FAISOmbud
Office of the Ombud for Financial Services Providers

OUR REFERENCE: FAIS 07380/12-13/ MP 1

28 February 2018

ATTENTION:

Mr C Barkhuizen (The Key Individual)

Mr F Koch (The Key Individual)

Mr D Kruger

Koch & Kruger Brokers CC

Per email: admin@kochkruger.co.za; Friedel@kochkruger.co.za; carelb@kochkruger.co.za

Dear Mr Barkhuizen and Mr Koch,

Mr George Baben and Mrs Lucille Miriam Baben (complainants) v Koch & Kruger Brokers CC (first respondent) and Mr Deon Kruger (second respondent): Recommendation in terms of Section 27 (5) (C) of the FAIS ACT, (ACT 37 OF 2002)

A. INTRODUCTION

1. On 14 December 2012, complainants Mr George Baben and Mrs Lucille Miriam Baben filed a complaint with this Office against Koch & Kruger Brokers CC and its member and representative Mr Deon Kruger. The complaint arose from two failed investments made by complainants on second respondent's advice into The Villa Retail Park Holdings Limited [1](The Villa Ltd), and Zambezi Retail Park Holdings Limited[2] (Zambezi Retail Ltd) both property syndication schemes promoted by Sharemax Investment (Pty) Ltd (Sharemax).

[1] Registration number 2008/017207/06

[2] Registration number 2006/028220/06

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Delay in finalising this complaint

2. It is necessary to digress a little and explain the delays in finalizing this complaint in view of the Office's mandate to resolve complaints expeditiously. Sometime in September 2011, after the Office issued the *Barnes* determination[3], the respondent in that matter brought an urgent application to set it aside[4]. Before the fate of the application could be known, respondents sought an undertaking from this Office that it would not proceed to determine any other property syndication related complaints involving them.

3. Since no legal basis existed for respondent's demands, the Office continued to determine further property related complaints, to which respondents reacted with an urgent application for an interdict to stop the Office from filing the determinations in court, and issuing further determinations against them. The decision was finally delivered in July 2012 in favour of the Ombud. See in this regard *Deeb Risk v FAIS Ombud & Others*[5].

4. The Office continued to determine complaints involving property syndications after the High Court decision. However, in 2013, following the *Siegrist* and *Bekker* determinations[6] and the relevant appeal, a decision was taken by the Office to halt processing property syndication related complaints. The decision was not taken lightly, but was a precautionary and necessary risk management step, as the Office had, for the first time, sought to hold the directors of property syndication schemes liable for complainants' losses. The said appeal was finally decided in April 2015[7], after which the Office resumed processing complaints involving property syndications with due regard to the decision. As many as 2000 complaints had to be shelved pending the Appeals Board decision.

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3 See E Barnes v D Risk Insurance Consultants FAIS-06793-10/11 GP 1

4 Respondent claimed that section 27 of the FAIS Act was unconstitutional

5 Gauteng High Court Division, case number 50027/2014

6 See in this regard FAIS-00039-11/12 and FAIS-06661-10/11.

7 See in this regard the decision of the Appeals Board date 10 April 2015.

B. THE PARTIES

5. First and second complainants are George Baben Lucille Miriam Baben. They are married to one another and are retired. Their full particulars are on file with this Office.

6. First respondent is Koch & Kruger Brokers CC (1992/007171/23), a close corporation duly incorporated in terms of South African law. First respondent is an authorised financial services provider (FSP) (11085) with its principal place of business noted in the Regulator's records as Suite 305, Medforum Building, Secunda, 2302. The licence has been active since 20 October 2004.

7. Second respondent is Deon Kruger, an adult male representative and member of first respondent. The regulator's records confirm second respondent's address to be the same as that of first respondent. At all times material hereto, second respondent rendered financial services to the complainant. (Note: Mr Deon Kruger is currently only listed as a 50% member of first respondent. He was previously listed as representative of first respondent since the inception of the license on 20 October 2004; he subsequently resigned as a representative effective 1 January 2013.)

8. It appears from the Regulator's records that respondent was <u>not licensed to render financial services</u> in connection with unlisted shares categorised as 1.8 (described in the FAIS Act as Securities and Instruments: Shares), and category 1.10 (described in the FAIS Act as Securities and Instruments: Debentures and Securitised Debt). This means that respondent was never licenced to render financial services with regards to The Villa Ltd and Zambezi Ltd syndications (refer to the attached correspondence).

