

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

CASE NUMBER: FAIS 02630/12-13/ FS 1

In the matter between:

PIETER GEORGE TALJAARD

Complainant

and

JOHANN EN MARINDA MAKELAARS (Pty) Ltd

First Respondent

JOHANN WILHELM JANSE VAN RENSBURG

Second Respondent

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

A. INTRODUCTION

[1] During July 2012, complainant filed eight¹ complaints² with this Office against respondents. The complaints arose from investments that were made by complainant in various Sharemax syndications, as well as Propspec, both being property syndication schemes.

¹ Reference numbers FAIS-02630 FAIS-02632-12/13, FAIS-02633-12/13, FAIS-02634-12/13, FAIS-02635-12/13, FAIS-02637-12/13, FAIS-02639-12/13 and FAIS-02640-12/13

² For purposes of this determination, the eight complainants will be dealt with as one.

[2] The complaints are based on the fact that respondent advised complainant to invest in high risk schemes that were incompatible with complainant's personal circumstances as a pensioner.

B. THE PARTIES

[3] Complainant is Pieter George Taljaard, an adult male pensioner whose full particulars are on file with the Office.

[4] First respondent is Johann en Marinda Makelaars (Pty) Ltd, a company duly incorporated in terms of South African Law, registration number 2015/421446/07, with its principal place of business at 14 Roux Avenue, Frankfort, Free State. First respondent is an authorised financial services provider in terms of the FAIS Act with license number 32104, which is still active.

[5] Second respondent is Johann Wilhelm Janse van Rensburg, a key individual and representative of first respondent. Second respondent's address is noted as 14 Roux Avenue, Frankfort, Free State.

[6] At the time of rendering financial services, first respondent was registered with the regulator as Johann en Marinda Makelaars CC, t/a JW Makelaars, a close corporation with registration number 2007/076537/23.

[7] At all material times, second respondent rendered financial services to complainant.

[8] I refer to first and second respondent as respondent. Where appropriate, I specify.

C. COMPLAINT

[9] I should note from the onset that voluminous amounts of paper were received in respect of this complaint. A summary is set out below:

9.1 Complainant alleged that during the period of 2002 – 2007, respondent advised him to make 5 investments with different Sharemax syndications, amounting to R650 000. These investments were successfully cashed out and complainant received his money. The six investments are not involved in this complaint, but provide background to complainant's investment history.

9.2 The investments being the subject of this complaint are noted as follows:

9.2.1	R150 000	Benoni Hyper	July 2006
9.2.2	R100 000	Parkside Plaza	May 2007
9.2.3	R130 000	Rivonia Square	August 2007
9.2.4	R300 000	Morningtide	November 2007
9.2.5	R200 000	Pacific Coast	January 2008
9.2.6	R60 000	Shopmakers Village	July 2008
9.2.7	R300 000	Zambezi	December 2008
9.2.8	R300 000	Silverwater	March 2009

9.3 According to complainant, he was assured by respondent at the time of making the investments that they were safe. The assurances appeared to have placated complainant's concerns.

9.4 Complainant is of the view that as an investor who depended on the advice of the respondent, he was misled. Complainant alleges that after

the collapse of the investments, respondent allegedly advised him that nothing in life is guaranteed, and that he (respondent) did not hold a gun against complainant's head to make the investments.

9.5 Due to ill health complainant had to sell his farm and is of the view that respondent gambled with his money and caused his losses when the investments collapsed. Complainant claims that had he been appropriately advised, he would not have invested in the risky schemes of Sharemax and Propspec. Complainant further alleges that respondent never once assisted him to recoup his lost funds. Instead, complainant claims that even when Sharemax's financial problems were publicly revealed, respondent was still requesting him to make further investments.

9.6 In conclusion, it is complainant's submission that respondent was driven by the exorbitant commission he earned on the investments in inducing the complainant to make the investments.

D. RELIEF SOUGHT

[10] Complainant seeks repayment of the amount of R1 540 000 from respondent.

