IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FAIS 07380/12-13/ MP 1

In the matter between:

George Baben	**First Complainant**
Lucille Miriam Baben	**Second Complainant**
and	
Koch & Krugar Brokers CC	**First Respondent**
Deon Krugar	**Second Respondent**

DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO 37 OF 2002 (the Act)

A. INTRODUCTION

[1] This determination follows a recommendation made in terms of section 27 (5) (c) of the Act on 28 February 2018. Section 27 (5) (c) empowers the Ombud to make a recommendation in order to resolve a complaint speedily by conciliation**.** This determination therefore, shall be read in conjunction with the recommendation and shall form part of this determination.

[2] The respondent's response to the recommendation was received on 13 April 2018, and shall be dealt with below.

B. THE PARTIES

[3] The first and second complainants are George Baben and Lucille Miriam Baben. They are married to one another and are retired. Their full particulars are on file with this Office.

[4] The first respondent is Koch & Krugar Brokers CC (1992/007171/23), a close corporation duly incorporated in terms of South African law. The first respondent is an authorised financial services provider (FSP) (11085) with its principal place of business noted in the Regulator's records as Suite 305, Medforum Building, Secunda, 2302. The license has been active since 20 October 2004.

[5] The second respondent is Deon Krugar, an adult male representative and member of the first respondent. The regulator's records confirm the second respondent's address to be the same as that of the first respondent. At all times material hereto, the second respondent rendered financial services to the complainant. (Note: Mr Deon Kruger is currently only listed as a 50% member of first respondent. He was previously listed as representative of first respondent since the inception of the license on 20 October 2004; he subsequently resigned as a representative effective 1 January 2013.)

[6] It appears from the Regulator's records that the respondent was <u>not licensed to render financial services</u> in connection with unlisted shares categorised as 1.8 (described in the FAIS Act as Securities and Instruments: Shares), and category 1.10 (described in the FAIS Act as Securities and Instruments: Debentures and

Securitised Debt). This means that the respondent was never licensed to render financial services with regards to The Villa Ltd and Zambezi Ltd syndications (refer to the attached correspondence).

[7] I refer to the respondents collectively as "respondent". Where appropriate, I specify which respondent is being referred to.

C. RESPONDENT'S REPLY TO THE RECOMMENDATION

[8] The respondent maintains his stance that as he had not been licenced to render financial services in terms of categories 1.8 and 1.10 he had acted as a representative under supervision of USSA. (Note: This aspect has been extensively canvased in paragraphs 37 and 38 of the recommendation.)

[9] The respondent then makes specific reference to correspondence received from a Renate Goosen, the compliance officer for FSP Network (PTY) Ltd, dated 8 March 2010, where it is claimed that the respondent possessed the required qualifications to in his own words "…sell the product." (Note: Not only is this correspondence dated after the transaction had been concluded with the complainants, but it has no bearing on the requirements of Section 7 and 8 of the FAIS Act that require a Financial Services Provider to be appropriately licensed to provide advice and an intermediary service, with one of the requirements to be satisfied being that of demonstrating to the Regulator one's competency in the categories for which a license is sought.)

[10] The respondent, without any additional evidence, disputes the complainants version that they had never been informed of the risks involved, that they had never been provided with a copy of the prospectus and that they had been under the impression that they were buying shares listed on the stock exchange. (Note: The aspects surrounding risk and the respondent's failure to adequately advice the complainant of such are dealt with in the recommended in paragraphs 22 – 35 and paragraphs 39 – 42 respectively. With regards to the other claims made, no further documentation has been provided to support the respondent's utterances in this regard.)

[11] In response to his failure to comply with the replacement protocol as detailed in section 8(1)(d) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ('Code'), the respondent claims that he had only been instructed to, in his own words "…complete replacement forms if a "insurance type of product was to be replaced…". (Note: Section 8(1)(d)[1] of the Code is clear in its requirement that the replacement protocol be adhered to whenever a financial product is to be replaced with another financial product.)

[12] The respondent in his response proposes to justify the due diligence conducted by him which led to him having been satisfied that the investment does not pose an undue risk to his clients, and also points to the then Financial Services Board (Now Financial Services Conduct Authority.) having provided Sharemax with a license.

[1] Section 8(1)(d) - where the financial product ("the replacement product") is to replace an existing financial product wholly or partially ("the terminated product") held by the client, fully disclose to the client the actual and potential financial implications, costs and consequences of such a replacement.

(Note: The risks inherent in the investments recommended to the complainants, and the respondent's failure to adequately appreciate the implications thereof and by extension to have adequately appraised the complainants thereof is dealt with in the recommendation in paragraphs 23 – 36 and paragraphs 39 – 40 respectively.)

[13] In closing the respondent claims that the only gain that he made from the recommendations made to the complainants was the commission paid to him, which amounted to R46 800, and that this would be the only amount he would be willing to reimburse to the complainant.

[14] This offer was rejected by the complainants.

D. CONCLUSION

[15] The issues raised in the recommendation have therefore not been disturbed, and based on the information provided in the recommendation it follows that respondent is liable to pay complainant's claim

E. THE ORDER

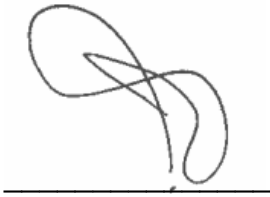
[16] I therefore make the following order:

1. The complaint is upheld.
2. The respondent is ordered to pay the following:
   - R330 000 to the first complainant;
   - R550 000 to the second complainant.

3. Interest on this amount at a rate of 10% per annum from the date of determination to date of final payment.

4. The complainants to cede their rights and title in respect of any further claims in respect of this investment to respondent.

DATED AT PRETORIA ON THIS THE 12th DAY OF OCTOBER 2018.



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NARESH S TULSIE
OMBUD FOR FINANCIAL SERVICES PROVIDERS