9. I refer to the respondents collectively as "respondent". Where appropriate, I specify which respondent is being referred to.

C. THE COMPLAINT

10. Respondent had been complainants' sole financial advisor for about 15 years prior to the investments in Sharemax, and complainants claim to have been satisfied with his advice with regards to their retirement and investment planning up to that point, and had trusted him completely.

11. The recommendation relating to the Sharemax investment was made in 2008 at a time when complainants had already retired. After two meetings with respondent where they were advised that they would receive an initial income of 12.5% as opposed to the 6.25% they were earning from their investment with Investec Private Bank (Investec), the decision was made to withdraw funds from their existing Investec investment and transfer an amount of R330 000 into Zambezi Retail Ltd, in the name of second complainant on 1 April 2008.

12. During 2009 respondent had again recommended that complainants invest into a new development, The Villa Ltd, where they would earn an income of 12.5% for the pre-occupation period, which would escalate in the five years after occupation to 15%, 15.6%, 16.22%, 16.86% and 24.02% respectively. Complainants subsequently invested an amount of R450 000 on 29 September 2009 in the name of first complainant. The funds invested were a combination of complainants' savings and inheritance, transferred from Investec.

13. Complainants claim that respondent had assured them that the syndications had been approved by both the Reserve Bank and the Financial Services Board, and that the prospectuses had been approved by the Department of Trade and Industry. Complainants referred the Office to a brochure of the Sharemax Guarantee Plan, which specifically guarantees a monthly income as well as the escalation on that income. The brochure confirms that the capital is guaranteed after 5 years. A copy of this pamphlet has been provided by complainant in the original complaint.

14. Complainants allege they had specifically asked respondent what risks, if any, existed, to which respondent replied that there was no risk attached to the investment as they were investing in physical assets – "bricks and cement"- and that he, the respondent, had even invested his own father's money into Sharemax. With specific reference to the investment into The Villa Ltd, complainants claim that they were never taken through the prospectus, and had never received a copy of the prospectus subsequent to the inception of the investment. They confirm having received an acceptance letter from Sharemax together with Share certificates.

15. Complainants' understanding was that they were investing in shares listed on the stock exchange. They claim that respondent had never corrected their assumptions in this regard, or informed them

that the investments involved unlisted shares and debentures. They also confirm that despite having specifically asked, respondent assured them that no commissions and or administration costs were payable in respect of the investment, and that brokers were paid directly by Sharemax.

16. During May and June 2010 complainants were alerted to newspaper and radio reports with regards to concerns over Sharemax and possible contraventions of the Banks Act. Respondent assured them that there were no problems and that the reports were simply propaganda. When complainants' income for the month of September was not paid, they realised there was a problem and that their capital and income were, in fact, at risk. They filed their complaints against the respondents in December 2012.

17. Having tried to resolve the matter with respondent in accordance with Rule 5(b) of the Rules on Proceedings of this Office (Rules), complainants approached this Office and requested that respondent be ordered to pay their lost capital and take cession of the exchangeable debentures.

D. RESPONDENT'S VERSION

18. On 11 January 2013, the complaint was referred to respondents in terms of Rule 6 (b) of the Rules on Proceedings (the Rules) to resolve it with his client. The complaint was not resolved and the respondents sent their response on 22 January 2013. The response is summarised below:

    18.1 Second respondent confirmed that neither he nor first respondent were licenced in terms of categories 1.8 and 1.10, and claim that the transaction was concluded under the licence of Unlisted Securities South Africa (USSA).

    18.2 In response to the options provided to complainant and whether they had been in a position to make an informed decision, respondent merely refers to a quotation from The Villa Ltd prospectus and claims that complainants had a choice to remain with their current investments with Sanlam Glacier, Momentum Wealth, JSE listed shares or to invest into property syndication schemes with Sharemax. (Note: No documentation has been provided to support why this investment was deemed to have been appropriate to the needs and

circumstances of complainants as required by section 8 (1) (c) of the General Code of Conduct for Authorised Financial Services Providers and Representatives (the Code). Furthermore, the transaction concluded that saw funds redistributed from Investec to Sharemax, was a replacement and no documentation exists to show compliance with section 8(1)(d) of the Code, which requires that a record be kept to demonstrate that the clients were advised as to the consequences and implications of replacing a particular financial product).

