

**IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS
HELD AT PRETORIA**

CASE NUMBER: FOC 2700/05/GP/1

In the matter between:

S NOWOSENETZ **1st Complainant**

M NOWOSENETZ **2nd Complainant**

and

**STANDARD BANK
FINANCIAL CONSULTANCY** **Respondent**

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

The Parties

[1] The First Complainant is Mr S Nowosenetz an adult male, married to the Second Complainant, residing at number 10 Nama RJA / 262 Sprite Avenue, Faerie Glen.

[2] The Second Complainant is Mrs M Nowosenetz an adult female, married to the First Complainant , residing at 10 Nama RJA/262 Sprite Avenue, Faerie Glen.

[3] The First and Second Complainants will be jointly referred to as the 'Complainants.'

[4] The Respondent is Standard Bank Financial Consultancy a division of Standard Bank Limited, a registered bank in terms of the laws of the Republic of South Africa and an authorized Financial Services Provider in terms of the FAIS Act, with its principal place of business at Standard Bank Centre, 7th Floor, No.5, Simmonds Street, Johannesburg.

Complaint

[5] The Complainants submitted a complaint to the product supplier, Liberty Life, on 30 May 2005, complaining about financial loss allegedly caused by the latter on the Multi Access Endowment.

[6] The Complainants also submitted a complaint to the Respondent, the financial services provider in this case on 28 October 2005, complaining about the advice given by one Francois Snyman ('Snyman') a representative of the Respondent, whom they allege induced them to purchase the investment with Liberty Life. They also complain that the Respondent is not entitled to the commission of R17 100, 00 earned on this transaction.

[7] Apparently not satisfied with the responses from Liberty Life and the Respondent, the Complainants then submitted their complaint to this Office on 20 December 2005.

[8] The gist of the complaint is that the Complainants suffered financial loss as a result of advice given by Snyman who recommended the investment with Liberty Life.

Background

[9] The allegations are that the Respondent advised the Complainants to invest an amount of R1 million in a Multi Access Endowment with Liberty on 16 November 2004. The sum of R17 100 represented commission earned by the Respondent.

[10] The Complainants allege that they were induced to purchase the investment after having been advised by Snyman that:

[10.1] it is tax efficient;

[10.2] payment would be made monthly 'by way of dividends based on 6.5% of the prime interest rate'; and

[10.3] most importantly the Capital would always remain guaranteed and repayable on demand.

[11] Having concluded the investment, the Complainants discovered that the capital sum had been eroded by approximately R17 100.00. The Complainants also discovered that additional deductions of R1600.00 were made from the capital investment by Liberty Life for a period of six months.

[12] This Office sent out a letter with the complaint to the Respondent on 16 January 2006 in order to resolve the complaint within the time prescribed by Rule 6 (b) of the Rules on Proceedings of the Office of the Ombud for Financial Services Providers.

The Response

Response from Liberty Life:

[13] In respect of Liberty Life, a response sent directly to the Complainants, explains in detail what took place in regard to the investment.

[14] It would appear from the response that Liberty Life made an overpayment to the Complainants of R1600.00 per month for a period of six months,

hence overpaying the Complainants a total of R9 600.00. This accounted for the reduction in the capital amount of the investment.

[15] On account of their error with regard to the overpayment, Liberty Life offered an amount of R500.00 being interest, which they considered to be well above the interest which the Complainants would have earned on the amount of R9600.00.

[16] Liberty Life then advised the Complainants that in so far as commission is concerned, they should approach the Respondent.

[17] In response to the letter from Liberty Life, the Complainants accepted the offer to reimburse them an amount of R500.00 on 20 December 2006.

Response from the Respondent:

[18] The Respondent settled this matter directly with the Complainants by offering an amount of R15 256.51. This offer was accepted by them on 23 January 2006. Thus in response to the complaint, the Respondent referred us to their letter dated 16 January 2006 informing us that they had resolved the complaint within a period of six weeks as set out in the Rules on Proceedings of this Office.

[19] In view of the foregoing, this Office advised the Complainants in a letter dated 30 January 2006 that as the matter had been resolved, it was dismissing the complaint.

[20] However on 07 February 2006, the Complainants responded to our letter dated 30 January 2006 by advising that they were not satisfied as their complaint against Liberty Life remained unresolved.

Determination and reasons therefore

[21] The financial service was rendered by the Respondent by providing advice to the Complainants to invest their capital amount of R1 million with Liberty Life.

[22] The Complainants were not satisfied with the reduction of their capital amount and the commission of R17 100 earned by Snyman.

[23] On 23 January 2006, an offer in the amount of R15 256.51 was made by the Respondent with a view to resolve the complaint. This offer was accepted by the Complainants on 23 January 2006.

[24] The Complainants also discovered that additional deductions of R1600.00 were made from the capital invested by Liberty Life for a period of six months the total being R9600.00.

[25] Liberty Life also responded to the complaint made directly to it by offering an amount of R500, 00 in lieu of interest, which was duly accepted by Complainants on 20th December 2006.

[26] In the circumstances, it appears from the documents and investigation conducted by this Office that a reasonable offer was made and accepted by the Complainants from the Respondent and Liberty Life.

Conclusion

[27] The Respondent furnished advice which led the Complainants to invest an amount of R1 million in the Multi Access Endowment with Liberty Life on 16 November 2004.

[28] Liberty Life made an error by making an overpayment to the Complainants in the amount of R9600.00. However Liberty Life rectified their error by reimbursing the Complainants with an amount of R500.00 which Complainants accepted.

[29] The Complainants accepted an offer from the Respondent in the amount of R15 256.51.

[30] The basis of this complaint revolves around the rendering of the financial service in this matter. This has been settled. In addition to this, an error relating to the maintenance and servicing of the investment by Liberty Life was rectified by making an offer which was accepted by the Complainants. There was no rendering of a financial service as defined in the FAIS Act by Liberty Life. Therefore, apart from what I have already said, there is no basis for me to pursue the complaint against Liberty Life, as urged by the Complainants.

Order

The complaint is dismissed in terms of Rule 7 (b) (ii) of the Rules on Proceedings of the Office of the Ombud for Financial Services Providers.

DATED AT PRETORIA ON THIS 11th DAY OF MAY 2006



CHARLES PILLAI
OMBUD FOR FINANCIAL SERVICES PROVIDERS