

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

**PRETORIA**

**Case Number: FAIS 07763/12-13/LP 1**

**In the matter between**

**CARL JOHANNES KOEN**

**Complainant**

**and**

**HESTER JOSINA THOMPSON**

**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 Carl Johannes Koen, an adult male whose full details are on record with this Office.

[2] The respondent is Hester Josina Thompson. The respondent was registered as an authorised financial services provider (FSP) with licence number 12718 from 6 August 2004 until 13 June 2011 when her license was withdrawn. At all times material hereto, the respondent rendered financial services to the complainant in his capacity as a sole proprietor of the aforementioned FSP. The respondent's principal place of business is

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

---

Fairness in Financial Services: Pro Bono Publico

noted in the records of the Financial Sector Conduct Authority (FSCA), or the Regulator, as 3 Hill Crescent, Aston Manor, Kempton Park, 1630.

## **B. THE COMPLAINT**

- [3] In November 2009, the complainant received a pension pay out of about R505 000 from a previous employer. The pension fund savings were due to the complainant in respect of a job he had held until 1994 when he was retrenched. The complainant did not however receive the savings from the pension fund until 2009.
- [4] The respondent had assisted the complainant with previous investments, which the complainant states were successful, and because of this, the complainant contacted the respondent and asked her to advise him on how to invest the savings he had received from his pension fund. The complainant states that the respondent advised him to invest in a property syndication scheme.
- [5] This property syndication scheme the complainant was advised to invest in was Grey Haven Riches 11 Limited<sup>1</sup>. The complainant claims that the respondent advised him that this investment offered the best interest at the time and suggested that the complainant capitalize the interest for the subsistence of the investment, which was meant to be five (5) years. The complainant alleges that the respondent advised him that the investment would have to be concluded by 31 December 2009 and sent the complainant a blank contract and asked him to sign the contract and return it to her.

---

<sup>1</sup> Registration number 2007/025464/06.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

- [6] On the strength of the information that the complainant received from the respondent and on account of their long standing relationship, the complainant acted on the respondent's advice and invested R400 000 in Grey Haven Riches 11 Limited on 31 December 2009. The complainant claims that he did not at any stage meet with the respondent to discuss the investment and claims that the respondent did not advise him of the risks inherent in the investment. Instead, the complainant claims that the respondent assured him that the investment was safe and that he would receive his capital at the end of the investment period together with the interest accrued on the capital during the investment period. The complainant alleges that he never received a copy of his investment contract because the respondent advised that she preferred to keep it for security reasons. Effectively, the only document that the respondent had presented to the complainant then in respect of the investment, prior to his commitment thereto, was the application form.
- [7] The complainant states that in February 2011 he became worried about the investment after he read reports in newspapers that the promoter of the syndication, Realcor Cape, was experiencing financial problems. The complainant states that he tried on numerous occasions during 2011, to reach the respondent in order to understand whether the reports were true or not and what the actual state of the syndication was. Complainant's attempts were however unsuccessful. It was only in 2012 when the respondent finally responded to the complainant's queries when she allegedly advised the complainant not to worry and informed the complainant that 'all was in order' at Realcor Cape. Together with her response, the respondent sent the complainant a copy of correspondence prepared by Realcor Cape, addressed to investors to which a 'liquidation opposition' form was attached.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

- [8] The complainant completed and signed the form in which he expressed his opposition to the liquidation of Grey Haven Riches 11 Limited and sent it back to the respondent in February 2012. The complainant was again asked to sign the same form in March 2012 but in addition to receiving this liquidation opposition form, the complainant also received a 'form of proxy' which he was requested to sign in order to authorise Deon Pienaar and Willie van Zyl, directors of the syndication, to act on his behalf in a proposed Scheme of Arrangement which was to be sanctioned by the relevant court. In addition to the proxy form and the form opposing liquidation of the syndication, the complainant signed a form the syndication's letterhead in which he indicated that he supported the proposition that the syndication be placed under business rescue.
- [9] The complainant however did not receive any conclusive updates on what had become of the syndication which would have necessitated, firstly, that he oppose its liquidation, secondly, that he consent to a scheme of arrangement undertaken in accordance with the Companies Act<sup>2</sup> and lastly, that he support proposition for the syndication to be placed under business rescue. Neither did the complainant receive an update on when the issues that were quite glaringly plaguing the syndication, would be resolved.
- [10] On 10 January 2013, this Office received the complaint from the complainant and when asked how he would like his complaint to be resolved, the complainant indicated that he would like to recover his capital of R400 000.

