

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

Case Number: FOC1831/06-07/GP 3

In the matter between:-

ANDRIES JOHANNES VAN DER WALT

Complainant

and

PROFESSIONAL GROUP INSURANCE

BROKERS (PTY) LTD T/A PROFGROUP

Respondent

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

Parties

[1] The Complainant is Mr Andries Johannes van der Walt, an information technology specialist residing at Eagle Wood, Mooikloof Rif and with postal address P O Box 1486, GARSFONTEIN 0042.

[2] The Respondent is an Authorised Financial Services Provider conducting business as Professional Group Insurance Brokers (Pty) Ltd., a company registered as such with registration number 2005/004432/07 and previously known as Seriso 635 (Pty) Ltd. It trades as ProfGroup. Its principal place of

business is Ground Floor, Building 6, Glen Manor Office Park, Corner Frikkie de Beer & Glen Manor Roads, MENLYN, 0181. The respondent is represented by Mr Francois van Rooyen ('Van Rooyen').

The Background

[3] The complaint is about the alleged failure of the respondent to insure a 'truck' and trailer pursuant to instructions by the complainant to do so. The trailer was damaged when it tipped over whilst it was uninsured. (The parties refer to a 'truck' and trailer. The truck is actually what is commonly referred to as a 'horse' and will be referred to as such in this determination.)

[4] Complainant says:

4.1 In an '*initial*' e-mail dated 30 June 2006 (I will revert to this later¹) he asked Van Rooyen to provide an insurance quotation for both a horse and trailer. The relevant portion of the e-mail reads:

'Hier is die gegewens van die trok. Sal jy vir my a kwotasie gee so gou as moontlik.

Freightliner FL112

2001 Model

En die wa is n (sic):

Tipper 30 kub/m'

4.2 In a subsequent telephone conversation respondent confirmed a monthly premium of about R1 600.00 per month.

1 Para 11 below.

4.3 About one and a half months later, on 21 August 2006, he e-mailed respondent with instructions to place the horse and trailer on cover.

The relevant portion reads:

'Onthou jy daai kwotasie vir die lorrie wat jy die ander dag vir my gestuur het, ek dink dit was R1600-00p/m. Ek wil he (sic) dat die lorrie van vandag af versekering moet op he (sic). Die lorrie se waarde (sic)...[is] R260 000-00 en die wa...R80 000-00...Laat weet maar as daar enige onduidelikheid is.'

4.4 On 23 August 2006 he telephoned Van Rooyen to enquire about the e-mail he (complainant) had sent on 21 August. Van Rooyen confirmed receipt of the e-mail and allegedly said, *'Don't worry, your items are covered'*.

4.5 Two days later, on 25 August, the trailer tipped over and was damaged.

4.6 He telephoned Van Rooyen to confirm that his insurance was *'in order'*. He alleges Van Rooyen assured him that it was. He then told Van Rooyen of the damage to the trailer and that he wanted to institute a claim. After a long silence, Van Rooyen exclaimed that the trailer was not covered as he was still sourcing quotes for it and that there was no signed contract in place as yet. He then said he *' "...didn't think that the trailer would fall over that quickly" '*. He told Van Rooyen that he has proof that he had asked him to cover both the horse and trailer.

The relief sought by Complainant

[5] Complainant seeks compensation for the damage to the trailer. Two quotes for R41 005.83 and R119 889.76 respectively were provided by complainant. He explained that the lower quote was for basic repairs to get the trailer working again. The higher quote was for a *'full repair'*.

Investigation by this Office

[6] Van Rooyen responded to the complaint on behalf of respondent:

6.1 He says complainant has not revealed a *'material'* fact, namely, that prior to the e-mail on 30 June 2006, complainant had telephonically contacted him to ask for a quote on a horse only and for which he would provide details by e-mail. Complainant had told him that it was not urgent as he was still investigating his options (apparently a reference to some business venture he was considering). The e-mail duly arrived on 14 June 2006. It states:

'Hier is die gegewens van die trok. Sal jy vir my a kwotasie gee so gou as moontlik.

