

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

HELD IN PRETORIA

CASE NO: FOC 1663/05/GP -03

In the matter between:

J KEARNEY

Complainant

and

A R STRAUSS FINANCIAL SERVICES PTY Ltd

Respondent

**DETERMINATION IN TERMS OF SECTION 28 (5) OF THE OF THE
FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002**

BACKGROUND

[1] This complaint was initially lodged with the Ombudsman for Short Term Insurance sometime in 2005. It was referred to this Office on the 28th September 2005 by that office.

[2] The facts, briefly are that the Complainant had through the Respondent's representative, one Anton Strauss ('Strauss') taken out a combined short term insurance policy. The insurance was administered by Dex and underwritten by Renasa.

- [3] Due to the size of the premium collected by Dex from the Respondent's business, which Renasa considered to be negligible, the Respondent was advised that it was no longer viable to continue doing business with Dex. Renasa accordingly advised Dex that as of the 30th September 2004, Renasa would cease to offer cover to all short term insurance policy holders under the Respondent's portfolio. Thus all policyholders who hitherto enjoyed short term insurance cover from Renasa would be left without cover as of the 1st October 2004 unless the Respondent took steps to remedy the situation. Such steps would include amongst others, informing the policy holders of Renasa's decision which the Respondent did not do in the case of the Complainant.
- [4] From the documents available to this Office, it appears that the Respondent decided to transfer its short term insurance book to another broker who would ensure that the policy holders affected enjoyed cover from another short term insurer.
- [5] For some reason, Complainant's record with Respondent was never transferred to the new broker. It is not clear why the record was never transferred to the new broker. What is clear though is that the Complainant was neither advised of the intended transfer to another broker nor was she advised that she would no longer enjoy cover as of the 30th September 2004. All efforts to obtain Respondent's version were

unsuccessful. This Office received communication from Locketts Attorneys dated 10 October 2005 indicating that they have been mandated to act on behalf of the Respondent. This was the only time the Office heard from Respondent. Further communication from this Office to Respondents did not elicit any response.

- [6] On 13th November 2004, Complainant's house was burgled. Furniture, jewellery, clothing and equipment which would have been covered by the policy underwritten by Renasa were stolen. The value of the goods allegedly stolen is estimated to be in the amount of Ninety two thousand five hundred and forty rand, (R92 540, 00).
- [7] Complainant alleges that upon calling the Respondent's offices on the day of the burglary with a view to instituting a claim she was told by Respondent that she should not worry as the claim would be sorted out.
- [8] On 15th November 2004, Complainant's husband was advised by the Respondent that there was no insurance cover in place as the existing insurance policy had been cancelled.
- [9] Complainant argues that neither she nor her husband was responsible for the cancellation of the policy. Eventually, a complaint was lodged with the Ombudsman for Short Term Insurance.

[10] As a result of investigation by this Office, it was established that Complainant indeed had no cover in place at the time of the burglary. This was through no fault of Complainant's but as a result of the cancellation of the existing policy by Renasa, as set out in paragraph 3 of this determination.

[11] The complaint was referred to the Respondent for its response on the 3rd of October 2005. No response was received from Respondent.

[12] Several letters and telephone calls were made by this Office to the Respondent. No response was received to any of the calls or letters.

[13] When the six weeks period within which Respondent is allowed in terms of Rule 6 (b) of the Rules on Proceedings of this Office expired, a notice was sent to it advising that the matter was under investigation. Respondent was called upon to furnish any documents which would assist in the resolution of the complaint. No response was received to this notice.

DETERMINATION AND REASONS

[14] The basis of liability in this complaint is:-

- [14.1] Negligence; and
- [14.2] Non Compliance with the FAIS Act.
- [15] The Respondent acted negligently in that:-
- [15.1] Despite having received the notice from Renasa through Dex on the 28th August 2004, it failed to notify the Complainant that she would no longer have cover as of the 1st of October 2004;
- [15.2] It failed to ensure that the Complainant's account was transferred with the rest of its clients to Prestasie, the new broker who took over its short term insurance book.
- [15.3] It failed to ensure that the Complainant continued to enjoy short term insurance cover under the circumstances;
- [15.4] It failed to prevent the harm the Complainant eventually suffered, although it was reasonably foreseeable that the Complainant would suffer financial prejudice in the event of a claim materialising whilst the short term insurance cover was not in place.
- [16] The Respondent failed to comply with the FAIS Act in that:-

[16.1] In terms of Part II section 2 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, ('the Code'), providers 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.'

[16.2] The Respondent's conduct under the circumstances is incongruent with the obligation to render the financial service in the interests of the client. It further exhibited lack of care and diligence in that the Respondent had a whole month and some few weeks within which it could have notified the Complainant about the cancellation and sought her instructions with regard to the transfer. It did not do so.

[16.3] At the time Respondent decided to transfer the short term insurance book to Prestasie it failed to ensure that the Complainant's record was also successfully transferred. Care and diligence entails that the Respondent follow up on all communication with all its short term insurance clients to ensure that none of its clients was left without cover.

[17] The Respondent further failed to comply with Part IX section 11 of the Code. The section provides:-

‘A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions’

[18] The fact that the Respondent could not ensure that the Complainant’s record of insurance was transferred to Prestasie indicates poor administration in that:-

[18.1] The policy was active up to the 30th September 2004; and

[18.2] The Respondent had been paid commission in respect of the policy up to the time of termination of the policy. Thus it should have maintained records of its clients.

[19] On the basis of what is set out above, it is just and equitable that the Respondent compensates the Complainant for her loss. Such

compensation must however be in line with the relief the Complainant would have enjoyed had cover been in place at the time the risk materialised.

[20] The Complainant had cover in the amount of R300 000 for household contents and R5000 for clothing and personal effects.

[21] In computing compensation, the relevant excesses applicable in terms of the policy document and all other relevant terms and conditions which would have been applicable must be taken into account. To assist this Office to compute the quantum of Complainant's loss, the services of Kotsi Loss Adjusters, ('Loss Adjusters') was sought. The report by the loss adjusters was sent to the Respondent for its response on 24 March 2006 with a request that the Respondent provide a response with regard to the quantum by no later than 24 May 2006. No response was received. In terms of the loss adjuster's report, Complainant's loss was computed in the sum of Seventy six thousand two hundred and eleven rand, (R76 211.00).

CONCLUSION

[22] The Respondent is found to have negligently rendered financial services to the Complainant. The Respondent is also found to have rendered the

financial service in a manner that is not compliant with the provisions of the FAIS Act. Such conduct is what occasioned Complainant's loss.

ORDER.

- [1] Respondent is hereby ordered to pay Complainant the aforesaid sum of R76 211, 00 Such payment is to be made within SEVEN (7) days from date of this order;
- [2] Interest on the said amount to be calculated at the rate of 15.5 % from SEVEN (7) days from date of this order;
- [3] Respondent is further ordered to pay the case fee of R1000. to this Office.

DATED AT PRETORIA ON THIS THE 13th DAY OF NOVEMBER 2006



Charles Pillai
OMBUD FOR FINANCIAL SERVICES PROVIDERS