---

<sup>2</sup> Act 61 of 1973.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

---

Fairness in Financial Services: Pro Bono Publico

Kasteel Office Park, Orange Building, 2<sup>nd</sup> Floor, c/o Nossob & Jochemus Street, Erasmus Kloof, Pretoria  
P O Box 74571, Lynnwood Ridge, 0040  
Phone: (012) 762 5000 / (012) 470 9080; Fax: (012) 348 3447 / (012) 470 9097  
[www.faisombud.co.za](http://www.faisombud.co.za)

**C. RESPONDENT'S VERSION OR LACK THEREOF**

- [11] On receipt of the complaint, this Office, in accordance with Rule 6(c) of its Rules on Proceedings, forwarded the complaint to the respondent to afford her an opportunity to either resolve the complaint with the complainant or to respond fully thereto.
- [12] The complaint was sent to the respondent on 18 January 2013 and the respondent was afforded until 1 March 2013 to either submit her response to this Office or to resolve the matter with the complainant. There was however no response forthcoming from the respondent. On 8 July 2013, some four (4) months after the initial response from the respondent was due, this Office sent further correspondence to the respondent, in terms of section 27(4) of the Financial Advisory and Intermediary Services Act (FAIS Act). In this correspondence, the respondent was reminded of the fact that her response remained outstanding and that from the unchallenged information provided by the complainant, this Office was of the view that the matter warranted an investigation as the complaint appeared to not only be justiciable but also to *prima facie* have some merit.
- [13] The respondent was again requested to submit a response to the complaint and to deal in her response, with the essence of the complaint, having regard to her duties as set out in the General Code of Conduct for Authorized Financial Services Providers and Representatives (the Code)<sup>3</sup>. The respondent's response to this notice was due on 22 July 2013. The respondent however again did not respond.

---

<sup>3</sup> All references to the General Code of Conduct for Authorized Financial Services Providers and Representatives (the Code) means the Code as it was prior to the amendments effected on 26 June 2020.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

- [14] There were three other letters sent to the respondent between 8 February 2016 and 22 August 2018 in which she was again afforded the opportunity to either respond to the complaint or to resolve the matter with the complainant. In these letters, the respondent's attention was drawn to complainant's allegations as well as the sections of the FAIS Act and the Code which it appeared the respondent had failed to comply with when rendering the financial service to the complainant. Yet again, this Office's correspondence was met with silence.
- [15] On 5 September 2018, this Office sent an email to the respondent reminding her that her response to, specifically the correspondence of 22 August 2018, was outstanding. This the Office did after liaising with the respondent by telephone and in light of the respondent's undertaking, during such conversation, to submit her response by 20 September 2018. This Office afforded the respondent until 20 September 2018, to file her response.
- [16] On 20 September 2018, the respondent, in response to the complaint and the many letters addressed to her by this Office, in which her attention was drawn to the duties she was meant to discharge when rendering the financial service to the complainant, attached the proxy signed by the complainant in 2012 authorising Deon Pienaar and Willie van Zyl to act on his behalf in respect of the Scheme of Arrangement. The respondent did not address any of the allegations levelled against her by the complainant nor did she deal with the apparent violations of the FAIS Act and the Code at the time the financial service was rendered by her. The respondent then effectively did not refute the allegations that she had failed to act in the manner demanded of her by her profession.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

- [17] The respondent followed this response with another email, on the same day, in which she stated that in her opinion, the complainant should seek clarity from Deon Pienaar and Willie van Zyl regarding the apparently failed investment. The respondent also, in yet another separate email, claimed that she did not receive any of the emails sent to her during 2013 and 2017. The respondent then requested that this Office re-send the first notice that had been sent to her and stated that she found it reasonable that she be granted the six week period which this Office indicated had previously been granted to her to respond to the complaint. The respondent also asked to be provided with a copy of the original complaint received from the complainant.
- [18] This Office acquiesced to the respondent's request and sent her the complaint as well as the previous letters which had been sent to her. This the Office sent to the respondent on 21 September 2018. The respondent however did not acknowledge receipt of the documents neither did she respond to the complaint even past the six (6) weeks that she had requested be afforded to her to do so had passed.