Freightliner FL112

2001 Model'

The trailer is not mentioned in this e-mail which is in fact an earlier e-mail than the one referred to by complainant as being the *'initial'* one.

6.2 Van Rooyen confirms receipt of the e-mail dated 30 June 2006 asking for a quote for both the horse and trailer². He stresses that the body of the e-mail is exactly the same as that of 14 June except that there was

² Sub-para 4.1 above.

an added sentence at the bottom pertaining to the request for a quote for a trailer as well. He 'assumed' it was a reminder to obtain a quotation for the horse. He says:

'Note that due to the similarity of the e-mails, I did not see the added part of the trailer; this fact is demonstrated in that the quotation I obtained for him only included the horse, and not the trailer'.

6.3 On 12 July 2006 he telephonically informed complainant about the quotation. Complainant thought it to be a very good premium. The quotation was then faxed to complainant the same day.

6.4 Van Rooyen says a material fact, that the quote was for the horse only was not mentioned by the complainant in his complaint to this Office. Complainant did not contact Van Rooyen for the next 39 days to inquire about the fact that the quote did not include the trailer. On 22 August 2006 Van Rooyen received complainant's e-mail³ of the previous day. It was at this point that he realised for the first time that complainant also wanted cover for a trailer. He immediately commenced with a revised quotation that would include the trailer. He informed complainant about this when the latter telephoned him later that same day. Complainant told him to speed it up as he wanted to commence business.

6.5 He confirms having received the call from complainant on 25 August but says he had told him that cover would soon be in place. It was then that complainant told him that the trailer had tipped over.

³ Para 4.3 above.

6.6 Van Rooyen denies having told complainant that cover was in place as contended for by him.

6.7 He says he told complainant that

'everything was recorded and that I would be able to listen to the voice-log to confirm our conversation on the 23rd of August 2006. Afterwards I realised that Mr Van der Walt contacted me on my cell-phone, and was therefore not voice-logged by our system.'

[7] Complainant was afforded an opportunity to comment on the respondent's version of events leading to the non-insurance of the horse and trailer. He denies receiving the written quotation from respondent.

[8] Complainant relies on a note made by a case manager on the written response of Van Rooyen (which was provided to complainant for comment) where it is mentioned that both the horse and trailer appear not to be mentioned in the quotation. However, that was merely the initial impression of the case manager. The horse in fact is mentioned. It is referred to as 'HCV' which is the acronym in the insurance industry for 'Heavy Commercial Vehicle'. The trailer is of course not mentioned. The complainant says it would have been impossible for him to overlook the fact that the trailer was not mentioned in the quotation – had he seen the written quotation. He says it was therefore impossible for him to make an informed decision. But the complainant must have seen the quotation. In his e-mail dated 21 August 2006 to Van Rooyen, complainant admits receiving the quotation. He says

'Onthou jy daai kwotasie vir die lorrie wat jy die ander dag vir my gestuur het...'(my emphasis).

[9] Complainant says he would have made alternative arrangements if he had known of the difficulties experienced by Van Rooyen in obtaining 'instant cover'.

The Issues

[10] The issue to be determined is whether the respondent was negligent in rendering the financial service to the complainant.

Determination and Reasons Therefore

[11] Complainant refers to his e-mail dated 30 June 2006 as being the '*initial*' one, i.e. the one where he requests a quotation for both the horse and trailer. He fails to mention the earlier telephonic contact with Van Rooyen requesting a quote for a horse only and which request was confirmed in an e-mail dated 14 June 2006.

[12] This Office expects parties to a complaint not to withhold important or relevant information. The information about the earlier e-mail was important to get a proper picture of the events relating to the complaint⁴.

⁴ In ABSA BANK LTD. v DLAMINI 2008 (2) SA 262 (T), a case where the respondent seemed to place 'facts' before the court in a very selective manner, Rabie J held, at 299 G-I: " This has the potential of causing a court hearing a matter to come to a wrong and potentially prejudicial decision."