[11] The basis of complainant's claim against respondent is the latter's failure to render financial services in line with the FAIS Act and the General Code of Conduct, which includes respondent's failure to appropriately advise complainant and disclose the risk involved in the various property syndication investments.

E. RESPONSE

[12] In compliance with Rule 6 (b) of the Rules on Proceedings of the Office of the Ombud, the Office referred the complaints to respondent, advising respondent to resolve the complaint with his client. Notices in terms of section 27 (4) of the FAIS Act were issued, to which respondent filed a response.

[13] The essence of respondent's response appears in the paragraphs noted immediately here below:

13.1 Although complainant appointed respondent as his representative, he did not exclusively utilise respondent's services, he consulted other representatives for certain investments. Respondent nonetheless rendered advice to complainant on many occasions, including when complainant wanted to make investments where exorbitant returns were offered³. Respondent noted that complainant did not make all the information relating to his financial circumstances and investment portfolio available to him.

13.2 Complainant made two investments during 2000, following advice from other FSP's. In both instances, complainant suffered significant losses.

13.3 As far as the Sharemax investments are concerned, the following is important:

13.3.1 During July 2002 complainant approached respondent about an investment in Sharemax, so complainant could receive better interest than that paid by the bank at the time. Respondent

³ In this regard respondent noted an investment offered by a Mr F Landsberg which promised returns of 55% and 177% respectively.

indicated that he conducted a risk profile analysis and established complainant as an aggressive investor, which complainant accepted. An investment of R130 000 was made in Centurion Highveld. During July 2006 the property was sold and complainant received a pay-out in the amount of R152 009.

13.3.2 During 2003, complainant invested an amount of R130 000 in The Bluff. This property was sold during July 2006, generating a pay-out in excess of R150 000. Complainant elected to reinvest R150 000 in Benoni Hyper.

13.3.3 During October 2003, complainant invested an amount of R100 000 in Atterbury Décor. Following the sale of the property in 2007, complainant received a pay-out of R137 000.

13.3.4 During July 2004, complainant invested R110 000 in Montana Crossing Holdings. The property was sold in 2007, generating a return of R29 562. Complainant reinvested an amount of R130 000 in Rivonia Square.

13.3.5 In January 2007, complainant, bought an investment from another investor to the value of R100 000. No costs or commission were involved in this transaction. Within 3 months, the property was sold, resulting in a pay-out of R112 923 for complainant. Complainant again elected to reinvest an amount of R100 000 in Parkside Plaza.

13.3.6 During August 2005, complainant invested R90 000 in Flora Centre. Following information that there was a fire in the building, complainant demanded his capital. Respondent assisted in selling this investment and complainant received his full amount of R90 000.

13.4 Respondent indicated that during November 2007, complainant approached him expressing that he had an amount of R300 000 available for investment. Various options were discussed and complainant decided to invest in Prospec, Morningtide. A risk profile analysis was done, again which confirmed complainant to be an aggressive investor.

13.5 It is respondent's submission that complainant's doubts about the investments started during July 2010, following an article in the Rapport. Prior to this article, complainant had even referred other clients to respondent and was satisfied with the returns he received from the various investments.

13.6 Respondent denies ever informing complainant that his investments were 100% safe. Respondent stated that complainant had various high-risk investments, including an investment with Krión into which complainant invested without seeking advice from respondent. During 2010, respondent nonetheless accompanied complainant to Pretoria to negotiate with the liquidators of Krión after complainant was sued.

