

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

**CASE NUMBER: FSOS 00340/14-15/ NW 2**

**In the matter between:**

**GERT GOEIMAN**

**Complainant**

**and**

**REKATHUSA FUNERAL PARLOUR**

**First Respondent**

**JOB DADA**

**Second Respondent**

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**DETERMINATION IN TERMS OF SECTION 14 (3) OF THE FINANCIAL SERVICES  
OMBUD SCHEMES ACT 37 OF 2004 (FSOS ACT), READ WITH 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 Gert Goeiman, an adult male whose particulars are on file with the Office.

[2] The first respondent is Rekathusa Funeral Parlour, with its address noted as 11 Kantoor Street, Alabama, 2577. The first respondent is not registered in terms of South African Law, nor is it registered as a financial services provider in terms of the FAIS Act.

[3] The second respondent is Mr Job Dada, an adult male and sole proprietor. His address is the same as that of the first respondent.

[4] I refer to the first and second respondent as “respondent”. Where needed, I specify which respondent is being referred to.

## **B. FACTUAL BACKGROUND**

[5] The determination is made in terms of the FSOS Act<sup>1</sup> read with section 28 (1) of the FAIS Act<sup>2</sup>. The complainant in this matter lodged a complaint with this Office following the respondent’s failure to honour a valid claim submitted in respect of a funeral policy held by him.

[6] The complainant and the respondent entered into an agreement in terms of which the respondent had to provide certain funeral benefits to the policy holder, against a defined monthly premium. The agreement commenced sometime during 2009, and is confirmed by the receipts for payment of premiums.

[7] According to documentation the complainant received from the respondent, it appeared that the respondent was underwritten by Prosperity Life, with FSP licence number 1901. However, the regulator’s records indicate that Prosperity’s licence lapsed on 14 January 2014. This Office could find no evidence that the respondent had ever been licensed in terms of the FAIS Act, or that a valid underwriting agreement existed to ensure the solvency of the fund.

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<sup>1</sup> Financial Services Ombud Schemes Act 37 of 2004

<sup>2</sup> Financial Advisory and Intermediary Services Act 37 of 2002

[8] Furthermore, section 7 (1) of the Long Term Insurance Act provides that registration is required in order to carry on long term insurance business. There is no evidence on file that the respondent complied with this requirement<sup>3</sup>.

[9] The complainant duly performed in terms of the contractual agreement by paying the monthly agreed premium.

### **C. THE COMPLAINT**

[10] On Thursday 9 October 2014, the complainant's wife, Mrs Priscilla Goeiman passed away. The complainant duly contacted the respondent to remove her body.

[11] By Monday 13 October 2014, the complainant have still not heard from the respondent in respect of the funeral arrangements, and visited the funeral parlour. The complainant found the body of his wife on the floor in a badly decomposed state. The aforesaid occurred as a result of the respondent's failure to preserve the body at the appropriate temperature. This necessitated the removal of the body from the first respondent to another funeral service, and the intervention of the government's pathology services.

[12] It is alleged by the complainant that the respondent agreed to settle the cash amount outstanding in terms of the policy and indicated that all other benefits will be forfeited as a result of the removal of the body from the first respondent's premises.

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<sup>3</sup> The Registrar's Office has provided proof that the respondent applied during 2006 for authorisation as a licenced service provider, however, the application was refused on the grounds that the respondent failed to submit financial statements prepared by an accounting officer. The respondent nonetheless continued with his business.

[13] Despite various requests for settlement of the claim in terms of the policy, the respondent has failed to oblige. The complainant had to pay an amount of R15 000 to the other funeral parlour in order for the burial to proceed.

#### **D. RELIEF SOUGHT**

[14] The complainant wants the respondent to reimburse him the costs of the funeral amounting to R15 000, in respect of the policy he held and paid for.

#### **E. RESPONDENT'S RESPONSE**

[15] On 4 February 2015, a notice in terms of Regulation 7 (1) (a) of the Financial Services Ombud Schemes Regulations was sent to the respondent, requesting him to resolve the complaint with the complainant, alternatively, furnish this Office with a detailed response. The respondent failed to reply to this request, despite various telephonic attempts to obtain a response.

[16] A further notice in terms of regulation 7 (1) (a) was sent on 4 April 2016, granting the respondent a further opportunity to resolve the matter. Again, no response was forthcoming.

[17] Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27 (4) of the FAIS Act. A notice dated 28 June 2017 was sent to the respondent, again inviting him to respond to the matter. To date, no response has been received.

[18] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of the complainant's version.

## **G. FINDING**

[19] To date, the amount claimed by the complainant remains outstanding.

[20] From the undisputed facts before this Office, it can be concluded that:

20.1 The respondent was never licensed as a financial services provider. The Rules on Proceedings of the Office of the Ombud for Financial Services Providers nonetheless provides<sup>4</sup> that the Ombud may entertain a complaint relating to a financial service rendered by a person not authorised as a financial services provider.

20.2 The respondent collected premiums from the complainant, but failed to honour the claim when it arose, even though the complainant's premiums were paid to date.

20.3 The respondent was at risk and is liable to pay the complainant in terms of the policy.

20.4 The respondent has not shown willingness to resolve the matter, despite various attempts to solicit a reply. The respondent appears intent on frustrating the resolution of the complaint by this Office. The respondent has further not provided any reason why the claim could not be settled.

[21] The respondents were in contravention of Section 2 of the FAIS Act which provides as follows:

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<sup>4</sup> Section 4 (d)

*“A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.”*

[22] The respondent’s continued failure to respond to the complaint, or the complainant’s pleas for payment in terms of the policy which he diligently paid for, leads to only one conclusion: the respondent never had the intention to respond to the claim or to conduct any legitimate business of an FSP.

#### **H. ORDER**

[23] In the premises the following order is made:

1. The complaint is upheld.
2. The respondent is hereby ordered to pay to the complainant, jointly and severally, the one paying the other to be absolved, the amount of R15 000.
3. Interest at a rate of 10% per annum, from a date seven days from date of determination to date of final payment.

**DATED AT PRETORIA ON THIS THE 12<sup>TH</sup> DAY OF JUNE 2018**



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**NARESH S TULSIE**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**