

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

Case Number: FAIS 05470/13-14/GP (3)

In the matter between:-

MARC RUPERT HUGHES

Complainant

and

MARIETTE JOLENE SLIPPENS

First Respondent

GEN-ASSIST INSURANCE BROKERS (PTY) LTD

Second Respondent

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

A. THE PARTIES

[1] The Complainant is Marc Rupert Hughes ('Hughes'), a self-employed adult male¹ of Craighall Park, Randburg, Gauteng.

[2] First Respondent is Mariette Jolene Slippens ('Slippens'), a female of adult age, key individual and member of the second Respondent residing at 149 During Street, Honeydew, Johannesburg, Gauteng.

¹ Vodacom Franchisee with a diploma in Sales and Marketing.

[3] Second Respondent is Gen-Assist Insurance Brokers (Pty) Ltd ('Gen-Assist'), a private company duly registered in accordance with the laws of South Africa. Second Respondent is a licensed Financial Services Provider (FSP nr: 30804) with its registered office, alternatively, its principal place of business at 27 Fricker Road, Illovo, Johannesburg.

[4] In this determination, respondent / respondents are used interchangeably.

B. BACKGROUND

[5] The complainant enjoyed comprehensive cover with Zurich Insurance, (Zurich) in respect of his home contents and vehicle. Based on facts, which are common cause, complainant requested respondent on 8 April 2013 to transfer his short-term insurance arrangements with the exact same cover and terms to Discovery Insure, hereinafter referred to as Discovery. What prompted the move was the attraction of added benefits and rewards, which were offered by Discovery as complainant had other existing financial arrangements with them.

[6] Subsequent to the transfer of the policy, complainant suffered a loss following an armed robbery at his residence. Complainant lodged a claim with Discovery on 15 August 2013.

[7] The loss was quantified at R141 521. During the processing of complainant's claim, it came to the attention of Discovery that complainant's house contents were insured for an amount of R100 000, reduced from R998 250. This meant, complainant was under-insured, leading the insurers to apply the condition of average; hence the claim was adjusted to the amount of R16 560.77.

[8] The condition of average in indemnity insurance is not something new. 'The indemnity provided in an insurance policy can be on market value, reinstatement value or agreed value basis. The principle of average will apply if the sum insured does not correctly reflect the value of assets and the same is under-insured. Proper valuation of assets for the purpose of fixing the sum insured is therefore very important.'²

[9] Complainant alleges that he did not authorise the reduction of his house contents cover.

[10] Failure to resolve the dispute between the two parties led to the present complaint.

C. RELIEF SOUGHT

[11] Complainant seeks relief against respondent, which is the difference between what the insurers paid and what should have been paid. Complainant claims, but for the respondent's failure to render the financial service in line with the FAIS Act, he would not have been under-insured. .

D. RESPONDENT'S VERSION

[12] The complaint was sent to the respondent requesting it to resolve it with the complainant, alternatively furnish this Office with a detailed response. What follows is a summary of the response provided by the respondents:-

²<http://www.niapune.com/pdfs/Research/VALUATION%20OF%20ASSET%20FOR%20THE%20PURPOSE%20OF%20INSURANCE.pdf>

- 12.1 Respondent confirms the replacement of complainant's Zurich policy with a Discovery one. He further confirms that complainant's home contents were insured for R998 250 under the Zurich policy and claims to have sent the Zurich policy schedule to Discovery and requested a quote based on the information contained therein.
- 12.2 Respondent states that Discovery erred in capturing the home contents cover as R100 000 and not R1 000 000 as intended.
- 12.3 Respondent submits that upon receipt of the quote, he sent it to complainant for his acceptance. The error was only discovered after complainant submitted his claim, resulting in the insurers applying the condition of average.
- 12.4 To illustrate how the amount payable was arrived at, respondent provided the following calculation:

<i>Sum insured:</i>	<i>R100 000.00</i>
<i>Divide:</i>	<i>R854 555.00</i>
<i>Loss at hand:</i>	<i>R141 521.00</i>
<i>Amount payable:</i>	<i><u>R 16 560.77</u> (Average)</i>
<i>Gap:</i>	<i>R124 960.23.</i>

- 12.5 Respondent contends that Discovery is responsible for the loss suffered by the complainant and should be held liable to pay the claim in full as they incorrectly captured the amount of the house contents cover.
- 12.6 Respondent further provided this Office with e-mail correspondence between his office and Discovery in support of their view that Discovery was the cause of the error. An examination of the e-mail correspondence

reveals that Gen-Assist provided the complainant's existing policy schedule and claims history to Discovery and requested the latter to provide a quote based thereon.

12.7 On 11 April 2013, Discovery provided the requested quote.

12.8 Respondent further states that on 11 April 2013, he directed an e-mail to complainant with the Discovery quote³ attached and informed him:-

'Please see attached Discovery Insure short term quotation based on your existing policy details. Please ensure that all your details are factual and if you have any queries please do not hesitate to ask us.' [own italics]

12.9 In a further e-mail dated 2 May 2013, respondent requested complainant to initial every page of the quotation and sign where required. Complainant enquired whether he should initial all 25 pages, to which the respondent confirmed, adding that it was to ensure that the information contained therein is correct.

[13] As the matter was not resolved, this Office issued a section 27(4) notice and informed respondent that the matter has been formally accepted for investigation. Respondent was warned that if the complaint was not resolved the Ombud would determine it upon completion of the investigation. In response to the notice, respondents provided written submissions.

³ Respondent only provided page 3 of the quote dated 11 April 2013. This contained the amount of household contents insurance as R 100 000.

13.1 Re-affirming its view that Discovery is liable for complainant's loss, respondent contended that:-

- the correct information was submitted to Discovery in order for them to issue a like quote;
- Discovery issued an incorrect quote to respondents;
- That incorrect quote was forwarded by respondents to the client (complainant);
- Complainant was requested to initial every page to ensure that the Information contained therein was correct;
- Indeed, complainant initialled each page confirming the information contained in the quotation.

13.2 Respondent further states that it was reasonable of them to assume that the information sent by Discovery was correct.

13.3 Respondent re-iterated that they did not make the error, Discovery did, therefore, they are liable to pay complainant's claim.

E. DISCOVERY'S RESPONSE

[14] The complaint and the response were sent to Discovery for their input as an interested party in the matter. What follows is a summary of their response:-

14.1 They admit that their (Discovery's), administrator erroneously captured the sum insured as R100 000 instead of R1 000 000. The incorrect quote was sent to respondent, who instead of verifying its correctness simply forwarded the quote to the complainant.

14.2 Discovery is not denying that its administrator erred in preparing the quote but, they are of the opinion that respondent, as the financial services provider on record, was ultimately responsible for the advice rendered to the complainant.

14.3 Discovery contends that the respondent should have perused the content of the quote and confirmed its correctness before sending it to the complainant. Their failure to confirm the quote amounts to negligence and a breach duty as a provider to render the financial service with the required '*due care, skill and diligence*'.

F. ISSUES

[15] The issues are:-

15.1 Whether there was a violation of the General Code of Conduct on the part of the respondent;

15.2 Whether such breach caused complainant the damage complained of;

15.3 The role of Discovery and whether its conduct violated the General Code in any way. In the event there is breach identified, whether such breach contributed to the damage complained of.

15.4 Quantum?

G. COMPLIANCE WITH THE GENERAL CODE

[16] Respondent admits he made no effort to verify the details provided in the quote by Discovery. In all its responses to this Office, not once did the respondent

claim to have verified the information contained in the quote. Respondent made it clear that he received the quote and forwarded it to the complainant to initial every page and sign where necessary. Respondent further added, this was to make sure that the all information contained in the quote was correct. So respondent simply shifted his obligations in terms of the Code on to the complainant. It was his duty to verify the information in the quote before forwarding it to the complainant. This is dereliction of duty as a provider.

[17] In terms of the General Code, a provider must when rendering financial services to a client ensure that the representations made and information provided to a client is factually correct⁴. On their own version, respondent's conduct violated this provision.

[18] It is an undisputed fact that the complainant requested the respondent to provide him with a short-term insurance policy based on his previous insurance with Zurich. Hence complainant expected the new product to be similar to the old product, including the insured amounts. Having agreed to render the financial service to complainant by way of procuring like for like in terms of cover, respondent in his own version failed to render the service in accordance with the client's instructions.⁵ It was respondent's duty to render the financial service in accordance with the contractual relationship and reasonable request or instructions of the client. Respondent's own version supports the conclusion that he rendered the service in violation of this provision of the Code.

⁴ Section 3(1)(a)(i) of the General Code of Conduct for Authorised Financial Services Providers ('the Code').

⁵ Part II, Section 3(1)(d) of the Code.

[19] It is common cause that no proper records were maintained relating to the rendering of the financial service. This is a violation of section 9 of the Code. To this end, respondent only provided 'page 3' of the quote sent to complainant. In terms of section 9 of the General Code of Conduct for Authorised Financial Services Providers ('the Code'), providers must 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; and
- (c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives;

[20] The mere fact complainant provided respondents with a Zurich policy was no basis for respondents to assume that complainant's needs are still in line with same. No evidence was provided to this Office to support the conclusion that complainant understood the material terms of the Zurich policy. Respondents should have studied the Zurich policy, gathered complainant's details in order to conduct an analysis of his needs and advise complainant whether seeking cover along the same lines as the Zurich policy was still in line with his needs. They did not do this. They simply went ahead and replaced the Zurich policy with the Discovery policy. Respondents have also not shown that complainant

failed to provide them with information to conduct an analysis of his need. In which case, respondents would have been obliged to comply with section 8 (4) of the Code. This is violation of section 8 (1) (a) of the Code, which should not be allowed.

Comparison of the Zurich policy schedule and the Discovery quote

[21] Having carried out a comparison between the two documents, it is obvious that the broker failed to carry out his duties as a Financial Service Provider. If one merely looks at the total premium for the entire policy, the Discovery premium is not disproportionately lower than the Zurich premium. It is likely that the complainant looked at the total premium and accepted that it was a like for like replacement as he requested. However, a detailed examination reveals that the premium for house contents was charged at R634. 53 for approximately R1 000 000 worth of cover by Zurich whereas, Discovery charged R192 for a R100 000's worth of cover. This is a drastic reduction in premium and should have raised alarm bells on the part of the respondent. It is not difficult to understand why he failed to pick this glaring reduction because on his own version, he never read the quote. Therein lies the negligence and violation of his duties as a provider in terms of the FAIS Act.

[22] There is no dispute that this was a replacement of a financial product. No documents have been provided to demonstrate compliance with Part VII sections 8 (1) (d). There is further no evidence that respondents complied with section 8 (2) of the Code. These sections of the Code stipulate:-

'where the financial product (the replacement product) is to replace an existing financial product wholly or partially, (the terminated product) which is held by the client,' the provider must 'fully disclose to the client the actual and potential implications, costs and consequences of such a replacement, including, where applicable, full details of-

'(i)

*(ii) special terms and conditions, exclusions of liability, waiting periods, loadings, penalties, excesses, **restrictions or circumstances in which benefits will not be provided which may be applicable to the replacement product compared to those applicable to the terminated product.**'*

(emphasis supplied)

(2) 'The provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision'.

[23] The Code in section 8 (1) (d) postulates a provider furnishing advice to the client. Section 8 (2) confirms this by providing that the provider must take reasonable steps to ensure that the client understands the advice and that the client is in a position to make an informed decision. Respondents' version to this Office is replete with admissions that they failed to comply with the sections 8 (1) (d) and 8 (2).

[24] Respondents urged that Discovery be held liable for the prejudice suffered by the complainant as their employee erred in preparing the quote. It was respondents' duty to ensure that the information contained in the quote was

factually correct. By their own admission, respondents failed to ensure that the material terms contained in the quote were correct, before sending it to the complainant for his approval. Respondents failed to comply with their general duty to act with due skill, care and diligence⁶. They now seek this Office's imprimatur. That cannot be allowed.

[25] It is respondent's failure to act in accordance with the General Code that left complainant inadequately insured, leading to the insurer applying averaging.

H. FINDINGS

[26] Respondents failed to act in line with the provisions of the FAIS Act and the General Code.

[27] Respondents failed to ensure that complainant was adequately insured for home contents; this led to the insurer applying the condition of average.

[28] Respondents failed to ensure that the information contained in the quote was factually correct. Instead, they requested complainant to initial every page and sign it to confirm the accuracy thereof. In simple terms, respondents shifted their duty in terms of the Code to complainant.

[29] Respondents took no steps to ensure that complainant understood the cover they procured for him in replacement of the Zurich policy.

[30] Respondent failed to act with the required due skill, care and diligence and in the interest of the complainant.

⁶ Section 2 of the Code.

[31] For the reasons stated in this determination, respondents must be held liable for the financial prejudice suffered by the complainant.

I. QUANTUM

[32] The complainant enjoyed cover for R998 250 in terms of the Zurich insurance policy. But for respondents' conduct, complainant would have been indemnified in full. An order will be made for the amount of R141 521.00 less the Discovery offer of R16 560.77.

J. ORDER

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

1. The complaint is upheld;
2. Respondents are hereby ordered, jointly and severally liable to pay to complainant the amount of R124 960.23;
3. Respondents are further order to pay interest at the rate of 9%, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 21st DAY OF NOVEMBER 2014.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS