

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 06393/12-13/ WC 1

In the matter between:

ROBERT WILLIAM WHITFIELD-JONES

Complainant

and

IMPACT FINANCIAL CONSULTANTS CC

1st Respondent

MICHAL JOHANNES CALITZ

2nd 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 Mr Robert William Whitfield-Jones, an adult male whose full contact details are on file with the Office.

[2] The 1st respondent is Impact Financial Consultants CC, a close corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5th Floor, The Cliffs, Niagara Road, Tyger Falls Belville.

[3] The 2nd respondent is Michal Calitz, key individual and member of 1st respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times rendered financial services to complainant on behalf of 1st respondent. In this

determination reference to respondent should be read to mean respondents.

B. THE COMPLAINT

[4] The complainant had a long standing relationship with Calitz going back several decades, and accordingly on his version implicitly trusted the respondents to manage his investments.

[5] Acting on Calitz' advice complainant invested two amounts in RAAF namely R350 000.00 on the 1st March 2009 and R250 000.00 on the 27th February 2012.

[6] The funds for both investments were obtained from existing unit trust investments, in this case the 4i Stable Fund.

[7] The investment in RAAF comprised approximately 30% of complainant's retirement savings.

[8] According to complainant, he was told by Calitz that he could get a better return if he invested in RAAF.

[9] Complainant claims that he knew nothing about the risks and instead trusted Calitz to render the best advice, particularly given their long standing relationship.

[10] Accordingly he holds respondents accountable for his loss and seeks recompense in the amount of R600 000.00.

C. RESPONDENTS' REPLY

[11] Calitz' version in essence is that, during a visit to his offices he, (Calitz) discussed with complainant the performance of the global equity market, more especially

the fall of the market in 2008. Moving on they then discussed alternative investments, such as hedge funds.

[12] Calitz claims he briefly explained the workings of a hedge fund and that these instruments were not regulated; however, Abante Capital was registered as an investment manager with the Financial Services Board. Complainant thereafter decided to invest with RVAF.

[13] Respondents contend that the option to invest in hedge funds was explained to complainant and was not in contradiction of his risk profile, given the long and short positions which make these investments market neutral, if managed correctly.

[14] Calitz additionally provided a hand written note dated 24th August 2009, which appears to be a record of the discussion with complainant. The essence thereof relates to the negative growth on the stock exchange, interest rates being low and the option of hedge funds that can make money in both up and down markets. Further hand written notes make mention of there being no upfront fee but a profit share of 80% - 20% and quarterly reports from Abante Capital.

[15] At this point it is necessary to note that none of the documentation canvasses the issue of risk, a particularly relevant issue given that the complainant was moving from a stable fund unit trust, one which as its name suggests was designed to mitigate risk, to an investment without so much as a single set of audited financials.

D. THE DETERMINATION

[16] Reference is made to the determination of Inch vs Calitz¹ where this Office dealt

with the key issues, which pertain to the rendering of advice to invest in RVAF. Principally the issues pertain to the respondent's failure to understand the entity, (RVAF) and the risks to which he was exposing his clients when he advised them to invest therein.

[17] Evident therein are the material deficiencies in the application forms which are clearly lacking in substance or form such that it is difficult to understand who or what the complainant was contracting with. Yet in spite of these failings, funds were transferred directly into RVAF without even the protection afforded by a nominee account.

[18] In attempting to support his version, Calitz stated that he enclosed as part of his investigations into the investment vehicle a copy of the FSB Licence brochure on 'Abante Capital (managing agent)' and presentations done by Abante Capital. Yet there is not so much as a single mention of Abante within the contractual documentation, further reinforcing the fact that Calitz himself failed to understand the contracting entity.

[19] Quite simply, no adviser would have recommended this product as a suitable component of any investment portfolio had they so exercised the required due skill care and diligence.

[20] Complainant as a client of a registered financial adviser, relied on Calitz' advice when he made this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Calitz failed in this regard.

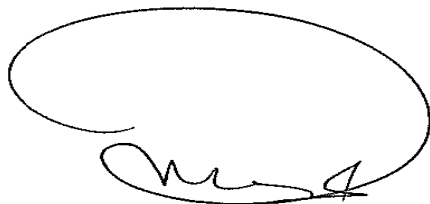
[21] For the reasons set out in the Inch determination, complainant's complaint must succeed.

E. ORDER

[22] Accordingly the following order is made:

1. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R600 000, 00.
2. Interest on the aforesaid amount at the rate of 15.5%, per annum seven (7) days from the date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 3rd DAY OF JULY 2014.



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OMBUD FOR FINANCIAL SERVICES PROVIDERS