- [13] Van Rooyen, for his part admits that he did not properly read the e-mail dated 30 June 2006 wherein a quote is requested for both the horse and trailer. He 'assumed' it was a reminder of the previous request to obtain a quotation for the horse alone. He should have read the e-mail with care. The General Code of Conduct for Authorised Financial Services Providers and Representatives is, amongst others, all about professionalism, care and diligence when rendering a financial service. But the matter does not end there.
- [14] There clearly are some disputes of fact. Firstly, Van Rooyen says on 22 August 2006, when he first realised that complainant wanted a quote for a trailer as well, he had informed complainant that he was obtaining a revised quotation. Complainant on the other hand, says he was (verbally) assured that his vehicles were covered. Secondly, complainant says on 25 August Van Rooyen told him that his insurance was in order. This too is denied by Van Rooyen. Insofar as the factual disputes are concerned, I must look at the probabilities with reference to the incidence of onus.
- [15] The first e-mail (dated 14 June 2006) was a request for a quote for the horse only. Two weeks later complainant sent a further (similar) e-mail but added, '*en die wa is...*' followed by a description of the trailer. Van Rooyen admits he thought it was merely a reminder to obtain a quote for the horse without noticing that the request had now included a quote for the trailer. Van Rooyen obtained a quote for the horse only and sent it to complainant. The quote was for a heavy commercial vehicle valued at R260 000.00. Complainant had it in his possession for almost six weeks but did not enquire from Van Rooyen why the trailer had not been quoted for. He was clearly aware that it was for the horse only as is evident from his e-mail of 21 August in which he referred to

the “lorrie” only. He went on to request cover from the very same day for both the horse and trailer. Van Rooyen says that is when he realised for the first time that complainant wanted cover for the trailer as well and began the process to obtain a quote for it.

[16] Nowhere does complainant say that he informed Van Rooyen that he had finally commenced business and had put the vehicles into use. The complainant clearly knew that no proposal forms had been completed nor were any arrangements made for premiums to be paid. He also had no written confirmation of cover. He alleges he obtained verbal assurance of cover being in place. In my view he should have done more than simply say he wanted cover from that very day. He should have obtained written confirmation that the vehicles were in fact covered before putting them to use. Also, he made enquiry whether his insurance was ‘in order’ only *after* the trailer tipped over.

[17] Complainant relies on a note made by a case manager on the written response of Van Rooyen (which was provided to complainant for comment) where it is mentioned that both the horse and trailer appear not to be mentioned in the quotation. However, that was merely the initial impression of the case manager. The horse in fact is mentioned. It is referred to as ‘HCV’ which is the acronym in the insurance industry for ‘Heavy Commercial Vehicle’. The trailer is of course not mentioned.

[18] The complainant denies receiving the written quotation. He says it would have been impossible for him – had he seen the written quotation - to overlook the fact that the trailer was not mentioned in the quotation. He says it was therefore impossible for him to make an informed decision. But the

complainant must have seen the quotation. In his e-mail dated 21 August 2006 to Van Rooyen, complainant admits receiving the quotation. Furthermore, the respondent has provided proof of having faxed the quote to complainant.

[19] The complainant has made allegations of what Van Rooyen purportedly told him verbally. I find it inexplicable that he would communicate with Van Rooyen via e-mail on several occasions but does not confirm an important assurance allegedly given by Van Rooyen that cover was in place. I am therefore of the view that on the probabilities Van Rooyen's version of the verbal discussions is the more probable one in the circumstances of this case.

[20] After taking all the relevant facts into account, I am compelled to the conclusion that the complaint falls to be dismissed.

I make the following order:

- 1 The complaint is dismissed.**

- 2 The respondent is ordered to pay the case fee of R1000.00 to this Office.**

Dated at PRETORIA this 10th day of June 2008.

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by a cursive name, all contained within a hand-drawn oval.

NOLUNTU NELLISA BAM

DEPUTY OMBUD FOR FINANCIAL SERVICE PROVIDERS