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

Case Number: FSOS 06492/08-09/KZN 3

In the matter between

T.C. NTOMBELA **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] Complainant is Ms T.C. Ntombela, an adult female, a school teacher residing at, E253 Gugu Ngcobo Drive, Umlazi Township, and 4031 KZN.

[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 Section14 (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 refused 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: 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 2008 Chevrolet Spark LS 5 Dr 140, bearing registration number and letters NUZ19238.

10.2 On the 18th of November 2008 , the Complainant entered into a Comprehensive short term insurance policy contract with the Respondent through Inbrocon Insurance Brokers, the principal Intermediary and a licensed Financial Service Provider under license number 9842.

10.3 The Complainant was furnished with a policy number: IBM100272 which was issued by the Respondent on the 18th of

November 2008, together with a schedule to the contract of insurance. The effective date for the complainant's cover was the 18th of November 2008. As will appear in this determination, Inbrocon Insurance Broker`s clients were part of the Fleetsure cell.

10.4 On the 24th of November 2008 The Complainant`s vehicle was involved in an accident and he duly submitted his claim through Inbrocon Insurance Brokers.

10.5 The assessment of the vehicle was conducted by a duly authorised assessor and the assessment determined that the vehicle was a write off.

10.6 On the 20th of January 2009, the Respondent accepted the claim and duly issued an Agreement of Loss to settle the Complainant's vehicle cost in an amount of R70, 812.00. 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 failed to honour the complainant`s claim.

10.8 The Complainant wants the Respondent to honour the claim by paying the cost of the vehicle according to the policy agreement. Since the accident occurred complainant was left stranded without means of transport.

10.9 On the 13th of March 2009 Complainant referred her 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 damaged 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.

[12] 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:

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

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

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

12.4 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.

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

12.6 According to the Respondent Fleetsure was not authorised to use it`s logo on documentation and correspondence.

12.7 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.

12.8 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.

12.9 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:

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

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

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

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

H. QUANTUM

14.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R70, 812.00 in settlement of his claim.

14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R70,812.00

14.3 The loss agreement was signed on the 20th of January 2009. The complainant expected the amount to be paid by the end of January 2009, accordingly i intend to make an order that interest be paid on this amount from the 1st February 2009 to date of payment.

I. ORDER

I make the following order:

1. The complaint is upheld.

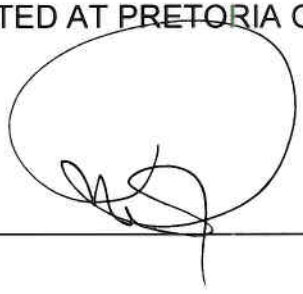
2. The respondent is ordered to pay to the complainant :

   2.1 The amount of R 70,812.00

   2.2 Interest on the amount of R70, 812.00 at the rate of 15, 5% per annum from the 1st of February 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 13th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

Att Pam

Inbrocon cc
Registration No: 1997/006824/23
VAT No: 4090151695
Authorised financial services provider
FSP No: 9841

INBROCON

Agreement of Loss

Without Prejudice

Insured :	**Ntombela T**	VAT No. :	
Claim No. :	**INB 3354/1**	Bank A/C No.:	

I/we the undersigned agree to accept payment of the following amount from Fleetsure (Pty) Ltd acting on behalf of Zurich Insurance Company Limited (The Company) without admission of liability in respect of my/our claim numbered above for Motor Vehicle : 2008 Chevrolet Spark – REG: NUZ 19238

Agreed Amount:	R 74,538.00
Less Excess: (5% min R 3,000)	R 3,726.90
TOTAL DUE TO BANK:	**R 70,812.00**

It is further agreed between the parties that:

1. payment of the aforementioned sum will be in full and final settlement of all or any claims of whatsoever nature, present or in future, ascertained or unascertained which I/we, our successors in title, heirs, dependants, administrators, executors and/or assigns may now or at any time hereafter have against The Company, their servants, directors, members, agents or employees which in any way arises out of the loss which occurred on or about
   Date: 24/11/2008 Cause: Motor Collision

2. The Company may irrevocably in rem suam in my/our name dispose of the salvage of the vehicle described above and retain the proceeds in reduction of the claim cost unless the salvage value is deducted from the agreed amount stated above.

3. If after payment of this claim the vehicle as detailed above is located, I/we shall render all assistance in the identification and physical recovery of such vehicle if called upon to do so by the Company provided that my/our reasonable expenses shall be reimbursed by the Company. Should I/we fail to render assistance when called upon to do so, I/we shall immediately become liable to repay to The Company all amounts paid in respect of this claim.

4. I duly warrant that I am authorised to sign this agreement of loss

Signed at _____ on _____

Signature

Name _____ Witness _____

3 Verona Office Park,
MacArthur Ave, Robindale
P O Box 5535, Cresta, 2118