IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS PRETORIA

CASE NUMBER: FAIS 02862/13-14/ GP1

In the matter between:

ELIZABETH MAGDALENA FOURIE **Complainant**

and

WILLIAM BARNARD **Respondent**

DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 37 OF 2002 (the Act)

A. INTRODUCTION

[1] On 11 July 2013, complainant filed a complaint with the Office against respondent.

[2] The complaint arises from an investment that was made by complainant into Sharemax Zambezi Retail Park and Theresapark Retirement Village respectively. The basis of the complaint is that respondent advised complainant to invest in a high risk scheme that was incompatible with her personal circumstances and profile as a pensioner.

B. THE PARTIES

[3] Complainant is Elizabeth Fourie, an adult female pensioner whose full particulars are on file with the office.

[4] Respondent is William (Wimpie) Barnard who at the time was an authorised representative under the license of FSP Network (Pty) Ltd[1], license number 6152 that has since lapsed.

[5] At all material times, respondent rendered financial services to complainant.

C. BACKGROUND TO SHAREMAX

[6] Sharemax Investments (Pty) Ltd was a public property syndication company, purportedly engaged in renting, operating, and managing commercial properties for shops and offices. The company was incorporated in 1998 and was based in Pretoria.

[7] On 13 September 2005, Sharemax was granted a licence to act as an Authorised Financial Services Provider in terms of section 8 of the FAIS Act. In terms of the licence, Sharemax was authorised as a Category 1 Financial Services Provider to render advisory and intermediary services with regard to Securities and Instruments, shares (1.8) and debentures (1.10).

[8] Sharemax issued prospectuses regarding the various investments available. These prospectuses were purportedly registered with the Registrar of Companies in terms of section 155 of the Companies Act 61 of 1973.

[9] According to the information contained in the prospectuses, all investments were to be paid to the attorneys and the funds would be retained in an interest bearing

[1] Unlisted Securities South Africa, (USSA) was established by Gerhardus Rossouw Goosen while he was a director of Sharemax. Independent brokers like the Respondent - who were licensed in their own right as Financial Services Providers, but lacked the correct license type - were able to market and sell unsecured debentures as representatives of FSP Network Ltd, trading at the time as USSA. FSP Network was finally liquidated in 2013.

account. In contravention of Government Gazette notice 28690, Notice number 459 of 2006 which states that funds shall only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle, funds were withdrawn by Sharemax, some of which were utilised to fund commissions.

[10] Investors were told that they would receive healthy returns in the form of guaranteed income for the first year of the investment term (bar the first month of investment term).

[11] During the course of 2010, the various property syndications under Sharemax were experiencing difficulties in paying out the promised income.

[12] Following an inspection during 2010 conducted under section 12 of the South African Reserve Bank Act[2], the Registrar of Banks concluded that Sharemax obtained money by conducting the business of a bank without being registered as a bank. The subsequent intervention by the Reserve Bank resulted in frozen investments and massive building operations being uncompleted and lying dormant.

[13] Directives were issued to Sharemax for the repayment of funds collected from individual investors in September 2010. The South African Reserve Bank appointed independent fund managers to take control of the assets of Sharemax and its property syndication companies.

[2] 90 of 1989

[14] During 2012 the court sanctioned schemes of arrangement[3]. These schemes were taken over by Nova Property Group Holdings Limited 2011/003964/06 (Nova) and Sharemax investors were issued with debentures or shares in Nova.

[15] Sharemax''s FSP license nevertheless lapsed in October 2012.

[16] A few interesting points to note:

16.1 Around the time of the announcement of the scheme of arrangement in 2011, the executive directors of the erstwhile Sharemax Group, Dominique Haese, Rudi Badenhorst and Dirk Koekemoer held 43.2% of Nova's issued shares and are currently listed as directors of Nova[4].

16.2 The registered address for Nova Property is 105 Club Avenue, Waterkloof Heights, Pretoria which is the same building as the old Sharemax head office.

16.3 Frontier provided a range of administrative services to Nova and Centro Property Group manages the property portfolio on behalf of Nova. The directors of Frontier are D Haese, D R Koekemoer, C J Van Rooyen and R N van Zyl (formerly directors of the erstwhile Sharemax Investments (Pty) Ltd); and the directors of Centro Property Group are E Grobler and M J Osterloh[5].

