THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS PRETORIA

CASE NUMBER: FAIS 06998/11-12/ GP 1

In the matter between:

ANNA CATHARINA RABIE	**Complainant**
and	
HUIS VAN ORANJE FINANSIËLE DIENSTE BPK	**First Respondent**
BAREND PETRUS GELDENHUYS	**Second Respondent**
STEPHANUS JOHANNES VAN DER WALT	**Third Respondent**
PIERRE WILSENACH	**Fourth Respondent**

DETERMINATION IN TERMS OF SECTION 28 (1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, (ACT 37 OF 2002), (the Act)

A. THE PARTIES

[1] Complainant is Mrs Anna C Rabie, a female pensioner whose details are on file with the Office.

[2] First respondent is Huis van Oranje Finansiële Dienste Bpk, a public company duly incorporated in terms of South African Law, registration number 1995/006025/06, with its principal place of business at 1421 Collins Avenue, Moregloed, Pretoria. First respondent was authorised as a financial services provider in terms of the FAIS Act with license number, 687 which lapsed on 11 July 2011.

[3] Second respondent is Barend Petrus Geldenhuys, an adult male key individual and representative of first respondent in terms of the FAIS Act, with its principal place of business at 5G Wakis Street, Kleinfontein, Rayton, 1001.

[4] Third respondent is Stephanus Johannes van der Walt, an adult male key individual and representative of first respondent in terms of the FAIS Act, with its principal place of business at FNB Century City Shop 139, Canal Walk Shopping Centre, Century City, Cape Town, 8001.

[5] Fourth respondent is Pierre Wilsenach, an adult male representative of first respondent, with its principal place of business at 10 Coert Steynboet Street, Witbank, 1035. At all material times complainant dealt with second, third and fourth respondent.

[6] I refer to first, second, third and fourth respondents as respondent. Where appropriate I specify.

B. FACTUAL BACKGROUND

[7] Complainant made three investments in accordance with advice rendered by respondent.

[8] On or about 14 May 2009 complainant concluded the first agreement with Grey Haven Riches 9 Limited, a public company with registration number 2007/022968/06, represented by Purple Rain Properties 15 (Pty) Ltd t/a Realcor Cape with registration number 1997/004873/07.

[9] The first agreement, facilitated by fourth respondent, constituted an application to purchase debentures to the value of R600 000 in the Blaauwberg Beach Hotel, Erf

19390. On 31 August 2009, with the assistance of third respondent, complainant concluded a further agreement with Grey Haven Riches 11 Limited[1] whereby complainant changed the debentures purchased on 14 May 2009 to class B shares, in the amount of R635 000[2].

[10] On 13 July 2010 complainant, concluded an agreement with Iprobrite (Pty) Ltd, a public company with registration number 2009/007170/06, for the purchase of shares to the value of R530 000. Complainant concluded a further agreement with Iprobite on 17 September 2010 for the purchase of shares in the amount of R400 000, bringing the total investment made by complainant to R1 566 000. In last two instances, complainant was assisted by second respondent.

[11] The total amount invested by complainant amounted to R1 565 000. Each of the investments constitute a separate and distinct cause of action.

About Realcor

[12] Realcor was an authorised financial services provider registered with the Financial Services Board, under license number 31351. Realcor used various subsidiary companies for purposes of obtaining funding from the public for its development projects. These companies included Midnight Storm Investments ("MSI"), which owned the Blaauwberg Beach Hotel (hereinafter, "the hotel"), Grey Haven Riches 9 Ltd and Grey Haven Riches 11 Ltd and Iprobrite Ltd (hereinafter, collectively referred to as "Realcor").

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1 Registration number 2007/025464/06

2 The amount includes the original capital as well as proceeds from the first investment. There is furthermore no share certificate, only a letter from Realcor acknowledging the investment and confirming that the debentures were no changed to Class B shares.

[13] Realcor subsidiaries raised money by issuing the investing public with one (1) year and five (5) year debentures and various classes of shares[3]. In this way Realcor was able to raise substantial amounts of money from the public, funds which were mainly earmarked for the construction of the hotel.

[14] The debentures and shares were marketed as attractive on the basis that investors would receive monthly interest payments and dividends before and after the construction of the hotel. The target market was mainly the elderly or adult persons making provision for post-retirement income. Whilst an ordinary bank savings account would fetch a single digit interest per annum, Realcor investors were promised more than 10% interest per annum. In the absence of legitimate economic activity that would generate cash inflows, it is not clear how this return was to be achieved.

[15] Meanwhile the investment was marketed as safe and guaranteed, with minimal risk of loss of capital as the investment was in "property" such as the hotel.

[16] Pursuant to concerns and allegations raised by members of the public that Realcor was obtaining money from the public unlawfully, the South African Reserve Bank (hereinafter, the "Reserve Bank") on 21 April 2008, conducted an inspection of Realcor's affairs, through PriceWaterhouseCoopers ("PWC") in terms of section 12 of the South African Reserve Bank Act[4].

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[3] The capital structure involved a combination of a share and a debenture and conversion of debentures into shares. Whilst a debenture earns interest, a shareholder is entitled to a dividend provided they are declared and there is profit available for distribution.

[4] Act No 90 of 1989

[17] As a result of the inspection, the Reserve Bank found that Realcor had conducted the business of a bank without being registered or authorised to operate as such. Realcor was thereafter placed under supervision and on or about 28 August 2008, the Reserve Bank appointed PWC as managers of Realcor. The Reserve Bank further prohibited Realcor from obtaining further deposits from the public, and took steps, by appointing PWC, to ensure that investors' money was repaid.

[18] Iprobite was finally liquidated on 25 October 2011, following the granting of a voluntary order by the High Court.

[19] The application for liquidation of MSI proceeded on 16 August 2012 and during May 2013 the hotel was sold for R50 million, dashing any hopes of investors to recoup their investments. For more details in respect of Realcor and its subsidiary companies, refer to the determination of Peens[5].

C. THE COMPLAINT

[20] Complainant states that following an advertisement about the proposed investment on "Radio Pretoria", she duly contacted the radio station. The station was able to put her in touch with the fourth respondent, who was closest to her residence. Based on advice from fourth respondent, the first agreement was concluded.

[21] Following further marketing on the radio about the Realcor investments and the attractive monthly income payable, complainant again made contact with the radio station with a view of investing more money. This time second and third respondent was assigned to assist complainant. Based on the advice received

[5] FAIS 04376-12/13 GP 1

from second and third respondents, complainant made the further investments as stipulated above. The records of the respective investments are on file.

[22] From the foregoing factual background, complainant is aggrieved with the conduct of respondent. Complainant trusted respondent's representations that the investment was safe and her capital guaranteed. The money that complainant utilised was invested in a money market account where she earned 5% interest per annum. Persuaded by the higher interest rate of about 20% per annum, complainant made the investment. Complainant stated that at no time during any of the discussions with respondent, was she informed that the investment was high risk. She furthermore indicates that no risk analysis was conducted, and no alternative products were offered to her.

[23] Complainant's monthly interest payments ceased during October 2010. It was only when complainant was alerted to an insert on Carte Blanche[6] in respect of the hotel that she realised that there was problems with her investment. Attempts to redeem the investment during November 2010 proved fruitless.

D. RELIEF SOUGHT

[24] Complainant seeks payment in the amount of R1 565 000.

E. RESPONDENT'S RESPONSE

[25] During February 2012, the complaint was referred to respondent in terms of Rule 6 (b) of the Rules on Proceedings of this Office, to resolve it with complainant. Respondent duly responded on 29 March 2012. Briefly, respondent confirmed that complainant had three investments with Realcor. Respondent further provided

[6] An investigative television program

copies of the documentation that was signed by complainant in respect of the three investments and refrained from making further statements.

[26] For each agreement concluded, complainant was required to sign an "advice record", in accordance with section 8(4) of the General Code of Conduct (the Code). Complainant therefore signed four advice records. I deal with these documents later in the determination.

[27] Following the aforesaid response, respondent was advised in a notice in terms of section 27 (4) dated 20 December 2012, to resolve the matter with his client and submit further documentation. No response was received.

[28] On 8 December 2015 a further notice in terms of section 27 (4) was issued to the respondent advising that the Office had accepted the matter for investigation and further informing respondent to provide all documents and or recordings that would support their case. The notice further indicated to respondents that in the event the complaint was upheld, they could face liability. There is no record of a further response from respondent.

