

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 02504/14-15/ NC 1

In the matter between:

ERIKA ELISE KRUGER

Complainant

and

IMPACT FINANCIAL CONSULTANTS CC

1st Respondent

MICHAL JOHANNES CALITZ

2nd Respondent

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

A. THE PARTIES

[1] The Complainant is Mrs Erika Elise Kruger, an adult female, whose full contact details are on file with the office.

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

[3] The 2nd respondent is Michal Calitz, key individual and member of 1st respondent, and residing at 123 Mauritius Singel, Stellenberg 7550. Calitz at all material times rendered financial advice to complainant on behalf of 1st respondent. In this determination respondent or respondents are used interchangeably.

B. THE COMPLAINT

- [4] In August 2010 following the sale of her immovable property, complainant invested R900 000, 00 in what she understood to be an international investment, namely, the 'MAT Abante UK Relative Value Arbitrage Fund.' To this end complainant had applied for and was granted a foreign investment tax clearance certificate.
- [5] The investment was made in consequence of advice furnished by the respondent who acted as complainant's financial adviser. Complainant was made to understand that it was a safe investment with excellent growth prospects.
- [6] According to complainant, whilst she initially understood MAT Worldwide to be a distinctly separate company, after Pretorius's death she learnt that it was controlled by Pretorius and hence part of his estate.
- [7] At this stage it must be pointed out that there has been no evidence that the funds were ever invested offshore at all, much less in a separate fund or entity. A perusal of the application form and bank account details into which complainant was to deposit the funds are identical to the documents used in all other RVAF matters before this Office.
- [8] In short complainant deposited the funds into the **South African bank account** of the RVAF trust on the basis of the instructions and forms provided by respondent. The South African account is specifically highlighted for reasons which will now become self-evident.
- [9] In this regard I now turn to what is reflected on the Abante Group profile brochure

as provided to this Office by respondent and following is noted:

- 9.1 'the MAT Abante UK Fund is domiciled in the financial services centre of Guernsey, Channel Islands;'
- 9.2 'The client administration is performed by MAT Securities and the fund administration is performed by AOS a South African administration company based in Johannesburg;'
- 9.3 'The Royal Bank of Scotlandperforms the custodian function;'
- 9.4 'All payments must be made out to MAT Securities (Pty) Ltd.'

[10] In short this Office would not expect to see the funds deposited into a South African bank account much less the exact same one used for RVAF. The breach of the basic principle of separation of funds is inexcusable, a position exacerbated by the fact that the very documents provided by respondent point to the Royal Bank of Scotland as being the custodian with payments to be made out to MAT Securities (Pty) Ltd.

C. RESPONDENTS' REPLY

[11] According to respondent he had been referred to the complainant and her husband by Herman Pretorius. The complainant and her husband had according to respondent dealt with Pretorius for years.

[12] Respondent was then contacted by complainant with the specific request that monies be invested with MAT Worldwide. Whilst respondent discussed alternatives such as Allan Gray, this was countered, both by the fact that complainant's husband was happily invested in MAT along with complainant's wish to take the money offshore.

[13] Respondent then states that the tax clearance certificate was obtained and the necessary forms completed. He then goes on to make mention of a letter which he refers to as having been sent from Abante to complainant.

[14] With regards to this letter above, this Office can only assume that respondent is mistaking it with one headed 'RVAF EN COMMANDITE PARTNERSHIP.' Whilst it refers to the 'MAT ABANTE UK RELATIVE VALUE ARBITRAGE FUND' it most certainly bears no indication of having emanated from Abante and in fact is signed for and on behalf of RVAF.

D. DETERMINATION

[15] Reference is made to the determination of *Inch vs Calitz*¹ 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.

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

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

[17] As part of his defence in other matters before this Office, Calitz 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 in the contractual documentation, further reinforcing the fact that Calitz himself failed to understand the contracting entity.

[18] 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.

[19] Complainant as a client of a registered financial adviser, relied on Calitz' advice when making this investment. When rendering financial services to clients, the FSP is required to act in accordance with the FAIS Act. Calitz 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 or other risks as required by section 7 of the Code.

[22] There is not a single disclosure of the actual fees charged as required by section 3(1) (vii) of the code.

[23] Respondent now wishes to attribute the loss to one person's fraud yet, it is his

actions in contravening the most basic elements of the FAIS Act that led to complainant investing in this investment.

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

E. QUANTUM

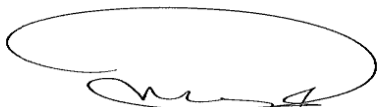
[25] Whilst complainant invested an amount of R900 000,00 she has agreed to forego the portion that exceeds the R800 000,00 to bring the complaint within the jurisdictional limit of the Office.

F. ORDER

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

1. The complaint is upheld;
2. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R800 000, 00.
3. 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 14th DAY OF NOVEMBER 2014.



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OMBUD FOR FINANCIAL SERVICES PROVIDERS