IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

Case number: FAIS: 01836/10-11/GP/1

In the matter between:

NTSUNDENI NELSON TSHITEMA **COMPLAINANT**

and

STANDARD BANK OF SOUTH AFRICA LIMITED **RESPONDENT**

DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT 37 OF 2001 ("THE FAIS ACT")

A. PARTIES

[1] The Complainant is Mr Ntsundeni Nelson Tshitema, an adult businessman of 2512 Mapuru Street, Mapetla Extension 1, Chiawelo.

[2] The Respondent is Standard Bank of SA Ltd, a registered bank in terms of the laws of the Republic of South Africa and an authorized Financial Services Provider in terms of the FAIS Act, with its principal place of business at Standard Bank Centre, 7th Floor, No.5, Simmonds Street, Johannesburg.

[3] The issue is whether the respondent may be held liable for the conduct of its employee, Mocwiri, who rendered financial services to the complainant. However, at this stage it is convenient to sketch out the factual background.

B. THE BACKGROUND

[4] On or about April 2009, the complainant received a call from the respondent's employee, one Lazarus Mocwiri, who was employed at the Small Street Branch of the respondent as a financial planner. It is common cause that Mocwiri was employed by the respondent as an investment advisor.

[5] The complainant states that he was surprised to receive a call from Mocwiri, who was based at the Small Street Branch, as he normally conducted his transactions at the Ellis Park Branch of the respondent. The call apparently invited the complainant to the respondent's branch in Small Street.

[6] On his arrival at the Small Street Branch, the complainant found Mocwiri in the company of one Sipho Dhlamini. According to information furnished by the respondent to this office, it would appear that Dhlamini was a financial consultant employed by Liberty Life. That much appears from the submissions made to this office by the respondent in response to the present complaint. The complainant stated that he had previously met Dhlamini through one of the respondent's Financial Advisors, Patricia Mthimunye at the Standard Bank's Ellis Park branch sometime in 2008.

[7] According to the complainant Mocwiri expressed concern about what he termed “the poor performance” of his (the complainant’s) investment. It was for that reason that Mocwiri then advised the complainant to move his investment to what he referred to as “a better fund”. This was done ostensibly to mitigate the losses the complaint had incurred as a result of the “poor performance” of his investment.

[8] In his complaint to this office, the complainant stated the following:

*“I agreed as I trusted the two gentlemen from the bank. I had debit order of R25 000 to unit trust – Stanlib they suggested that I cancel that and take the R25 000 per month to Liberty Life for 5 years and take R600 000 to Discovery Life for 5 years, R400 000 to Gold Shares for 1 year” (*Quoted as is from the complaint*).*

[9] The complainant mentioned that he felt at ease on seeing Dhlamini who had previously rendered financial services to him.

[10] Given that respondent’s employee had called him to the branch to discuss information on his account which was only available to a bank employee, complainant laboured under the impression:-

(i) the investment products he received financial advice on belonged to or were authorised by the respondent; and that

(ii) both Mocwiri and Dhlamini were employees of the respondent who, at the time of the rendering of financial advice, were acting in their respective capacities as the respondent's employees.

[11] Later in this determination, I deal with the complaint's impression, and in particular the role played by Mocwiri.

[12] The complainant then states that after the lapse of a period of six months since his meeting with the respondent's employee at the Small Street branch, he called Mocwiri and enquired about documents from the Growth Coin Solutions investment. Growth Coin was one of the products into which complainant's money had been invested on the advice of Mocwiri. Having assured complainant that the documents were on their way, Mocwiri further informed complainant that the delay could be due to slow service of the post office.

[13] The complainant grew disquiet and became more despondent when he realised that he was not getting any information from the bank about his investment in Growth Coin. After months of desperation, the complainant decided to approach this Office for assistance.

C. RESPONSE

[14] In response to a letter from this office issued in terms of Section 27 (c) of the FAIS Act, 37 of 2002, the respondent set out its response in a written letter dated 8 November 2010.

[15] The general tenor of respondent's response makes it clear that the Growth Coin Product, sold to the complainant by its employee Mocwiri, was not one of its approved products.

[16] The respondent further disputes that its financial planner (Mocwiri) acted in his capacity as the bank's employee or representative or that he was acting within the course and scope of his employment. In that regard, the respondent suggests that when Mocwiri sold the complainant the Growth Coin Product, he was on a frolic of his own.

[17] The respondent further asserts that the SBFC statutory disclosure signed by the complainant disclosed the companies whose products it approved, and that the Growth Coin Product was not in the list of Standard Bank's approved products.

[18] Furthermore, the respondent contended that its documentation was never submitted with the Growth Coin transaction. On the contrary, so the submission goes, the contents indicated that the documentation supplied to the complainant belonged to Liberty Life. In that connection, the respondent further submitted that the usage of its documentation could not be considered

as proof that its sales processes were used during the course of advising complainant.

[19] The respondent denies liability and asserts that in advising the complainant to invest in the growth coin product, its employee, Mocwiri acted outside the scope of his mandate, duties and authority.

D. GROWTH COIN PRODUCT

[20] For the record, Growth Coin Trading Solutions was registered as a Close Corporation on 14 April 2009. Its only members are listed as Lazarus Modisatlile Mocwiri and Sipho Dhlamini. Mocwiri was, at that critical moment, in the employ of Standard Bank, the respondent. On the other hand, Dhlamini was employed by Liberty Life. Liberty Life's products are approved and authorised by the respondent.

Determination and its Reasons

[21] The factual background sketched out in the preceding paragraphs gives rise to the crisp issue of whether in advising the complainant, Mocwiri was acting within the course and scope of his duties as the respondent's employee.

[22] I pause to emphasise that it is common cause that Mocwiri advised the complainant to invest in respondent's various authorised financial products. It was during the course of selling these authorised products that Mocwiri introduced the Growth Coin Product to the complainant. The gist of the complaint is that when rendering advice to the complainant, Mocwiri

presented the financial products, including Growth Coin, as having been approved and authorised by the respondent.

[23] Mocwiri furnished the complainant with a number of documents which related to the Growth Coin Product. One such document was a form which required complainant to select a product of his choice. This was done ostensibly to enable the complainant to decide which product best suited his needs. It is noteworthy that on the last page of this document, the complainant selected both proposals of Stanlib and Liberty Investment.

[24] Further, a closer look at one of the Growth Coin documents that were given to the complainant reveals some options. Option 2 bears particular relevance, and states the following:-

"OPTION 2"

"Have your maturity value ***invested in the Standard Bank Money Market Fund***."

(my emphasis)

[25] Under Option 3 there is a subheading entitled: "How to exercise your option". The first paragraph bears particular relevance and reads:

"A copy of this letter has been forwarded to your financial adviser. Please consult with your adviser regarding the best investment option to meet your personal needs. Complete and return the enclosed Option Selection Form to

GCTS by 01/04/2010. ***If we do not receive your signed instruction by this date, <u>we will default your maturity proceeds to the Standard Bank Money Market Fund</u>."***

(my own emphasis)

[26] It is clear from the passages cited in paragraphs 24 & 25 that the Growth Coin product was passed off as a Standard Bank's authorised product. The various references to the respondent (Standard Bank) in Growth Coin documents clearly had the effect of creating the impression to the complainant that the product was sanctioned and authorised by the respondent.

[27] To compound matters further, the respondent's employee advised the complainant to invest in the Growth Coin product alongside other authorised products such as Liberty products. In the same vein, the complainant was also sold one of Discovery's products. The respondent's employee clearly intended to convey to the complainant that this Growth Coin product was just as authorised as the other products.

[28] It bears repeating that the presence of Dhlamini who was a consultant of one of the respondent's approved product suppliers (namely, Liberty) and with whom the complainant had previously dealt, had the effect of lending an aura of legitimacy to the Growth Coin product. To the complainant's mind the

Growth Coin product bore the stamp of approval and authority of the respondent.

[29] To illustrate the point further, the Growth Coin document (mentioned in paragraphs 24 & 25) made it quite clear that if the complainant failed to submit the signed instruction, Growth Coin would "default his maturity proceeds to the Standard Bank Money Market Fund". One is therefore left in no doubt that the Growth Coin product was deliberately associated with the respondent by its employee who was tasked with advising the complainant.

E. RECORD OF ADVICE

[30] The record of advice does not detail sufficient information pertaining to the products recommended and selected. The record of advice as furnished by the respondent falls short of the requirements as contemplated in the General Code. This marks a breach of the provisions of rule 3(2) of the General Code of Conduct which reads as follows:

"(2)

(a) A provider must have appropriate procedures and systems in place to-

(i) record such verbal and written communications relating to a financial service rendered to a client as are contemplated in the Act, this Code or any other Code drafted in terms of section 15 of the Act;

(ii) store and retrieve such records and any other material documentation relating to the client or financial service rendered to the client; and

(iii) keep such client records and documentation safe from destruction.