F. DETERMINATION

[29] The issues for determination are:

29.1 whether respondent, in rendering financial services to complainant, violated the Code and the FAIS Act in any way. Specifically, the question is whether complainant was appropriately advised, as demanded by the Code; and

29.2 in the event it is found that respondent breached the Code and the FAIS Act, whether such breach caused the loss complained of, and

29.3 the amount of the damage or financial prejudice.

G. LEGISLATIVE FRAMEWORK

[30] I deem it necessary to first isolate the legislative framework relevant to this matter:

30.1 The General Code of Conduct for Authorised Financial Services Providers and Representatives, in particular, Sections 8 (1) (a) to (d); 8 (2); 8 (4) (a); and 7; and;

30.2 Government Notice 459 (published by means of Government Gazette 28690 of 2006), (the notice).

Whether complainant was properly advised as required by the Code?

[31] Respondent was invited to demonstrate that he had conducted due diligence on Realcor, prior to advising complainant. No such evidence was presented and, as will become apparent, respondent conducted no due diligence whatsoever on Realcor.

[32] Had respondent conducted due diligence, he would have learnt of the 2008 inspection by the Reserve Bank, the outcome of which pointed to Realcor's illegal conduct of running the business of a bank without a license. Respondent would have realised there and then that Realcor was not an investment and directed his clients elsewhere.

[33] Respondent had a duty to familiarise himself with the regulatory environment around property syndications. In order to get a better appreciation of the risks associated with property syndications and the kind of disclosures that should have

been made by respondent in order to appropriately advise complainant, one has to refer to the statutory disclosures contained in the Government Notice 459 published in Government Gazette 28690 in 2006, hereinafter referred to as 'the notice'.

[34] The notice contains minimum mandatory disclosures, which must be made by promoters of property syndicates. The disclosures must form part of the disclosure document or prospectus, which must be issued by the promoter. By extension, any provider who recommends this type of investment to clients, must be aware of the notice and is obliged to deal with the disclosures when advising their client. The aim, as set out in the Gazette, is to protect the public. Some of the most pertinent provisions of notice 459 are highlighted below:

a) Section 1(b) states that:

"Investors shall be informed in writing that:

(i) public property syndication is a long-term investment, usually not less than five years;

(ii) there is a substantial risk, in that the investor may not be able to sell his shares should he wish to do so in the future;

(iii) it is not the function of the promoter to find a buyer should the investor wish to sell his shares and that it is the investor's responsibility to find his own buyer."

b) Section 2 (a) requires that investors be informed that funds received from them prior to transfer will be held in an attorney's trust account. But more importantly, section 2 (b) states as follows:

"Funds shall only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding."

[35] Information available to this Office points to investors' funds being paid directly into the account of Purple Rain Properties 15 (Pty) Ltd, trading as Realcor, in contravention of section 2 (b) of the notice. Investors were invited to pay money into the account of Realcor[7]. I have carefully analysed respondent's responses and cannot find a single reference to the notice. It appears to me that respondent was not even aware of the existence of the notice. Indeed, had respondent been aware, he would have realised that Realcor's prospectus undermined the provisions of the notice. Yet another telling point that respondent had not conducted any due diligence on Realcor.

[36] Section 3 (c) of the notice states:

"The disclosure document, which is to be dated and signed by the promoter, shall contain a statement of proper due diligence (commercially and legally) with regard to the property and its tenants prior to the unconditional purchase thereof and he/she shall state that this was done and that he/she is satisfied with the results thereof."

[37] One can easily conclude from respondent's version that he had not satisfied himself on whether the promoter of this syndication had complied with the provisions of section 3 (c) of notice 459.

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[7] See in this regard clause 5.10 of the prospectus, as well as the application form

[38] The prospectus made a clear statement that there were no financial statements available since the company was a start-up. What was available, was nothing more than a set of management accounts for a period of three months. The management accounts dealt with the issuance of debentures, shares and related costs. It is not clear how the management accounts alone would have assisted respondent in concluding that the investment was sound

[39] From the documents that were in circulation then to promote this investment there was no information whatsoever that informed respondent about any governance arrangements. There was no independent board of directors. As a start-up company respondent had no credible material on which to rely in order to evaluate the financial soundness of the entity. Respondent provides no insight into how he went about establishing information that points to the entity's business model, its commercial and legal viability. It comes as no surprise that respondent did not include any documentary evidence to support his 'due diligence'. The fundamental flaw in respondent's conduct was his decision to promote this product to his clients, when he knew that he had not carried any work whatsoever in order to understand the risk inherent therein.

[40] Turning to respondent's duties in terms of the FAIS Act, section 8 (1) of the General Code of Conduct provides that a provider must, prior to providing a client with advice:

(a) 'Take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives to enable the provider to provide the client with appropriate advice;

(b) Conduct an analysis, for purposes of the advice, based on the information obtained;

(c) *Identify the financial product or products that will be appropriate to the client's risk profile and financial needs, subject to the limitations imposed on the provider under the Act or any contractual arrangement;'*

[41] In order to demonstrate compliance with section 8 (1), respondent provided a document entitled "Adviesrekord van 'n Onderlinge Ooreenkoms"[8]. This document states:

'The share class productive investment is considered as a venture capital investment and seeing that unlisted shares are not readily marketable, Realcor Cape and the representative undertakes to assist the shareholders to sell their shares at market related commission should such a need arise.

It is noted that potential fluctuations because of market conditions associated with property and prime lending rate could have a negative impact on the value of the investment portfolio. It is thus not possible to guarantee the investment capital or the target return and Realcor Cape cannot be held responsible for any losses in this regard. It is confirmed that the client understands and accepts the underlying market risks.'

[42] Before I deal with the rest of the advice record, a brief comment is warranted on respondent's notes, (para 41). First respondent describes the product sold as a share in a venture capital. This is notwithstanding that Realcor had been ordered

[8] Translated to mean Record of Advice of an Underlying Agreement

by the Reserve Bank, as far back as 2008, to desist from collecting funds from investors.

[43] Venture capitalists are wealthy experienced individuals, who agree to support start-up companies, in anticipation of superior returns. They (venture capitalists) are fully cognisant of the high risk involved in the venture capital market. They may choose to support a new company either with capital or managerial experience. The point to stress here is, venture capitalists have the capacity to deal with the high risk involved in this type of investment. At the very least, assuming that Realcor had no challenges with the law in anyway, I would expect a provider who advises a client on this type of investment to take steps to satisfy themselves that the investor's profile is suitable to it, as required by section 8 (1). To expect anything less would be undermining the code. Thus, I find it disturbing that respondent, after luring complainants to this 'safe investment', found it appropriate to hide behind the statement this record. This is nothing short of trickery.

[44] The record of advice deals with three types of products that were considered, namely Realcor Cape, PIC and Sharemax, all three products being property syndications. There is no indication that other investment types were considered. As to why complainant's needs could only be addressed by means of property syndication products, respondent has not explained. The recommendation to invest in Realcor was on the basis that it offered the highest return. This much is noted on the advice record. There is no information evidencing that respondent was concerned by complainant's capacity to absorb high risk. Equally, there is no evidence that respondent was open to consider other types of investments with

less risk than property syndications. Respondent failed to meet the requirements of section 8 (1) (c).

[45] Even if complainants wanted to invest in Realcor respondent had a duty to state in no equivocal terms that:

45.1 Realcor had been directed by the Reserve Bank not to collect investor funds, following the inspection;

45.2 information provided in the prospectus was conclusive that investors carried all the risk and that certain provisions of the prospectus undermined Notice 459;

45.3 the product was high risk and not suitable for complainants;

45.4 complainants could lose all their capital.

Had these statements been made clear, the probabilities that complainants would have gone ahead with the investments are zero.

[46] It appears from this document and the surrounding circumstances of this case that respondent had taken no time to satisfy himself that complainant understood the advice in violation of section 8 (2). The provision states that a provider must take reasonable steps to ensure that the client understands the advice and is in a position to make an informed decision. On the contrary, respondent informed complainant that the investment was safe and her capital was guaranteed.

[47] Given the aforesaid discussion, I conclude that respondent was completely out of his depth and could not have appropriately apprised complainant of the risks involved, in violation of sections 7 of the Code.

Record in terms of section 8 (4) of the Code

[48] Respondent provided documents entitled "Adviesrekord ingevolge artikel 8(4) van die Algemene Kode" which translates to the Record of Advice as required in section 8(4) of the Code. These documents were allegedly completed at the time the investments were made and is supposedly proof of compliance with the aforesaid section of the Code.

[49] Before I examine the documents further, it might be useful to refer to section 8 (4) (a). The section stipulates that where a client has not provided all the information requested by a provider for the purposes of furnishing advice, the provider must fully inform the client and ensure that the client understands that:

(i) a full analysis could not be undertaken;

(ii) there may be limitations on the appropriateness of the advice provided; and

(iii) the client should take particular care to consider on its own whether the advice is appropriate considering the client's objectives, financial situation and particular needs.

[50] The first Record of Advice was signed by fourth respondent on 14 May 2009, in respect of the initial investment of R600 000. It is worth noting that apart from complainant's address and contact details, that no other information had been

completed. Complainant was required to sign a blank record of advice, in contravention of section 7 (2) of the Code, which categorically states that no provider may request any client to sign any written or printed form or document unless all details required to be inserted, have already been inserted.

[51] The next three Records of Advice, were signed by second and third respondent respectively. Part three of the said records of advice contain the following question and answer:

Question: Reason as to why needs analysis was not conducted?

Answer: The client did not want to provide all the necessary information, which would have enabled me to conduct a detailed needs analysis.

[52] There is neither indication that the information was in fact requested of complainant nor an attempt to convey to complainant the consequences of not carrying out the required analysis. Complainant has in fact stated that second and third respondents were in a hurry to obtain the signed documentation from her. When she asked about the documentation that she was required to sign, second and third respondent told her that: “ag, dis maar niks” (oh, it is nothing). Apart from stating that the investment is safe, no more information was provided to complainant.

[53] Part four of the records of advice notes the following information:

Client’s financial information:

- *An analysis of the client’s financial position was not conducted*
- *The client did his own analysis*

Client’s risk profile:

- *The client manages his own investment portfolio*

Client's needs and objectives:

- *To earn the highest return on his investments as fast as possible*

[54] On further inspection of these documents, it is evident that the above information was already inserted in the documents prior to the signature thereof. Certain answers on the form were pre-printed and could not have been a proper response completed in accordance with complainants' circumstances at the time. Even the gender reference on the form is incorrect, confirming that the document is a standard printed document.

[55] Respondent failed to assess the risk capacity and profile of complainant prior to recommending the said investment. Complainant at the time owned a townhouse and a vehicle. She used the investment income derived from the Realcor investments to supplement her pension income[9]. Information in respect of the aforesaid, as well as complainant's income and expenditure is not documented anywhere. How respondent was able to appreciate complainant's capacity for risk is therefore unclear.

[56] What the Code contemplates in section 8 (1) is that a provider take into account necessary and available information for the purpose of conducting an analysis. There is no evidence that respondent properly considered other investments suitable to complainant's circumstances and in particular, whether complainant would be in a position to recoup any loss she suffered. What is evident, is that respondent sold complainant the Realcor investments outside of any analysis of her needs or risk profile, in violation of section 8 (1) (c) of the Code.

[9] Complainant received a combined pension income consisting of her own pension and a portion of her late husband's pension.

[57] It cannot be accepted that the said record is a proper record of advice as envisaged by the Code. The document is nothing more than a failed attempt to create the impression that the Code had been adhered to.

[58] I am persuaded that the contents were not explained to complainant and that she was unaware of the consequences of affixing her signature to the said records. The paucity of information relating to complainants' circumstances suggests that respondent had no intention of providing appropriate advice. In any event, respondent had no resources to advise complainant on this investment.

[59] That complainant wanted to make the investment in Realcor, according to respondent, does not absolve respondent from his duties in terms of the Code. Respondent still had a duty in terms of section 8 (1) (c) to identify products that would be suitable to the client's risk profile and financial needs, regardless of what complainant thought would have been in her interest.

[60] Complainant indicated that the funds she utilised to make the investments were in money market and savings accounts. Section 8 (1) (d) of the Code provides that where a financial product is to replace an existing financial product, wholly or partially, the provider must disclose fully the actual and potential financial implications, costs and consequences of such a replacement. There is simply no evidence that respondent conducted the aforesaid exercise prior to recommending the Realcor investments.

Did respondent's conduct cause the loss complained of?

[61] Based on complainant's version, the investment in the hotel was as a result of the respondent's advice. I have already mentioned that based on the outcome of the inspection by the Reserve Bank and the violations of Notice 459, respondent should have never recommended the product to anyone. But for respondent's advice, there would be no investment in Realcor. This makes respondent's advice the primary cause of complainant's losses. The next enquiry deals with legal causation. The question is whether, as a matter of public and legal policy, it is reasonable, to saddle respondent with liability for the consequences of the failure of the investment. In simple terms, can it be said that respondent, in giving advice that was inappropriate in terms of the Act and the Code, should have foreseen the resultant collapse of the investment.

[62] It is easy and convenient to impute loss of investors' money to director mismanagement or other commercial causes. In this case however, complainants' loss was not caused by management failure or other commercial influences. If respondent had done his work according to the Act and the Code, no investment in Realcor would have been made, bearing in mind complainants' tolerance for risk. On the strength of the outcome of the Reserve Bank's inspection, respondent should have known that this is not an investment but an illegal venture. Had respondent read the prospectus or disclosure document, he would have realised that the directors of Realcor had no intention of conducting themselves within the law; yet another reason to keep his client's money away from Realcor.

[63] Respondent should have inferred from the overall failure to comply with the Notice, on the part of the promoters of the scheme, that this was not an investment. Had respondent been acting within the law, he would have refused to promote an

investment he could not understand. He ought to have been aware that he owing to his lack of understanding of the product, he was in no positon to advice a client of the risks involved. In short, the cause of loss was the inappropriate provided by respondent. That the risk actually materialized, for whatever reason, is not the cause of the loss. Otherwise the whole purpose of the Act and the Code would be defeated. Every FSP would ignore the Act and Code in providing financial services to their clients and hope that the investment does not fail. Then when the risk materializes and loss occurs they hide behind unforeseeable conduct of the directors. This will fly in the face of public and legal policy and the provisions of the Act and Code.

[64] The reasonable foreseeability test does not require that the precise nature or the exact extent of the loss suffered be foreseeable: it was sufficient that the general nature of the harm suffered by complainant and the general manner of the harm occurring was reasonably foreseeable. I refer in this regard to the matter of *Standard Chartered Bank of Canada v Nedperm Bank Ltd*[10] where the Court held that:

"as to the issues of loss and causation, that although the untrue report issued by the respondent had been a factual cause of the appellant's loss, the test to be applied to the question whether the furnishing of the untrue report had been linked sufficiently closely or directly to the loss for legal liability to ensue was a flexible one in which factors such as reasonable foreseeability, directness, the absence or presence of a novus actus interveniens, legal policy, reasonability, fairness and justice all played a part."

[10] 1994 (4) SA 747 (AD)

[65] Information at this office's disposal points to the following conclusions:

65.1 Respondent failed to note that Realcor's prospectus undermined the law

65.2 Respondent failed to conduct due diligence on Realcor. Had he done so, he would have been aware of the outcome of the Reserve Bank's inspection that had been carried out almost two years prior to advising complainants to invest in Realcor.

65.3 It is an undisputed fact that respondent, prior to advising complainants, had not carried out any work to acquaint himself with the legal environment in which property syndications operate.

65.4 Respondent had no means to evaluate the financial viability of the business proposal, yet he advised complainants that their investment was safe.

65.5 Respondent failed to advise complainants that by investing in what he described 'venture capital share, they were gambling their investment.

65.6 Had respondent adhered to the Code, he would have realised that complainants' circumstances were unsuitable to invest in Realcor.

65.7 It was respondent's insistence on selling this investment to complainant, regardless of the surrounding circumstances, that saw respondent violate his duty to act in the interests of his client and the integrity of the financial services.

[66] I find that, in advising complainant to invest in Realcor, respondent contravened sections 2; 7 (1) and 7 (2); 8 (1) 8 (2); and 9 of the Code. I also find that respondent's conduct caused complainants' loss.

H. QUANTUM

[67] Complainant invested an amount of R1 565 000. There are no prospects of ever recovering the money from the hotel.

[68] Accordingly, an order will be made that respondents pay to complainant an amount of R1 565 000 plus interest.

I. ORDER

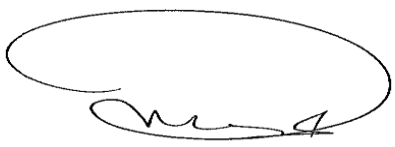
[69] In the premises, I make the following order:

1. The complaint is upheld.

2. Respondents are ordered to pay complainant, jointly and severally, the one paying the other to be absolved, the amount of R1 565 000;

3. Interest on the amount of R1 565 000 at the rate of 10.25%, seven days from the date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 27th DAY OF SEPTEMBER 2016



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