

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

Case Number: FSOS 07082/08-09/GP 3

In the matter between

O.S. NYAKATHA

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 Mr O.S. Nyakatha, an adult male, residing at, No. 99 Sunset View, 128 Berger Street, Vorna Valley, and 1686 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 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 **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.

B. 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 2007 Volkswagen Golf 5 1.6, bearing registration number and letters WGT 705 GP.

10.2 On the 29th of September 2008, the Complainant comprehensively entered into a short term insurance policy contract with the Respondent through Guardian Independent Finance Services CC, the principal Intermediary and a licensed financial Service Provider under license number 23699.

10.3 The Complainant was afforded with a policy number bearing: GIF002368 which was issued by the Respondent on the 29th of September 2008.

10.4 The Complainant has since enjoyed short term indemnity insurance in respect of the vehicle referred to above.

10.5 On the 22nd of December 2008 the Complainant was involved in an accident and duly submitted his claim through Guardian Independent Finance Services CC.

10.6 Subsequently after the accident ,the broker referred the Complainant to an Administrator who authorised for the vehicle to be towed to a duly authorised repairer (Carmen Panel Beaters).

10.7 The vehicle was duly repaired on the 18th February 2009 at the cost of R92 701.57. Towing charges amounted to R9 400.00.

10.8 To date almost two years later, the Respondent failed to honour the complainants' claim. In the interim the panel beater has presented an invoice for storage feed from the 1st March 2009 to 6th March 2010 in the amount of R57 969.00. The insurer failed to pay any of these amounts.

10.9 The Complainant wants the Respondent to honour the claim by paying the settlement as per policy agreement.

10.10 On the 5th of August 2009 the Complainant referred his complaint to our offices for further investigation and necessary action.

10.11 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.

A. 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 copy of the response 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.

B. 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

C. 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.

D. QUANTUM

- 14.1 In terms of the agreement of loss, the complainant agreed to accept the amount of R92, 701.57 in settlement of his claim. The respondent is also liable for towing charges and storage fees.
- 14.2 Accordingly an order will be made that Respondent pay to complainant an amount of R160 070.57, which is inclusive of storage fees.
- 14.3 The loss agreement was signed on the 18 of February 2009. The complainant expected the amount to be paid by the end of February 2009, accordingly I intend to make an order that

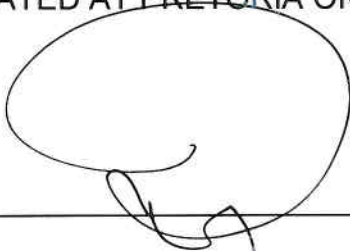
interest be paid on the amount of R92 701.57 from the 1st of March 2009 to date of payment.

E. 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 R160 070.57.
 - 2.2 Interest on the amount of R92, 701.57 at the rate of 15, 5% per annum from the 1st of March 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 12th DAY OF OCTOBER 2010.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS

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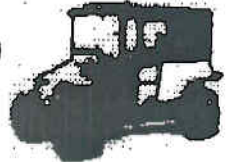
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INVOICE

CARMEN PANEL BEATERS (PTY) LTD.

REG. No 83/09631/07



636 North Coast Rd.
Red Hill

Tel.: (031) 563 0159 Fax: (031) 563 1280

VAT REG. NO.: 4740114700

Nº 5431

REDLEX 604 PTY LTD
% ORANGE INSURANCE
P.O. BOX 17504
RANDHART 1475
Vat No: 4840246864

YOUR C/NO: 31/07/09	DATE
REF FLE 1744	
OUR MAKE VW Golf	
REF	5
QUOTE No	
REG No WGT. 705GP	
O. NYAKATHA	

No	Description	R	C
	STORAGE AS FROM		
	1 3 09 TILL 6 03 2010		
	= 339 DAYS @ R150.00	50 850	00

This is to certify that I have received the vehicle described above from the above Repairer with the Repairs completed to my Entire Satisfaction.

SUB TOTAL	50 850 00
VAT	7 119 00
TOTAL	57 969 00

Insured

INVOICE

CARMEN PANEL BEATERS (PTY) LTD.



REG. No 83/00631/07

636 North Coast Rd.
Red Hill

Tel.: (031) 563 0159 Fax: (031) 563 1280

VAT REG. NO.: 4740114768

Nº 5432

REDLEX 604 PTY LTD
C/O ORANGE INSURANCE
P.O. BOX 17504
RANDHART 1475
Vat No: 4840246864

YOUR C/NO:	
REF FLE 1744	DATE 18/2/09
OUR REF	MAKE VW GOLF5
QUOTE No	
REG No	WGT 705 GP
O. NYAKATHA	

No	Description	R	C
	Agreed cost of repairs	87 910	45
	Vat	12 307	46
		100 217	91
	LESS EXCESS	7 516	34
		92 701	57

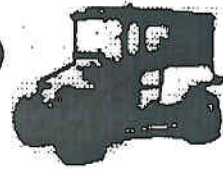
This is to certify that I have received the vehicle described above from the above Repairer with the Repairs completed to my Entire Satisfaction.

SUB TOTAL
VAT
TOTAL 92 701 57

Insured

INVOICE

CARMEN PANEL BEATERS (PTY) LTD.



REG. No 83/00631/07

638 North Coast Rd.
Red Hill
Tel.: (031) 563 0159 Fax: (031) 563 1280

VAT REG. NO.: 4748114788

№ 5433

REDLEX 604 PTY LTD
to ORANGE INSURANCE CO.
P.O. Box 17504
RANDHART 1475
Vat No: 4840246864

YOUR REF	C/NO: FLE 1744	DATE	18/2/09
OUR REF		MAKE	Yw Golf
QUOTE No			
REG No	WGT 7056P		
O. NYAKATHA			

No	Description	R	C
	TOWING PAID	9 400	00

This is to certify that I have received the vehicle described above from the above Repairer with the Repairs completed to my Entire Satisfaction.

SUB TOTAL
VAT
TOTAL 9 400 00

Insured

INVOICE

CARMEN PANEL BEATERS (PTY) LTD.



REG. No 83/06531/07

638 North Coast Rd.
Red Hill

Tel.: (031) 563 0159 Fax: (031) 563 1280

VAT REG. NO.: 4740114788

Nº 5432

REDLEX 604 PTY LTD
C/O ORANGE INSURANCE
P.O. BOX 17504
RANDHART 1475
Vat No: 4840246864

YOUR C/NO:	
REF FLE 1744	DATE 18/2/09
OUR REF	MAKE VW GOLFS
QUOTE No	
REG No WGT 705 GP	
O. NYAKATHA	

No	Description	R	C
	Agreed cost of repairs	87 910	45
	Vat	12 307	46
		100 217	91
	LESS EXCESS	7 516	34
		92 701	57

This is to certify that I have received the vehicle described above from the above Repairer with the Repairs completed to my Entire Satisfaction.

Insured

SUB TOTAL
VAT
TOTAL 92 701 57

