse its license.

[18] At all times material hereto, first respondent rendered financial services to complainant.

[19] The word respondent/respondents are used interchangeably in this determination and should be read to refer to both respondents.

### **C. COMPLAINT**

[20] In an effort to grow a retirement nest egg, complainant invested regular amounts into BondCare following first respondent's advice.

[21] Complainant had heard of BondCare from a relative who had allegedly received great returns from BondCare. She was put in touch with Les Mogentale<sup>1</sup>.

[22] Complainant claims that while her communication was directed to first respondent, all e-mail communication from the respondents always came from first respondent's wife, Tina.

[23] Persuaded by first respondent's representations of the suitability of BondCare to her circumstances, complainant invested an amount of R65 000. The amount was paid as follows and is supported by BondCare 's own statement of account, with the exception of the last investment of R8000:

R15 000 – 28 June 2011;

R12 000 - 4 October 2011;

R10 000 – 29 November 2011;

R10 000- 24 January 2012;

R10 000 – 22 March 2012; and

R8 000 – 5 June 2012.

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<sup>1</sup> Per e-mail from complainant dated 19 November 2015

[24] As at 1 June 2012, her investment, including interest, was standing at R63 087<sup>2</sup>.

[25] During June 2012 and after receiving a note from Louis Smit regarding an investigation by a Receiver appointed by SARB, complainant, through her daughter, made contact with Tina, to find out about the safety of her capital.

[26] Tina's reply confirmed the safety of complainant's capital and further added, 'this is not another Sharemax'<sup>3</sup>. For his part, first respondent informed complainant that her capital would be paid by the end of June 2012.

[27] In late June 2012, first respondent advised complainant through her daughter that her capital cannot be paid out as the SARB was 'auditing our trust.'

[28] Complainant later heard that BondCare had been liquidated.

#### **D. RESPONDENT'S VERSION**

[29] The complaint was referred to respondents to resolve with their clients in terms of the Rules on Proceedings of the Office, (Rules). No response was received.

[30] After the expiry of the six weeks period prescribed in Rule 6 (b), further attempts were made to obtain respondent's version. Respondent did not avail himself of this opportunity and the complaint remained unresolved.

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<sup>2</sup> Statement from BondCare, (undated). The statement is a simple excel spread-sheet. There are no details detailing the address, contact details or the entity's registration number on the statement except for BondCare's letterhead.

<sup>3</sup> Loosely translated from Afrikaans to English

[31] In August 2012, a notice in terms of section 27 (4) of the FAIS Act was referred to the respondents, asking them to resolve the complaint, failing that, provide their full version of events with supporting documents. The notice further warned respondents that the Office intended to investigate the matter. There was no response to the notice.

[32] On 13 April 2015, respondent was once again invited to provide his response. Respondent was warned that in the event he failed to respond, the matter would be investigated and determined without his version. To date, no response has been received from respondents.

[33] Complainant has confirmed that her capital has not been paid and she has not received any distribution from the Receiver.

## **E. DETERMINATION**

[34] Having not heard from respondents, notwithstanding numerous invitations, the matter is determined on the basis of complainant's version, along with supporting documents. The following are issues to be determined:

- (i) Whether respondents complied with the FAIS Act and the General Code while rendering financial services to complainant?
- (ii) In the event there was violation of the Act and Code, whether such violation is sufficiently connected to the loss complained of by the complainant?
- (iii) Quantum?

[35] I refer to the determination of Johannes William van Breda, FAIS 03914/12-13 GP (1) in particular paragraphs 38 to 69, which determination can be

accessed from this office's website<sup>4</sup>. For all the reasons articulated therein, which apply *mutatis mutandis* to this case, the complaint is upheld.

## **F. QUANTUM**

[36] Having confirmed complainant's investment into the account of BondCare, including the additional R8000 paid on 5 June 2012, there is no dispute as to the amounts invested. Complainant has requested this Office to order the return of her capital in full including interest. The difficulty with granting the interest promised to the complainant is two-fold. First, there is no evidence that complainant's funds had ever been invested in a legitimate business venture. Second, it is highly probable that the figures were contrived.

[37] I add that this Office communicated with the liquidator, ML Stewart of Bombani Liquidators. According to his report which was submitted at the second meeting of creditors on 16 September 2014<sup>5</sup>, there was already a shortfall of about R23 million. Add to this the claim by the South African Revenue Services, (SARS) which had not been taken into account at the time this report was compiled, the prospects of a dividend towards the complainant becomes bleak as SARS' claim must be paid in full before any concurrent creditors are considered. Complainant is a concurrent creditor.

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<sup>4</sup> [www.faisombud.co.za](http://www.faisombud.co.za) from the determination section

<sup>5</sup> Report in the matter of the Consolidated Insolvent Estate of Louis Jeremia Cornelius Smit – Master's Reference number T3989/12 BC Trust Association – Master's Reference number T4352/12 BondCare Financing CC (In Liquidation) – Master's Reference number T3976/12 – Pretoria 16 September 2014.

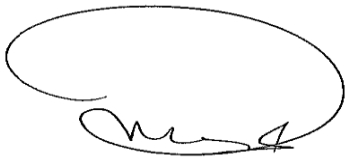


**G. ORDER**

[38] In the premises, the following order is made:

1. The complaint is upheld;
2. Respondents are hereby ordered to pay complainant, jointly and severally, the one paying the other to be absolved the amount of R65 000.
3. Interest at a rate of 9%, from 1 July 2012 to date of final payment.

**DATED AT PRETORIA ON THIS THE 8<sup>th</sup> DAY OF FEBRUARY 2016.**



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