

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

**PRETORIA**

**CASE NO: FAIS 03948/09-10 GP 3**

In the matter between:

**LUKE CARAZZO**

**Complainant**

and

**AQUARIUS INSURANCE CONSULTANTS CC**

**First Respondent**

**MAURIZIO SCOLARI**

**Second Respondent**

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**DETERMINATION IN TERMS OF SECTION 28 (1) OF THE FINANCIAL  
ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('FAIS Act')**

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**A. INTRODUCTION**

[1] This is a complaint arising out of the failure by Complainant's financial adviser, the Respondent in this instance, to timeously submit Complainant's insurance claim form to the insurer.

[2] Complainant was involved in a motor vehicle accident on the 14<sup>th</sup> November

2008.

- [3] Complainant's policy was underwritten by Saxum Insurance Limited, (Saxum), through Niche Administrators. Niche Administrators stopped trading and had their license revoked by the Financial Services Board during 2008. In terms of an Information Letter issued by the Registrar of Short-Term Insurance on the 25<sup>th</sup> March 2009, the Innovation Group, (Innovation) were to administer all claims on behalf of Saxum. Saxum required that all documentation be submitted on or before the 31<sup>st</sup> March 2009.
- [4] Complainant's claim was not paid; the reason being that Innovation contended that his documentation had not been submitted by Respondent within the requisite time frame.
- [5] The crisp issue before this Office therefore, is whether Respondent had submitted Complainant's documentation timeously.

## **B. THE PARTIES**

- [6] Complainant is Mr Luke Carazzo, an adult male whose full contact details are on file with the office.
- [7] First Respondent is Aquarius Insurance Consultants CC, a close corporation with its principal place of business being, 4 Malteser Road, Northriding, Gauteng. Aquarius is a registered financial service provider with license number 14576.
- [8] Second Respondent is Mr Maurizio Scolari, a member and key individual of first Respondent; residing at 194 Market Street, Johannesburg North, Gauteng.
- [9] For purposes of convenience I refer to the first and second Respondent

collectively as Respondent.

### **C. THE COMPLAINT**

[10] Following a motor vehicle accident on the 14<sup>th</sup> November 2008, Complainant duly submitted a claim to Respondent, his insurance broker at the time.

[11] Thereafter Complainant followed up and was told that the claim was in process. This repeated itself several times over a few months, after which Complainant was told that Innovation would be handling his claim.

[12] After a while, Complainant made contact with Innovation and provided his policy number. In response thereto Complainant was advised that his claim had not been received from Respondent.

[13] Despite following up the claim with Respondent on numerous occasions, Complainant was unsuccessful in achieving any resolution. The claim was never paid.

[14] Complainant then submitted a complaint to the Financial Services Board ('FSB') regarding the service of Respondent. The FSB in turn forwarded the complaint to this Office.

### **D. DETERMINATION**

[15] In compliance with Rule 6 (b) of the Rules on Proceedings of the FAIS Ombud's Office, (the Rules), the Office referred the complaint to both Respondent and Innovation, in order to afford them an opportunity to resolve the complaint. The complaint remained unresolved and the parties were then required to revert to the Office with their full version of events, including a copy

of the file of papers relating to the complaint.

[16] The response from Innovation was that the required documentation had not been submitted within the requisite time frame. In this regard Innovation's version was that Respondent had been requested to submit all outstanding claims to them for processing, yet had failed to do so. They elaborated as follows:

16.1. An excel list of twenty one claims was e-mailed by Respondent to Innovation on the 22<sup>nd</sup> January 2009. The e-mail stated, '*Attached all my outstanding claims as discussed!!!*'

16.2. Complainant's claim was not on the excel list.

16.3. On the 18<sup>th</sup> February 2009 a follow up e-mail was sent by Respondent to Innovation with the comment; '*Herewith all the claim forms, policy schedules and quotations and where applicable settlement letters as well.*'

16.4. A few minutes later a further e-mail was sent with the comment; '*Sorry forgot the attachment.*' This e-mail contained the twenty one pdf files. Each file name contained the claimant's name and initials in alphabetical order, along with supporting documents.

16.5. Once again Complainant's claim was not included in the attached files.

[17] Contrary to the version submitted by Innovation; Respondent as part of their reply submitted a printed out copy of the e-mail dated the 18<sup>th</sup> February 2009. This being the second mail containing the attachments. On Respondent's copy and in contrast to Innovation's copy, this copy appeared to contain an attached file, with the name; '*L Carazzo.pdf.*'

[18] In that it appeared to evidence that the Respondent had indeed submitted the claim to Innovation, this office forwarded the printout on to Innovation

for their comment.

- [19] Innovation in turn disputed the authenticity of this e-mail printout, and denied that the e-mail which they received contained the said file. In an e-mail response dated the 29<sup>th</sup> June 2010, Innovation stated that on Respondent's e-mail printout, the Complainant's file was out of alphabetical sequence.
- [20] Further they pointed out that whilst all of the other files make reference to the documentation which they contain; this is not the case in Complainant's case.
- [21] At this stage it should be pointed out that Respondent dismisses the significance of Innovation's points and asserts that the key issue was that the file had indeed been attached to the 18<sup>th</sup> February 2009 e-mail and that Innovation had been made aware of the Carazzo claim.
- [22] However, over and above Innovation's comments it is noted that there is one other anomaly. This being that the subject line is duplicated on Respondent's version. This is an anomaly that would tend to suggest some form of cut and paste.
- [23] Given both the anomaly and the disparate versions, Respondent was asked to submit as an attachment the actual e-mail of the 18<sup>th</sup> February 2009. Citing this office's concerns, this request was repeated on several occasions during the course of the investigation.
- [24] Respondent however, never provided the e-mail in the required format. This despite having confirmed in an e-mail correspondence to this office dated the 18<sup>th</sup> November 2014 that, *'I have by some stroke of luck been able to locate the ORIGINAL e mail i sent to innovation group as per your request to see the Original e mail and not a print copy thereof.'* (copied verbatim)
- [25] The e-mail mentioned by Respondent in paragraph 24 did not contain the

required attached e-mail, instead it only contained what purported to be the attachments from the e-mail addressed to Innovation on the 18<sup>th</sup> February 2009. Amongst these attachments was a file named '*L Carazzo.pdf (124 KB)*'.

[26] In summation; despite having afforded Respondent more than ample opportunity to prove the timeous submission of documentation, Respondent has to date failed to do so. This despite the requirement of section 11 of the General Code which states:

*'A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.'*

[27] On the contrary, not only the failure to retain electronic documentation, but additionally, the question marks around the very submissions that Respondent made, favour the probabilities that the claim was never submitted to Innovation.

[28] Having dealt with the key issue in this matter, the remainder of Respondent's reply must now be considered:

28.1. In addition to the original e-mails wherein the claim was submitted, Respondent asserts that there were further e-mails and phone calls to Innovation to which Respondent had never gotten any formal answer regarding Complainant's claim.

28.2. *'As the process was lengthy, ie innovations took months to get around to all the claims we assumed that they still had to get to Mr Carazo's claim, KNOWING we HAD sent them his claim.'*....(verbatim);

28.3. *'That unfortunately was out of our hands & we explained the situation to Mr Carazzo on a few occasions, other than that we had no answers for him...'*

[29] As to the further correspondence, Respondent provided copies of e-mails to Innovation dated October of 2009. However, no evidence of any form of intervening communication as pertaining to the Carazzo claim, either written or verbal, as between the date of the alleged submission of the claims in February 2009 and the October communication was submitted.

[30] None of the above assists Respondent's case.

[31] Section 3 (2) (a) of the General Code requires that *'A provider must have appropriate procedures and systems in place to-*

*(i) record such verbal and written communication relating to a financial service rendered to a client as are contemplated in the Act, this Code....*

*(ii) store and retrieve such records and any other material documentation relating to the client or financial services rendered to the client;...'*

[32] In summation, I am persuaded that on the evidence, the probabilities favour the conclusion that Complainant's claim was not properly submitted. Adding weight to this conclusion is Respondent's failure to submit the pertinent e-mail in the required format, in spite of more than a few requests by the Office.

[33] As such Respondent has breached the requirements of section 11 of the General Code in allowing the Complainant to suffer loss through either poor administration or negligence. There is also a failure to comply with section (3) 2 of the Code, which requires that records relating to financial services rendered to clients be maintained. Overall, Respondent's cavalier attitude, as demonstrated in the manner in which he dealt with Complainant's claim is in sharp contrast with section 2 of the General Code, which calls for due skill, care

and diligence in rendering financial services.

## **E. QUANTUM**

[34] As regards the damage caused to Complainant's motor vehicle, this Office has obtained a reasonable estimation of the quantum through the services of a loss adjuster. The loss adjuster indicates that Complainant would have repaired the vehicle for R22 673.35 (VAT included).

[35] In terms of the policy, there is an excess of 5% of the agreed loss, with a minimum of R2 500 being applicable. The minimum amount is applicable in this instance.

[36] This Office is therefore prepared to award Complainant the amount of R20 173.35<sup>1</sup> as a fair and reasonable amount of compensation for his damages.

## **F. ORDER**

[50] In the premises the following order is made:

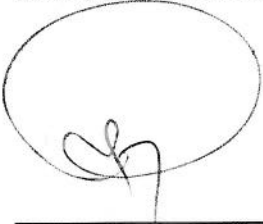
1. The complaint is upheld;
2. Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to Complainant the amount of R20 173.35.
3. Interest on the aforesaid amount at the rate of 9%, per annum seven (7) days from the date of this order to date of final payment.

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<sup>1</sup> R22 673.35 – R2500 = R20 173.35



**DATED AT PRETORIA ON THIS THE 27<sup>th</sup> DAY OF AUGUST 2015**



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