16.4 Frontier Asset Management sent out communique dated 6 August 2013 warning investors that those who brought complaints to the Office of the

[3] As contemplated by section 311 of the Companies Act 61 of 1973
[4] http://www.frontieram.co.za/AboutUs.aspx
[5] http://www.frontieram.co.za/AboutUs.aspx

Ombud would lose their right to have their Sharemax investments converted into Nova debentures or shares.

D. THE COMPLAINT

[17] On the advice of respondent, complainant on 14 August 2008 invested an amount of R450 000 into the Zambezi Retail Park syndication. A further amount of R80 000 was invested into the Theresapark Retirement Village syndication on 12 September 2008.

[18] Complainant states that she was assured by respondent that the investment was 100% safe. The money complainant invested was inherited from her late husband. Complainant states she specifically enquired from respondent about the safety of the investment because she was concerned about losing the funds.

[19] The interest payable on the amount invested had been determined at 12.5% per annum. Initially, complainant received the monthly agreed amount, however the last monthly payment received was on 31 July 2010. When no payment followed in August 2010, complainant realised that there was a problem with her investment.

[20] She further complains that respondent failed to send her any correspondence in writing to explain the problems in processing payment. Complainant further claims she has still not received her capital, despite the investment reaching maturity after five years.

[21] Complainant has requested this office to order the repayment of her capital. She claims she has no capacity to lose what by all accounts is a fairly significant amount.

E. RELIEF SOUGHT

[22] Complainant seeks repayment of the amount of R530 000 from respondents.

[23] The basis of complainant's claim against respondent is the latter's failure to render financial services in line with the FAIS Act and the General Code of Conduct, which includes respondent's failure to appropriately advise complainant and disclose the risk involved in the Sharemax investments.

F. THE RESPONSE

[24] In compliance with Rule 6(b) of the Rules on Proceedings of the Office of the Ombud, the office referred the complaint to respondent advising respondent to resolve the complaint with his client. Respondent duly responded on 18 November 2013 indicating that the matter could not be resolved with complainant.

[25] On 29 June 2015, the FAIS Ombud addressed correspondence to respondent in terms of Section 27(4) of the FAIS Act informing them that the complaint has not been resolved and that the office was proceeding towards an investigation. The letter invited respondent to deal with the question of appropriateness of advice, taking into account the risk involved in the investment and how it matched complainants' circumstances. In reply, respondent submitted a supplementary response.

[26] Respondent, in aforesaid responses invoked legal points arguing against consideration of the complaint. Respondent made generalised statements in relation to the conduct of the FAIS Ombud's office but failed to deal with the complaint. These statements have been raised in the past and dealt with in previous determinations. I will thus not deal with them in this determination.

[27] As far as the issue of prescription is concerned, respondent is of the view that the complaint has prescribed as per the provisions of Section 27 (3) (a) (i) of the FAIS Act and should therefore be dismissed. I will respond to this issue later in the determination.

[28] The remainder of respondent's response will now be dealt with

28.1 Respondent met complainant during August 2008 through her daughter and son in law who had been his clients for 10 years. During their meetings, complainant's son, daughter and son in law were present and gave input. Although respondent is satisfied that complainant understood their discussions, it was clear to him that complainant's son made the final decision for her.

28.2 Complainant informed respondent that she cannot sustain her standard of living on the interest that she is earning on her savings and therefore required a product that would provide higher monthly income. Respondent subsequently met with complainant to collect the necessary data to be able to give sound advice. Respondent considered complainant's request to be a single need.

28.3 Respondent recommended the Sharemax syndication in light of the returns offered (12% per annum). The prospectus indicated that national tenants had been secured. The possibility that the property would be sold was taken into account, in which event complainant could make substantial capital gain. Respondent informed complainant that the investment is medium to long-term, at least five years and complainant was satisfied to have the capital locked in for that period of time as she needed the monthly income.

28.4 Respondent indicated that the investment was structured as a debenture since the Receiver of Revenue allowed tax payers a rebate on interest earned. Had the investment been structured as rental income, the full amount would be taxable.

28.5 As part of his due diligence, respondent states that he continually consulted financial newspapers for advertisements and articles from respected financial journalists and commentators to be in a position to advise his clients of what the market is offering in terms of investments, the quality of such products and what could be expected of the products on offer. Respondent says he did the same for Sharemax, which seemed to be in the news regularly then. Respondent particularly relied on the articles of Mr Magnus Heystek, who apparently recommended Sharemax as an alternative investment option for pensioners.

28.6 Despite concerns raised around vacancies, rental collection and maintenance of the building, which respondent informed complainant

would be taken care of by the promoter, there was an understanding between respondent and complainant that in general, property was a good investment. It would appreciate in value over time and provide her with regular monthly income.

28.7 Respondent requested complainant to ensure that she had sufficient liquidity in respect of other investments, as well as money available for emergencies. Complainant indicated that she would acquire more capital in respect of a policy on the life of her late husband.

28.8 Respondent further states that complainant agreed to all terms and conditions of the investments and confirmed that she understood the risks associated with the investment by signing the "Client Advice and Intermediary Service Agreement". Respondent considers the advice rendered to be based on the due diligence exercise undertaken by him. Respondent states that he worked through the compliance documentation and prospectus with complainant step by step to ensure that she fully understood the information in order to make an informed decision.

28.9 Respondent further provided a list of documents to complainant which amongst others, confirmed that Sharemax was a non-guaranteed investment. Respondent makes reference to certain paragraphs in the prospectus which confirm that the shares are unlisted and that the investment should be considered as a risk capital investment.

28.10 During September 2008 complainant concluded a further investment and respondent again stated that complainant understood the risks associated with the investment by signing the client advice document.

28.11 Respondent considers his function as one of establishing the needs and circumstances of his clients and advise accordingly, by identifying an appropriate financial product, aligned with the client's needs. In this regard he considered the product recommended commensurate with complainant's circumstances and needs. Respondent is of the view that the aforesaid is often a balancing act between client's needs and the circumstances. Respondent feels that it was complainant's decision to make the investment and he has therefore fulfilled his duties in terms of the Act and the Code.

28.12 Respondent further notes that it is a client's democratic right to do with their money as they see fit and not be dictated by anyone. If a client, with full knowledge and understanding, therefore selects a product even though it does not correspond with their risk profile, respondent is of the view that he did not fail in his duties. This is what occurred in this instance. Respondent states that it is not his duty to act as a policeman for an investor and refuse to assist where a 'fully informed' client has made up her mind.

28.13 In summary, respondent:

a. denies providing bad advice to complainant. Complainant had a single need which he addressed, and therefore, she did not require a detailed financial analysis;

b. confirms that by way of signature of the necessary documentation, complainant was aware of the risk and still persisted with the investment.At all material times the risk was disclosed to complainant and respondent disagrees with the characterisation of the investment as an ‘extremely risky venture’;

c. The prospectus in respondent’s view, complies with Government Gazette notice 28690, Notice number 459 of 2006.

d. Respondent also sets out a list of things he considered during his due diligence exercise. It will not be repeated here, save to say the respondent considered the Sharemax syndications as legitimate, backed up by various financial institutions and compliant with requirements set out by the FSB and Reserve Bank.

28.14 The functions of the Ombud, according to respondent, is to act as an impartial and objective adjudicator, investigating the matter, establishing the fact and applying the facts to the legal principles to test for liability. Her function is not to “police” the conduct of respondent and to check compliance with formalistic requirements in accordance with her subjective views, and if non-compliance is found, hold respondent liable. Respondent states that non-compliance with the Act or Code of Conduct can only lead to liability if the non-compliance was the direct consequence

or cause of the alleged loss (and other common law requirements of liability have also been established).

G. DETERMINATION

[29] The following issues arises for determination:

29.1 Jurisdiction;

29.2 Prescription;

29.3 Whether respondent, in rendering financial services to complainant, violated the Code and the FAIS Act in any way. Specifically, the question is whether complainant was appropriately advised, as demanded by the Code;

29.4 In the event it is found that respondent breached the Code and the FAIS Act, whether such breach caused the loss complained of and the amount of the damage or financial prejudice.

Jurisdiction

[30] The declaration in support of respondent's application in terms of section 27 (3) (c), sought that the Ombud decline to entertain the complaint and to determine that it is more appropriate that the complaint be dealt with by a court of law. Alternatively, the Ombud in investigating the complaint, should afford respondent a hearing which should include the following of due process in investigating matters of this nature.

[31] Respondent further states that he should be entitled to have a detailed statement or “pleading” setting out the charges against him. He should further be afforded the following:

a. The opportunity to request further particulars;

b. The discovery of documents;

c. The receipt of expert witness reports;

d. The taking of evidence on oath;

e. The cross-examination of witnesses;

f. The right to legal representation, and;

g. Allowed to be submit legal argument prior to the Ombud making a final decision.

[32] Respondent’s argument is further supported by reference to Section 34 of the Constitution relating to access to courts.

[33] To summarise, respondent raised the point that there are deep and fundamental differences between the version of events of complainant and his. To determine the truth would require the elements set out above and such a decision cannot be made on paper.

[34] The above points raised by respondent are not new. They were all considered in the *Deeb Risk and D Risk Insurance Consultants v The Ombud for Financial Services Providers and Others*[6] where the Honourable Judge S Baqwa in rejecting the Applicants’ arguments concluded:

[6] Case no 38791/2011 paragraph 7 - 12

"The effect of section 27 (3) (c) (supra) is that first respondent retains jurisdiction over a complaint unless she, on reasonable grounds makes a determination that it should be dealt with by a court or any alternative dispute resolution process. It has been submitted and I accept that first respondent administers an institution, which in terms of FAIS demands efficiency and economy and that this may indeed justify the lack of a public hearing in circumstances, which may be resolved quickly and with minimal formality.

The section confers neither a right on applicant to demand that the Ombud declines her jurisdiction to deal with complaints, nor does it confer a duty for her to do so. The section clearly confers discretion on the first respondent. Any other interpretation would be tantamount to stripping her of her statutory powers in terms of the FAIS Act. Absent a decision by the first respondent to refer the matter to a court, she retains jurisdiction.

[35] Accordingly, the above-mentioned judgement makes it clear that this office has jurisdiction to entertain the complaint. I do not intend to deal with rest of respondent's unwarranted attacks on the person of the Ombud.

Prescription

[36] It is unfortunate that respondent only referenced the first portion of section 27 (3) (a) (i). Subsection (a) (ii) further reads as follows:

"Where the complainant was unaware of the occurrence of the act or omission contemplated in subparagraph (i), the period of three years commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first". (my emphasis)

[37] It is correct that the advice was furnished during 2008. What is relevant is when complainant became aware of the act or omission. Complainant became aware that there was a problem with the investment when she did not receive her monthly income, on 31 August 2010. The complaint was submitted to this office on 11 July 2013, and the complaint form signed on 13 April 2013. Therefore, complainant still fell within the three year period as required by the provision. This should therefore settle the argument with regards to prescription. I now deal with respondent's response to the merits of the complaint.

Record of advice and other documentation

[38] The complaint centres about the appropriateness and suitability of advice by respondent. Complainant relied on, and trusted the advice of respondent.

[39] There is a record of advice which was annexed to the response provided by respondent. The problem with this purported record of advice, is that it only contains information about the service rendered and the recommended product, but contains no personal information whatsoever about complainant which should give an indication as to what her circumstances were. There is no indication as to what complainant's assets and liabilities were, what her income and expenditure was, means of subsistence, other financial arrangements, and whether complainant had experience in any other financial products. It only states that she held funds in a money market account and that this money will now be placed with Sharemax to provide a higher income.

[40] Section 9(1) of the General Code of Conduct provides that:

"A provider must, subject to and in addition to the duties imposed by section 18 of the Act and section 3(2) of this Code, maintain a record of the advice furnished to a client as contemplated in section 8, which record must reflect the basis on which the advice was given, and in particular—

(a) a brief summary of the information and material on which the advice was based;

(b) the financial products which were considered;

(c) the financial product or products recommended with an explanation of why the products selected, is or are likely to satisfy the client's identified needs and objectives;"

[41] The record of advice does not demonstrate the material information respondent relied on, or what other financial products were considered. Most importantly, there are no reasons provided to justify why the high risk Sharemax investment had any place in complainant's circumstances. How respondent concluded that the said investment was appropriate for complainant, is a mystery.

[42] The crucial aspect of rendering advice to a client requires the undertaking of a risk analysis to determine whether the product being considered will be suitable to the circumstances of the client. That means the provider should have an appreciation of the risk that the client can take, based on their circumstances. It is this information that must be reflected in the record of advice along with what other products were considered. Respondent failed to comply with section 9 in aforementioned respects.

[43] Despite respondent's contention that the risky nature of the investment was fully explained to complainant, I have to disagree. I will demonstrate just now that respondent had no appreciation of the magnitude of risk involved in the investment. Respondent claims in his response that the prospectus complied with Government Gazette 28690, Notice 489. The very prospectus respondent relies on told a different story. The directors of Sharemax at the time are on record in this office, stating that they had been advised by their lawyers that the notice did not apply[7]. They however failed to provide reasons. They further provided no exemption from the Minister of Trade and Industry. The significance of the Government Notice 489 is that the Minister, desirous of protecting investors from unfair business practices, decided to have the Notice promulgated with the sole objective of protecting the consumer. Given that the people who were in a position of trust *vis a vis* the company, namely the directors, denied that the Notice applied, shows that Sharemax was no place to go for sensitive investors like complainant. To put it simple, Sharemax had set out to deny investors the legal protection afforded by the notice. That in my view should spell out the risk that investors were facing. Hence, long before the transfer of the immovable property, the directors withdrew investors' funds from the attorneys' trust account and did what they pleased. Investors were on their own here.

[44] On a balance of probabilities, had complainant been fully aware of the risks inherent to this investment, she would not have proceeded. It seems that

[7] Refer in this regard to paragraph 77 of the Bekker determination (case no FAIS-06661-10/11 WC 1), available from our website: www.faisombud.co.za

respondent simply accepted that owing to signature by complainant, risk was accepted. That is disingenuous because respondent knows he had carried out no due diligence and had failed to disclose the risk. This is highlighted by his failure to read the prospectus. Simply informing a client that the investment is not guaranteed does not explain the risk to a lay person. What complainant needed to know is that she stands to lose her capital, because amongst other reasons, the directors of the scheme have chosen to disregard legislation meant to protect investors. The Code requires that the nature of the risk be disclosed to the client in order to make an informed decision. Complainant could not have made an informed decision about the Sharemax transaction.

[45] The document containing the record of advice was signed by complainant, and presumably formed the basis of the investment. A key prong of respondent's claim is that complainant signed the forms and therefore accepted the risk inherent in the property syndication. This argument is flawed. It ignores the requirements of the FAIS Act which specifically places an obligation on the provider to explain the risk in a financial product to the client. I have already pointed that respondent could not have explained the risk to complainant.

[46] Complainant is a pensioner and was at the time of advice. The money she invested in Sharemax was inherited from her late husband. Complainant was at a fairly advanced age at the time when the risky investment was proposed to her by respondent. I say so, on the basis of the Identity Document which records her date of birth as 1938. It is common cause that respondent was aware that complainant had no other means or source of income.

[47] As a matter of fact, had respondent considered the advanced age of complainant, a risky investment such as a property syndication ought not to have been recommended. Respondent does admit through the lengthy quotes of the various Sharemax prospectus that the product being marketed is risky. The quotes however do not resolve the question of whether any risk analysis was conducted. Respondent cannot rely on the assistance complainant received from her children to make the investment in order to absolve him from his responsibilities under the Code. It is not the children who need to comply with the provisions of the Act and the Code, but respondent.

[48] On further inspection of the record of advice document, it is evident that the above information was already inserted on the document prior to the signature thereof. All the questions under "statement by client"[8], had already been typed out as "yes". Complainant therefore really had no option but to agree. The pre-printed section of the form could not have been a proper response completed in accordance with complainant's circumstances and understanding at the time. In other words, complainant was requested to sign pre-completed documentation conveying a clear intention by respondent to disregard the law.

Whether respondent, in rendering financial services, violated the Code and the FAIS Act in any way.

[49] All indications are that complainant did not accept and / or appreciate all the risks inherent in the property syndication. What is more, respondent did not fully apprise himself of the financial situation of complainant, who says that the

[8] Translated from Afrikaans

money she had was her only money. Had respondent done so, he would have known that placing the bulk of complainant's funds in a property syndication would yield nothing but disastrous results for complainant, which is what occurred in this instance. As a result, complainant has been without income for some time now. As it is, there is evidence suggesting that respondent acted negligently in recommending the Sharemax Investment to complainant. Complainant simply did not have capacity for high risk investments.

[50] Respondent made much of complainant's signature on his Sharemax document, arguing that they are evidence that complainant understood the risks. Taking into account the complexity of the prospectus, there are no prospects that complainant would have read and understood the prospectus. Respondent failed to disclose the risk involved in the investment, in violation of Section 7(1). The section calls upon providers other than direct marketers to provide (a) '*reasonable and appropriate general explanation* of ***the nature and material terms of the relevant contract*** or transaction to a client, ***and generally make full and frank disclosure*** of any information ***that would reasonably be expected to enable the client to make an informed decision***. '(*my emphasis*).

[51] Section 3 (1) (a) (iii) clearly states that representations made and information provided to a client must be adequate and appropriate in the circumstances of the particular financial service, taking into account the reasonably assumed knowledge of the client. As the expert, had he carried out the necessary due diligence, respondent ought to have been in a better position to inform complainant on product suitability, taking into account her circumstances. He

could not do so, because respondent, in violation of section 2 of the Code, had carried out no due diligence, despite his claims in this regard.

[52] What is evident from the facts is that there was no incentive for respondent to recommend any other product than Sharemax. Since respondent was not licensed to sell shares and debentures, he acted, under supervision, as a representative of USSA[9] where he was only allowed to sell unlisted securities and debentures, a fact which was not disclosed to complainant. If respondent had sold an appropriate investment he would have missed out on the lucrative commission paid by Sharemax, which commission was by industry standards out of kilter with the rest of the institutions.

[53] Section 8 (1) (d) of the Code provides that where a financial product is to replace an existing product, wholly or partially, the actual and potential financial implications, costs and consequences have to be fully disclosed to client. There is no indication that respondent complied with the aforesaid, seeing that the proposed investment replaced a relatively low risk money market investment with a high risk investment.

[54] Respondent's contention that the recommendation of a suitable product is often a balancing act between the client's needs and circumstances, does not hold water. The Code requires the FSP to recommend a financial product that is **appropriate** for the investor and **compatible** with their needs, financial risk profile and tolerance. Respondent was invited to demonstrate this, using records of advice, which should have been compiled at the time of advising

[9] At the time, Unlisted Securites South Africa was a licensed service provider with license number 6152

complainant. Such records must demonstrate the need that was identified, which required the high risk Sharemax investment. The records must further demonstrate the types of products considered and a brief explanation as to why the Sharemax investment was considered suitable to address complainant's identified needs.

[55] There is further no substance to the allegation that the Ombud polices advice and checks for formalistic requirements with subjective views. The question that should be answered is straight forward and that is, whether respondent complied with the provisions of the Code. The answer must be no.

Did respondent's conduct cause the loss complained of

[56] Based on complainant's version, the investment in Sharemax was made as a result of respondent's advice. Thus, absent respondent's advice, there would be no investment in Sharemax.

[57] Outside of the complainant's version, there is no evidence pointing to respondent's adherence to the law. The information at this office's disposal points to the following conclusions:

57.1 Had respondent followed the Code, he would not have recommended an investment in Sharemax. Being acutely aware of complainant's circumstances, he would have found an investment that is commensurate with complainant's circumstances;

57.2 When respondent recommended the investment in Sharemax, he could not have been acting in complainant's interest. This is so because respondent had not even read the prospectus.

57.3 Despite respondent's contention that he conducted due diligence on the Sharemax investment, he was still unclear as to what he was inviting complainant to when he recommended the Sharemax investment. The explanation regarding respondent's reliance on the articles of journalist as credible authority cannot be sufficient. Respondent needed to comply with the law.

57.4 There is no evidence that respondent was truly aware of the risk involved in Sharemax. These include the lack of apparent safe guards to protect investors against director misconduct; the lack of visible governance arrangements; and the complicated structure of investment itself, which left the investors with no protection.

57.5 It is improbable that complainant, given the guidance and presence of respondent would have relied on her children to make the investment. It is on the strength of respondent's advice that the investment was made. This is what caused complainant's loss.

H. FINDINGS

[58] In the premises, based on the reasons set out in this determination, I make the following findings:

58.1 The complaint failed to apprise himself of the risk involved in the Sharemax investment.

58.2 Respondent advised complainant to invest in the risky Sharemax property syndication scheme without properly assessing the financial needs, conducting an analysis and determining the risk profile of complainant, thereby contravening Section 8(1)(a),(b) and (c) of Part VII of the General Code of Conduct.

58.3 Respondent failed to render financial service honestly, fairly with due skill, care and diligence and in the interest of client and integrity of the financial services industry, thereby contravening Section 2 of Part II of the General Code of Conduct.

58.4 Respondent failed to maintain his records of advice as required by section 9 of the Code.

I. THE ORDER

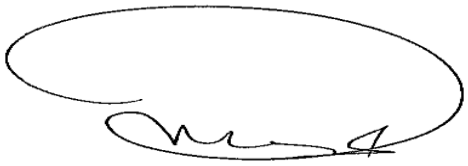
[59] In the result, I make the following order:

1. The complaint against respondent is upheld.

2. The respondent is ordered to pay the combined amount of R530 000 to complainant.

3. Interest on this amount at the rate of 10.25% per annum from the date of determination to date of final payment.

DATED AT PRETORIA THIS THE 29th DAY OF JULY 2016.



_____

NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS