[115] The first respondent was merely seduced by the generous commissions being paid by Sharemax and he recklessly abandoned his duties and obligations as a licensed FSP. He did this under the supervision of the very providers of the product he was selling.

[116] The first respondent contravened the provisions of section 2 of the Code; which provides :

*"A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry."*

[117] First respondent, under the supervision of USSA, further contravened the provisions of section 3 (1) (a), (b) and (c) of the code as well as sections 4, 7 and 8. The first respondent together with his supervising principals contravened section 13 of the Act. The first respondent was given an opportunity to explain how he was "supervised" while advising the complainant. He failed to give any details of this.

**SECTION 13**

[118] All the property syndication scandals that come through this office have one thing in common, the perpetrators made use of section 13 of the Act. This has become a serious problem and cannot be allowed to continue any further. Ponzi schemes rely on being able to access large numbers of investors in a short period of time. It is the abuse of section 13 that allowed these schemes to proliferate.

[119] Individuals intent on starting a Ponzi scheme need access to a network of agents to sell their toxic investments. This they managed to achieve by exploiting the provisions of section 13.

[120] The perpetrators of these schemes use section 13 to set up their own network of agents. They also use the promise of lucrative commissions to entice brokers to market their products.

[121] The Act and the Code is aimed at regulating the industry in order to protect the investing public and to maintain the credibility of the industry. We must now take a long hard look at the industry and ask if these objectives were achieved. Let us look at the damning facts; in recent times South Africans have lost billions to failed investment schemes. In the Leaderguard scandal, involving forex investments, a staggering amount of about R380 million was lost. In the Blue Zone property syndication investors lost R450 million. Whilst an amount of about R300 million was lost in the Blue Pointer scheme, and so the list continues. Incidentally, none of the perpetrators have been prosecuted notwithstanding that this office reported some of these cases to the National Director of Public Prosecutions.

[122] The Act and the Code is structured in such a way that it requires, to a certain degree, self-regulation by the industry. The legislature expects that members of the profession will act in good faith and apply the provisions of the Act and Code. International experience, since 2007, has taught us that this industry requires more and more effective oversight. Currently, the oversight

responsibility is left entirely to the principal. This makes no sense where the principal is behind the Ponzi scheme. The abuse of section 13 is a good example. At one point USSA had as many as 1376 section 13 appointed FSPs spread throughout the country. How it was possible to train and supervise this number is beyond explanation. USSA, as did Leaderguard, Bluezone and the others, failed to explain how they trained their large numbers of representatives. They abused the Act to take advantage of a loop hole which effectively allowed unlicensed FSPs to sell risky investments to an unsuspecting public. In this way they established broker networks that are so essential for the scheme to work.

**SECOND TO SEVENTH RESPONDENTS**

[123] In terms of section 27(4) the second to seventh respondents were presented with the details of the complaint and were given an opportunity to respond. All the respondents, made written responses to this office stating why they should not be held liable for the complainant's loss.

[124] The respondents basically relied on the same defence. The fourth respondent, Goosen, presented a comprehensive and detailed response. The other respondents rely on the same explanation.

[125] In summary, the defences are as follows:

125.1 the complaint is against the first respondent, the complainant did not lodge any complaint against them, accordingly this office cannot treat them as respondents;

125.2 the second and fourth respondents did not provide the complainant with any advisory and or intermediary services and the complainant was never a client of the second and third respondents. The complainant was a client of the first respondent only;

125.3 the respondents did not render any financial services to the complainant as defined in section 1 of the act;

125.4 the fourth respondent had nothing to do with the business of the first respondent and cannot be held accountable for the conduct of the latter;

125.5 the first respondent was provided with a disclosure document that pointed out that the investment represented possible capital risk and that the first respondent was providing services under supervision. Therefore the complainant made the investment knowing that there was a risk. The complainant accepted the risk and therefore the respondents cannot be held accountable;

125.6 the complainant was informed of the risks and had sufficient time to consider the investment, the complainant even had enough time to change her mind;

125.7 the first respondent received a step by step guide from USSA and was obliged to comply with it; and

125.8 at the time when first respondent sold the investment to the complainant, he was suitably qualified and was no longer under supervision of USSA.

[126] For reasons already stated, there is no substance in the representations made by the respondents. I will now deal with those issues not already dealt with.

[127] I point out that throughout their written submissions to this office, the respondents, with the exception of the sixth respondent, did not deal with the provisions of section 13 of the Act. Nor did they make any reference to the Code. For this reason alone the explanation in paragraph 125 above must be rejected. The respondents did not explain how the provisions of section 13 could be avoided.

[128] The only attempt made to avoid section 13 was for the respondents to suggest that the first respondent was not under supervision when he sold the investment. In this regard I refer to Board Notice 104 of 15th October 2008, as amended, *"Exemption of Services Under Supervision in Terms of Requirements and Conditions, 2008"*. On the information available to this office, the first respondent acquired the qualifications described in paragraph 3 (b)(i) of the board notice. However, at all material times, the first respondent was never licensed by the FSB to market category 1.8 and 1.10 investments. He remained a representative of USSA in terms of section 13. The first respondent enjoyed no exemption which rendered his conduct to be independent of USSA. The first respondent could not have legally sold the Sharemax investment as an independent FSP, he did so as a representative

of USSA and the question as to the status of his supervision is irrelevant. In any event, the exemptions set out in BN 104 does not compromise the fit and proper requirements of the Act nor does it compromise the Code of Conduct as it was intended that a representative under section 13 will be the responsibility of the principal or licensed provider. The disclosure document nevertheless described the first respondent as being under the supervision of USSA.

**Goosen's Further Response**

[129] In keeping with section 27 (4) of the Act, Goosen was invited to respond further to certain questions raised in this complaint. The questions are as follows:

*"1) The broker in question, Mr CJ Botha was one of FSP Network's t/a USSA ('USSA') Section 13 representatives under supervision. It appears from our investigation that USSA is an extension of Sharemax, set up to create a broker network to market Sharemax investments.*

*2) Kindly address us on why the directors of Sharemax and/or Sharemax Zambezi Retail Park Holdings Limited should not along with USSA be held responsible in terms of section 13 of the FAIS Act for the advice given to complainant to invest in Zambezi (prospectuses 2 and 4).*

*3) Kindly advise as to how investors such as the complainant were paid interest of 12% whilst Zambezi and Villa were not generating any income"*

[130] I now deal with Goosen's response to each of these questions.

> At the outset I am compelled to point out that Goosen did not take this opportunity to be candid and forthcoming with information and an explanation. Instead his responses were lacking in material detail and he was evasive. Goosen also elected to accuse this office of a bias and expressed a view that this office had prejudged the matter. Instead of providing a response, Goosen mainly asked more questions instead of giving answers. He also accused this office of acting contrary to the provisions of PAJA no 3 of 2000.

He nevertheless gave some responses to the above questions.

**The first question**

[131] In response to a previous notice in terms of section 27 (4), Goosen dealt with this question and his response is dealt with by me elsewhere in this determination. The purpose of this further invitation for a response was to give Goosen an opportunity to deal with the provisions of Section 13 of the Act. This he did not address in his first response.

[132] Goosen again failed to deal with the application of section 13 of the Act to all the brokers registered with USSA. Goosen merely repeated his previous stance claiming that the first respondent was not under supervision when the investment was sold to the complainant. This point is already dealt with and Goosen's response here is of no assistance.

**The second question**

[133] This was yet another invitation for Goosen to deal with section 13 of the Act as this section is crucial to some of the issues in this complaint. Goosen again failed to deal with this and made an evasive response suggesting that this office had no justification to "pierce the corporate veil". Goosen demanded an explanation from this office as to the grounds for holding the directors liable, suggesting that there was an onus on this office to give him an explanation first.

This response was equally unhelpful.

**The third question**

[134] For purposes of this determination I deem it necessary to quote in full the response from Goosen. This is what he stated:

"*It is important to note that all the prospectuses of Zambezi and The Villa were registered by the Registrar of Companies Pretoria in terms of section 155 of the Companies Act No 61 of 1973 as amended. It is also important to note that the documents that were registered by the Registrar of Companies Pretoria included the prospectus, the schedules thereto and the application form contained in the prospectus.*

*In terms of the sale of business agreement Capicol 1 (Pty) Ltd would until the occupation date as defined in the prospectus pay to The Villa Retail Park Investments (Pty) Ltd interest on all amounts raised by The Villa Retail Park Investments (Pty) Ltd through the issue of prospectuses. The interest payments*

*received by The Villa Retail Park Holdings Ltd from The Villa Retail Park Investments (Pty) Ltd would then be distributed as accrued interest to the unit holders of the Villa Retail Park Holdings Ltd.*

*I was not involved in the negotiations in respect of the sale of business agreement concluded between Capicol 1 (Pty) Ltd and The Villa Retail Park Investments (PTY) Ltd and I trust that the Office of the Ombud would be able to obtain a copy of this agreement from Frontier Asset Management (Pty) Ltd.*

*I trust that in respect of the Zambezi transactions, a similar sale of business agreement would exist and that the Office of the Ombud would be able to obtain a copy of the said agreement from Frontier Asset Management (Pty) Ltd."* Although Goosen refers to The Villa, the same explanation will be valid for Zambezi as the two schemes were identical in their terms.

[135] A question that was asked repeatedly, related to how Sharemax was able to pay such generous interest whilst the Villa and Zambezi had no independent means of earning an income, either from an existing business or from any other source. Both these companies, according to the prospectuses, had no trading history.

[136] In this response Goosen explains how 12% interest was paid. The explanation does not make commercial sense. It appears that The Villa Retail Park Investments (Pty) Ltd or Zambezi Retail Park Investments (Pty) Ltd took investors' money (amounts raised through the issue of prospectus) and lent it to Capicol (Pty) Ltd. The latter then paid interest to the former.

[137] Of particular concern to this office is, irrespective of how Capicol came to have access to the funds and irrespective of how the interest payments were generated, this information was certainly not conveyed to investors when they were sold the Sharemax investment.

[138] Although the legality of this business agreement may be questionable (it smacks of a scheme designed to circumvent The Banks Act), for purposes of this determination, this office must consider if a full disclosure of the transaction was made to the investors. Were the investors told that their funds will be lent to Capicol and that the interest payments will come from Capicol, which company owned the property and was building the structure and will also incidentally be selling the property to Sharemax once construction was completed?

[139] This office could find no evidence that this was conveyed to investors clearly and in a manner that they could easily understand. Nor is there evidence that USSA's brokers were trained to give this information to their prospective clients.

[140] The prospectuses do indeed refer to a "Sale of Business Agreement" with Capicol (Pty) Ltd. In terms of this agreement Zambezi bought from Capicol the immovable property for a "projected price of R 930 000 000 – 00". The prospectus further states that an amount of R50 million of investors' funds will be used to pay part of the purchase price for the immovable property. This amount will be paid to Capicol which is also the developer.

[141] What is not clear from the prospectus is that money was being lent to the seller and developer of the property and that the latter will pay 12% interest which will be distributed to the investor. If Capicol is the seller and developer of the immovable property, there is no explanation as to how the latter was going to fund the interest payments.

[142] I note that the prospectus records that the property being purchased is as yet undeveloped, but that the "developer is on site". The complainant, like other investors, was told that they were investing in a shopping mall that was already generating rental income.

[143] The prospectus does not explain why the developer should pay the investor 12% nor does the prospectus say anything about making a loan to the developer. According to the prospectus, an amount was being paid to Capicol as part payment of the purchase price.

[144] There is no clear explanation as to where the money went and how the returns were being paid.

[145] Certainly, looking at Goosen's explanation, he too has a different understanding of this transaction when read with what appears in the prospectus. The prospectus is a complex document well beyond the capacity of the average pensioner. The material disclosures in the prospectus had to be explained to the investor before the investment is made. This was not done in this case.

[146] I also refer to Government Gazette volume 489 number 28690 of 30th March 2006 (GG) "MINIMUM INFORMATION TO BE CONTAINED IN A PROPERTY SYNDICATION DISCLOSURE DOCUMENT".

In particular I refer to section 2 which deals with "Investor Protection". Sections 2(a) and (b) reads as follows:

*"2 (a) Investors shall be informed, in writing, that all funds received from them prior to transfer/finalisation shall be deposited into the trust account of a registered estate agent, a legal practitioner or a certified chartered accountant and provided that such trust account is protected by legislation. Individual investors are to be given written confirmation thereof. It shall be clearly stated who controls the withdrawal of funds from that account. Such an account shall be designated " XYZ Attorneys/auditors/estate agents Trust Account- the xyz syndication". In the event of investors paying by cheque, promoters shall ensure that the name of the payee is printed in bold on the application forms.*

*(b) 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.*

*(f)The method of raising the necessary capital to fund the acquisition of the property and the syndication and how any disbursements will be dealt with prior to transfer, shall be disclosed.*

*(g) Provision shall be made for interest earned to be paid on investors' funds deposited as per 2 (a) prior to the effective date of the transfer of the property."*

It is then appropriate to refer to paragraphs 4.2.2, 4.3 and 4.8 of the prospectus which is reproduced here:

*"4.2.2 On 26 October 2007 Sharemax Zambezi Retail Park concluded a Sale of Business Agreement with Capicol (Pty) Ltd (Reg n 2007/010860/07) in terms of which Sharemax Zambezi Retail Park bought from Capicol (Pty) Ltd the proposed Sections 8, 9, 10, 11 and 12 in the building know as Zambezi Retail Park situated on Erf 5 Derdepoort Township, Registration Division JR, Gauteng. The proposed Sections 8 to 12 are still under construction although it is expected that Sections 8 to 11 will be completed and thereafter occupied by not later than February 2008. The anticipated occupation date for Section 12 is 1 September 2009.*

*4.3 The Company will operate as a holding company and intends utilizing the proceeds of the offer to-*

*4.3.1 pay part of the purchase price, being R20 963 910 (Twenty Million Nine Hundred and Sixty Three Thousand Nine Hundred and Ten Rand), in respect of the entire shareholding in Sharemax Zambezi Retail Park purchased from Sharemax for an amount equal to 16,64% (sixteen comma six four percent) of the purchase price to be paid by Sharemax Zambezi Retail Park for the business referred to in paragraph 4.3.2 below; and*

*4.3.2 to advance unsecured loan funding in the amount of R100 000 000 (One Hundred million Rand) to Sharemax Zambezi Retail Park for the purpose of paying part of the purchase price which is to be paid to purchase the Immovable Property from Capicol (pty) Ltd (Reg No 2007/010860/07) for a projected amount of*

*R930 000 000 (Nine Hundred and Thirty Million Rand) (excluding VAT) which purchase will be a purchase of an income generating undertaking as a going concern. The expected date of transfer is 1 November 2009. The actual purchase price will only be calculated thirty days after the Occupation Date, once the income stream (rental) has been determined. The income generating business comprising inter alia the Immovable Property was purchase for an amount equal to an agreed cap rate of 9,80% per annum return on investment as at date of transfer of the Immovable Property in the name of Sharemax Zambezi Retail Park. It has further been agreed that in the event of the actual income generated by the business as at the said date being more or less than as anticipated, the purchase price would be adjusted to equate to the agreed cap rate of 9,80%. It was further agreed between the parties that after the first escalation date of the first lease agreement of the proposed Section 12, the purchase price for the business will be adjusted further to an amount equal to an agreed cap rate of 10,40% calculated on the nett rentals per month as at the date of transfer of the Immovable Property in the name of Sharemax Zambezi Retail Park;*

*4.8.1 The effective date of the property syndication will be on date of registration of transfer of the Immovable Property in the name of Sharemax Zambezi Retail Park, which is expected in or about November 2009. All monies received from investors of the Company will be deposited in a trust account with the Attorneys who shall control the withdrawal of funds from that trust account. Interest earned on these funds between the date of deposit and the said effective date will be calculated at the bank call rate and such accrued interest less bank costs will be paid by cheque or electronic transfer (at the risk of the investor) to the Promoter on behalf of investors monthly on or before the second working day of each month until the effective date. The Promoter will pay the accrued interest over to the investors. After the effective date, members of the Company will be paid interest on the Claims."*

[147] To begin with, Goosen's explanation is contrary to what is in the prospectus. The prospectus does not explain how the interest of 12% was going to be paid to investors. The prospectus suggests that the funds will come from rental earned from units in the Shopping Mall. This too is untrue as the mall was yet to be built and fully let.

[148] Of greater concern is that the prospectus does not comply with the above provisions of the Government Gazette and it is plain that the investors' funds were at risk from the start. The investors' funds were not dealt with as contemplated in section 2 of the Gazette. The directors of Sharemax knew this and they nevertheless continued to take in investor funds. This can only be described as reckless conduct and they must be held accountable for the considerable loss to individual investors who placed their trust in them.

The only probable explanation for the interest payments is that it came directly from the investors' funds.

## THE SALE OF BUSINESS AGREEMENT

[149] In their response to this office, Goosen and Haese made reference to a "sale of business agreement" that was entered into with the developer, Capicol (Pty) Ltd. It appeared that this agreement was key to exactly how the 12% interest was paid. This office then obtained a copy of this agreement and I deem it necessary to deal with it briefly.

[150] The agreement is between CAPICOL (PTY) LTD Registration Number 2007/010860/07, represented by Paul Kyriacou, ID number 770604 5176 083 and Brookfield Investments 256 (Pty) Ltd, Registration Number 2006/009236/07 (Brookfield 256), represented by Johannes Willem Botha, ID Number 670128 5015 084 ("the business agreement").

[151] In analysing the agreement, I refer to prospectus number 4 of Sharemax Zambezi Retail Park Holdings Limited, (Holdings) Registration Number (2006/028220/06), (the prospectus). The company was formally known as Brookfield Holdings 21 Ltd. The prospectus opened on the 9th April 2008 and closed on 8 July 2008.

[152] Zambezi Retail Park Investments (Pty) Ltd, (Zambezi Retail) was formerly known as Brookfield Investments 256 (Pty) Ltd, Registration Number 2006/009236/07, the party to the business agreement signed with Capicol.

**In brief**

[153] The agreement was not made part of the prospectus. Sharemax, (the Promoters) must be criticised for failing to include the agreement. This is because the inclusion of the business agreement in the prospectus would have, at the very least, made investors aware that Sharemax was renting the investors' funds to Capicol. This is what the agreement is about. Had the agreement been made a part of the prospectus, investors would have been in a position to make an informed decision as to whether they want to be party to such a scheme, given that, at the time, no information had been furnished

indicating that Zambezi Holdings (represented by the moving spirits Botha, Brand, Goosen and Hease) was licensed to be in the business of renting out money for profit. The mere mentioning of the business agreement in the prospectus served no purpose because, the prospectus, read alone, is long winded and misleading.

[154] Although not clear in the prospectus, what in essence happened here is that the developer who owned the land was lent money by Sharemax . Such money was paid in contravention of the law and to the detriment of the investors. The entire scheme made no business sagacity whatsoever. What in essence happened here is that money was collected from the public in the name of Zambezi Holdings. Such money was deposited into Weavind's trust account. Upon payment the money found its way to Sharemax who in turn lent it to Capicol.

I have deliberately abstained from canvassing every single clause of the business agreement in order to keep this determination brief.

[155] There is no explanation as to why money is advanced to the seller before registration of transfer of the immovable property as this exposes investors to unnecessary risk. No steps are articulated to mitigate risk following such advancement of investors' funds, save for the mention of a future registration of a mortgage bond against the property.

[156] There is a further risk that investors have not been made aware of, which is introduced by the business agreement. This is concerning payment to third

parties whose role is unclear. Paragraph 16.1 of the agreement expressly states:

'*In the event of the sale and purchase as contemplated herein taking place, agent's commission will be paid by the Seller to Brandberg Konsultante (Pty) Ltd at the rate of 3% of the Purchase Price (Vat Excluded).'*

*Paragraph 16.2 states, 'Commisson plus + Vat is payable monthly on funds payable to the developer, the purchaser will advance the commission to Brandberg Konsultante (Pty) Ltd.'*

It is bizarre for a purchaser (Zambezi Retail) to pay commission, for the benefit of the seller's agent, to the seller's (Capicol) agent prior to registration of transfer of the immovable property. Nor is it clear why Brandberg should receive commission in the first place.

[157] All of these provisions would make any rational minded person to question whether the parties ever intended to sell each other the business as a going concern as envisaged in the normal sense of commercial intercourse.

[158] On the purchase price of R930 million, Sharemax paid Brandberg commission of R27.9 million plus vat. This was investors' funds. Investors were not told that these payments were being made. We could find no commercially rational reason for Sharemax to pay commission to Brandberg.

[159] As one goes through this business agreement, there is no question that the agreement is heavily weighted in favour of the interests of the seller even though the purchaser was represented by a seasoned business man (as

described in the prospectus) in the stature of Botha. One cannot help wondering, who in that case represented the purchaser's interests, in other words, the investors' interests.

[160] The law is clear both in the Attorneys Act, 53 of 1979 (as amended) and in the mentioned Government Notice 459. Investors, by law are entitled to have their funds kept in a trust account of an attorney or certified chartered accountant or estate agent. Such funds can only be paid out in the event transfer has taken place or where a disclosed underwriter is involved. I dealt with the responsibility of the attorneys, Weavind & Weavind, and auditors, ACT Audit Solutions Inc, in terms of the Public Auditors Act, in particular section 45 elsewhere in this determination.

[161] The practical effect of the business agreement is as follows:

- Investors funds were paid to the developer of the property as a loan;
- When the funds were paid to the developer, the property was still registered in the name of the same developer;
- There was no security for this loan;
- The developer, had no independent source of income from which to pay interest to Zambezi;
- In effect the developer was borrowing money from investors to fund construction and used part of the same money to pay interest to Zambezi which in turn paid interest to investors via Sharemax.

- It makes no commercial sense for a developer to borrow money, to build, from the prospective purchaser and in the interim pay interest to the purchaser.
- Sharemax and all of its corporate entities were not authorised to lend investors' money to the developer.
- It is hard to resist the conclusion that investors were effectively being paid interest out of their own funds.
- The seller's agent's commission is being paid out of investors' funds before transfer took place.
- The investors' funds were at risk from the outset.
- The prospectus represented that the investors' money was being used to pay the purchase price of a "going concern" in the form of a shopping mall with rent paying tenants. This was far from the truth.
- The business agreement was deliberately kept out of the prospectus in order to conceal the true nature of the scheme.

[162] Of significance is the fact that, in their responses to this office, only Goosen and Haese mentioned this business agreement. However both of them refrained from explaining its terms. In fact Goosen stated that he knew nothing about it as he did not negotiate its terms. This is bizarre as Goosen was very much a part of the management of Sharemax and must have been aware of the contents of this agreement.

[163] Botha and Brand conveniently evaded this agreement. They said nothing about it and flatly refused to answer any questions about how Sharemax paid interest of 12%.

[164] The only reasonable conclusion to be drawn from this conduct is that these directors and key individuals were being deliberately evasive as they knew that the interest was being paid out of the investors' funds.

[165] That this was nothing more than a Ponzi scheme is sustained by the fact that as soon as the Reserve Bank intervention stopped new investment, Sharemax was unable to make any further interest payments to existing investors.

**Weavind and Weavind**

[166] According to the prospectus, all investor's funds were to be deposited in the trust account of attorneys Weavind and Weavind where it will enjoy protection. Indeed this is in keeping with the above mentioned government gazette. By accepting the funds into their trust account, the attorneys were in law accepting the responsibility of ensuring that the investors were protected as contemplated in the GG.

[167] A key component to the syndication was the role of certain professional firms, in particular attorneys, accountants and valuators. They feature prominently in the prospectus and marketing material of the syndication. The reason for this is to assure members of the public that there will be oversight at the hands of

regulated professionals. It is also accepted by the public that these professionals will be independent.

[168] These professionals also have to be appointed as contemplated in the GG.

[169] For the Sharemax syndications Weavind and Weavind Attorneys were appointed to receive investors' funds into their trust account. The syndication also appointed ACT Audit Solutions as its accountants. W G Haese and partners were appointed as valuators.

[170] I first deal with the role of the firm of attorneys, Weavind and Weavind (the attorneys). In the prospectus and in the marketing of the Sharemax product, two significant representations were made to the investing public viz.

a) that their funds will be deposited into the trust account of the attorneys where it will enjoy protection; and

b) that the attorneys, acting independently, satisfied themselves that the whole scheme was compliant with the prevailing laws.

[171] It must be accepted that in making these representations both Sharemax and the attorneys knew that members of the public will rely on these representations and will act accordingly.

[172] The GG referred to above, makes it clear **how** the funds will be paid out of the attorneys trust account. Equally the GG directs that interest earned by the investors be paid to the latter.

[173] The prospectuses in respect of these syndications provide that:

All funds will be deposited into the attorney's trust account and will be "controlled by the attorneys";

The prospectus undertakes that investors funds will be dealt with in terms of section 78 (2A) of the Attorneys Act; and

Investors' funds will remain in trust "until the minimum subscription is received and immovable property have been transferred to the Villa/Zambezi".

[174] Investigations by this office revealed that the attorneys did not comply with the provisions of notice 459, published in the above GG. Consequently this office wrote a letter to the attorneys, referring to the provisions of the GG, pointing out that there was a contravention. In the same letter the following questions were asked relating to this investment:

"(a) Can you provide us with an explanation as to how the funds were transferred out of your trust account?

(b) Can you explain the legal basis for the movement of the investors' money from your trust account?

(c) Can you give an account of what happened to the interest that was earned on the investors' funds held in trust in terms of section 78 (2A) of the Attorneys Act?"

[175] A response was received from the attorneys and I deem it necessary to quote the relevant part :

[176] *"the answers to your questions are as follows:*

1. *The monies invested by investors in the schemes in question were indeed paid into our trust account and were invested in individual interest bearing accounts opened in their names in terms of section 78(2A) of the Attorneys Act. In terms of the relevant prospectuses investors expressly authorised and instructed the release to Sharemax (as the promoter of the schemes) of an amount equal to 10% of the amounts invested after the expiry of a four day cooling off period, to enable Sharemax to make payment of certain commissions. These authorisations were underpinned by undertakings by Sharemax to refund investors the amounts invested by them in the event of the syndication not proceeding. The aforesaid amounts were released to Sharemax in accordance with the said instructions and the balance upon receipt of confirmation from Sharemax's auditors that the minimum subscription had been reached and that the applicable share certificates and debentures had been issued to the relevant investors. Without the release of these funds Sharemax would not have been able to make payment of the instalments due in respect of the relevant immovable properties in terms of the applicable sale agreements.*

2. *The legal basis for the "movement" of investors' money from our trust account was the terms of the relevant prospectuses, which incorporated the sale agreements referred to above, and the application forms completed by them when they made their*

*investments. It is not our intention to set out these terms in detail. Suffice it to say, for present purposes, that it was made abundantly clear in each prospectus that the bulk of the funds raised in terms thereof would be advanced by the holding company invested in by investors to their property holding subsidiaries, to enable the latter to make payment of the abovementioned instalments payable in terms of the applicable sale agreements.*

3. *The interest earned by investors was paid over to Sharemax, who distributed same to the investors concerned.*

*We trust that the above responses provide the clarification required by you. Please feel free to contact us if any further information is required.*

*In view of your response to our letter of 19 December 2012 we see no point in becoming embroiled in a debate with you about the allegation in paragraph 8 of your letter of 14 December 2012 that the transfer of funds out of our trust account was made contrary to the terms of the government notice referred to in the preceding paragraphs thereof. Suffice it to say that we deny the allegation. In our view the said notice was inapplicable to the schemes in question."*

[177] This office is concerned that the "investor protection" provisions of the GG were not complied with, this to the detriment of the investors. According to the attorneys the said notice "was inapplicable to the schemes in question". I have the following difficulties with this:

- In my view the notice certainly applies to this investment which, on Sharemax's own version, is a property syndication;
- Whilst the attorneys state that the notice did not apply to this investment, they do not say why it does not apply. No legal or factual basis is given;
- This view is contrary to what the prospectus states, that funds can be transferred out of trust upon registration of transfer of the property;
- It is not in dispute that both The Villa and Zambezi did not take transfer of the property and yet funds were transferred out of trust;
- If indeed the GG notice did not apply to this transaction then there was a duty on Sharemax and **the attorneys** to disclose this in the prospectus and in the disclosure documents of the scheme. This was not done and the prospectus is misleading.
- The attorneys were involved in drafting and approving the prospectus. There is no explanation from Sharemax and the attorneys why the non-application of the notice was not detailed in the prospectus.

[178] The prospectus as well as the above response of the attorneys clearly suggests that the investors' funds will be used to pay for the purchase of immovable property. The prospectus also suggests that what will be purchased is a "going concern" being a fully let and income producing shopping mall. In truth this is not what happened. The money was in fact lent to Capicol and Capicol1 for the purpose of building the shopping mall. This loan was made at a time when neither Sharemax nor any of its corporate entities had title to the property being developed.

[179] It was essential for both Sharemax and the attorneys to have made this disclosure in the prospectus. This is a fact which would have materially influenced the decision, by investors, to invest. In plain language, investors would not have invested if they knew that their funds were to be lent to the builder when neither Sharemax nor Zambezi had title to the property. In truth it was also the builder that owned the property. The same builder was paying Sharemax 14% on the money it borrowed from them. This is not detailed in the prospectus.

[180] The investors were not told that in fact their funds were being round tripped from the attorneys trust account to The Villa Retail Park Investments (Pty) Ltd /Zambezi Retail Park Investments (Pty) Ltd then from the Villa/Zambezi to Capicol who paid back 14% to Sharemax who paid the investor 12%. The investors got paid out of their own funds. This scheme, apart from being a typical pyramid scheme, was obviously used to circumvent the Banks Act.

[181] The prospectus and application forms filled out by investors made it clear that their funds will be dealt with by the attorneys in terms of section 78 (2A) of the Attorneys Act. In terms of the Attorneys Act and the guidelines issued by the Law Society (Ref. S.1429/95), the interest on accounts opened in terms of section 78 (2A) "*will accrue to the client*".

[182] Paragraph 2.5 of the guidelines provides as follows, "*The effect of section 78(2A) is that clients' trust funds invested in terms of the clients' specific instructions retain their trust identity. In other words, the trust liabilities will not diminish once such an investment is made, nor will the available trust funds*

*diminish. The interest will accrue to the client and will continue to be treated as trust money".*

[183] On the attorneys own version they paid the interest to Sharemax who, according to the attorneys, paid the interest to investors. The attorneys provided no documentary proof of this. Nor can this office find any evidence that such interest was in fact paid to investors. By all accounts this money was not accounted for to investors.

[184] It is clear that the attorneys did not comply with the Attorneys Act and the Law Society's guidelines. Nor did the attorneys comply with the investor protection provisions of the GG.

[185] I am of the view that The Law Society will have an interest in this determination.

**Act Audit Solutions**

[186] According to the prospectus ACT Audit Solutions Inc. were appointed as the auditor of Zambezi Holdings. This firm must have known that investors' funds were being transferred out of trust. If this was an irregular transaction then the auditor was under a duty to report the matter to the relevant regulators.

[187] This office wrote to Act Audit Solutions seeking an explanation of their handling of the Sharemax account, referring to section 45 of the Public Auditors Act. A letter was written to them on the 14th December 2012 and on

the 24th December 2012 a response was received informing this office that their attorneys will respond after they return on the 7th January 2013. In January the attorneys informed this office that they intend to respond by the 25th January 2013. This office informed the attorney that if a response is not forthcoming by the 14TH January 2013, the matter will nevertheless be finalised. In any event the auditors and/or their attorneys failed to respond to the letter by close of business on the 25th January 2013.

[188] The letter contained certain questions. The relevant portion of the letter reads as follows:

*"9. As you are aware, the law places an obligation on the Auditors to report any suspicion of wrongdoing or possible breaches of the law. In that regard, we draw your attention to the provisions of the Auditing Professions Act 26 of 2005, and in particular section 45.*

*10. In the premises, we require your response to the following questions:*

*(a) Can you provide us with an explanation as to how the funds were transferred out of the attorneys trust account?*

*(b) Did you report any transgression of the law by Sharemax / The Villa or Zambezi, in this regard or in any other instance?*

*(c) Did you report any non-compliance with the law by the directors of Sharemax / The Villa or Zambezi, or the attorneys Weavind and Weavind?*

*(d) Did you establish the legal basis for the movement of the investors' money from the Attorneys Trust account?*

*(e) Can you give an account of what happened to the interest that was earned on the investors' funds held in trust in terms of section 78(2A) of the Attorneys Act?*

*(f) Can you provide us with an explanation as to how investors were paid interest of 12%, bearing in mind that both The Villa and Zambezi had no trading history?"*

[189] The above questions are important and as an independent auditor, this firm is under a duty to provide answers. They refused to answer and one can only draw an adverse inference.

This firm of auditors have since changed their name to Advoca Auditing Inc. This aspect of the investigation will be reported to The Independent Regulatory Board for Auditors for further investigation.

**Botha and Brand's Response**

[190] Botha and Brand (fifth and seventh respondents) were served with section 27 notices. They each responded in a 34 page, plus annexures, document and requested that the section 27 notice be withdrawn.

[191] The response from Botha and Brand are identical in every respect. Accordingly where I refer to Botha and his response I also include Brand and his response.

[192] Botha relies on the following submissions:

i. He was not given enough time to respond and that the time allowed was "manifestly unfair and unreasonable".

ii. This office has no jurisdiction to investigate the complaint against Botha. The reason being that Botha did not render any financial services to the complainant and the complainant did not make a complaint against Botha.

iii. This office merely generated "its "*own biased complaint*".

iv. The subject matter of the complaint is subject to court proceedings in which there was a final determination of the complainant's rights, therefore this office has no jurisdiction.

v. The complainant failed to set out, with the required particularity, the damages suffered by her.

vi. Botha denies that the complainant suffered damages or is likely to suffer damages as "the amount of R580 000 – 00" was received by the complainant in terms of the scheme of arrangement sanctioned by the court. Complainant also received interest payments from Zambezi. Further that interest is being paid to her on her debentures in Nova.

vii. It was USSA that rendered financial services to the complainant. Botha is not an FSP nor is he a representative of an FSP.

viii. There was no proof that the complainant had endeavoured to resolve the complaint with Botha, in terms of rule 5 (b).

ix. In the light of Botha's view that this office lacks of jurisdiction, he elected not to answer the three questions that were asked in the section 27 notice.

x. Botha chose to emphasize the threat of a review to the high court throughout his response.

xi. Botha concluded by requesting that the section 27 notice against him be withdrawn.

[193] I will deal with each of these submissions. It must be said, at the outset, that Botha chose to take technical points rather than deal with the substance of the complaint. This is unfortunate. Botha refused to deal with two important issues, viz

a) the provisions of section 13 of the Act and how this impacts on FSPs, product providers, directors and key individuals of USSA and Sharemax; and
b) the appropriateness of the Sharemax product for pensioners.

**Not enough time**

[194] Botha complained that he did not have enough time to respond to the section 27 notice. According to the records of this office, Botha had enough time to respond. The section 27 notice was delivered to him on the 21st November 2012 and he responded on the 5th December 2012. He in fact submitted a 34

page document supported by annexures and a supporting affidavit. In his submissions Botha does not say how he was prejudiced, if at all, by the short time he was given. He does not state how his response would have been any different to the one he submitted had he been given more time. On Botha's own version he elected not to answer the questions in the notice. Why he would need more time to tell this office that he will not answer questions is not dealt with. This submission is without substance and must be dismissed.

**Court proceedings**

[195] Botha submits that there is existing court proceedings that bar this office from proceeding with this complaint. The court proceedings referred to is the section 311 compromise that served before court for approval after Sharemax and its related entities stopped operating.

[196] Section 27 (3)(b)(i) of the act provides as follows:

*'The Ombud must decline to investigate any complaint if, before the date of official receipt of the complaint, proceedings have been instituted by the complainant in any Court in respect of a matter which would constitute the subject of the investigation.'*

[197] There can be no doubt that the section 311 compromise procedure is not the type of court procedure referred to in section 27 of the act. The act only bars this office from investigating where the **complainant** institutes court proceedings. The section 311 procedure was not instituted by the complainant

and further had nothing to do with this complaint. This is a spurious defence and must be dismissed.

**Complainant's damages uncertain**

There are two points made by Botha:

a) It is unclear what the complainant is claiming; and

b) Complainant has not shown that she suffered loss or is likely to suffer loss.

[198] The complainant made it clear that she believed that she lost her capital. Exactly how much and how the amount is arrived at is set out in her complaint. In any event I cannot fathom why Botha makes this point. He does not make a tender of any amount to the complainant. It is not as if he will pay any amount if he is told exactly what the complainant's loss is. There is no substance in this submission.

i. Botha states as a fact that the complainant received payment of R580 000 and interest on her debentures post the section 311 compromise. This is factually incorrect. At the time of writing of this determination, the complainant had received absolutely no payment, capital or interest, since 2010. It is widely known that the investors in Sharemax, post section 311 compromise, did not receive any payment towards capital and/or interest. Botha must know this as he has a direct interest in these payments.

ii. The Act provides that this office may be approached even where there is "likely" to be a loss. The complainant is 75 years old and in poor health. She describes her life as "surviving" from day to day. She has

no access to her capital, is receiving no interest and has no other source of income. She is destitute and has reasonable cause to believe that she is not likely to recover her capital and interest anytime soon.

iii. If there is a payment forthcoming in terms of the compromise, this will be dealt with in the order that I will make.