18.3 Respondent confirmed complainants' claims with regards to the disclosures made that there were no fees and or commissions payable, by referring to paragraph 15 on page 43 of the prospectus.

18.4 Respondent confirms that no financial needs analysis was conducted to determine the suitability of the investment, as complainants had already retired and the funds were from existing investment which provided a mere 6.5 % return per annum. (Note: The fact that respondent may have viewed this as a single need does not preclude him from having determined whether the investments into Sharemax were appropriate to the needs and circumstances of complainants. Sections 8 (1) (a) and (b) of the Code still apply in that all relevant and available information must be considered in determining the appropriateness of the proposed recommendation.)

18.5 As to whether respondent had established complainants' risk profile, respondent refers to a copy of page 43 of the application form titled ''Sharemax Investments Se Risikoberekening Oor Produkinligting". (Note: This document does not suffice as any attempt at risk profiling or determining complainants' capacity for risk. Furthermore, a copy of the Client Advice Record, does record complainants' risk profile as "Laag/med" or low to medium).

18.6 In response to the due diligence conducted, respondent claimed that he had relied on the contents of the prospectus which had been approved by the Department of Trade and Industry, and the fact that Sharemax had at that time achieved a successful 7 year track record. Respondent was also satisfied that Sharemax was a registered Financial Services

Provider (FSP) with the Financial Services Board. Respondent was satisfied that the risk associated with Sharemax was being managed as follows:

- Sharemax did not own any shares in the buildings;
- information and figures in the prospectus were verified by external auditors;
- the directors of Sharemax were personally responsible for the correctness of the prospectus;
- an independent building manager would be used; and,
- all buildings were comprehensively insured with the required power supply.

18.7 Respondent ended off with a reference to the 311 Scheme of Arrangement and that complainants should be patient until it was finalised.

E. INVESTIGATION

19. In the interests of resolving the complaint this Office sent a notice to the respondent in terms of section 27 (4) of the FAIS Act (the Notice), on 20 May 2016 and 29 January 2018 informing respondent that the complaint had not been resolved and that the Office had intention to investigate the matter. The Notice in terms of section 27 (4) invited the respondents to explain the basis of the recommendations of the Sharemax products. Respondent was further afforded the opportunity to provide proof that he had advised his client of the risk involved in the Sharemax product. A copy of the Notice is annexed to this recommendation.

20. I summarise respondent's response to the Notices in the immediately following paragraphs:

20.1 In reply to how respondent expected income to be paid, other than out of the investor's money, respondent referred this Office to an excerpt from Finweek, the edition of 11 March 2010, and to a response provided by the managing director of Sharemax, Mr Willem Botha.

20.2 Respondent reiterated his stance with regards to the sustained period of success enjoyed by Sharemax over a 7 year period, providing him with the confidence to recommend the product. Respondent believed that a shopping mall was a good, solid commercial property

investment, and listed the following as evidence of the 'suitable' measures undertaken by him to evaluate the investment:

- Sharemax had been introduced to him at a meeting of the Financial Intermediaries Association ('FIA') as a well rated investment;
- Sharemax was licenced by the FSB;
- every prospectus was approved by the Department of Trade and Industry;
- all prospectuses were registered with CIPRO (Now CIPC) in terms of Section 146 of the Companies Act No 61 of 1973;
- all monies were paid into a trust account of Weavind & Weavind Attorneys, and respondent trusted that they would have treated the funds in accordance with their fiduciary obligations;
- claimed that it satisfied the requirements of Regulation 28. (Note: Regulation 28 is issued in terms of the Pension Fund Act, and limits the extent to which retirement funds may invest in particular assets or in particular asset classes. The main purpose is to protect the members' retirement provision from the effects of poorly diversified investment portfolios. How an investment into Sharemax satisfied this requirement is not clear); and,
- his onsite visits to the construction site provided evidence of the progress being made.

20.3 Respondent points to the completed Client Advice Record as confirmation that complainants had been made aware that there could be shortcomings in the advice provided as a result of no needs analysis having been conducted.

20.4 Respondent reiterates that the reasons for recommending the Sharemax investments were that complainant's exposure to cash was very high and that they were earning low returns of around 6%.

20.5 In conflict with his response of January 2013, where respondent declared his satisfaction at the manner in which the risks presented by Sharemax were being managed, respondent claims

that all the risks associated with the investments were disclosed to complainants. In support, respondent refers to the USSA Disclosure Document, which was signed by complainant, and where he claims complainant would have been alerted to the risks involved under the heading 'General Investment Risk and Tax Consideration'. Respondent is of the view that by signing this document complainants confirmed their understanding of the risks involved in the Sharemax investments.