- 13.7 Respondent further stated that complainant reinvested in Sharemax on three occasions, and in some instances without requesting advice from respondent on the investments⁴.
- 13.8 Respondent noted that during December 2008, complainant visited him at home whilst he was on sick leave. The visit was sparked by a program on television that complainant saw where Mr Willie Botha of Sharemax spoke about the Zambezi project and the 12% interest that would be generated from the investment. Respondent stated that complainant was so pleased with what he had witnessed on the program, he was adamant that he wanted to proceed with the investment. Again, the risk profile done indicated complainant to be an aggressive investor.
- 13.9 Respondent also advised complainant at all times to keep at least R200 000 in liquid investment to provide for emergency funds.
- 13.10 Respondent stated that he was never aware of any legality issues around Sharemax, until Reserve Bank intervened. Respondent conducted his due diligence and considered the successful 10 year investment history as an indication that Sharemax was a healthy scheme. Respondent denies ever advising complainant that there were no risks involved with the various investments, or that he at any point in time, misled complainant. Respondent indicated that he provided the prospectuses to complainant, explained it fully to him, and complainant indicated that he had understood.

⁴ Respondent referred in this regard to the Montana Crossing investment which complainant allegedly invested in on his own accord.

13.11 Respondent concluded that there are obvious discrepancies and disputes between his version and the version of complainant; which can only be resolved by leading evidence in court.

[14] Respondent's reply was provided to complainant. Complainant's response was a repetition of what he had previously submitted.

F. DETERMINATION

[15] Complainant's version to this Office is that he was advised by respondent to make the various investments in Sharemax and Propspec. He is aggrieved with the latter's conduct, because the investments were high risk and not compatible with his circumstances. Complainant also alleged that respondent misled him and gambled his hard-earned retirement money.

[16] Documentation received by this Office explaining that respondent had a role to play in the execution of the various agreements; and duly receiving commission thereon is not disputed. This Office also received records of advice for the respective investments.

[17] Having said that, the case presented to this Office contains various contradictory statements. There are material disputes of fact as to whether complainant was in fact persuaded by respondent to continue investing in Sharemax, especially in light of the fact that complainant on more than one occasion reinvested his funds, without seeking advice from respondent.

[18] There is an allegation that complainant attempted to make a supposed risky investment with a Mr Landsberg, but heeded the advice from respondent to not

proceed because of the risk. There is also a dispute with regards to who approached whom during 2008 to make the Zambesi investment.

[19] I could establish from the records of advice that complainant was advised that capital growth and income is not guaranteed on the property syndication investments. Complainant's product knowledge seems to include investments in Sanlam, Old Mutual, Momentum, PIC, Sharemax, Liberty, Prospec, Absa and VKB⁵. Complainant was therefore not a stranger to the investment arena. It would appear that complainant had an appetite for risky investments, because of the high returns he received.

[20] Evidence was also presented that during November 2007 respondent, upon investing with Prospec, presented other investment options to complainant which provided capital guarantees⁶, as opposed to Prospec, PIC and Sharemax, (which, respondent had noted in his records, were not guaranteed). Complainant nonetheless elected to invest in Prospec and declined a needs analysis at the time.

[21] This begs the question as to whether complainant can successfully argue that he was misled by respondent and that the products recommended to him were not commensurate with his circumstances.

G. FINDINGS

[22] Given the extent of material disputes of fact, the failure on complainant's part to deal with respondent's statements which point to complainant acting on his own

⁵ Vrystaat Kooperasie Beperk

⁶ One of the products recommended at the time, was an investment with Old Mutual which guaranteed interest payments at 8.21%. Complainant elected the Prospec investment that offered 12% interest although it was not guaranteed.

in respect of a number of the investments involved, I am compelled to refer the matter to court.

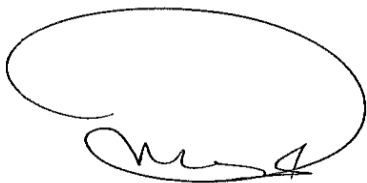
[23] It is simply not possible to establish from these two versions what really happened between the two parties. Thus, the question whether respondent rendered financial services to complainant and in respect of which investments (considering the total investments involved in the complaint), would be best suited to oral evidence and cross examination in order to arrive at the truth.

[24] It would be more appropriate that the complaint be dealt with by a Court, as provided for in Section 27 (3) (c) of the FAIS Act.

H. THE ORDER

[25] In the result, complainant is referred to court.

DATED AT PRETORIA THIS THE 1st DAY OF AUGUST 2017.



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS