

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

CASE NUMBER: FAIS-04528-18/19

In the matter between: -

DR LUZANNE DE BEER

Complainant

and

BADIE JACOBS INSURANCE BROKERS CC (FSP NO. 11837)

Respondent

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

THE PARTIES

[1] The Complainant is Dr. Luzanne de Beer, an adult female.

[2] The Respondent is Badie Jacobs Insurance Brokers CC with its principal place of business at, 17 Knox Avenue, Brits, 0250. The Respondent is registered with the Financial Sector Conduct Authority (FSCA) as a Financial Services Provider (FSP), with license number 11837, in terms of the FAIS Act.

THE COMPLAINT

- [3] On 5 February 2016, the Complainant purchased a vehicle, a Toyota Land Cruiser 76 4.2D. The vehicle was added to her insurance policy obtained through the Respondent, who acted as the Complainant's broker. The insurer of the policy is Quicksure, which is underwritten by Old Mutual Insure.
- [4] On 30 July 2018, the vehicle was stolen from [REDACTED], her place of employment.
- [5] The Complainant submitted a claim with the insurer, Quicksure, in the amount of R312 400.00.
- [6] On 17 August 2018, the insurer rejected the claim, as the complainant's vehicle did not have a satellite early warning device when it was stolen.
- [7] The Complainant lodged a complaint against the insurer with the Ombudsman for Short-Term Insurance (OSTI). OSTI dismissed the complaint against the insurer.
- [8] The Complainant filed a complaint form with the FAIS Office against the Respondent on 29 October 2018.
- [9] The Complainant submits that Mr. Jacques Jacobs, a representative of the Respondent, did not properly inform her of the requirements of the policy, including the need for this device to be installed.
- [10] The Complainant further submits that there was no correspondence enquiring whether she had a satellite early warning device installed and that the Respondent never requested the installation certificate from her.

RESPONDENT'S RESPONSE

- [11] The Respondent submitted that the letter from Quicksure, dated 17 August 2018, states that the claim was rejected due to the absence of a satellite early warning device, not a tracker. The Complainant signed the policy documents after it was explained to her that a satellite early warning device had to be fitted.

[12] The Complainant did not give the contract and accompanying disclosure the attention they deserved.

[13] The policy stipulates the requirement regarding the satellite device, which is the grounds on which the claim was rejected. This is indicative that the process was discussed with the complainant, that she gave her inputs, and that her inputs were incorporated into the contract.

[14] The satellite device was explained to the Complainant. This fact is corroborated by the correspondence of Suzaan Calitz, dated 02 April 2019. This email states:

Ek Suzaan Calitz werksaam by Badie Jacobs Makelaars was in die kantoor 31 Julie 2018 met die aanmelding van Dr L De Beer se voertuig eis.

Ek het kennis geneem dat kliente herken het hul nie voldoen het aan die vereistes soos per E-pos aan hul gestuur is nie en was hul nalatig op die "tracker" afdeling en nie voldoen het aan die vereistes nie.

Baie dankie

Suzaan

(Generally translated - I Suzaan Callitz, employed by Badie Jacobs Brokers, was in the office on 31 July 2018 when the vehicle claim of Dr L De Beer was reported. I took note that the clients admitted that they did not comply with the requirements as per the email sent to them and they were negligent on the tracker section. Thank you. Suzaan.)

[15] A letter dated 27 November 2017, which was sent to the complainant, states:

“Voertuie:

Maak asseblief seker van die voertuie se beskrywing, Registrasie nommers, Tracker of enige ander Sateliet opsporingstelsel – indien dit ‘n vereiste op u polis is, moet in werkende toestand wees en aktief wees.”

(Generally translated: Motor vehicles: Please make sure of the description of motor vehicles. Registration numbers. Tracker or any other Satellite tracking system - where it is a requirement on your policy, must be in working condition and be active.)

ATTEMPTS TO RESOLVE THE MATTER

- [16] From the onset, the Respondent denied liability and submitted that the Complainant was aware or ought to have been aware of the satellite early warning device.
- [17] On 24 August 2023, a recommendation, in terms of section 27(5) (c) of the FAIS Act, was sent to the Respondent advising it to settle the claim.
- [18] The Respondent responded on 7 September 2023 that they intended to appeal the decision and that they were seeking legal advice on the matter.
- [19] Subsequent attempts to contact the Respondent or its compliance officer telephonically and by email have been unsuccessful.

ASSESSMENT OF THE EVIDENCE

- [20] The policy makes it clear that a satellite tracking device was a requirement for theft cover on the vehicle. Based on the Office's experience with cases it adjudicates, an early warning satellite tracking device is not a normal or usual requirement in a policy for theft cover on all vehicles. It is generally only applicable to certain vehicles depending on value and exceptional risk factors.
- [21] The Respondent submitted that it discussed the requirement with the Complainant, but it has not produced any evidence in this regard. There is no record of advice reflecting any discussion with the Complainant regarding the satellite tracking device. There is no evidence of the Respondent following up with the Complainant to confirm whether a device was installed.
- [22] The only evidence the Respondent has submitted is a general letter sent to all its clients and the policy schedule that was sent to the Complainant at the inception of the policy.

[23] The general statement made by Ms Calitz has little probative value and does not advance the Respondent's case. At most, the statement only reflects the understandable regret that the Complainant expressed for not paying attention to the schedule requirement or the letter. It does not provide any proof that the Complainant was properly advised and informed or that the Respondent complied with its responsibilities in terms of the Code.

[24] On a balance of probabilities, it can only be concluded that the Respondent did not provide any additional specific explanation or information to the Complainant regarding the early warning satellite tracking device (besides what was contained in the policy schedule).

[25] Section 7(1)(a) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the Code") places a duty on Financial Services Providers to disclose any material terms of the contract. It states as follows:

"A provider must provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision."

The Code places an obligation on the Financial Services Provider to place the client in a position to make an informed decision and take the appropriate action where necessary. There is no evidence of the Respondent providing any explanation to the Complainant regarding the satellite device or the serious consequences of it not being installed.

[26] Section 7 (1) (c) (vii) of the Code states that a provider must provide full and appropriate information on the following: *"concise details of any special terms or conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided"*.

There is no evidence of the Respondent advising the Complainant of the unusual and special condition relating to the satellite device.

[27] Section 9(1) of the Code states *“A provider must, subject to and in addition to the duties imposed by section 18 of the Act and section 3 (2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 8, which record must reflect the basis on which the advice was given....”*.

There is no evidence of any record of advice reflecting the information or advice provided to the Complainant.

[28] Section 2 of the Code states *“A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.”*

The Respondent seeks to blame the Complainant for not reading the policy, however, it has not provided any evidence of complying with the Code. There is no evidence of it rendering services with due skill, care, and diligence.

[29] The Respondent appears to regard itself as a mere conduit or post-box for the Complainant's transaction with the insurer. As per the Code, its duties and responsibilities extend far beyond that. The Respondent is the expert in the field and is expected to provide all the information and assistance necessary to ensure that the Complainant is well advised and informed regarding a special condition such as an early warning satellite tracking device. It will then be reasonably expected to follow up regularly to check whether the device was installed and to send proof of the installation to the insurer.

[30] Sending a general letter to all its clients and the policy schedule to the Complainant does not satisfy the requirements in terms of the Code.

[31] Had the Respondent complied with its duties, there is a high probability that the Complainant would have installed the device, and the claim would have been successful. The Respondent's failure to comply with the Code led to a situation where the Complainant was not reasonably aware of the requirement and did not take the necessary steps to comply with the requirement.

[32] The Office's approach in this matter is in accordance with similar determinations

issued previously.

[33] The vehicle was insured for R312,400.00, subject to a 3.5% excess amounting to R10,934.00. Accordingly, the amount the claim would have paid is R301,466.00.

THE ORDER

[34] The following order is made:

- The complaint is upheld.
- The Respondent is ordered to pay the Complainant the amount of R301,466.00; and
- Pay interest on the said amount at a rate of 11.75% per annum from the date of this determination to the date of final payment.

Please note that a person aggrieved by this decision, has the right to apply for the reconsideration of the decision by the Financial Services Tribunal (“the Tribunal”) as contemplated in section 230 of the Financial Sector Regulation Act.

An application for reconsideration must be made:

- (a) In accordance with the Tribunal rules ([link](#)); and*
- (b) Within 30 days as set out in section 230(2) of the FSR Act.*

The contact details of the Tribunal secretariat are as follows:

Ms. Kim Host / Ms Alitah Morudu

E-mail: Applications@fstribunal.co.za

Telephone: (012) 741 4300 / (012) 741 4302 / (012) 741 4303

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DATED AT PRETORIA ON THIS THE 11TH DAY OF DECEMBER 2023

A handwritten signature in black ink, appearing to be 'John Simpson', written over a horizontal line.

ADV. JOHN SIMPSON

OMBUD FOR FINANCIAL SERVICES PROVIDERS