F. ANALYSIS AND RECOMMENDATION

21. Complainants, a retired couple, had been provided with a recommendation by respondent with whom they had a long relationship as a trusted advisor. In other words, the complainants have established the existence of a contract of rendering financial services. In rendering financial services respondent had to align his conduct with the General Code of Conduct (the Code). Based on his advice, complainants invested their retirement capital.

22. Respondent, on the other hand, has not denied the existence of the contract and the fact that it was his advice that led to the Sharemax investments. He has further proffered the basis of recommending Sharemax to the complainants which includes, *inter alia*, the fact that investors' capital was protected under Sharemax and that the company had an impeccable track record. There is nowhere in the documents submitted to this Office where he explained the true risk to his clients, not in his section 3 (2) record, nor his record of advice in terms of section 9.

23. In the paragraphs that follow I demonstrate that the risk inherent in The Villa Ltd and Zambezi Retail Ltd were extraordinary and that respondent's statements that the complainants' investments would be safe was a material flaw in his advice. In that case, respondent failed to advise his clients appropriately as required by the Code.

24. On their own, the violations of the law as conveyed by the directors (in this respect their intention to act against Notice 459), meant that the investors were without any protection. I point out that the prospectuses confirmed that investors' funds had already been disbursed to several entities including the unexplained and gratuitous disbursement to entities like Brandberg Konsultante (Pty) Ltd (the

directors of which are not revealed anywhere, not in the Sale of Business Agreement, (SBA) and not in the prospectuses). The provisions of the prospectus and the Sale of Business Agreement (SBA), more fully dealt with hereunder, should have raised questions of investor protection on the part of respondent and should have been communicated to his clients. None of that appears in any of the respondent's responses to this Office.

The Villa and Zambezi Ltd Prospectuses[8]

Violations of Notice 459

25. From the onset, paragraphs 4.3 of The Villa Ltd/Zambezi Ltd prospectuses made it plain that the directors of Sharemax, who also were directors of all the other Sharemax companies involved in the prospectus, were not going to comply with Notice 459.

26. In this regard, the prospectuses made provision for disbursing investors' funds to pay for the entire shareholding of The Villa Retail Shopping Investments (Pty) Ltd (The Villa (Pty) Ltd and Zambezi Retail Park Holdings Ltd) from Sharemax. There is no detail of the concomitant benefit for investors and neither is the full purchase price noted anywhere in the prospectuses.

27. The prospectuses disclosed (in paragraph 4,3) that investor funds will be lent to the developer, Capicol 1, (in respect of the Villa and Capicol in respect of Zambezi) via the subsidiaries, namely, The Villa (Pty) Ltd and Zambezi (Pty) Ltd, well before registration of transfer of the immovable property into the name of the syndication vehicle.

28. The movement of the funds <u>was illegal and a direct affront to Notice 459</u> (see Annexure A3, which contains a summary of section 2 (b) of the Notice) which is aimed at investor protection. The respondent, even in his answers to this office, says nothing about the infringement of the Notice.

Conflicting provisions of the prospectuses

29. I refer also to the conflicting provisions of the prospectuses; in this regard paragraphs 19.10 and 4.3(Paragraph 5.11.2 of Zambezi Retail Lt). First, paragraph 19.10 states that funds collected from

[8] Note that the two prospectuses were symmetrical in so far as the terms and conditions are concerned, save for the amounts and the identity of the parties.

investors would remain in the trust account in terms of section 78 2 (A) of the Attorneys Act. Investors' returns would be paid from the interest generated by the trust account. Paragraph 4.3 (Paragraph 5.11.2 of Zambezi Retail Lt) however, conveys that the funds would not stay long enough in the trust account with 10% being released after the cooling off period of seven days to pay commissions. The same statement is made in the application forms that clients had to complete in applying for the investment. This payment too was in violation of the Notice.

30. There are two problems with the proposition that the investor's return would be paid from the interest generated by the trust account. They are:

30.1 At the time, the interest payable by the bank on investments made in line with section 78 (2A) did not go beyond one digit. In fact, this office obtained information that the interest payable at the time was between 5.9% - 7%[9] for The Villa Ltd and 7.55% and 9.6%[10] for Zambezi Retail Ltd.

30.2 The prospectus is unequivocal that the funds would not stay long enough in the trust account to have accumulated any significant interest as they were withdrawn, firstly after ten days to fund commissions and subsequently, to fund the acquisition of the immovable property.

30.3 The prospectus states that the interest payable on the claim component of the unit will be determined from time to time by the directors[11].

Sale of Business Agreement (SBA)

31. The prospectuses issued by The Villa Ltd and Zambezi Retail Ltd refer to a Sale of Business Agreement (SBA) concluded between both The Villa Ltd and Zambezi Retail Ltd and the developer Capicol, while The Villa Ltd refers to an SBA between Capicol 1 and The Villa Ltd[12] (summary attached, annexure

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9 http://www.fidfund.co.za/banking-options/credit-interest-rate-history/

10 http://www.fidfund.co.za/banking-options/credit-interest-rate-history/

11 See paragraph 9.3.1 of The Villa Ltd

12 Note that the SBA in respect of both entities, Zambezi (Pty) Ltd and The Villa (Pty) Ltd carried essentially the same terms but differed in terms of amounts. The developer however **was Capicol 1 in respect of The Villa Ltd and Capicol in respect of Zambezi Retail Ltd** Both the borrowers and lenders were represented by the same persons

A4). Two types of payments are dealt with in the SBA. They are: payments to the developer, and payments to an agent Brandberg Konsultante (PTY) Ltd. (Brandberg)

Payments to Capicol (Capicol 1 in the case on The Villa Ltd)

32. According to the agreement, investors' funds were moved from The Villa Ltd and Zambezi Ltd to The Villa (Pty) Ltd and Zambezi (PTY) Ltd respectively, and advanced to the developer of the shopping mall. The payments were made well before transfer of the immovable property and thus were in violation of the provisions of Notice 459. At the time of releasing the prospectus of The Villa Ltd and Zambezi Retail Ltd, Sharemax had already advanced substantial amounts to the developer in line with this agreement (see paragraph 4.23 of The Villa prospectus). A brief analysis of the business agreement reveals:

32.1 No security existed for the loan in order to protect investors; this is clear from reading the prospectus and the agreement.

32.2 The prospectus states that the asset was acquired as a going concern, even though the building was still in its early stages of development.

32.3 At the time the funds were advanced to the developer, the immovable property was still registered in the name of the developer. Although the prospectus mentioned the intention to register a mortgage loan, there is no evidence that this was done.

32.4 The developer paid interest of 14%, from which Sharemax took 2% and paid the remaining 12% to the investors of The Villa Ltd and Zambezi Retail Ltd.

32.5 The agreement is devoid of detail relating to the assessment of the developer's credit worthiness.

32.6 No detail is provided to demonstrate that the directors of The Villa Ltd and Zambezi Retail Ltd had any concerns about the Notice 459 violations.

32.7 There are no details regarding the economic activity that generated the 14% return paid by the developer.

32.8 The conclusion is ineluctable that the interest paid to investors was from their own capital.

33. There was also no evidence that the developer had independent funds from which it was paying interest; besides which, if the developer had the financial standing to borrow such large sums of money at 14% per annum, it would have gone to mainstream commercial sources.

Payments to Brandberg

34. An entity known as Brandberg was paid commission in advance. The commission is said to have been calculated at 3% of the purchase price according to the SBA. There are no details of the benefit to investors. No valid business case is made as to why commission had to be advanced in light of the risk to investors. There was also no security provided against this advance to protect the interests of the investors.

35. These are serious reed flags, as comprehensively noted in the annexures that are apparent from the start, and should have led a reasonable person, particularly one in the position of respondents, to foresee the harm and have taken steps to mitigate it accordingly. It is plain from the response of the respondents that the high risk involved in this investment was ignored or respondents simply had no resources to identify it.

The section 311 Scheme of Arrangements

36. Respondents referred to the section 311 Scheme of Arrangements where they state that complainant had been furnished with debenture certificates by Nova coupled with a date for payment of her historical capital. Respondent however does not point to any legally enforceable instrument that guarantees complainant's capital. There can be no doubt that complainant has lost her capital. In any event, the Board in the *Siegriest* and *Bekker* appeals (FAIS 00039/11-12/GP1 and FAIS 06661/10-11/WC 1) ruled that the investors' claims had not been compromised.

Respondent acted as representatives of USSA

37. The reply provided by respondent contained references to having been a representative for USSA, intimating that respondent was acting in his capacity as an authorised representative of USSA in rendering financial services to complainant. This does not assist respondent in any manner. See in this regard the decision of the Appeals Board in the matter of *Black v Moore*[13]. The complaint is thus directed at the correct person, the respondents. Besides, the respondents are fully aware that USSA was finally liquidated in 2012.

38. The question of whether a representative [and not the provider] should be held liable in this context was again dealt with by the Board of Appeal in the second *Black v Moore* Appeal[14]. Appellants, relying on Board Notice 95 of 2003, argued that the responsibility lay not with the appellant as a representative, but rested solely with the financial services provider. In dismissing the argument, the Board concluded:

> '*the effect of the Exemption Notice thus allows a representative (due to his minimum experience) to market products subject to a supervisor's guidance. Apart from this exemption, he has to comply with the Code of Conduct*.'

Section 13(2) (b) of the Act states:

> *"An authorised financial services provider must 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*" (underline supplied).

G. FINDINGS

39. On the basis of the reasoning set out in this recommendation, the respondent failed in his duty to advise complainants about the risk in the investment, as well as his duties in terms of the Code.

[13] In the Appeal Board of the Financial Services Board, John Alexander Moore and Johnsure Investments CC / Gerald Edward Black, 15 January 2013 at para 59 – 61 and 91.
[14] In the Appeal Board of the Financial Services Board, John Alexander Moore and Johnsure Investments CC / Gerald Edward Black - Decision handed down on 12 November 2014, paragraphs 18 to 23

40. I add that the prospectus made it plain that the investment was far too risky, guaranteeing neither the capital nor the income. Again, respondent had no basis to invest complainants' funds into this product. His recommendation was either a result of incompetence or lack of skill, in which case respondent was negligent (*Durr v ABSA*). Either way, respondent violated his duty to act with skill, care and diligence as provided for in section 2 of the Code.

41. As a consequence of the breach of the Code, the respondent committed a breach of his agreement with complainants in that he failed to provide suitable advice. The respondent must have known that complainants would rely on his advice as a professional financial services provider in effecting the investment in Sharemax. Complainants also trusted respondent.

42. The representations made to the complainants were incorrect and in violation of section 3 (1) (a) (vii) of the Code. Complainants were simply not advised that the product was high risk and that they could lose their capital. There is no doubt that had the complainant been made aware of the risks involved in these investments, they would not have invested in the Villa Ltd scheme.

H. CAUSATION

43. The question that must be answered is whether respondent's materially flawed advice caused complainants' loss. In the first instance, had respondent complied with the Code and sought investments that were in line with complainant's circumstances, there would have been no investments in Sharemax. In the event the complainants had still insisted in the investments, and assuming they had been made aware of the obvious dangers, respondent was still obliged to comply with record 8 (4) (b) of the Code. Instead respondent referred this Office to a Sharemax Risk Assessment form, which form contains no useful information in so far as the risk that was contained in this product. In all, respondent failed his clients woefully in terms of his duty to provide appropriate advice. Second, respondent must have known that his clients were going to rely on his recommendations in making the investment. It stands to reason that the respondents caused the

complainant's loss, which loss must be seen as the type that naturally flows[15] from the respondents' breach of contract.

I. RECOMMENDATION

44. The FAIS Ombud recommends that respondents pay complainants losses as set out below:

44.1 R330 000 to the first complainant; and

44.2 R450 000 to the second complainant.

45. The respondents are invited to revert to this Office within TEN (10) working days with their response to this recommendation. Failure to respond with cogent reasons will result in a final determination being made in terms of Section 28 (1) of the FAIS Act[16].

Yours sincerely

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Marc Alves

Team Resolution Manager

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15 *Administrator, Natal v Edouard* 1990 (3)SA 581 (A); *Thoroughbred Breeders' Association of SA v Price Waterhouse* [2001] 4 All SA 161 (A), 2001 (4) SA 551 (SCA), paragraphs 46-49; Compare in this regard, *First National Bank v Duvenhage* [2006] SCA 47 (RSA).

16 "*The Ombud must in any case where a matter has not been settled or a recommendation referred to in section 27(5)(c) has not been accepted by all parties concerned, make a final determination, which may include-*
(a) the dismissal of the complaint; or
(b) the upholding of the complaint, wholly or partially…."