[31] The General Code states that the provider has the obligation to ensure that systems are put in place for the keeping and maintaining of the record of advice.

[32] I should further mention that all of the respondent's approved products sold to the complainant were in their individual companies' letter heads. I have already mentioned that Liberty & Discovery products were sold to the complainant on the same day he was sold the Growth Coin product. The two, Liberty and Discovery had their own letterheads. It follows then that once a product was authorised by the respondent it did not necessarily alter its letterheads. That being so, nothing turns on the fact that Growth Coin product was not in Standard Bank's letter heads.

[33] On 15 April 2009, a day after Growth Coin CC had come into being, an amount of R400 000.00 was debited from the complainant's Standard Bank account and transferred into Growth Coin's First National Bank ("FNB") account.

[34] I shall return later to the significance of this transfer and the attitude adopted by the respondent.

[35] It is significant that the complainant was invited by Mocwiri who called him from the Standard Bank's Small Street Branch. The stated purpose of that meeting was to discuss the complainant's investments.

[36] It is clear that Mocwiri had gained insight into the complainant's investment by virtue of his position as the respondent's (Bank) employee.

[37] Whatever apprehension or anxiety the complainant might have had was eased by the presence of Dhlamini who had previously rendered financial services to him at the bank's Ellis Park branch. That consultation had taken place through another bank employee. It is clear that the complainant was under the erroneous, though reasonable impression that Dhlamini was also one of the respondent's employees.

[38] It follows therefore that the complainant laboured under the impression that he was dealing with the respondent's employees, who were acting in such capacity. All things considered, I venture to suggest that the complainant's impression appears to have been reasonable and justified in the circumstances.

[39] The objective facts indicate that the growth coin transaction bore all the trappings of it being one of the respondent's products (Standard Bank). The telephone used to call complainant was that of the respondent. It is not disputed that Mocwiri called the complainant using the bank's telephone and summoned him to the branch. Secondly, the venue of the consultation or meeting where the complainant was sold the financial product was the respondent's branch. Thirdly, Mocwiri was in the employ of the respondent.

[40] All these factors inevitably lulled the complainant into believing that he was concluding a transaction with the respondent. At the very least, the complainant must have reasonably thought the transaction had the blessings of the respondent. Accordingly, when Mocwiri rendered financial advice to the complainant, the latter states in his complaint that he agreed because he "trusted the two gentlemen from the bank".

[41] Unbeknown to the complainant, he became a victim of a fraudulent scheme devised by the respondent's employee, Mocwiri. It is clear that the respondent's employee used his position to obtain all of complainant's information and details. Acting in cahoots with Dhlamini, Mocwiri then set out to defraud the complainant using the respondent's facilities. It is somewhat regrettable that Mocwiri and Dhlamini were so easily able execute their brazen fraud on complainant with seeming ease without any detection.

[42] Upon enquiry, the complainant learnt much to his consternation that when the financial service was rendered on 06 April 2009, the growth coin product had

not come into existence and that the close corporation had not yet been registered as a legal entity. It only came into being on 14th April 2009.

[43] It is clear that this so called growth coin product was merely a device by which Mocwiri and Dhlamini set out to unlawfully and wrongfully divest the complainant of his money after they had come to know of his investments.

[44] There is no doubt that the belated registration of the Close Corporation some days after the commencement of the purported investment was an attempt by Mocwiri and Dhlamini to disguise the true nature of their ill-gotten gains.

Employer's Vicarious Liability

[45] The test for vicarious liability is whether the wrongful act was committed by an employee while acting in the course and scope of his employment.

[46] What is clear is that not every act of an employee committed during the time of his employment which is in the advancement of his personal interest or for the achievement of his own goals necessarily falls outside the course and scope of his employment.

[47] In each case, the question of whether the employer is to be held liable or not must depend on the nature and extent of the employee's deviation. In that regard, the answer in each case will depend upon a close consideration of all the facts.

[48] There must be a causal link between the conduct of the employee and the employment relationship.

[49] In *Ess Kay Electronics Pty Ltd v First National Bank of Southern Africa Ltd* [2001] 1 ALL SA 315 (A), Howie JA (as he then was) enunciated the rule thus:

> "Vicarious liability is imposed on innocent employers by a rule of Delictual law. The rule in its most simple form is that the liability arises when an employee commits a delict within the course of such employee's employment."

[50] In the present matter, Mocwiri an employee of the respondent and its financial advisor was involved in the rendering of financial service to the complainant. During the course of rendering financial services, Mocwiri sold several financial products to the complainant. Some of those products, such as the Liberty investment, were authorised by the respondent. However, the Growth Coin product was not authorised.

[51] It is clear that the selling of the Growth Coin product was closely linked to what Mocwiri was mandated to do. The submission that the complainant ought to have checked the list of respondent's authorised products is without merit. Although the complainant signed the document which contained the generic list of respondent's approved products, there is no suggestion by the respondent or any of its employees that the product list mentioned each and every specific name of the approved product, nor is it suggested that that such a specific list was ever brought to the attention and notice of the complainant.

On the contrary, none of respondent's officials ascertained from the complainant which specific financial products had been sold and whether these fell into the category of the respondent's approved products. In any case, the list of approved products does not purport to be exhaustive.

[52] In its submissions, the respondent stated that the Growth Coin product was not one of its approved products. The respondent further submitted that the complete list of its approved products was available to clients on request. However, it is noteworthy to mention that the product list given to the complainant was generic in nature and did not mention individual products by name.

[53] The question of whether products other than those referred to in the file notes were discussed assumes greater significance in light of the defence advanced by the respondent in this matter. It cannot be correct to suggest, that all products discussed during Mocwiri's interaction with the complainant were mentioned and specified in the file notes. Clearly, the file notes would have been drafted in a self-serving manner by Mocwiri.

[54] I pause to mention that paragraph 5 of the form which lists authorised products also contains the following passage:-

*"Standard Bank Financial Consultancy **also has existing contracts** with a number of life offices for continuation business only **that may be conducted by the consultant on your behalf**. **A list of these product suppliers can be obtained from SBFC directly**." (emphasis added)*

[55] The above-quoted paragraph makes it clear that there are other authorised products which do not appear on the list contained in the form. The list was by no means exhaustive. That being the case, this left ample room for clients, such as the complainant, to be misled by a dishonest employee. When Mocwiri told the complainant that Growth Coin was one of the respondent's authorised financial products, the complainant's conduct was reasonable in relying on Mocwiri's advice.

[56] The weight of evidence as can be gleaned from documents submitted, suggests that the Growth Coin transaction was presented as no more different from the Liberty and other approved products. It would be placing an onerous and unnecessary burden on the complainant to have expected him to disbelieve Mocwiri's representations.

[57] It would be recalled that the complainant was reliant on the very same Mocwiri to explain the contents of documents he had to sign. It was the responsibility of Mocwiri to explain the documents and the products to the complainant. As already stated, Mocwiri's account of what he did during the course of rendering financial advice would naturally have been very self-serving, and would have been done to prevent any detection of wrongdoing on his part by his employer. It follows then that respondent should not be allowed to avoid liability by relying on its employee's violation of the law.

[58] Clause 11 of the General Code provides as follows:

> ***"11.*** *A provider* ***must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions****."*
>
> (Emphasis Added)

[59] As part of its response, the respondent submitted a handwritten note dated the 06th May 2009. I deem it important to reproduce the contents of the note here. In that regard the following is written:

> *"I spoke to the client Mr Nelson Tshitema as a follow up to the investment that he took with Lazarus Mocwiri of R25 000 a month. The customer is aware that he took a 5 year investment with Liberty-Excelsior 2000 Investment Builder. Mr Tshitema hinted at the possibility of increasing the premiums in the near future.*
>
> *Signed: Mathabatha Lamola"*

[60] The note contains very scant account of what Mr Lamola, who was apparently Mocwiri's manager, had done to ensure that proper procedures had been followed. The statement is inadequate as it does not indicate whether he asked the complainant about all products that were sold to him. The statement therefore is unhelpful as it does not shed light on the steps taken to ensure that there had been compliance with the bank's own processes during the selling of the financial product. Given that Mocwiri was rendering financial advice under supervision as contemplated in section 13 of the Act, the steps taken by the respondent were woefully inadequate in ensuring compliance with the Act. The failure to pay close attention to Mocwiri as someone who was working under supervision exposed the respondent's clients to potential prejudice. The respondent's senior staff managers, to whom Mocwiri reported, did not seem to have paid any particular attention to Mocwiri as required by the Act. For example, there is no indication that Lamola in any way verified the contents of the file notes with the complainant.

[61] In my view the respondent was in breach of clause 11 of the Code in that there appears to have been a lack of proper systems to prevent the theft, fraud and dishonest acts of its employee. In that regard, the following aspects are worth noting:

61.1 According to the Certificate issued by the Registrar of Companies & Close Corporations, Growth Coin Trading Solutions was registered as a Close Corporation on 14th April 2009.

61.2 The two active members of Growth Coin listed in the certificate of corporation are Lazarus Modisaotsile Mocwiri and Sipho Dhlamini.

61.3 A day after Growth Coin registration, on 15th April 2009, an amount of R400 000 in cash was transferred from the Standard Bank's account of the complainant to the First National Bank's account held by Growth Coin.

[62] Here we have a bank employee who by virtue of his employment and position obtains access to the bank's (respondent's) client's accounts, registers a close corporation as a vehicle through which he unlawfully divest complainant of his funds, all with such ease that he is not detected.

[63] A simple check on the close corporation would have revealed that it was less than 24 hours old, and that its only two members were an employee of the bank and a consultant who had contacts with the respondent's clients on a regular basis.

[64] There is no contemporaneous account of what took place during the rendering of advice.

[65] In the document entitled "Summary of proposal prepared for Mr Nelson Ntsundeni Tshitema By Lazarus Mocwiri", paragraph 2 reads as follows:-

"2. Goal and investment objectives of the client"

Products discussed

Stanlib-money market, dividend income, income fund

Liberty excelsior 300 (guaranteed) capital bond

Liberty excelsior 2000 investment builder

I covered the long term as well as the short term investment products that would benefit client" (Emphasis added)

[66] The last sentence of the above quoted paragraph appears to be vague enough to cover any form of product. It is curious that in the preceding sentences the products discussed are specifically described and mentioned by name. However, the last line vaguely mentions that there were other products discussed during the rendering of financial advice to the complainant.

[67] That being the case, it is probable that Growth Coin was discussed as part of other long term and short term products mentioned in the above-quoted passage.

[68] I am satisfied that on the principles of vicarious liability, the respondent is liable to the complainant for the actions of its employee, Mocwiri.

[69] Section 13 of the FAIS Act provides as follows:

“13. Qualifications of representatives and duties of authorised financial services providers

(1) A person may not –

(a) .....

(b) act as a representative of an authorised financial services provider, unless such person-

(i) is able to provide confirmation, certified by the provider, to clients -

(aa) that a service contract or other mandate, to represent the provider, exists; and

(bb) that the provider accepts responsibility for those activities of the representative performed within the scope of, or in the course of implementing, any such contract or mandate;

(2) An authorised financial services provider must -

(a) at all times be satisfied that the provider’s representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with

the requirements contemplated in paragraphs (a) and (b) of section 8(1) and subsection (1)(b)(ii) of this section, where applicable; and

(b) take such steps as may be reasonable in the circumstances to ensure that representatives comply with any applicable code of conduct as well as with other applicable laws on conduct of business.

[70] The provisions of section 13 of the Act enjoin all financial services providers to "accept responsibility for those activities of the representative performed within the scope of, *or in the course of implementing, any such contract or mandate*". The Act requires financial services providers to accept liability for wrongful acts of their representatives committed in the course of implementing their mandate.

[71] Ultimately, the financial services providers are duty bound to take reasonable steps to ensure that their representatives provide advice in accordance with the statutory requirements set out in the FAIS Act and the General Code.

[72] It follows therefore, that the respondent failed to take reasonable steps to ensure that its employee, Mocwiri, rendered financial services in accordance with the law.

Fairness and Equity

[73] Section 20(3) of the FAIS Act sets out the objectives of the Ombud as follows:

> "(3) The objective of the Ombud is to consider and dispose of complaints in a procedurally fair, informal, economical and expeditious manner ***and by reference to what is equitable in all the circumstances***, with due regard to -
>
> (a) the contractual arrangement or other legal relationship between the complainant and any other party to the complaint; and
>
> (b) the provisions of this Act."
>
> (Emphasis Added)

[74] Section 20(3) allows the Ombud to depart from common law and determine any matter on the basis of the principle of equity. In certain circumstances what may be lawful may not necessarily be fair and equitable. The legislature clearly intended the Ombud to go beyond common law when looking at complaints. In a previous determination of *Elizabeth September v Santam Life Insurance Limited (FOC1291/07-08/EC (1)*, the principles underlying the concept of equity were enunciated. In particular, it is apposite to refer to paragraph 26 and 27. The two paragraphs are worth reproducing here:-

> "*[26] In Port Elizabeth Municipality v Various Occupiers [2005 (1) SA 217 (CC) at 35Sachs J, in expounding on the concept of "just and equitable" in the context of land law, said-*

'The phrase 'just and equitable' makes it plain that the criteria to be applied are not purely of the technical kind that flow ordinarily from the provisions of...law.'

In other words, while one attempts to find solutions according to the law, its strict application may not always produce just results. I am mindful though, that the concept of equity must not be taken too far. As the FAIS Act says, it must be with reference to all the circumstances of the case, the contractual or other legal relationships between the parties and the provisions of the FAIS Act. Equity is an adjunct to the law, not its substitute.

[27] In R (on the application of IFG Financial Services Limited) v FOS [2005] All ER (D) 301 a decision of the United Kingdom Financial Ombudsman Service was taken on review to the High Court. The firm was a financial advisor which wrongly recommended investments as being medium risk when, in fact, they were high risk. The investors suffered losses due to the fraud of a manager of one of the investment funds into which they had been advised to invest. The firm argued that as the losses were caused not by the unsuitable advice but by the fraud they were not liable to compensate the complainants. The fraud was unforeseeable and outside the firm's duty of care. The ombudsman agreed that the fraud was not foreseeable but he did consider it fair and reasonable in all the circumstances that the firm should be required to compensate the investors. He decided it was neither fair nor reasonable to expect the investors to absorb the losses as the investment

was not suitable for them and if the firm chose to make an unsuitable recommendation then it did so at its own risk.

'The firm applied for Judicial Review of the ombudsman's decision on the basis that the ombudsman had failed to take account of the legal position in relation to causation and had wrongly concluded that the firm be held liable for unforeseeable losses.

'The court found that whilst the ombudsman had to take account of the law, he was not required to decide a case in accordance with the law, as would a court, provided that his decision was fair and reasonable in all the circumstances. Only in cases where the ombudsman's decision of what was fair and reasonable was perverse or irrational would his decision be liable to be set aside by the court.' ***(emphasis added)***

[75] I have already found that on the common law grounds of employer's vicarious liability and on the basis of the FAIS Act the respondent is liable to compensate the complainant for his loss. Moreover, the circumstances of this matter would in any event justify the liability of the respondent to the complainant on the basis of the principle of equity. The facts of this case render it fair and equitable that the respondent be held liable for the actions of its employee.

In the premises I find as follows:

[76] During the course of rendering financial advice to the complainant, the respondent's employee, Mocwiri, defrauded the complainant of the sum of R400 000.00.

[77] That amount of R400 000.00 was deposited into a close corporation, named Growth Coin Solutions, which had been registered on 14 April 2009.

[78] The two members of the close corporation were Mocwiri and Dhlamini.

[79] The entity Growth Coin had no trading history, and had literally been formed few hours before the transfer of the complainant's money from his Standard Bank's account.

[80] There is no credible reason as to why the complainant's funds were transferred into this account other than to further the interests of Mocwiri and Dhlamini.

[81] As a result, of the unlawful conduct of the respondent's employee, the complainant lost an amount of R400 000.00 of his money.

[82] The respondent failed to put in place adequate systems to prevent the theft or fraud by its employee of the complainant's money as required by the General Code.

[83] The respondent's employee sold the Growth Coin product alongside other authorised financial products to complainant, and presented it as though it were one of respondent's approved products.

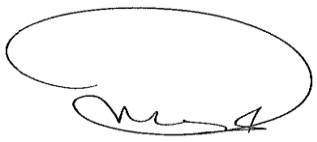
[84] Accordingly, I find that the respondent is liable to compensate the complainant for his loss.

F. ORDER

In the result, I make the following order:

1. Respondent is ordered to pay the complainant an amount of R400 000.00 within 14 days of date of this order.
2. Respondent is to pay interest on the said sum at the rate of 15.5 per cent from 14 April 2009 to date of 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 7th DAY OF MARCH 2012.



_____

NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS