

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FAIS 00450/15-16/ MP 3

In the matter between:

Karen Mandie Van der Merwe obo Brother Roadside Assist Complainant

and

Forum SA Trading 325 (PTY) Ltd

First Respondent

Christo Jonker

Second Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT NO 37 OF 2002 (the Act)**

A. INTRODUCTION

[1] This determination follows a recommendation made in terms of section 27 (5) (c) of the Act on 4 December 2017. Section 27 (5) (c) empowers the Ombud to make a recommendation in order to resolve a complaint speedily by conciliation. This determination therefore, shall be read in conjunction with the recommendation and shall form part of this determination.

[2] Respondent's response to the recommendation was received on 18 December 2017. Respondent in its response requested an extension to 12 January 2018 to provide it with the opportunity to facilitate a resolution between the parties involved.

It has been confirmed by complainant that despite the extension provided respondent has to date not been in contact with complainant.

- [3] Respondent did in its request for an extension provide reasons for not accepting the recommendation, and these are dealt with in the paragraphs following below.

B. THE PARTIES

- [4] Complainant is Mrs Karen Mandie Van der Merwe a sole proprietor who trades under the name and style Brother Roadside Assist. Complainant's full details are on file in this Office.

- [5] First respondent is Forum SA Trading 325 (PTY) Ltd, a private company duly incorporated in terms of South African law, with registration number (2003/016867/07). First respondent is an authorised financial services provider (FSP) (license number 17660) with its principal place of business noted in the Regulator's records as No. 20 Dirk Van Der Berg Street, Modimolle, 0510.

- [6] Second respondent is Christo Jonker, an adult male, an authorised representative and key individual of first respondent. Second respondent's address is the same as that of first respondent.

C. RESPONDENT'S REPLY TO THE RECOMMENDATION

- [7] Respondent claims that subsequent to the establishment of the relationship on 10 May 2011 there had been two annual reviews conducted for complainant. The second of which, which had been conducted during September 2013 had led to

confirmation that the stolen vehicle had a Skytrax system installed, and that the tracking devices of two older vehicles have been changed to a TOM TOM system.

[8] Respondent claims that it was only during the claim that it had been advised by the assessor that the vehicle in question was not fitted with a Skytrax unit, but with a TOM TOM system instead. Respondent claims that it had been misled by complainant as it maintains that the Skytrax unit does indeed meet the minimum security requirements of an early warning system, and provided a brochure from Tracker in support of this claim.

[9] Respondent also points to e-mail correspondence indicating that it would appear as though Tracker had erred in not installing the correct unit in complainant's vehicle.

[10] Respondent accepts responsibility for not having accurately recorded the advice provided to complainant in a more detailed record of advice. It does however maintain that the security requirements had been discussed with complainant as confirmed by it having been provided with the Skytrax installation certificate. Respondent claims that it was not informed that complainant had changed the system or that Tracker had installed a different system to the one listed on the certificate.

D. DETERMINATION

[11] Whilst respondent continues to find fault with the actions of Tracker and complainant's failure to have informed it of the change in tracking units from a

Skytrax to a TOM TOM, the essence of this matter remains that respondent had failed to adequately disclose to complainant the minimum security requirements, which required that there be an early warning system installed in the vehicle, which would not have been met by either of the Skytrax or TOM TOM units.

E. CONCLUSION

[12] The issues raised in the recommendation have therefore not been disturbed, and based on the information provided in the recommendation it follows that respondent is liable to pay complainant's claim

F. THE ORDER

[13] In the result, I make the following order:

1. The complaint is upheld.
2. The respondents are ordered, jointly and severally, the one paying the other to be absolved, to pay the complainant the amount of R355 785;
3. Interest on this amount at a rate of 10.25% per annum from the date of determination to date of final payment.

DATED AT PRETORIA ON THIS THE 16th DAY OF MARCH 2018.

A handwritten signature in black ink, consisting of a large, loopy initial 'M' followed by a cursive name.

**NOLUNTUN BAMB
OMBUD FOR FINANCIAL SERVICES PROVIDERS**