IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA.

CASE NO. FOC 03586/09-10/KZN 1

In the matter between:

L.W. WHEELER **1st COMPLAINANT**

F.W. WHEELER **2ndCOMPLAINANT**

and

ANDRE VAN DER MERWE **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 1st Complainant is Mr L.W. Wheeler an adult male, self employed residing at Lot 354 Ogilvy Gardens, Munster.

[2] The 2nd Complainant is Mr F. W. Wheeler an adult male, retired, residing at Lot 354 Ogilvy Gardens, Munster.

[3] The respondent is Mr Andre van der Merwe an authorised financial services provider carrying on business at 12 Mc Iver straat, Uvongo, Kwa-Zulu Natal.

B. INTRODUCTION AND BACKGROUND

[4] This case revolves around investments made by complainants in an entity known generally as the GAREK scheme. There have been many other investors who invested in this scheme. They have lost millions of rand in the process. This Office is seized with a number of complaints relating to financial services rendered in the course of recommending investments in the GAREK scheme.

[5] Complaints and enquiries relating to the GAREK scheme were steadily coming into the Office since late 2006. In order to properly understand what the scheme was all about, it became necessary to await a report that the former Minister of Trade and Industry had commissioned against the scheme. This report was only finalised in May 2009 (The DTI Report).

[6] Essentially the GAREK scheme involved the formation of various companies which solicited investments from members of the public through the sale of unlisted shares.

[7] These shares were sold on the promise that they would increase substantially in value upon the listing of the entity in which the shares were sold on the Johannesburg Securities Exchange South Africa (JSE).

[8] The unlisted shares purchased by complainants were essentially in two connected entities namely Global Africa Resource and Energy Corporation Limited (GAREK) and Mwamko Africa Trade Resource Industrial and Commerce Corporation Limited (MATRIC).

[9] Intrinsically related to GAREK and MATRIC are several other unlisted companies amongst which were Resourcefin Strategies International Limited (RSI); Independent Holdings Limited (IHL); Appropriate Structures in Emerging and Markets Limited (ASEM); and Holistic Resources Limited (HRL) and GAREK..

C. THE COMPLAINT

[10] Around November 2002, whilst in hospital, the 1ts complainant was introduced to the Respondent in connection with a short term home insurance.

10.1 During the month of April 2003, the Respondent encouraged the complainant to cash in existing investments he had with Old Mutual and Liberty Life. He further advised the complainant to give him permission to assess his portfolio.

10.2 The Respondent was persistent and enticed the 1st complainant, his elderly parents, 2nd Complainant Frederic Wheeler and Isobel Wheeler and his girlfriend Susan Lamb in putting their monies into this scheme as well.

10.3 The Respondent told them that these investments were due to mature at the end of 2003 with extremely good returns. This is what motivated the Complainants to invest.

10.4 The Respondent showed the Complainants his share certificates showing amounts of money he had personally invested.

10.5 The Respondent told the complainant that he had taken a bond on his house, to the value of R 1,000,000.00 (one million) and invested this money.

10.6 The Respondent was very aggressive, he wanted to know when monies would be available, he was also willing to drive down to collect money as soon as it was available.

10.7 The Complainants put their trust in the Respondent, as the Respondent had assured them of his intent and that the Complainants will receive a viable income from their investments.

10.8 Every time the point of listing was reached, there was a change of company name or the country where listings were to be placed, or personal tragedy in the life of one of the directors, which made it impossible to carry on with the listings.

10.9 The companies involved with the Complainants' investments were GET, MATRIC, GAREK and RSI. In 2005 the complainants were naively lured to invest with the Respondent again.

10.10 The Respondent received all the money from the complainants in cash or in a cheque made out to Appropriate Structures In Emerging Markets Limited.

10.11. **On the 4th of April 2003,**

1st Complainant paid - R25 000.00, and

2nd Complainant paid - R5, 000.00 to the respondent.

On the 31st of October 2003,

The 1st Complainant paid a further R 12,000.00.

On the 3rd of October 2005,

The 1st Complainant paid yet another R 5.000,00 and

The 2nd Complainant paid R1, 000.00.

Total amount paid R48, 000.00

10.12. During their meeting the Respondent emphasised that this investment was conducive to their future financial requirements. No interview was conducted to assess whether this investment was appropriate for the Complainants and their families' future financial requirements or their present financial position.

10.13. The challenges that lay ahead for these investment companies and the risks associated with the investment were never mentioned or discussed, instead the Respondent advised complainants that the opportunity was about to expire and as such the Complainants were encouraged to act expeditiously. As such and acting on the advice of the Respondent, the investments were made.

10.14. The promised listing and several future listing dates never materialised. Various reasons were advanced for the delay. The complainants were misled by a licensed financial provider and the

communication was less than adequate. To date almost 8 years later no listing has taken place.

10.15. Complainants and their family members have requested a return of the money that they have invested plus interest on it from the end of April 2003.

D. THE RESPONSE

[11] As the complaint could not be resolved between the parties, it proceeded to investigation at which point Respondent was requested to provide copies of his "entire file papers".

11.1 The Respondent was also required to submit a reply to the allegations, taking into account the requirements of the FAIS Act. In particular to provide a statement on how the investment was entered into, with supporting documentation, if available; the exact commission earned; and specific details as to the source of the investments and the contact details of the individuals or entity that provided the investment.

The respondent's response can be summarised as follows:

11.2 The respondent chose not to deal with this claim specifically but decided to treat this claim together with other similar claims, all of which represent investments through GAREK and related companies, with reference to a letter dated 5 July 2010 which was written by the Respondent`s attorney Mr Mike Werner.

11.3 The Respondent contends that the matter has not been resolved with the Complainants and allegations raised by the Complainants are rejected, based on the following reasons:

11.4 All Complainants are using "last resort" and not "first resort" procedures in that the complainants' queries should be directed to the entity in which the Investment was made. He further contends that only in the event of the complainants having exhausted their remedies against GAREK, should the FAIS Ombud become involved and that there is no record of the complainants communicating directly with the entity in which they invested.

11.5 FAIS Ombud is limited to deal with financial institutions, which do not fall within the jurisdiction of any other Ombud Scheme or where there is uncertainty over jurisdiction. It is then the contention of the Respondent that the Ombud has infringed its granted authority.

11.6 Most of the Complainants have laid criminal charges against the Respondent, thus the demands of the Ombud constitutes an infringement of the Respondent`s constitutional right to remain silent when a criminal investigation is pending.

11.7 The Respondent was never aggressive at any time and did not pressurise complainants to invest;

11.8 The Respondent submits that the investments are in a Capital Growth Share, not a dividend share. The time of the listing is not under the Respondent`s control;

11.9 The Respondent states that he never made excuses, about the facts, he merely conveyed what management of the investment companies had stated.

11.10 Respondent denies that prospectuses were prepared or necessary as all the shares were traded on a re-sale basis.

E. THE ISSUES

[12] The following are the issues to be determined:

12.1 Jurisdiction of this Office over the Respondent.

12.2 Whether the respondent rendered the financial service herein negligently and/ or in a manner which is not compliant with the FAIS Act;

12.3 If it is found that the respondent did render the financial service negligently/ and or failed to comply with the FAIS Act, whether such failure caused the complainants' loss; and

12.4 The respondent was required to provide a copy of his entire file of papers. In this regard the only documents provided by respondent were a one-page document headed "APPLICATION FORM" and "MANDATE FORM" respectively. Other documents provided were deposit slips and/or bank printouts, accompanied in some instances by correspondence from complainants to respondent advising of deposits.

12.5 As will become clear no document evidencing any form of compliance with the FAIS Act was provided.

12.6 In fact to do justice to the many and varied contraventions of the FAIS Act and the Code would be voluminous. As such, and in the

interests of brevity, I shall confine myself in this determination to some of the more pertinent breaches.

F. JURISDICTION

[13] The basis of this office`s jurisdiction is that the Respondent is a licensed intermediary in terms of the FAIS Act and does not dispute that the investments in question were made through him as a financial service provider. This brings the matter squarely within the jurisdiction of the FAIS Ombud.

[14] The Ombud does not assume any jurisdiction over the companies introduced by the Respondent to his clients, as was suggested by the Respondent's attorneys.

[15] It would be convenient at this stage, for reasons that would become clear in the rest of this determination, to deal with the Respondent's Attorney`s submissions:

15.1 The criticism that the Complainants are resorting to "a last resort" by approaching the Ombud instead of first exhausting their remedies against the entity in which the investments were made, is of no substance.

15.2 It is not in dispute that GAREK and related companies have no assets and that their shares are entirely worthless. There is no prospect that the Complainants will recover any part of their investment from GAREK.

15.3 These proceedings are not an infringement of the Respondent`s constitutional rights to remain silent when a criminal investigation is pending. As far as this Office was able to ascertain, the Respondent is currently not facing any prosecution.

15.4 The Respondent nevertheless did not make any election to remain silent, on the contrary he responded to this Office`s request in terms of Section 27 of the FAIS Act.

The Respondent further made out no case that the provisions of Section 27 are unconstitutional.

15.5 The Respondent`s attorney denies that Respondent pressurised the Complainant to invest: this submission must equally be rejected. On the evidence before me, the Respondent`s *modus operandi* in respect of all of his investments was to entice his clients to invest quickly or else the opportunity would pass.

15.6 Respondent's attorney states that the Respondent had no control over the time of listing nor did he make any excuses on behalf of GAREK. The Respondent's attorney simply missed the point.

In as much as the Respondent had no control over the listing he nevertheless conveyed dates to his clients on the basis that he had verified them and that they were true.

He also failed to give a full explanation to his clients of the risks inherent in such investments.

15.7 The Respondent cannot hide behind the very same companies in which he placed his clients' money.

G. FINDINGS

16.1 It is not in dispute that, at all material times, the Respondent was a licensed FSP and was subject to the provisions of the FAIS Code.

16.2 Respondent is an authorised financial services provider. However, he is restricted to certain financial products. In correspondence with this Office, the Financial Services Board has confirmed that respondent was, at all material times, not licensed to sell unsecured shares.

16.3 Respondent's licence was only amended in 2007 so as to enable him to sell shares. Section 7(1) of the FAIS Act requires that a person not act or offer to act as a financial services provider unless such person has been issued with a licence under Section 8. It goes without saying that such licence must relate to the particular financial product or products that the person is authorised to offer advice and/or intermediary services on. Section 36 of the FAIS Act makes a failure to comply with Section 7 (1) an offence. Respondent is clearly in contravention of the aforementioned sections and as such was not authorised to sell the shares to complainants. Incidentally, respondent's licence was withdrawn by the FSB on the 9th November 2009 for breach of the Act.

[17] Verbal and Written communication relating to the financial services rendered as required by Section 3(2)(a)(i) of the Code. This section states that:

17.1 "a provider must have appropriate procedures and systems in place to record such verbal and written communications relating to a financial service rendered to a client"

17.2 Quite simply this relates to the communication between a specific client and the provider. In this regard, what respondent would have me accept is what he terms "a transcript of a typical presentation" Clearly not only does this contravene the Code but this transcript was reconstructed in response to the complaint more than a year after the sale. It could therefore hardly be a true reflection of the communication between the parties at the time the financial service was rendered.

17.3. The Application form and the Mandate themselves provide nothing that could be construed as providing a record of what took place. On the contrary, these documents are themselves confusing.

17.4. Of course a record of advice would imply that the respondent had complied with Section 8 of the Code and as such carried out an analysis of complainants' needs. I saw no evidence of any needs analysis in this case. In fact the Respondent misled the Complainants into investing quickly in order to benefit from the imminent listing of the shares.

On the facts before me the Respondent had no interest in carrying out needs analysis as he merely wanted to sell the shares.

17.5 When rendering a financial service, any actual or perceived conflict of interest, requires full disclosure in order that client's make an informed decision.

17.6 Specifically Section 3 (1) (b) of the Code requires that: "the provider must disclose to the client the existence of any personal interest in the relevant service, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such service".

17.7 In a letter addressed to GAREK/MATRIC shareholders and dated 25 February 2005 respondent describes himself as being part of the "marketing team of GAREK". This simple statement is perhaps the first real revelation as to the true relationship between respondent and the GAREK scheme.

17.8 The true extent of this relationship becomes evident in the DTI Report which reflects that commission of R4 470,558.92 was paid to respondent.

17.9 In essence respondent acted as a *de facto* agent of GAREK. This was not disclosed to complainants and clearly respondent's advice, in the circumstances would have been tainted.

17.10 Taking into consideration the amounts paid and the inception dates of the various entities, respondent undoubtedly received more than 30% of his commission from one product supplier in the year in which the shares were sold to complainants.

17.11 In truth the various entities are really just differently named versions of the same entity particularly when one considers their interlocking shareholding and commonality of boards of directors. In essence commission from any one of the separate companies was commission from the group as a whole. All that happened is another instance of hiding behind the corporate veil.

17.12 In communication from this Office to respondent, reference was made to the commission amounts in the DTI report. Respondent was requested to advise whether any declaration was made to complainants that he had received more than 30% of total commission from any particular product supplier.

17.13 Respondent did not reply to a request in a letter sent to him and as such I must conclude that once again he has failed in his responsibilities toward complainants.

The Respondent was asked to deliver the following information:

i) A statement by him as to how the investment was entered into with Complainant.

ii) To provide documentation compliant with the FAIS Act which provides not only a record of the advice provided to Complainant, but that the relevant disclosures were made regarding the nature and risk associated with this investment;

iii) Provide details of the analysis conducted for the complainant, which formed the basis for recommending this product as one that was in the best interests of complainants;

iv) Provide documentation showing that the advice fee received was clearly disclosed to the complainant in monetary terms. Further he must confirm what percentage of his total commission was represented by the fees that he received from the business he had with GAREK, and whether this was also disclosed to the complainants.

v) He must further provide this office with details of the due diligence he conducted prior to advising the Complainant to invest in GAREK.

vi) The Respondent was not licensed in terms of FAIS Act to provide advice on shares, and the Office required that he provide documentation where Complainants were informed that he was not licensed to advise on unsecured shares.

vii) A copy of the record of advice in terms of Section 9 of the General Code of Conduct for Authorised Financial Services Providers and Representatives.

viii) Any other material signed by the Complainants which may support the Respondent's version of events, including a full statement from the person who dealt with complainants in concluding this transaction.

The Respondent failed or refused to provide the above information. An adverse inference must be inevitable.

[18] Whether the nature and risk structure of the investment were properly explained and understood by complainants.

18.1 In addition to the present matter, this Office has fourteen other complaints detailing similar allegations against respondent. It is notable that in every complaint the allegations are similar.

18.2 Essentially complainants were advised about an excellent investment opportunity that would only be open for a limited period due to an imminent listing of the company; at which point their shares would increase substantially in value. As such it was imperative that they invest at the earliest possible opportunity.

18.3 No attempt was made to comply with the FAIS Act and as such no consideration was ever given as to whether the investment actually suited complainants' needs.

18.4 The fact that respondent himself had supposedly invested in the scheme served to assure investors of the safety and security of the scheme. The risks inherent in the scheme were never mentioned.

18.5 Of course, as in this case, respondent contends that "*the complainants were categorically and specifically informed of the high risk coupled to unlisted share*" and in respondent's typical presentation

to clients he states "*these are Capital Growth Shares in an unlisted company thus a high risk. However with high risk comes high returns".*

18.6 Given that there is no written documentation supporting respondent's claims, respondent relies on the "typical presentation" as evidence that he explained the risks inherent in the product.

18.7 Section 7 (1) (c) (xiii) of the Code requires disclosure of appropriate information of "any material investment or other risks associated with the product." Clearly this information would need to be set out explicitly, in any documentation or client advice record. No such documentation exists.

18.8 In respondent's letter to complainants dated 25 February 2005, not long after the shares were sold to complainants, no mention is made of the risks involved in investing in GAREK/MATRIC.

18.9 On the contrary respondent states that "*the company have* (sic) *achieved outstanding results, and large development has taken place*

in the structure". In fact respondent goes on to entice his clients into purchasing more shares.

Either respondent does not believe that there were any risks involved in investing in the companies or he was deliberately misleading his clients to induce them to purchase more shares. Not only has the company done anything but achieve outstanding results but the so called "discounted price" is a fallacy when one reads in the DTI report that these same shares were sold to related companies for a mere pittance.

[19] Whether the nature of the investment was explained to and was understood by complainants.

19.1 Section 3 (1) (a) (iii) of the Code requires that representations must: be adequate and appropriate in the circumstances of the particular financial service, taking into account the factually established or reasonably assumed level of knowledge of the client;

19.2 Section 3 (1) (a) (iii) must be read with section 7(1) (a) of the Code which requires that a provider must: "provide a reasonable and appropriate general explanation of the nature and material terms of the relevant contract or transaction to a client, and generally make full

and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision"

19.3 It becomes clear that respondent himself, is firstly required to have a proper understanding of the product which he is marketing, and then to convey this to complainants in such a manner that they grasp the issues so as to enable them to make an informed decision. It is for this reason that the legislature has seen it fit to add the provision that the provider must take into account the factually established or reasonably assumed level of knowledge of the client.

19.4 In so far as the promotional material placed in the Time magazine is concerned, this by its very nature contains nothing of any substance and could not in any way be construed as contributing to an appropriate understanding of the investment that complainants were entering into. In any event Respondent failed to point out to Complainant that "the times article" was actually a paid for advertisement.

[20] The Mandate form which reads as follows:

"IHL hereby sell 4000 of my A option shares to the third Party listed below (the third party being the name of the complainant). I will receive a surplus of NIL paid to me per share. R2.50 of the A option will be paid to MATRIC"

This is confusing and beyond the comprehension of a lay person.

20.1 It stands to reason that the requirements as set out in the paragraphs above, must be evident either from the client advice record and/or additional documentation provided to complainants. Respondent's "typical presentation" even if I were to assume that it is an accurate record of the presentation, is anything but easy to comprehend.

20.2 The various derivations and related shareholdings of GAREK are confusing and it would be fair to say that without the benefit of the DTI report and time to peruse these transactions carefully it would be impossible to grasp this questionable structure.

20.3 Regrettably complainants did not have the luxury of any due diligence reports or appropriate advice before they entered into these transactions. Instead it was a rushed process that had a so-called limited offer period of less than a month. They were encouraged to act quickly given the promised imminent listing. In the ordinary course of business one would not expect a lay person to carry out due diligence, one would expect them to merely rely upon the advice of a licensed financial service provider, which the Complainants did in this case.

20.4 Not surprisingly they were later approached to purchase more shares at the same "good price" given that they were existing shareholders.

20.5 The requirement that complainants be able to make an informed decision must be interpreted to include an understanding of the financial merits of the investment itself.

20.6 Respondent clearly either did not possess the necessary skill and as such failed to exercise the required due diligence to ensure that he actually understood what he was dealing with, or if he did have the skill, then he acted negligently in advising the Complainant to invest in GAREK.

20.7 A far more likely scenario though is that respondent intentionally misled complainants into believing that they were investing in a "sure thing".

Ipso facto there was no way in which complainants could possibly have been provided with the appropriate information to enable them to make an informed decision.

[21] Whether or not the advice fee was properly disclosed to complainants

Section 3 (1) (a) (vii) of the Code requires that:

21.1 all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to the product supplier or provider be reflected in specific monetary terms".

21.2 Quite simply if a provider receives any form of commission from whatever source, in respect of the sale of a product this must be disclosed. Respondent did not provide this information to complainants as required by the Code. Pertinently when requested to do so by this Office, this is what respondent's attorney states:

21.3 "Each applicant/complainant received **full value** (respondents emphasis) of their respective application in shares; No deductions were made whatsoever and Commission was paid by IHL (owner of the shares) in a private agreement between the Client (respondents attorney referring to his client, the respondent) and IHL." .This is a typically evasive response.

21.4 Respondent in failing to disclose this commission has clearly violated the FAIS Act.

[22] Section 8(1)(a): Whether a needs analysis was conducted to ascertain whether the investment was appropriate to complainants' circumstances

22.1 Section 8 (1) (a) of the Code requires that a provider must: "take reasonable steps to seek from the client appropriate and available information regarding the client's financial situation, financial product experience and objectives"

Paragraph (c) of the same section goes on to require that the provider must after conducting an analysis of the information provided by the client: "identify the financial product or products that will be appropriate to the client's risk profile and financial needs"

22.2 Complainants contend that no such needs analysis or risk profile was ever conducted; a statement that was neither disputed by respondent nor even remotely supported by relevant documentation. On respondent's own version the shares were sold on the basis of a "typical presentation" and no account was taken of the suitability or otherwise of this product to complainant's needs.

22.3 Unlisted shares are at the best of times a high risk investment, suitable only to seasoned investors with a full appreciation of the facts.

[23] Whether respondent exercised the necessary skill care and diligence to ensure the soundness of the investment itself

23.1 The general duty of a provider is summed up in section 2 of the Code which requires that:

23.2 "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" This is the very antithesis of the manner in which respondent has conducted himself. I am convinced that respondent failed to exercise the necessary due skill care or diligence. The Promised listing by RSI, MATRIC and GAREK failed to materialise.

23.3 Upon enquiring with the JSE, as to the listing position of GAREK, Mr Gary Clarke the JSE company secretary confirmed in July 2008 that "No documentation was, or has ever been submitted".

23.4 One of the first and most basic checks to ascertain the financial soundness of a company is, of course, the financial statements. The

fact that financial statements are outstanding, as is evident in this case is the first sign that all is not well with the entity concerned. Had respondent taken this basic step, he would have been alerted to the fact that this may not be an appropriate investment to recommend to his clients.

23.5 This is such a glaring omission that either respondent failed to check on this or being aware that these important documents had not been completed choose to ignore this and continued to mislead complainants and solicit funds.

23.6 Had he in fact assured himself of all the facts as he contends in his letter there is no basis on which he could have made the statement that:

The company "have (sic) achieved outstanding results". Quite simply this is an untruth. It is inconceivable that the continued delays in listing and complex share transactions without any legal or substantive commercial basis, particularly considering that the companies themselves had no assets, would not have alerted respondent.

23.7 Respondent's role as part of the "marketing team of GAREK" and the lucrative commissions paid by GAREK no doubt clouded his judgment.

23.8 In fact so much so, that I am inescapably drawn to the conclusion that by his actions respondent may have been complicit in a fraud perpetrated against innocent investors.

[24] In the event of any contraventions of the Act, whether such contraventions led to a loss.

24.1 Complainants acted on the advice of respondent. The investment was inappropriate and numerous contraventions of the Code are evident. But for these contraventions and misrepresentations complainants would not have invested in GAREK.

24.2 According to the DTI report, of the R74, 046,875.99 invested in the companies only R299, 061.89 remained in the bank account. As none of the "funds appear to have been utilised for any acquisition of assets" coupled with the number of shares in existence running into the billions, there can be no doubt that complainants shares are worthless.

24.3 I have no doubt that the many violations of the Code were deliberate, and as such in inducing complainants to invest with GAREK he knowingly placed them at risk from inception.

24.4 In the circumstances, I deem it appropriate not only that complainants be placed back in the position which they were prior to the investment but that interest thereon be awarded from the 3rd October 2005, the date of the last investment.

[25] The Respondent's conduct during and after investments were made by the Complainant is worth considering. As I have already pointed out Respondent persuaded the Complaint and other investors to invest in these shares immediately in order to benefit from the lucrative consequences of an imminent listing of the shares. The investment was also described as a limited offer that was only available for a limited time to a limited number of investors.

[26] When questions were being asked about the investment, in particular after each failure to list, Respondent informed his clients that he personally investigated allegations against the company and that they were untrue. At the same time Respondent painted an extremely rosy picture of the companies and resorted to name dropping in order to make his explanation sound more credible. The Respondent mentioned the name of the former President of Botswana and the former President of Liberia. Respondent mentioned investing opportunities in countries such as Botswana, Liberia and New Zealand.

[27] I am in possession of correspondence from the Respondent to his clients wherein he mentions these various personalities and countries. At all material times Respondent conveyed to the investors that what he was telling them was true as he had personally verified the information. The Respondent in this process continued to encourage his clients to invest more money in the shares that he was marketing.

[28] Subsequent investigations proved that all of the Respondent`s promises of the performance of these companies did not materialise. In fact the Respondent recklessly and without concern for his clients, continued to sell investments in the GAREK schemes. On the Respondent's own version he was a member of the GAREK marketing team.

H. FINDINGS

1. For reasons set out in this determination and in the determination of A.J. HARE and ANOTHER vs ANDRE VAN DER MERWE case No. FOC 2759/06-07 KZN (1) A, I find that the Respondent is in breach of the FAIS Act and Code of Conduct.

2. As a result of such a breach the Complainants were induced into investing in a financial product that was high risk and entirely unsuitable for the Complainants' profile.

3. I also find that it was the result of such breach that Complaints lost their investments, which now effectively reside in a block of worthless shares.

4. In the result I find that Respondent must be held liable for the Complainants' loss.

I. QUANTUM

1. The amount of the investment was R48.000, 00.
2. Since making the investment Complainants received absolutely no return from the investment and even lost the capital.

3. It would be appropriate to make an order that in addition to re-paying the capital, Respondent must be ordered to pay interest on the capital from 1st November 2005 to date of payment.

J. ORDER

I make the following order:

1. The complaint is upheld.

1.1 The Respondent is ordered to pay the 1st Complainant an amount of R42,000.00

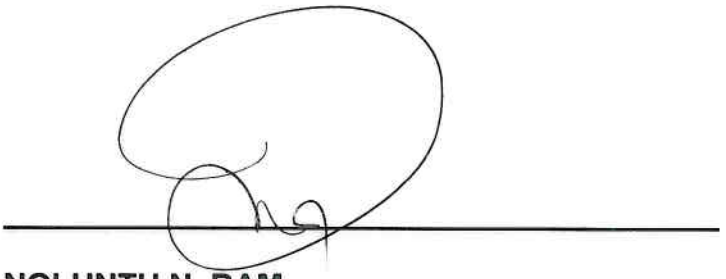
1.2 Interest on the amount of R42.000.00 at the rate of 15,5% from the 1st November 2005 to date of payment .

1.3 The Respondent is further ordered to pay the 2nd Complainant an amount of R6, 000.00.

1.4 Interest on the amount of R6,000.00 at the rate of 15,5% from the 1st November 2005 to date of payment.

3. The respondent is ordered to pay the case fee of R1, 000.00 within 30 days of date of this determination.

DATED AT PRETORIA ON THIS 4th OF NOVEMBER 2010



NOLUNTU N. BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS