

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

**CASE NO: FAIS 02853/14-15/ WC 1**

In the matter between:

**JEANRICH HEIN EHLERS**

**Complainant**

and

**IMPACT FINANCIAL CONSULTANTS CC**

**1<sup>st</sup> Respondent**

**MICHAL JOHANNES CALITZ**

**2<sup>nd</sup> Respondent**

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

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**A. THE PARTIES**

[1] The Complainant is Mr Jeanrich Hein Ehlers, an adult male whose full contact details are on file with the Office.

[2] The 1<sup>st</sup> respondent is Impact Financial Consultants CC, a close corporation and authorised financial services provider, number FSP 4274, and carrying on business at 5<sup>th</sup> Floor, The Cliffs, Niagara Road, Tyger Falls Belville.

[3] The 2<sup>nd</sup> respondent is Michal Calitz, key individual and member of 1<sup>st</sup> respondent, and residing at 123 Mauritiussingel, Stellenberg 7550. Calitz at all material times

rendered financial advice to complainant on behalf of 1<sup>st</sup> respondent. In this determination respondent or respondents are used interchangeably.

## **B. THE COMPLAINT**

[4] In March 2010 the complainant invested an amount of R150 000, 00 in RVAF. The investments were made in consequence of the recommendation and advice of the respondent.

[5] Complainant's version of event is as follows:

- 5.1. Respondent was selling investments in the fund to various investors;
- 5.2. In March 2010 complainant accompanied respondent to the offices of Mr Pretorius. The purpose was to attend a presentation given by Mr Pretorius;
- 5.3. At the presentation Mr Pretorius explained that the fund was set up as a hedge fund trading in CFD's (contracts for difference);
- 5.4. Subsequent to the presentation and acting on the advice of respondent complainant made the investment;
- 5.5. Complainant contends that 'the RVAF fund was nothing more than a scam, and in my opinion Mr Calitz did not conduct the necessary due diligence on the RVAF fund before placing investors' money.' To this end complainant contends that respondent act recklessly;
- 5.6. Accordingly the complainant claims the initial capital of R150 000, 00 which was invested.

## **C. RESPONDENTS' REPLY**

[6] I make mention of the fact that the section 27(4) letters from this Office to

respondent are materially similar in all RVAF matters; to this end, respondent referred the Office to his previous replies in this regard.

[7] In essence, respondent contended in his replies that the long and short positions make these investments market neutral, if managed correctly. He further stated that whilst these instruments were not regulated, Abante Capital was registered as an investment manager with the Financial Services Board.

[8] With regards to the matter at hand respondent denies that he recommended the investment to complainant. Instead he contends that one evening complainant's father brought him along to a presentation by Abante Capital.

[9] At the presentation the investment was explained and the complainant interacted directly with Abante, which interaction included the completion of the forms.

#### **D. DETERMINATION**

[10] Reference is made to the determination of *Inch vs Calitz*<sup>1</sup> where this Office dealt with the key issues, which pertain to the rendering of advice to invest in RVAF. Principally the issues pertain to the respondent's failure to understand the entity, (RVAF) and the risks to which he was exposing his clients when he advised them to invest therein.

[11] Evident therein are the material deficiencies in the application forms; the latter, lacking in substance or form it is difficult to understand who or what the complainant was dealing with.

1. **Graig Stewart Inch v Impact Financial Consultants CC and Michal Johannes Calitz FAIS 0497/12-13/MP1**

Yet in spite of these failings, funds were transferred directly into RVAF without even the protection afforded by a nominee account.

[12] In attempting to support his version, Calitz stated that he enclosed as part of his investigations into the investment vehicle a copy of the FSB License brochure on 'Abante Capital (managing agent)' and presentations done by Abante Capital. Yet there is not so much as a single mention of Abante within the contractual documentation, further reinforcing the fact that Calitz himself failed to understand the contracting entity.

[13] Quite simply, no adviser would have recommended this product as a suitable component of any investment portfolio had they so exercised the required due skill care and diligence.

[14] Respondent contends that he never recommended RVAF to the complainant and that the forms were completed during complainant's interaction with Abante. Whilst complainant in his version confirms having attended a presentation<sup>2</sup> by Pretorius, he asserts that Calitz recommended the product.

[15] Additionally complainant has provided the Office with copies of e-mails between himself and respondent, which deal not only with the provision and completion of the RVAF application forms but also the supply by the complainant of FICA documentation as well as complainant's request for RVAF statements.

[16] One of the RVAF statements provided by complainant also reflects respondent as the broker.

**2. He refers to this as a meeting in his complaint but later clarified it as a presentation.**

[17] These correspondences are all indicative of an interaction between a broker and his client; an interaction which respondents' version makes no mention of, instead respondent downplays his role.

[18] On the evidence before me I am satisfied that respondent acted as complainant's adviser.

[19] To this end respondent had a duty to act with due skill care and diligence in accordance with the requirements of the FAIS Act. Complainant as a client of a registered financial adviser, relied on respondents' guidance when making this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Respondent failed in this regard.

[20] As with most of respondent's RVAF matters before the Office there is a notable lack of compliance documentation.

[21] Quite simply there is no needs analysis as required in terms of section 8 of the General Code to establish the suitability of the product; no record of advice in terms of section 9 of the Code; or any disclosure of appropriate information, in particular the material terms, including risk as required by section 7 of the Code.

[22] For the reasons set out in the Inch determination, complainant's complaint must succeed.

## **E. ORDER**

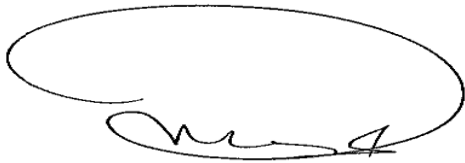
[23] Accordingly the following order is made:

1. The complaint is upheld;
3. The Respondents are hereby ordered, jointly and severally, the one paying the

other to be absolved, to pay to complainant the amount of R150 000, 00.

4. Interest at the rate of 9 %, per annum, seven (7) days from date of this order to date of final payment.

**DATED AT PRETORIA ON THIS THE 13<sup>th</sup> DAY OF OCTOBER 2014**

A handwritten signature in black ink, enclosed within a hand-drawn oval. The signature is cursive and appears to read 'Noluntu N Bam'.

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**NOLUNTU N BAM**

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