

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FOC 1228/07-08 WC 3

In the matter between:

M SNAIGO

Complainant

and

T I KIRSTEN

Respondent

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

A. THE PARTIES

[1] The Complainant is Mr Mphumezo Snaigo, a policeman residing at Khayelitsha, Western Cape.

[2] The respondent is Mr Thomas Ignatius Kirsten, who at all material times carried on business as an authorised financial services provider (license number 20365), and currently residing at 9 Coyne Street, Brackenfell,

Western Cape.

B. COMPLAINT

- [3] On 7th May 2007 complainant purchased a Renault Megane, motor vehicle. The dealership ('Lavonnes') however informed complainant that the vehicle could not leave the premises unless it was insured. Complainant concurred and requested Lavonnes to contact an intermediary (respondent) that they had previously dealt with. Lavonnes in turn requested respondent to arrange the said insurance and accordingly provided both the vehicle and complainant's details. Respondent subsequently provided a 'Santam Quotation for Proposed Cover' ('quotation') which was signed by complainant. At no stage did complainant directly interact with respondent.
- [4] Later that day Lavonnes received a facsimile from respondent confirming insurance cover on complainant's vehicle, and providing a Santam policy number. The interests of Absa Asset Finance were also noted.
- [5] On 14th May 2007 complainant received a telephone call from respondent, informing him that the quotation summary, as well as a request for certain documentation was to be forwarded to him. This turned out¹ to be a facsimile from respondent requesting that he provide proof of previous insurance and no claims within 5 years. However as of 22nd May 2007 when complainant was involved in an accident and admitted to hospital, no documentation had been received.

¹ Refer paragraph 19

[6] Upon complainant's return to work on 11th June 2007 he was again contacted by respondent who informed him that he had forwarded a facsimile² to Lavonnes. This again contained the request referred to in the preceding paragraph, to which complainant replied as follows; 'I have only driven police vehicles in the past and have no claims for accidents in the past.'

[7] Around this period complainant attempted to institute a claim for the damaged Megane but upon making enquiries was informed that what he had been led to believe was a policy number was in fact only a quotation number. As such complainant had no claim in respect of the vehicle.

[8] Attempts to resolve the matter with respondent were unsuccessful and complainant referred the matter to the Office.

C. RESPONDENTS VERSION

[9] The essence of respondent's reply to the complaint is as follows:

9.1. That after providing complainant's details to Santam on the 7th May 2007, he was provided with the quotation. The quotation was already pre-populated with a policy number and effective date. The effective date being reflected as the 7th May 2007.

9.2. Accordingly respondent relied on this document, in particular the effective date in furnishing the facsimile confirming that the complainant was insured.

9.3. Further this quotation was valid for '30 days' and Lavonnes who had

² Refer paragraph 22

insisted on the 'covering note' undertook to ensure that the outstanding information would be provided when complainant collected his vehicle.

9.4. Additionally respondent attempted to contact complainant in order to obtain the required information. This information was subsequently provided to Santam, subsequent to the Megane being damaged but still within the validation period of the quote with Santam.

9.5. As such respondent feels that he at all times acted Bona Fide and that if any party is accountable it should be Santam.

D. DETERMINATION

[10] In light of respondent's defence the quotation documentation was examined. Of particular relevance and at the end of the quotation under the heading 'Important Information' I noted the following:

'Quotation is subject to final approval by underwriting.

Remember this quotation is valid for 30 days

To accept your quote, or for any further information, do not hesitate to contact your broker or phone the Santam office.....'

[11] Save for the provision of the quotation; respondent's interaction with Santam had been telephonic and accordingly Santam was requested to furnish the recordings thereof.

[12] The gist thereof is as follows:

12.1. Respondent provided complainant's details to Santam and in turn was e-mailed the quotation;

12.2. In line with the requirement under 'Important Information' respondent called to activate this quotation and simultaneously provided what he believed to be complainant's banking details and proof of previous insurance in the form of an Auto & General 'policy number'. The Santam representative informed respondent that both details appear to be incorrect and accordingly advised that the policy was on hold;

12.3. Later the same day respondent followed up with Santam and provided what he believed to be the correct details. In turn he was informed by the Santam representative that this was being forwarded to the underwriting department which has a 24 hour turnaround.

12.4. The preceding conversations all appear to have taken place on the 7th May 2007.

12.5. On the 10th May 2007 respondent was told that the Auto & General 'policy number' was a quotation number that was never activated and accordingly the Santam representative advised that the client might not have cover.

12.6. Santam again followed up on the 14th May 2007 and advised respondent that previous insurance checks show up negative;

[13] As detailed in para 10 hereof, the 'quotation is subject to final approval by underwriting' a fact which in addition to being set out in the quotation was conveyed to respondent. Underwriting is an evaluation and pricing of the risk faced by an insurer, based on amongst other things, information provided by a client or his agent, as well as the insurers own data base. In this instance the information provided by respondent was initially incorrect and when corrected it confirmed that complainant had never been

insured.

[14] In effect the insurer had based the quotation and its initial dealings on incorrect information provided by respondent.

[15] Accordingly no final approval was granted by underwriting. Without approval, this was communicated to respondent, no contract could have come into being.

[16] The recordings unequivocally evidence the fact that at no point and particularly when respondent furnished Lavonnes with confirmation of cover, was cover ever in place.

[17] Whilst respondent makes much of the fact that the quotation was valid for 30 days this in no way supersedes the underwriting approval requirement.