**Rule 5 (b)**

[199] Botha points out that contrary to the provisions of rule 5 (b) the complainant did not endeavour to resolve the complaint with him. I must first point out that it is never too late to resolve a dispute. If Botha had any intention of resolving the matter he should have said so. This office would immediately suspend any further action pending the outcome of an endeavour by Botha to resolve the matter.

[200] Botha expresses no intention of resolving this complaint. On the probabilities, it is highly unlikely that Botha could find a basis that will resolve the complaints made by hundreds of disgruntled Sharemax investors. This submission is therefore entirely unhelpful and must be rejected.

**Review**

[201] Botha repeatedly pointed out that much of what this office does in dealing with this complaint is, in his opinion, subject to review. It was entirely inappropriate for Botha to set out his interpretation of the law to remind this office that it is subject to review. This smacks of bullying and it may be worth pointing out that this office will carry out its mandate without fear or favour.

[202] Many of these issues were dealt with in the North Gauteng High Court in Risk and another v Ombud for Financial Services and others case no 38791/2011 dated 7/09/2012.

[203] Botha's submission in this regard is entirely unhelpful and must be dismissed.

**USSA rendered financial services**

[204] Botha submits that it was USSA that provided the complainant with financial services as contemplated in the Act. It is significant that whilst Botha readily admits that USSA provided financial services, Goosen denies this and points out that the independent brokers, such as the respondent, provided the financial services to the complainant.

[205] Botha points out that Sharemax did not provide any financial services to the complainant and that he was not an FSP nor was he a representative of an FSP. It is convenient for Botha to now place blame on USSA, as he knows that USSA has gone into liquidation.

[206] It is not in dispute that USSA's sole business was to market Sharemax products and nothing else. Clearly the bulk of the investments into the Sharemax products, Zambezi in this case and The Villa, were made through the network of brokers that was established by USSA. It was simply impossible for Sharemax itself, without access to the broker network, to access the pensioners who invested.

[207] A director of Sharemax, Goosen, converted the name of his company to FSP network trading as USSA. This company was used by Sharemax as a vehicle for setting up a network of brokers who then went out and, "under supervision", sold the investments to investors, mainly pensioners.

[208] That there was a community of interest between USSA and Sharemax is beyond any dispute. The two companies shared a common director, compliance officer and both were under the control of the same people. They also shared the same purpose, promoting and marketing Sharemax investments. In this regard I refer to what is stated above.

[209] The facts establish that Sharemax was the product provider and USSA was used to market those products. USSA marketed no other product nor did it represent any other FSP. In truth USSA was nothing other than an agent or representative of Sharemax.

[210] It cannot be disputed that in relation to Sharemax, USSA was not an independent broker.

[211] Whilst the brokers went out and aggressively marketed the investment, Sharemax issued the certificates and letters of confirmation to investors. The investor's funds were paid into the trust account of Sharemax's attorney. It was Sharemax that instructed the Attorneys to transfer the funds out of trust. As already explained, this instruction was contrary to the terms of the prospectus and the provisions of the GG.

[212] At all times, Sharemax through its directors and through USSA knew that the brokers were selling their high risk products to people who had no tolerance

for risk. Neither Sharemax and its directors nor USSA and its directors made any attempt to stop this.

[213] At the same time 12% interest was being paid to the investors when neither The Villa nor Zambezi was generating any income from business operations of their own. The directors of Sharemax and USSA nevertheless continued to accept money from unsuspecting members of the public.

[214] When it became clear to the directors that the scheme was no longer sustainable, USSA was conveniently liquidated and investors were told to contact the brokers they dealt with. It was too easy. If the directors of Sharemax and USSA are allowed to hide behind the law, then the law is an ass. This is not the case.

[215] As a general rule the separate legal personality of a company must be recognised. It is no wonder that Goosen, Botha, Brand and Haese repeatedly point out that USSA was a separate legal entity.

[216] As a matter of principle, in a case such as the present, there must at least be some misuse or abuse of the distinction between the corporate entity and those who control it which results in an unfair advantage being afforded to the latter.

[217] Against this background, our courts have pierced the corporate veil in instances where a corporate entity has been a mere sham or a facade to conceal true facts, or has been an alter ego of the controlling person. Thus, in the case of *Cape Pacific Ltd v Lubner Controlling Investments (Pty) Ltd and Others 19945 (4) SA 790 SCA* Smalberger JA stated that:

*"Lifting the corporate veil means disregarding the dichotomy between a company and the natural person behind it (or in control of its activities) and attributing liability to that person where he has misused or abused the principle of corporate personality"*

[218] The directors of Sharemax and USSA clearly abused the corporate personality and on the facts of this case, piercing of the corporate veil will be appropriate.

[219] In the *Cape Pacific* case Smalberger JA further stated as follows:

*"It is undoubtedly a salutary principle that our Courts should not lightly disregard a company's separate personality, but should strive to give effect to and uphold it. To do otherwise would negate or undermine the policy and principles that underpin the concept of separate corporate personality and the legal consequences that attach to it. But where fraud, dishonesty or other improper conduct (and I confine myself to such situations) is found to be present, other considerations will come into play. The need to preserve the separate corporate identity would in such circumstances have to be balanced against policy considerations which arise in favour of piercing the corporate veil . . . . And a court would then be entitled to look to substance rather than form in order to arrive at the true facts, and if there has been a misuse of corporate personality, to disregard it and attribute liability where it should rightly lie."*

[220] The facts establish that USSA was set up by Sharemax, as a separate corporate entity, for the improper purpose of selling the high risk Sharemax

products through a network of unlicensed and poorly trained brokers. There is no reason in principle or logic why USSA's separate personality cannot be disregarded in relation to the transactions in question in order to fix the individual or individuals responsible with personal liability.

[221] Piercing the corporate veil, as a concept, is now recognised in legislation, see section 163 (4) of the Companies Act No 3 of 2008.This section refers to the *"unconscionable abuse of the juristic personality of a company as a separate entity".*

[222] Accordingly Botha cannot be allowed to rely on USSA's corporate identity in order to state that he was not an FSP and he did not render financial services to the complainant. Botha and his fellow directors were the masterminds behind this toxic scheme. They were also the people who had the ability and capacity to stop taking money from old people, especially when they knew that the scheme was not commercially viable.

[223] It is clear that the perpetrators of these types of schemes, and there are, and were, many, believed that they could use the law and render themselves untouchable whilst the investors are left destitute. The directors of these companies will be held accountable.

[224] If Sharemax marketed their product themselves under their own license, there would be no doubt that the directors will be called to account. Just because these same directors merely interposed another company between themselves and the brokers and investors, does not mean that they are

untouchable. There has been an unconscionable abuse of the corporate identity.

**Own biased complaint**

[225] Botha states that the complainant did not file a complaint against him but only against the first respondent. He submits that the investigation against him and the directors of Sharemax and USSA was the result of this offices "own biased complaint". There is no substance in this.

[226] Section 27 (4) of the Act provides as follows:

*"(4) The Ombud must not proceed to investigate a complaint officially received, unless the Ombud -*

*(a) has in writing informed every other interested party to the complaint of the receipt thereof;*

*(b) is satisfied that all interested parties have been provided with such particulars as will enable the parties to respond thereto; and*

*(c) has provided all interested parties the opportunity to submit a response to the complaint."*

Botha is, by all accounts, an interested party in the complaint. This office was obliged to give him notice and an opportunity to respond.

[227] The complainant is a lay person and cannot be expected to do more than to complain about the broker who gave the advice. The complainant does not

understand the provisions of the Act, in particular section 13. The complainant is not expected to know who all the interested parties are and that they should be joined, hence the provisions of section 27 (4). This submission must be dismissed.

**Questions in Section 27 notice**

[228] The Act and the Rules together with the Code enjoin parties to cooperate with this office and to be forthcoming with information. This in the interests of resolving disputes expeditiously and economically. Botha has not acted in this spirit; instead he elected to be unnecessarily technical and was vague about the substance of the complaint. Accordingly he refused to answer the three questions in the notice.

[229] Botha however did provide some answer and I will deal with it here. In his answer to the first question, Botha merely relies on the separate corporate identity of USSA. This has already been dealt with above.

[230] In answering the second question Botha states:

"There *are no factual allegations which prove a contractual relationship or a legal basis, which can, or could make Sharemax Investments vicariously liable for any financial service provided by the Respondent or USSA."*

"*The Respondent at all times acted as a representative of USSA, who in turn conducted business as an independent services provider,.."*

(It is worth noting that Botha admits that the first respondent was a representative of USSA. A significant admission which Goosen refused to make.)

Botha is being vague and evasive. He deliberately fails to deal with the provisions of section 13 of the Act. Questions one and two were directed at precisely this point.

[231] As discussed above, Sharemax and USSA made use of section 13 to set up this network of unlicensed brokers, over one thousand of them at one point. Botha, like Goosen, refused to deal with section 13 and in particular their obligations in terms of this section. I have dealt with this in a discussion above.

[232] I now turn to the third question, namely, how investors were paid 12% interest when The Villa and Zambezi generated no income. The implication was clear; did they get paid from investors own money? Botha was again evasive. He merely refers to the prospectus and states that it explains *"the offer in terms of which interest was paid.."*

[233] This office has copies of the prospectus and it does not explain how the interest will be paid. It is common cause that the interest was paid by Capicol. The prospectus certainly does not explain this. See the discussion above, under Goosen's response. Incidentally, Goosen contradicts Botha. The only reasonable conclusion to be drawn is that Botha knew that the interest was being paid out of the investors own funds.

[234] It is significant that Botha failed to deal with the "Business Agreement" entered into with Capicol. He in fact acted on behalf of Sharemax in the agreement. This agreement is dealt with above and the conclusion is equally irresistible that investors were paid interest out of their own funds.

**Withdraw the section 27 notice**

[235] Botha requests, for reasons set out in his response, that the section 27 notice against him be withdrawn.

[236] For reasons set out in this determination, there is no legal basis for this office to do so. The request is refused.

## L. CONSEQUENCES

[237] For reasons set out above, the first respondent did not conduct himself in a manner as contemplated in section 2 of the Code. The first respondent's breach of the Code resulted in loss to the complainant. The complainant lost income and has lost her capital as well. The first respondent is liable to pay the complainant compensation for the latter's loss.

[238] Equally, for reasons set out above the second to the seventh respondents' (as licensed FSPs, product providers, principals in terms of section 13, key individuals and directors) breach of the Act and Code resulted in the complainant's loss.

[239] The facts before this office support the conclusion that the investment, as promoted and executed by Sharemax, was nothing more than a Ponzi scheme. The directors of Sharemax violated the law and on this basis too they must be held liable for the investors' loss.

## M. QUANTUM

[240] The complainant made two investments in Zambezi of R460 000 – 00 and R120 000 – 00 respectively. The amount of the compensation is accordingly the amount of R580 000 – 00 plus interest.

[241] Both Botha and Brand pointed out that the complainant "was paid 12% interest". The purpose of this must be the suggestion that any award to the complainant must account for the interest already paid, that a possible set off be applied. This suggestion is misdirected.

[242] Sharemax was contractually bound to pay the complainant 12% interest; this was not merely a windfall. Equally Sharemax, through their brokers, represented to the complainant that her capital will be safe. There can be no basis in law to reduce the amount of the capital by the sum total or any fraction of the interest payments made to the complainant. Besides, the respondents cannot benefit from the fruits of their own Ponzi scheme.

[243] I refer to the following cases:

Trotman v Edwick 1951 (1) SA 443 at 449 SCA

De Jager v Grunder 1964 (1) 446 SCA

Scoin Trading (Pty) Ltd v Bernstein NO 2011 (2) 118 SCA

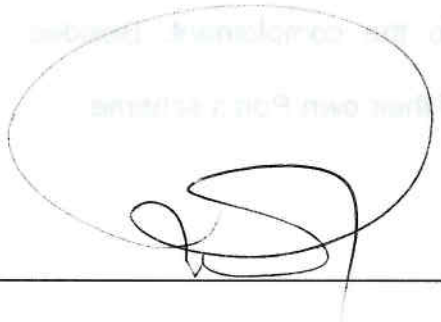
In addition I find that the award made to the complainant is fair compensation as contemplated in section 28(1) (b) of the Act.

## N. ORDER

In the premises the following order is made:

1. The complaint is upheld;
2. Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R580 000,00;
3. Upon compliance with the order, the share certificate is to be tendered to respondents according to payment.
4. Interest at the rate of 15.5 % , per annum, seven (7) days from date of this order to date of final payment;

**DATED AT PRETORIA ON THIS THE 29th DAY OF JANUARY 2013.**



**NOLUNTU N BAM**

**OMBUD FOR FINANCIAL SERVICES PROVIDERS**