

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

CASE NO. FAIS 3852/09-10/ MP 1

In the matter between:

SUSANNA GERTRUIDA DU PLESSIS

COMPLAINANT

and

NICOLAAS RENSBURG CRONJE T/A

NIC CRONJE MAKELAARS

RESPONDENT

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

A. THE PARTIES

- [1] The complainant is Susanna Gertruida du Plessis, an adult female of Po Box 3813, Witrivier 1240.
- [2] The respondent is Nicolaas Rensburg Cronje t/a Nic Cronje Makelaars which carries on business of a financial services provider at 10 Tinktinkie Street Nelspruit. The respondent is a licensed financial services provider with FSP number 15657. The license was granted to Nic Cronje Brokers CC with the

key individual being recorded as the respondent. The license is a category 1 as issued by the FSB.

B. THE COMPLAINT

- [3] The complainant and her husband, Jeremias, had accumulated cash in a savings account at ABSA Bank. The complainant and her husband had available, for investment, an amount of R2 million.
- [4] The couple were approached by the respondent who wanted to invest this money on their behalf. The complainant wanted R1 million to be invested on her behalf and her husband a similar amount. The respondent invested R1 million on behalf of the complainants husband and as this investment is not relevant to this complaint; nothing further will be said about it.
- [5] The complainant wanted an investment that gave her a monthly income as well as capital growth. The respondent recommended that the funds be invested in Bluezone Property Investments (Pty) Ltd, in particular the Spitskop Village Properties Ltd.
- [6] On the 11th January 2007, the respondent accompanied the complainant to the latter's bank and withdrew a sum of R1 million. The money was deposited into the account of Honey and Partners, a firm of attorneys.
- [7] On the 29th January 2007 the complainant received her share and debenture certificate in Spitskop. After investing, complaint began receiving interest payments. On the 21st November 2007, complainant received a letter from the SAPS informing her of a land claim in respect of the Spitskop development.

Complainant immediately called the respondent who informed her that the letter was “nonsense” and that her investment was safe.

- [8] The complainant did not feel reassured by the respondent and on the 1st December 2008 wrote to the respondent requesting that the latter immediately withdraw her money from the Spitskop investment and to deposit same into her savings account at ABSA Bank. Upon receipt of this letter the respondent informed the complainant that there was a penalty to be paid for the early termination of the investment and that it was better for the complainant to wait until August 2009. According to the complainant the respondent again assured her that she “had nothing at all to worry about”.
- [9] On the 4th or 5th December 2008 respondent visited the complainant and her husband and assured them that everything was “100% in order”. He also stated that he was going to consult people from Bluezone to confirm this.
- [10] Thereafter, two representatives of Bluezone, Heinrich Bessinger and Marna Strydom visited the complainant and assured her that there was absolutely no need for concern. Shortly after this visit, another letter was received from the SAPS. This time the respondent told the complainant to throw the letter in the bin. Again the respondent gave the assurance that the money “is safe”.
- [11] On the 3rd August 2009, the complainant received a letter informing her that Spitskop had been placed into liquidation. Even after this letter, both respondent and Heinrich continued to assure the complainant that her money was safe. Since August 2009, no more interest payments were received by the complainant.

[12] There is now no prospect of the complainant recovering her money.

C. JURISDICTION

[13] The complainants claim exceeds the jurisdiction of this office. The complainant, in writing, was willing to forfeit an amount of R150 000 – 00. The matter is now within the jurisdiction of this office.

D. THE RESPONSE

[14] The respondent responded to this Office by sending a short affidavit and all the documents in his file. Before this office was engaged, the complainant had filed a complaint with the FSB. The respondent included in his documents his response to the FSB. I will take this into account as well.

[15] In his affidavit, the respondent appears only to respond to the allegation that he failed to withdraw the investment and deposit the money into the complainant's savings account. Whilst it was necessary for him to do so, he still had to deal with the allegation that he did not act in the interests of his client in recommending the Bluezone investment.

[16] The respondent states that he started the procedure to withdraw the investment but recommended against this as a 10% penalty was applicable. Respondent recommended that the complainant should wait until August 2009, after which no penalty would apply. The complainant does not dispute

this but questions the respondent's conduct in recommending the Bluezone investment in the first place.