[18] In that respondent makes much of having contacted complainant during this period in order to obtain the required information it remains for me to consider whether complainant's conduct was in any way contributory to his loss.

[19] In this regard respondent's telephone records reflect calls to complainant on the 9th, 14th and 15th May 2007. In addition respondent's attorneys provided a copy of a facsimile sheet dated 14 May 2007, purportedly forwarded to complainant, the relevant section whereof reads; 'the cover has been effected in order for you to have taken delivery of the vehicle and to note the interest of Absa therein. The quote is subject to proof of previous insurance and no claims of (sic) 5 years please forward this proof to the above fax nr'

[20] When queried on the above, complainant replied that he had indeed been contacted by respondent who advised him that he was forwarding the

quotation summary, but as of the date of the accident on 22 May 2007 when he was admitted to hospital, the said documentation had not been received.

[21] Respondent was requested to provide proof that the facsimile had indeed been forwarded on the 14 May 2007 but no facsimile transmission slip was ever provided.

[22] The only facsimile slip provided to the Office relates to a facsimile on the 31st May 2007 which respondent addressed to a Mr Liamm Pead at Lavonnes, which states 'attached doc's for Mr Smaigo (sic) as per our earlier discussion.' In response to this and a call from respondent on 28th May 2007 complainant stated via facsimile on the 4th June 2007 that he had only driven police vehicles and had no claims for accidents in the past.

[23] On the evidence it appears unlikely that complainant ever received the initial facsimile and respondent has produced no file notes or records of conversations which he had with complainant.

[24] In addition, nowhere during the interaction between complainant and respondent is there any indication that complainant was ever alerted to the fact that his motor vehicle was in all likelihood not insured and that the required information was required as a matter of urgency.

[25] This comes as no surprise given that all indications are that respondent himself did not appreciate the urgency given his belief that he had 30 days to provide the information, despite the insurer having alerted him to problems with the motor vehicle insurance.

[26] The time frame between confirmation of insurance and complainant's

accident and hospitalisation is just 15 days, namely the 7th to 22nd May 2007. The accident on the 22nd May occurred prior to the insurer having accepted the risk.

[27] In short there is no reason to believe that complainant's conduct in any way contributed to the loss. On the contrary it was respondent's conduct in falsely confirming cover, when it is evident no such cover was in place. Respondent's own attorney in a facsimile to the Office dated 8th May 2009 stated:

'the Dealer, of the motor vehicle in question undertook to ensure that the outstanding information would be given to our client when the complainant collects his vehicle. The Dealer when requesting written information of the cover undertook that although certain information was needed, that they would ensure that our client would receive same when the complainant collects his vehicle. The Dealer which was also a client of our client, insisted to get a covering note.'

This statement effectively confirms that respondent confirmed cover whilst knowing full well that not all the requirements had been met.

[28] The General Code of Conduct For Authorised Financial Services Providers and Representatives, Act No.37 of 2002, the 'Code' requires that a provider must at all times render financial services honestly, fairly, with due skill, care and diligence, in the interests of clients and the integrity of the financial services industry.

[29] Section 3. (1) (a) (i) of the Code requires that information provided to a client must be factually correct.

[30] On both provisions respondent failed. He did not bother to consult with

complainant and gather the correct information prior to attempting to arrange insurance. Instead he blundered ahead and even when he was informed that the information was incorrect amplified his error by failing to comprehend the urgency thereof.

[31] There are no file notes, facsimiles or even sms's which would indicate an appreciation of his predicament and quite simply if he could not comprehend that there was no way that it could have been conveyed to complainant.

[32] In a nutshell he did not apply the necessary due skill care and diligence when he provided the facsimile confirming insurance.

[33] As such the complainant drove the vehicle whilst under the misapprehension that it was insured, directly leading his loss as the claim was rejected on the basis that no insurance had ever been confirmed. The 'policy number' being merely a quotation number.

[34] It merely remains for me to determine quantum.

E. QUANTUM

[35] Respondent was requested to make submissions on the quantum but to date has seen fit not to respond thereto.

[36] The motor vehicle was purchased for R53, 995.01 excluding extras. The quotation reflects an insured amount of R51, 900.00, however from the documentation on record there is no indication as to whether this was trade or retail value and respondent did not discuss this with complainant.

[37] The Quotation contained a primary excess of R2500 in addition to a compulsory excess of R2000. Deducting the combined excess from the

insured amount leaves a balance of R47, 500.00.

[38] The costs of repairs exceeded economical repair with the scrap value of the wreckage being a mere R2 500. Storage and related costs negated any value therein.

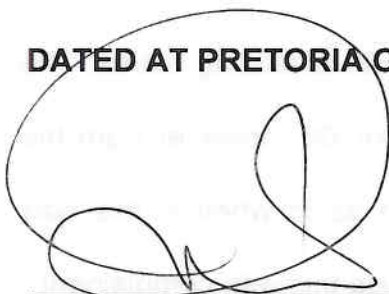
[39] As such and after due consideration of all the facts of this particular case I make the following order as fair compensation for complainant's financial prejudice.

ORDER

The complaint is upheld and;

1. Respondent is hereby ordered to compensate complainant in the sum of R47, 500;
2. Interest on the aforesaid amounts shall accrue at the rate of 15.5 per cent per annum, 7 days from date of judgment to date of final payment;
3. Respondent is ordered to pay the case fee of R1 000, 00 to this office within thirty (30) days of date of this determination.

DATED AT PRETORIA ON THIS THE 6th DAY OF April 2011



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS