

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

Case Number: FAIS 00823/09-10/GP/3

In the matter between

JABULANI NHLAPO

Complainant

and

ORANGE INSURANCE LIMITED

Respondent

DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES OMBUD SCHEMES ACT NO. 37 OF 2004 (“the FSOS Act”) READ WITH SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2002 (“the FAIS Act”).

A. THE PARTIES

[1] The Complainant is Jabulani NHLAPO, an adult male, residing at 429 Tugela Street, Boipatong, Vanderbijlpark, Gauteng.

[2] The Respondent is Orange Insurance Limited, a registered insurer and financial institution duly incorporated according to the company laws of the Republic of South Africa (registration number 2003/031 307/06) with its registered offices at 22 Koelenhof Road, Northcliff Ext, 19, 1709.

B. INTRODUCTION

[3] This is a determination pursuant to a complaint against the Respondent insurance company. The determination is made in terms of Section 14 (3) of the FSOS Act read with Section 28(1) of the FAIS Act. The Respondent insurance company entered into an agreement with a licensed financial service provider known as Fleetsure (Pty) LTD. The Respondent had entered into a binder agreement with Fleetsure in terms of which Fleetsure was authorised to conduct the business of short term insurance for and on behalf of the Respondent. Pursuant to this agreement and for the period 1st of June 2008 to 31st December 2008 Respondent provided short term cover for a number of Fleetsure`s clients.

[4] A dispute arose between respondent and Fleetsure and as a result Respondent failed to pay claims emanating from the short term policies

placed by Fleetsure. The Complainant in this case is one of many policyholders who were not paid after claims were made in terms of their policies with the Respondent.

[5] Many policyholders filed a complaint with this Office after the Respondent refused to pay. The Respondent was requested to provide a written response to these complaints. For each of these complaints the Respondent relied on exactly the same response in the form of a letter dated 17th February 2010.

[6] On the 15th of September 2010, this Office made a determination in respect of another of these policyholders namely: Mr Innocent Sithembele Mthethwa. This determination was made under case number **Case Number: FSOS 06362/08-09/GP 3** and comprehensively dealt with the merits of the dispute between the Respondent and Fleetsure (the Mthethwa determination).

C. JURISDICTION

[7] The Respondent is not a member of a recognised scheme as contemplated in Section 10 & 11 of the Financial Service Ombud Schemes Act 37 of 2004 ("the FSOS Act").

[8] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the Respondent in respect of this complaint.

[9] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. THE COMPLAINT

[10] According to the Complainant, the following are the material aspects of his complaint:

10.1 The Complainant alleges that the Respondent failed to honour a claim arising out of an accident involving the complainant's motor vehicle, a 2003 Volkswagen Citi Golf 1.4, bearing registration number and letters XKR 859 GP.

10.2 On the 23rd of July 2008, the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through All About Insurance Brokers, the principal Intermediary and a licensed Financial Service Provider under license number: FSP 7090

10.3 The Complainant was furnished with a policy number: AAIB00002, which was issued by the Respondent together with a schedule to

the contract of insurance. The effective date for the complainant's cover was the 23rd of July 2008. As will appear in this determination, All About Insurance Brokers clients were part of the Fleetsure cell.

10.4 On the 20th of November 2008 the Complainant's vehicle was high jacked, and he duly submitted his claim through All About Insurance Brokers.

10.5 An assessment was conducted by an investigator who informed the complainant that the insurer will settle his motor finance account and premiums deducted for the month of November and December 2008 would be refunded.

10.6 On the 18th of February 2009, the Respondent accepted the claim and duly issued an Agreement of Loss to settle the Complainant's cost in an amount of R48.150.40. This was duly signed by the Complainant and submitted through his broker. A copy of the agreement of loss is annexed marked "A"

10.7 To date, the Respondent has failed to honour the complainant's claim.

10.8 The Complainant wants the Respondent to honour the claim by paying the Complainant's cost according to the policy agreement.

10.9 On the 23rd of April 2009, the Complainant referred his complaint to the FAIS Ombud for further investigation and necessary action.

10.10 It is not in dispute that the complainant entered into a contract of insurance in terms of which he comprehensively insured his motor vehicle. The schedule to the policy that was issued to the complainant records the respondent as the insurer. Nor is it in dispute that after the complainant purchased the policy the insured vehicle was involved in an accident. The respondent does not dispute that it then received a claim from the complainant policyholder.

E. THE RESPONSE FROM RESPONDENT

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point the Respondent was requested to submit a reply to the allegations, taking into account the requirements of the FAIS Act.

11.1 The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent policies issued through Fleetsure, with reference to a letter dated 17 February 2010.

The respondent's response can be summarised as follows:

11.2. The Complainant was at all times factually insured by Zurich Risk Financing SA Limited, previously known as SA Eagle Insurance Company ("Zurich").

11.3 The Respondent further contends that Ms Ilse Becker trading as Fleetsure Insurance had attempted to transfer her Fleetsure portfolio from Zurich to the Respondent.

11.4 The Respondent disputes the validity of the above mentioned transfer by Ms Ilse Becker.

11.5 The Respondent further contends that Ms Becker and Zurich failed to comply with statutory requirements prescribed for intended transfer of the Fleetsure Book of Business from Zurich to the Respondent, and as such concludes that the intended transfer was void and of no force and effect.

11.6 The Respondent further avers that the liability as insurer remained with Zurich and not with them.

11.7 According to the Respondent Fleetsure was not authorised to use its logo on documentation and correspondence.

11.8 This Office, according to the Respondent, cannot deal with the complaints as the question of its liability is subject to an inspection by the Financial Services Board (FSB). The Respondent claimed that the whole matter was *sub-judice* and that any action on the part of this Office will be premature. The Respondent requested that this Office stay proceedings pending the outcome of the FSB inspection.

11.9 The reason for non-payment is attributed to a dispute between respondent, Fleetsure and Zurich. This dispute was the subject of an investigation by the Financial Services Board. The respondent insisted on not dealing with this complaint as an individual complaint and stated that the matter was *sub judice* in the hands of the FSB.

11.10 The respondent states that there was no valid contract of insurance as between itself and the complainant. According to the respondent the complainant was a client of Fleetsure and/or one of the latter's brokers. The Respondent submits that it was not at risk as Fleetsure was not authorised to issue policies on its behalf and that it was in any event not aware of the fact that Fleetsure was conducting business on its behalf.

The defences raised by the Respondent will be dealt with in this determination.

F. Findings

For reasons stated in Mthethwa's case, I find that the Respondent was at risk and is liable to pay the Complainant in terms of the contract of insurance

G. Conclusion

On the undisputed facts before this Office the following conclusions are made:

12.1 The respondent as an insurer was at risk in terms of the policy purchased by the complainant.

12.2 Complainant's policy was effected during the period 1st June 2008 and 31st December 2008.

12.3 The respondent has provided no legitimate basis in law to avoid paying the complainant's claim.

12.4 The complaint is upheld and the respondent is ordered to pay the Complainant's claim.

H. Quantum

13.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R 48.150.40 in settlement of his claim.

13.2 Accordingly an order will be made that Respondent pay to complainant an amount of R 48.150.40

13.3 The loss agreement was signed on the 18th of February 2009. The complainant expected the amount to be paid by the end of the end of March 2009. Accordingly, I intend to make an order that interest be paid on this amount from the 01st of April 2009 to date of payment.

I. ORDER

I make the following order:

1. The complaint is upheld.

2. The respondent is ordered to pay to the complainant:

- 2.1 The amount of R 48.150.40
- 2.2 Interest on the amount of R 48.150.40 at the rate of 15, 5% per annum from the 01st of April 2009 to date of payment.
3. Respondent is ordered to pay the case fee of R1000, 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 7th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS



Settlement Quotation

17/02/2009

Attention :NHLAPO J

Fax: 011 6807638

RE: Settlement Quotation on account number : NHLAPO 08077273

ARTICLE :2003 U VOLKSWAGEN CITI CHICO 1
 ENGINE NUMBER :BBV174843
 CHASSIS NUMBER :AAVZZZ17Z3U015050
 YEAR MODEL :2003

With reference to your inquiry on the above-mentioned account, we confirm that the settlement will amount to **R48,150.40**, including daily interest. This is provided that we receive it on or before **19/03/2009**. This amount takes into account all payments received on settlement date including the payment on **30/01/2009** for the amount of **R1,342.98**, and assume no cheques/debit orders will be referred back to us by your bank. Should the above payment be returned the settlement figure would have to be revised.

**Kindly quote your account number with The Motor Finance Corporation (PTY) Ltd. t/a MFC on the reference section of the FNB deposit slips when payment is made .
 Kindly fax copy of agreement of loss .**

Please note that the right of ownership of the article shall still vest in MFC until the outstanding amount is paid, either in cash or per bank guaranteed cheque, and that the relevant article may not be sold on behalf of MFC. This confirmation of the settlement amount occurs without prejudice to any rights, which MFC may have. If, at any stage, it should become clear that MFC, for whatever reason, has made a calculation or any other error, the unpaid amounts will still be due to MFC by yourself.

We urge you to obtain a copy of the Natis document in order for you to verify the full vehicle description including the year model and make. MFC will not be liable for any errors, be it administrative or any other related to the vehicle description as displayed on this letter.

Yours sincerely,
 Sibongile Sibeko
 Client Services

BANKING DETAILS:

FIRST NATIONAL BANK

BRANCH CODE: 255005

ACC NO: 62090136039

PLEASE QUOTE ACCOUNT NUMBER AS REFERENCE NUMBER ON DEPOSIT SLIP AND FAX TO (011) 879-9926

The Motor Finance Corporation (Pty) Ltd. t/a MFC | Reg. No. 2001/012691/07
 Directors: T. Browne, R. Van Wyk, P. Hibbit, D.G. Leadley, C. Otto, Company Secretary: G Tyusha

FORM OF ABSOLUTE DISCHARGE

Insured: J NHLAPO
 Claim No: FLEET 137
 Date of Loss: 20/11/2008 at 21:50
 Place of Loss: In front of 1389 Chirwa Str, Bophelong

I JABULANI NHLAPO ID 820928 6127 088 in my capacity as insured, owner hereby accept from INBROCON of P.O Box 5535, Cresta, 2118, representing Orange the following sum in full, final and irrevocable settlement of any or all claims that I have, or may hereafter have, against the said Inbrocon; Orange; and/or the said Client/Insured of theirs named above. In respect of any/all losses that I have suffered, may have suffered, or will suffer following upon or consequent upon, directly and/or indirectly, the incident referred to herein above.

SUM INSURED	:	R47 000.00
RETAIL	:	R45 300.00
LESS BASIC EXCESS	:	R 2 265.00 (5% min R2 000)
LESS ADDITIONAL EXCESS	:	Nil
ENDORSEMENT	:	Walver VESA system
VEHICLE VALUE	:	R43 035.00

Payable as follows:

SETTLEMENT MFC : R48 150.40

FIRST NATIONAL BANK
 BRANCH CODE 255005
 ACC NO 62090136039
QUOTE REF NR NHLAPO 08077273

This release is issued entirely without prejudice and/or admitting liability. Inbrocon & Orange retain the right to withdraw release up to final payment.

SIGNED _____ SIGNED _____
 Client Witness Date

PLEASE COMPLETE DETAILS FOR DEPOSIT – INSURED - NIL

BANK	BRANCH	B/CODE	ACCOUNT HOLDER	ACCOUNT NUMBER

PLEASE COMPLETE DETAILS FOR DEPOSIT – FINANCE HOUSE

BANK	B/CODE	QUOTE REFERENCE	ACCOUNT NUMBER
FNB	255005	NHLAPO 08077273	62090136039