- [17] In correspondence to the FSB, the respondent denies that he failed to act with due skill, care and diligence. He states that at all times he conveyed information to the complainant only after same was conveyed to him by Bluezone and he accepted from Bluezone that the complainant's capital was guaranteed.
- [18] The respondent sent copies of the documents he received from Bluezone which included his section 13 certificate and the documents signed by the respondent. I shall deal with these documents later.
- [19] The respondent denies that he failed to act in the interests of the client and denies that he acted contrary to the FAIS Act.

E. THE ISSUES

- [20] The following are the principal issues to be determined:

- 20.1 whether the respondent rendered the financial service herein negligently and/ or in a manner which is not compliant with the FAIS Act; and
- 20.2 If it is found that the respondent did render the financial service negligently/ and or failed to comply with the FAIS Act, whether such failure caused the complainant's loss.

F. FINDINGS

- [21] At the outset it must be said that the respondent admits that the Bluezone investment was introduced by him and that the complainant acted upon his recommendations.
- [22] On the respondent's own version he made no independent inquiry into the merits of the Bluezone investment. Respondent readily admits that all his information about the investment came from Bluezone itself. I could find no evidence of even the most basic due diligence on the part of the respondent.
- [23] The respondent admits that he was not licensed, in his own right, to sell this investment. His licence from the FSB makes this perfectly clear. The respondent set out no facts to even suggest that he had the capacity to give advice regarding property syndication and the sale of unsecured shares and debentures.
- [24] According to the respondent he did not act illegally as he acted as a representative of Bluezone in terms of section 13 of the act. For a further discussion on the interpretation and application of Section 13, I refer to the determination in **Black v Moore, Case Number: FAIS 01110/10-11/WC1**.
- [25] In his certificate in terms of section 13(1) of the Act, it is noted that the respondent "is competent and authorised" to render financial and advisory services in respect of the Bluezone products. Exactly how the respondent became competent is not explained. The respondent certainly gives no information in this regard. For reasons set out in the case of **Black v Moore**, I find that the respondent was not competent to sell this product and consequently not qualified to advise the complainant regarding an investment in Bluezone.

- [26] The respondent, in selling this product, carried out a "Risk Profile Analysis" of the complainant. It is not in dispute that in terms of the Act the respondent was obliged to do so. The analysis was carried out on a document produced by Bluezone. The document was filled out by the respondent according to the complainant. The complainant then signed this document. Significantly, the analysis determined that the complainant's risk profile was "moderately conservative", it further defines this as "investors who want to protect their capital and achieve some real increase in the value of their investments".
- [27] Having obtained this risk profile of the complainant, the respondent promptly ignored it and put the complainant's investment into high risk property syndication. The respondent acted negligently.
- [28] Equally there was a duty on the respondent to satisfy himself that this investment was viable. Respondent took no such steps. He does not even appear to have read the disclosure documents (DD) from Bluezone. See the Black case. Ironically the respondent got the complainant to sign a document wherein she acknowledged that she received the dd and that she had read them. I truth no such thing happened. The duty was on the respondent to read the DD and advise his client. The respondent acted negligently.
- [29] It is abundantly clear that the respondent abandoned his duties. At the very least one would have expected the respondent to question where this commission was to be paid from. The respondent knew that Bluezone did not have an existing business and an independent source of income.
- I refer to the case of **Naidoo v Swanepoel Case Number: FAIS 01110/10-11/ NC 1.**

For reasons set out in this case as well as in the **Black v Moore** determination, I find that the respondent acted contrary to the FAIS Act.

[30] I find further that it was the respondent's negligent conduct that resulted in the complainant's loss. The complaint must be upheld and the respondent be ordered to compensate the complainant.

G. THE QUANTUM

[31] Complainant invested R1 000 000 – 00 on the 11th January 2007. There is no prospect of recovering any of these amounts as Bluezone went into liquidation. The complainant abandoned R150 000 – 00 and accordingly respondent must pay an amount of R850 000 – 00 plus interest.

THE ORDER

I make the following order:

1. The complaint is upheld.
2. The respondent is ordered to pay to the Complainant,
 - 2.1 The amount of R 850, 000.00;
 - 2.2 Interest on the amount of R850, 000.00 at the rate of 15, 5% per annum from the 1st September 2009 to date of payment.
3. Respondent is ordered to pay the case fee of R 1 000. 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 10th DAY OF MAY 2011.

A handwritten signature in black ink, consisting of several loops and a horizontal stroke, enclosed within a hand-drawn oval. The signature is positioned above a solid horizontal line.

NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

