

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

**PRETORIA**

**CASE NUMBER: FOC 2079/07-08/LP (2)**

In the matter between:

**CATHARINA ELIZABETH DU PLESSIS**

Complainant

and

**SA HOME LOANS (PTY) LTD**

Respondent

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

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**A. PARTIES**

[1] The Complainant is Mrs Catharina Elizabeth du Plessis of 11, Selati Street, Polokwane, 0699, Limpopo Province.

[2] The Respondent is SA Home Loans (Pty.) Ltd., a registered Financial Services Provider of No.1, The Glades, 78 Armstrong Avenue, La Lucia, 4051, Kwa-Zulu Natal.

**B. THE BACKGROUND**

[3] Complainant and her late husband obtained a home loan from the Respondent and a Mortgage Bond was registered over their jointly-owned property as security for the bond. They were married out of community of property. As further security, Credit Life Insurance was effected over both spouses' lives on 29 August 2005 and the policy commenced on 1 November, 2005. The insurance cover was underwritten by SAHL Life Assurance Company (SAHL Life), an associate of the Respondent.

[4] Complainant's husband died on 13 May 2007 and Complainant duly submitted a claim in terms of the policy. SAHL Life repudiated the claim by letter dated 18 July 2007 on the grounds that the deceased died of a pre-existing medical condition within twenty four months of inception of the policy.

[5] Complainant says she and her late husband were misled when the life assurance was offered as she as co-owner was not contacted by the Respondent and the deceased could not agree to 'this kind of life assurance' on her behalf. She asks for proof that her husband did not disclose his pre-existing medical condition. (More about this later) She also alleges that to her

knowledge no policy documents were issued as she did not see or receive any. Neither she nor her husband was made aware of the fact that due to his condition there was a possibility that the death benefits would not be paid out. Complainant is further of the view that Respondent did not properly advise her late husband about the exclusions.

### **The relief sought by Complainant**

[6] The Complainant wants the Respondent to settle the balance outstanding on the bond as at date of her husband's death.

### **Investigation by this Office**

[7] The complaint was sent to the Respondent for comment. A detailed response was provided including documents and, more importantly, a voice recording of the telephonic discussion between Respondent's consultant and the deceased when the mortgage insurance was sold to him.

[8] When asked by the consultant about the state of his health, the deceased disclosed that he had had a heart attack some three months before. Respondent's representative thereupon told the deceased that he would not be covered for that condition for a period of twenty four months. The deceased said he understood and the policy was duly issued. He died almost nineteen months later of 'cardiac failure' or a heart attack, i.e., within the twenty four months exclusion period.

## **The Issues**

[9] The crisp issues for determination are:

9.1 Was the insurer correct in repudiating the claim when Complainant's husband died within the twenty four months exclusion period given that disclosures were only made to her late husband?

9.2 Did the insurer send any policy documents to her or her late husband?

### **C. DETERMINATION AND REASONS THEREFORE**

**Was the insurer correct in repudiating the claim when Complainant's husband died within the twenty four months exclusion period?**

[10] It is clear from the voice recording of the discussion between the Respondent's consultant and the deceased that the latter was clearly informed of the fact that he would not be covered for twenty-four months for death due to a heart attack. The deceased accepted that. Unfortunately, he died some nineteen months later, i.e., within the exclusion period. I am of the view that the Respondent was entitled to repudiate the claim in the circumstances and no blame could be imputed on it or its consultant as there was proper disclosure in terms of the General Code of Conduct for Authorised Financial Services Providers (the Code) promulgated under the FAIS Act.

### **Did the insurer send any policy documents to her or her late husband?**

[11] It is clear from the recorded telephonic discussion between the deceased and the consultant that deceased elected to receive the policy document by email. According to the Respondent, the deceased never complained in the subsequent seventeen months that he did not receive it. A further point is that the consultant told the deceased that if he was not happy with the policy he had thirty days in which to cancel it. He did not cancel it. The probabilities are that he received it and was happy with it. In any event, the receipt or non-receipt of the policy document is irrelevant for determining whether the Respondent was entitled to repudiate the claim given that it was based on a pre-existing medical condition which caused the death of the deceased within the exclusion period.

### **A further issue raised by Complainant**

[12] A further point raised by the Complainant is not directly relevant to the determination of the complaint but it will be commented upon in view of its importance in the context of proper rendering of a financial service. The issue is whether the Respondent was correct in having insurance cover effected over both the Complainant and the deceased's lives by consulting with and asking health questions of the latter only and in circumstances where they were married out of community of property.

[13] Respondent's reaction was that in terms of the FAIS Act, its regulations and the Code it is not required to provide information regarding the exclusion clauses to each insured telephonically. It is sufficient for this to be done in writing. However, the Respondent is rendering the financial service through direct marketing. My view is that they simply cannot speak to only one party.

[14] Both Complainant and her late husband were covered under the policy. The policy terms and exclusionary clauses were disclosed to the deceased only. The question is what would have happened if she had any pre-existing medical condition of which she had died and her husband had survived? That was precisely the issue in the *Saroja Naidoo v SA Home Loans (Pty) Ltd (FOC/035/06/KZN (2))* determination where only the surviving spouse was informed of the exclusionary clauses; here it was the deceased. This Office determined the issue in favour of the Complainant in that case. The matter was taken on appeal by the Respondent to the Board of Appeal. Counsel for the appellant argued that disclosure made to the Complainant was equivalent to disclosure to her husband. The Board said at paragraph 13 that "This places far too technical approach on the situation." The Board upheld the Ombud's ruling on this aspect for several reasons which are fully set out in its decision. Fortunately for the Respondent that issue does not arise in this case before me. However, Respondent would be well advised to change its stance on this point and ensure that it's consultants make proper disclosure to both spouses.

[15] Respondent also contended that whether the Complainant and her spouse were married in or out of community is not relevant in the circumstances of this case. I agree.

[16] As stated in [9] above, in this case Respondent's representative had spoken to the deceased. He disclosed his health problem. He was informed of and accepted the clause relating to a twenty four month exclusion period for his specific condition. Unfortunately for the Complainant, he died of the condition within twenty four months. The complaint therefore falls to be dismissed.

**Accordingly, I make the following order:**

A. The Complainant's complaint is dismissed.

**DATED AT PRETORIA THIS 18<sup>th</sup> DAY OF FEBRUARY 2008.**



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**NOLUNTU BAM**

**DEPUTY OMBUD FOR FINANCIAL SERVICES PROVIDERS**