#### **D. INVESTIGATION OF THE COMPLAINT**

- [19] Subsequent to the email of 21 September 2018 in which the respondent was again provided with a copy of the original complaint as well the previous letters prepared by this Office reminding her that her response to the complaint was outstanding and calling on her to rectify this as well as informing her that the matter would be formally investigated with or without her response, this Office sent the respondent three emails reminding her to furnish this Office with her response. These emails were sent to the respondent on 20 March 2019, 16 April 2019 and finally on 17 May 2019 but these too were met with silence.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

This Office then concluded its investigation into the complaint sans the respondent's response to the allegations raised by the complainant regarding the financial service that **preceded** his investment in the syndication (my emphasis).

[20] I am satisfied that the respondent was afforded sufficient opportunity to address this Office on the allegations levelled against her and that she understood what consequences would follow if she failed to so render her response. As such, this determination is prepared with regard to the information detailed in the complaint and the subsequent correspondence this Office exchanged with the complainant and the responded, this includes the emails received from the respondent on 20 September 2018.

#### **E. DETERMINATION**

[21] By implication of the duties placed on her by the FAIS Act and the Code, the respondent, when rendering a financial service to the complainant, entered into a contract with the complainant in which she undertook to render the financial service in the manner required of her, primarily, by the FAIS Act and the Code. The complainant effectively claims that the respondent did not do this. The complainant claims, *inter alia*, that:

- he was made to sign a blank contract;
- the respondent did not disclose to him the nature of the investment, including the risks inherent therein but instead, that she simply advised the complainant that the investment was safe and that his capital would be protected; and
- the respondent did not make a copy of the record of the advice rendered to the complainant available nor did she provide the complainant with a copy of the agreement he concluded with Realcor.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

---

Fairness in Financial Services: Pro Bono Publico



- [22] In the first instance it is important to observe that prior to advising the complainant, the respondent was required to discharge the duties imposed on her by section 8(1) (a) - (c) of the Code. The respondent was required, as prescribed by this section of the Code, to seek from the complainant, appropriate and available information regarding the client's financial situation, financial product experience and objectives, so she would be able her to provide the client with appropriate advice. The respondent was required then to conduct an analysis based on the information obtained (for the purpose of rendering advice) and, after the analysis, to identify a financial product or products that would be appropriate to the complainant's risk profile and financial needs.
- [23] That the parties had enjoyed a long standing business relationship at the time the complainant contacted the respondent and asked her to advise him on how best to invest the proceeds from his pension, did not excuse the respondent from ensuring that she had information appropriate to the complainant's needs and circumstances, at the time. This is so even if, as the complainant admits, the respondent had appropriately advised him in the past. Even if the respondent had on prior occasions sought this information from the complainant and even if respondent was able then to advise him appropriately, there may well have been developments in the complainant's life which would have materially altered the relevance and appropriateness of any information that the respondent may have sought from the complainant and acquired prior to November 2009. In any event, the advice which the complainant sought from the respondent was in respect of his retirement savings which meant that a greater degree of care was required from the respondent given

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

the consequences that would have befallen the complainant if the funds were lost due to an inappropriate investment.

[24] According to the complainant, the respondent not only failed to assess the appropriateness of the product prior to recommending it to him, but she also did not place the complainant in a position to make an informed decision prior to him accepting the advice.

[25] The complainant alleges that the only information he received regarding the product was its duration and the interest he was advised would accrue on the capital during the investment period. According to the complainant, the respondent gave him a blanket assurance of the product's safety without providing a general explanation of the nature and material terms of the transaction to him. This, even though section 7(1)(a) explicitly demands that a provider provide a reasonable and appropriate general explanation of such details regarding the product and that the provider also make full and frank disclosure of any information that would reasonably be expected to place a client in a position to make an informed decision.

[26] In the first instance, the respondent should have advised the complainant that Grey Haven Riches 11 Ltd was a subsidiary company of Purple Rain Properties 15 (Pty) Ltd t/a Realcor Cape<sup>4</sup> and that Grey Haven Riches 11 Ltd was used by Realcor Cape, along with its other subsidiaries, to raise funds from the public in order to primarily develop a hotel. Realcor Cape had initially attempted to raise funds from the public in 2008 but the prospectus which it had published then, and opened on 1 November 2008, expired on 31 January 2009

---

<sup>4</sup> Registration number 1997/004873/07.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

before Realcor Cape could raise the intended funds from the public. Grey Haven Riches 11 Ltd was used to issue the second invitation<sup>5</sup>.

[27] On a thorough assessment of section 7(1)(a) of the Code, and the information which the section requires be provided to a client, it is clear that the information which the respondent provided to the complainant can in no way be said to have met the requirements of section 7(1)(a).

[28] It is not enough for a client to only know that an investment will subsist for five (5) years and that during this period he will earn interest that will be capitalized. The complainant should have been provided with full and appropriate information on, *inter alia*, the following:

- a) the class or type of the financial product;
- b) concise details of the manner in which the value of the investment is determined, including concise details of any underlying assets or other financial instruments;
- c) to what extent the product is readily realisable or the funds concerned are accessible; and
- d) any restrictions on or penalties for early termination of or withdrawal from the product, or other effects, if any, of such termination or withdrawal.
- e) How and what information would be provided to the complainant about the performance of the investment.

---

<sup>5</sup> Details of the prospectus issued for Grey Haven Riches 11 Ltd and on Realcor Cape and its subsidiaries' inner dealings can be found in determinations issued by this Office in the matters of Carol Johannes Weideman and another v Huis van Oranje Beherend Beperk and another (FAIS-09071-10/11-MP 1) & Joseph Petrus Hermanus Robbertse v Mof van Niekerk Makelaars BK and another (FAIS 07189/10-11/ KZN 1).

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

[29] The complainant then should have been advised that Realcor Cape's capital structure involved a combination of a share and a debenture/loan and conversion of debentures into shares<sup>6</sup> and that what the complainant was being offered specifically was a 5-year debenture. Simply defined, a debenture is a debt instrument used by companies to borrow which generates a fixed-rate of interest. A debenture is secured against a particular asset or assets. The asset against which the debenture issued to the complainant was to be secured was a hotel which had not yet been built and which Grey Haven Riches 11 Ltd would have the right to purchase from the company that owned the land on which the hotel was being built. The right for Grey Haven Riches 11 Ltd to purchase the hotel immediately upon completion of construction, would only accrue if the subscriptions made available to the public were purchased in full.

[30] The complainant quite evidently had no knowledge of this.

[31] Not only did the respondent not disclose all the information necessary to place the complainant in a position to make an informed decision, but once the complainant indicated that he would act on the respondent's advice, the respondent sent him a blank application form, asked him to sign it in the areas marked by the respondent and to then return it. Evidently, the respondent acted contrary to the Code.

[32] There is a *prima facie* case against the respondent and which the respondent, despite the many opportunities granted to her from 2013 to 2019, failed and/or refused to respond to. The respondent's nonchalance when she finally responded is disconcerting to say the

---

<sup>6</sup> See Joseph Petrus Hermanus Robbertse v Mof van Niekerk Makelaars BK and another (FAIS 07189/10-11/ KZN 1).  
[Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud](#)

least. In choosing to simply provide this Office with the proxy form granting the directors of the syndication authority to act on the complainant's behalf in the proposed Scheme of Arrangement the respondent at least demonstrated that she did not understand the importance of her role as a financial services provider as well as the responsibility she owed the complainant in that capacity. The respondent's inability to appreciate the above is evident also in her statement that she is of the view that the complainant should seek answers from the directors of the syndication when asked to respond to why she thought the product to be suitable to the complainant's risk profile and financial needs.

[33] The complainant completely trusted that the respondent would accord the appropriate level of care to his financial needs. So much so that the complainant did not think it untoward when he was provided with a blank form and directed, by the respondent, to sign on the applicable places on the form.

[34] The complainant rightfully depended on the respondent to render to him a service that was in his interests and reasonably trusted that the respondent had done precisely that when he paid over the proceeds from his pension fund so the respondent could facilitate the transaction on his behalf. The complainant spoke of how his trust in the respondent was predicated on the service that she had rendered to him in the past. He saw no cause not to trust the respondent and the respondent seemingly exploited this unfettered trust that the complainant had in her by not observing the duties and responsibilities she was encumbered with.

[35] The fact that South African Reserve Bank carried out an investigation into allegations that Realcor Cape was unlawfully raising money from the public does not absolve the

**[Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud](#)**

respondent of the duties she bore but in fact highlights the respondent's failure to diligently interrogate the suitability of the investment to the complainant. This is in fact the question that must be answered. Was the respondent's advice to the complainant appropriate and if not, did it cause the complainant to lose his capital. Yet the respondent, seemingly set instead on the consequent demise of the syndication, did not appreciate this.

- [36] When recommending the product to the complainant, the respondent was required to exercise judgement that went beyond the term of the investment, how interest would be calculated and when it would be paid to investors. The respondent was required to interrogate how this interest, which she correctly observed to be higher than what other products in the market were offering at the time, was to be generated and what the consequent risk of the method of generation was. The duties placed on the respondent demanded that she not accept the statements made by those with an interest in the syndication without question.
- [37] The respondent should have taken greater care to satisfy herself that the product would deliver what the complainant needed and what she, having accepted the representations from the promoters and other parties who were involved and had an interest in the syndication, promised to the complainant.
- [38] At the time the respondent rendered the advice, the complainant was 69 years old and the respondent knew that the source of the funds which the complainant sought to be invested were proceeds from the complainant's pension fund, and therefore money which the complainant would unlikely to be able to recover if it were lost. Yet, the respondent took

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

no discernible care to ensure that whatever product she recommended to the complainant would save him from this unfortunate end.

## **F. FINDINGS**

[39] The respondent forfeited the opportunity to defend herself against the complainant's allegations even after she was repeatedly afforded such opportunity by this Office. The unrefuted evidence before this Office shows that the respondent rendered the advice that led the complainant to invest in the property syndication scheme which failed within two years of the complainant's investment. Grey Haven Riches 9 and 11 were placed under business rescue on 14 June 2011 and were later liquidated. To date, investors have been unable to recover the capital they invested. The complainant is one of these investors. I am satisfied, in light of there being no evidence to the contrary, that the respondent was the factual cause of the complainant's loss.

## **G. LEGAL CAUSATION**

[40] Having found that the respondent is the factual cause of the complainant's loss, we must now consider if the respondent is also the legal cause of the loss since no liability can be imputed to the respondent if the is not the legal cause of the loss.

[41] Legal causation is established by applying the proximate cause test which asks whether the respondent's actions, by the respondent failing to render financial services in the manner prescribed by the FAIS Act and the Code, are so closely linked to the loss suffered by the complainant that they caused the loss. In other words, is the alleged cause sufficiently or reasonably closely or directly linked to the loss or is the loss too remote.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

- [42] I have referred at length to how it seems that the respondent holds the view that the complainant lost his capital because Grey Haven Riches 11 Ltd went out of business and not because she negligently recommended a product that was inappropriate for the complainant's needs and his personal circumstances. The issue however, is that in this instance, the two were not necessarily mutually exclusive.
- [43] In 2008, the South African Reserve Bank (Reserve Bank) found that Realcor *and/or other related persons or entities* had obtained money by conducting the business of a bank without being authorised or licensed to do so. This finding was made pursuant to an investigation that the Reserve Bank conducted in terms of section 12 of the Banks Act which investigation came after members of the public raised concerns about how Realcor Cape had been conducting its business. At the time, Realcor Cape was raising funds for the property by receiving loans from the public. Realcor Cape changed its business model after the Reserve Bank found it had contravened the Banks Act and issued a directive to its sole director, a Deonette de Ridder, ordering that the money Realcor had obtained from the public via loans be repaid to the members of the public from whom it had been received. Realcor Cape was also directed to repay any interest which may have accrued on such money.
- [44] In 2009, Realcor Cape changed the model which the Reserve Bank had found contravened the Bank's Act. This 'new' model is that described in paragraph 29 above. When the 'new model' was implemented however, Realcor was not just raising additional money to continue with the construction of the hotel but had also asked existing investors if they wished to convert the loans they had advanced to the syndication into shares or

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico



debentures. It is unclear how many investors agreed to the conversion and how many preferred to be repaid but even then, there was no obligation on Realcor Cape to immediately repay the investors. As such, Realcor remained in possession of money due to its investors who had invested money to it expecting investment returns but whose relationships with Realcor had overnight and without their proper consent, changed to that of shareholders and/or debenture holders.

[45] More to the point this does not excuse or explain why the respondent had not enquired at all into the viability of the syndication which if she had done, would probably have dissuaded her from recommending the product to the complainant. It seems that the respondent did not ask, at least, why there was a need to issue a second prospectus to raise funds for the same project, how much had been successfully raised from the public under the previous prospectus, how much was still required in order to complete the construction and to meet any other financial obligations the syndication had. The respondent does not seem to have been interested even, in the fact that not all the money collected from the public would fund construction of the hotel but that there were likely other commitments the syndication had, which would be paid from the funds raised by the public. In my view, none of these questions are cumbersome since they were necessary to establish whether there was in fact an underlying asset from which the obligations to the investors could be met.

[46] It seems also that the respondent did not ask if the syndication had considered how secure the complainant's investment would be given that the syndication had also received a loan from a bank and that the bank was a secured creditor. Where would the complainant rank

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

as a creditor if the syndication failed? How likely would the complainant be to receive all of his capital or at least a significant portion of it? Would the complainant be able to absorb some loss of his capital if it came to that? These are again questions which were necessary and which the respondent does not seem to have considered at all.

- [47] Instead, the respondent was quick to recommend that the complainant invest in the syndication. There is nothing to suggest that the complainant was pressed to complete a transaction quickly and given that he elected to have the interest capitalized rather than have it paid to him monthly, it does not seem that he had a pressing need to supplement any income he was already receiving.
- [48] Had the respondent carried out an inquiry in which she sought answers to at least the questions detailed above, she would have known that the product was inappropriate and would not have recommended it. She would have known that the value of the property had been overly inflated and that even if the property was completed and sold, that it was unlikely to realize the returns promised to investors. There was no new intervening act that disturbed the course the syndication was on. Even when the respondent recommended the syndication to the complainant, it was already experiencing some problems which grew worse over time and eventually led to the liquidation of Grey Haven Riches 9 and 11.
- [49] The demise of the syndication was a culmination of events that were present when the advice was given to the complainant by the respondent. As such, I am satisfied that the respondent is the legal cause of the complainant's loss.

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

**H. THE ORDER**

[50] In the instance, I make the following order:

1. The complaint is upheld.
2. The respondent is ordered to pay to the complainant the amount of R400 000.
3. Interest on this amount at a rate of 7% per annum from the date of determination to date of final payment.
4. The complainant is to cede his rights and titles in respect of any further claims in respect of this investment to the respondent.
5. Should any party be aggrieved with the decision, leave to appeal is granted in terms of section 28 (5) (b) (i), read with section 230 of the Financial Sector Regulation Act 9 of 2017.

**DATED AT PRETORIA ON THIS THE 5<sup>th</sup> DAY OF FEBRUARY 2021.**



---

**ADV NONKU TSHOMBE**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**

**Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud**

Fairness in Financial Services: Pro Bono Publico

---

Kasteel Office Park, Orange Building, 2<sup>nd</sup> Floor, c/o Nossob & Jochemus Street, Erasmus Kloof, Pretoria  
P O Box 74571, Lynnwood Ridge, 0040  
Phone: (012) 762 5000 / (012) 470 9080; Fax: (012) 348 3447 / (012) 470 9097  
[www.faisombud.co.za](http://www.faisombud.co.za)