

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 04282/09-10/WC1

In the matter between:

ROLAND FRANZ ZOBELEY

COMPLAINANT

and

MORNE SEAN LUBBE

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 Roland Franz Zobeley, a pensioner residing in Villiersdorp, Western Cape.

[2] The respondent is Mr Morne Sean Lubbe, previously an authorised financial services provider with FSP number 28021 and carrying on business at 2 Daalder Street, Strand, Western Cape, 7140.

B. BACKGROUND

[3] This complaint revolves around an investment made in October 2005 into a company known as Network 1 – The Company Limited t/a PropDotCom no.2 ('PropDotCom'). PropDotCom is part of an entity generally referred to as the Blue Pointer Group of companies ('Blue Pointer'). All pertinent details about the Blue Pointer group of companies were comprehensively dealt with in the determination of BERNARD FEDERICK DUDLEY v LIFESURE FINANCIAL SERVICES CC, FAIS Reference No: 04114/08/09 WC 1, ("Dudley"). As such, it follows that this determination must be read with that of Dudley.

[4] In a nutshell, PropDotCom was established for the purpose of raising capital for financing property acquisitions by its future subsidiaries. In order to raise capital for the acquisitions, PropDotCom offered linked units at R15 000.00 per unit to the public. Each linked unit consisted of Class B ordinary shares of R1.00 per share and an interest free unsecured loan of R14 999.00.

[5] Blue Pointer was never authorised as a financial services provider; and the PropDotCom entities which it marketed were high risk thereby placing investors at risk of losing all or a portion of their capital.

C. COMPLAINT

[6] Complainant noted an advertisement in local newspaper. It was worded as follows: In enlarged bold caps **9.5% INTEREST PER ANNUM AND CAPITAL**

GROWTH; followed by PFA Brokers and their contact details. These contact details led complainant to respondent, who then advised him to invest R90 000, 00 with Blue Pointer in October 2005.

[7] He became worried when he no longer received his monthly interest payments, and thus contacted respondent who informed him that he would get the money when the property was sold.

[8] Complainant believes his capital has been lost and promises by respondent to repay the amount have failed to materialise.

[9] I include herewith as follows two sentences which perhaps most aptly demonstrates the complaint:

[9.1] 'Ek het die investment aan Mnr Lubbe met vertroue gegee, omdat hy die saak baie goed kan hanteer, maar ek het verkeerd gedink.' (I entrusted the investment to Mr Lubbe because he could handle it well, but I thought wrong.)

[9.2] 'Ek kry 'n klein pension en ek benodig die geld baie.' (I get a small pension and really need the money.)

[10] Having been requested by the Office to supply a list of assets and income, complainant's reply thereto reflected an individual of very limited means.

D. RESPONSE

[11] In reply to the complaint, Respondent stated that he was a representative of

Blue Pointer under the FSP number 7895 – Key individual Chris van Tonder. He cannot find the contract that he signed with Blue Pointer and neither does Blue Pointer exist anymore to get the necessary documentation.

[12] He initially understood that the prospectus contained sufficient information, given that the investor had all the detail upfront as contained therein. Complainant himself had signed the contract stating that he has a copy of the prospectus and as such, had all the information required by the Financial Services Board.

[13] As for Blue Pointer as an investment, Respondent advised that he personally invested R450 000 into this company and asserts that it was never a risky business or supposed to be:

‘What happened was that the property we purchased for in hard earned cash was bonded by the directors of Blue Pointer without our knowledge (Fraud). Furthermore bridging finance was taken against the property over and above the bond (Fraud).’

E. DETERMINATION

[14] A common thread with most property syndication cases is the financial service provider’s understanding of the product which they are marketing. A perfect example hereof being respondent’s reply to the complaint wherein he makes the following statement:

‘We are selling property and there was a grey area regarding it being financial advice or selling property.’

[15] Respondent provided a brochure in respect of PropDotCom, from which I have taken the liberty of extracting a few sentences:

'PropDotcom is a commercial property consortium venture offering smaller investors the opportunity to invest directly in commercial property through the acquisition of a direct interest in the company.....PropDotCom also prefers to invest in a cluster of quality properties as this reduces risk whilst the capital preservation fund will also serve the purpose of further hedging the investment against risk. Obviously the fact that shareholders own the properties is the first and foremost consideration in terms of determining the risk profile of this type of investment.'

[16] Whilst the document which Respondent forwarded relates to Turquoise Moon Trading Limited trading as PropDotCom No 1, nonetheless the principle remains.¹

[17] Quite simply an ordinary share of R1.00 linked to an unsecured interest free loan to the company with a nominal value of R14 999, is anything but an investment in property. This being Respondent's understanding, it is inconceivable that anything else conveyed to complainant was correct.

[18] The illusion of an investment in property as conveyed by the brochure creates the perception of a secure investment when this could not be further from the truth.

¹ Refer to the Dudley determination supra in paragraph 3. The determination is available on the FAIS Ombud's website www.faisombud.co.za.

[19] There were inherent risks in the Blue Pointer product, yet nothing on file assists me to understand quite why an unregulated high risk scheme such as PropDotCom was recommended and how it would be likely to satisfy complainant's needs in the circumstances. The risks of investing in unlisted shares in the circumstances far outweigh any potential returns and respondent furnished no document evidencing that these risks were disclosed to complainant; in particular that he could lose all or a portion of his capital.

[20] This marks a breach of the Code which requires full and appropriate information of the material terms of the investment and other risks associated with the product, a requirement of section 7 (1) (xiii) of the Code.

[21] Respondent has not so much as bothered to comply with the requirements of the FAIS Act and General Code, least of all, even performing a simple needs analysis as required by section 8(1) (a) of the Code, which analysis would have enabled him to provide appropriate advice. It is no wonder that 8(1) (c) of the Code was not complied with, namely that Respondent identify the financial product or products that will be appropriate to the client's risk profile and financial needs. There is also no record of advice as required by section 9 of the Code.

[22] There is no evidence that Respondent disclosed his commission, a requirement of section 3 (1) (a) (vii) of the Code, which provides that all 'fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or the provider, be reflected in specific monetary terms....'

[23] Part of Respondent's defence is that Complainant sold his shares in Blue Pointer thereby realising his full value, and bought shares in SAFGrowth (a company within the Blue Pointer group) with the proceeds. These shares were then supposedly sold to a private individual but the sale fell through. Given that by the supposed second sale there was already clear evidence of problems it is somewhat surprising that anyone would buy the shares much less an apparent relative of respondent, one CJ Lubbe.

[24] From a form supposedly submitted in support of his contention that Complainant sold his shares I note the following:

'Thank you for your support in Propdotcom and your decision now to invest in SAFgrowth....I Roland Franz Zobeley do hereby agree to exchange all my PropDotCom investment linked units (shares) for linked units (shares) of the same value in the Income Plan Option of SAFGrowth Limited.'

[25] This is signed by complainant on the 15th June 2006. On closer inspection I noted that the broker is still reflected as Mr M.S Lubbe, with the original investment deposit date being 9th October 2005. The reference number starts with PDPC 2. In other words, PropDotCom. The postal address remains the same and even the physical office is merely a different unit within the exact same office complex.

[26] In a nutshell, complainant clearly remained within the very same structure controlled by the same individual in which he was advised to invest in by respondent.

[27] Now as already mentioned the very brochure provided to the Office by respondent relates to Turquoise Moon Trading 46 and not the company in which complainant invested namely Network 1- the Company Limited trading as PropDotCom No.2.

[28] Turning now to the provisions of section 5 of the Code which require that a provider rendering financial service to a client must at the earliest opportunity furnish full contact details, as well as concise details of the legal and contractual status of the provider and the names and contact details of the relevant compliance department, or in the case of a representative, such detail concerning the provider to which the representative is contracted. The purpose thereof being such as to ensure that clients understand who it is that they are contracting with.

[29] All too frequently as in the matter at hand, this disclosure is misleading. Amongst the various documentation forwarded by complaint were the following:

[29.1] A disclosure document reflecting Morne Sean Lubbe as a Personal Financial Adviser at **PFA Brokers (my emphasis)**, authorised to market Old Mutual/Sanlam/Liberty Life/Mutual & Federal/Santam. Next to this list and completed by hand are the following, Momentum/Sharemax/PIC/Div Inv; No FSP number was indicated on this form.

[29.2] A PFA **Personal Financial Advisers** (my emphasis) business card with the name of Morne Lube;

[29.3] Yet respondent claimed to having been representing Blue Pointer as a

representative under FSP 7895 which is Chris Johan Van Tonder. Van Tonder effectively rented out his license to Blue Pointer which itself was not licensed. Respondent is however not reflected on the list which Van Tonder supplied to the Financial Services Board and neither was respondent able to supply any documentation evidencing that such a contractual arrangement existed.

[29.4] What is interesting is that there is an entity, namely Paarl Financial Advisers CC FSP 11078 which was authorised on 22/12/2004 for shares but not debentures, and under which respondent was listed as a representative. Whilst Paarl Financial Advisers CC contends that they were never accredited by or contracted with Blue Pointer (and that it appears that respondent contracted directly with these entities), their name appears on Chris Van Tonder's list.

[29.5] Nonetheless whilst the name PFA brokers is used, nowhere is the name Paarl Financial Advisers reflected. The Blue Pointer documentation refers to the broker as Mr Lubbe, thereby pointing to Mr Lubbe, acting on his accord and as such being unlicensed when he rendered the advice. Even had he been acting as representative of Paarl Financial Services this entity was itself not authorised for debentures and as such respondent's conduct would have in any event contravened the requirement that he be licensed to render advice.

[29.6] Indeed there is also a FSB application No 28021 for a Morne Sean Lubbe in 22/08/2006, approved on 13th February 2007 but lapsed on the 11th January 2010.

[29.7] An illustration of respondent's proclivity for registration as an FSP or representative is perhaps best served by the following list, in which the FSB informed the Office that he was appointed as a representative of the following additional FSP's:

FSP 6152 (USSA) removed 11/01/2007 products 1.8 and 1.10

FSP 22381, removed 14/2/2008 products, 1.8, 1.9, 1.12 and 1.14.

FSP 26369, removed 27/02/2009, products 1.8 and 1.10

FSP 28643, removed 31/12/2008, products 1.8

FSP 29432. removed 31/03/2008, products 1.8

[29.8] In addition respondent was the key individual of Family Wealth Creator cc No 39056, an entity authorised on the 10th June 2009.

[29.9] On a form provided by respondent, with the subheading 'Conditions pertaining to application for shares', particularly interesting is the statement that 'the applicant hereby also confirms that he/she has satisfied himself /herself regarding the identity of the Independent Financial Consultant and has had access to his/her accreditation certificate.' (The applicant refers to complainant)

[29.10] By independent, this can only be interpreted to mean other than a Blue Pointer related entity; however, it is clearly evident the information contained in the disclosure documentation provided by respondent is distinctly less than forthright.

[30] In the matter at hand it is clear that respondent made no attempt to disclose upon whose behalf he acted; if anything his disclosure was designed to mislead complainant. Certainly there is not one single reference to him having acted on

behalf of Van Tonder as he now asserts, never mind the utilization of PFA and Personal Financial Advice when viewed against his registration with Paarl Financial Advisers.

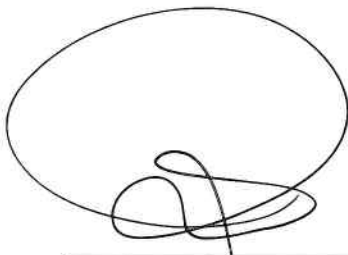
[31] In conclusion, the advice appears to have been wholly inappropriate; most certainly there was no compliance with the Code and no attempt to perform a needs analysis or recommend a suitable product.

F. THE ORDER

I make the following order;

1. The complaint is upheld;
2. Respondent is ordered to pay the sum of R90 000,00;
3. Interest at the rate of 15.5 %, from a date seven (7) days from date of this order to date of final payment;

DATED AT PRETORIA ON THIS THE 20th DAY OF DECEMBER 2012



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS