

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

Case Number: FSOS 00184/11-12/KZN (3)

In the matter between:-

MELVIN SHANE CRESSWELL

Complainant

and

PIETER DE WET t/a MODEL INSURANCE COMPANY

Respondent

**DETERMINATION IN TERMS OF SECTION 14(3) OF THE FINANCIAL SERVICES
OMBUD SCHEMES ACT NO. 37 OF 2004 ('FSOS Act'), READ WITH SECTION
28(1) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO.
37 OF 2002 ('FAIS ACT')**

A. THE PARTIES

[1] The complainant is Melvin Cresswell ("Cresswell"), an adult male of Sydenham, Durban, KwaZulu Natal.

[2] The respondent is Pieter De Wet, a sole proprietor who conducted short-term insurance business under the name and style of Model Insurance Company ('Model') at 14 Link Hills, Kloof, Durban.

B. BACKGROUND

[3] The determination is made in terms of the FSOS Act¹ read with section 28(1) of the FAIS Act. The complainant in this matter is one of a number of policy holders who lodged complaints with this Office following the respondent's failure to honour their claims.

[4] The respondent held himself out to be an authorised short-term insurer and collected premiums from members of the public. It emerged from enquiries with the Registrar that the respondent had never been licensed in terms of Section 7(1) of the FAIS Act² to render financial services to the public. He had also never been licensed to conduct business as a short-term insurer as required by Section 7 of the Short-term Insurance Act ('SITA'). In terms of Section 7 of the SITA:

- '(1) No person shall carry on any kind of short-term insurance business unless that person –
- (a) is registered or deemed to be registered as a short-term insurer, and is authorised to carry on the kind of short-term insurance business concerned under this Act; or
 - (b) is authorised under section 56 to do so, and carries on that business in accordance with this Act.'

[5] During February 2012, the Registrar issued a warning, requesting the public not to conduct business with Model. Despite this warning, the respondent continued to conduct unregistered insurance business. The Registrar reported the

¹ Financial Services Ombud Schemes Act 37 of 2004.

² Financial Advisory and Intermediary Services Act 37 of 2002.

respondent to the Commercial Crime Branch of the South African Police Service and secured an interim interdict in the Kwazulu-Natal High Court to stop the respondent from carrying out short-term insurance business.

C. JURISDICTION

[6] The Respondent is not a member of a recognised scheme as contemplated in section 10 and 11 of the FSOS Act.

[7] Accordingly and in terms of Section 13 of the FSOS Act, the FAIS Ombud, in its capacity as Statutory Ombud assumes jurisdiction over the Respondent in respect of this complaint.

[8] The FAIS Ombud therefore deals with this complaint in terms of Section 14 of the FSOS Act.

D. COMPLAINT

[9] The following are the material aspects of the complainant's complaint:

9.1 On 22 July 2011, the Complainant entered into a comprehensive short-term insurance agreement with the respondent. The respondent furnished a facility (policy) number 555104 together with a confirmation of insurance document to the complainant.³ The policy incepted on 22 July 2011.

³ Proof provided.

- 9.2 On 9 August 2011, the Complainant's vehicle was hijacked. He duly reported the matter to the South African Police Service ('SAPS') and instituted a claim with the respondent.
- 9.3 By 1 September 2011, the claim was still not settled prompting the complainant to question the respondent about the vehicle instalment he paid to the bank and an insurance premium debited from his bank account. The respondent refunded R2 575 representing the vehicle instalment, but failed to pay the insurance claim.
- 9.4 The complainant subsequently made a number enquires about the status of his claim. The respondent's initial response⁴ was that he had completed the assessment of the police reports and would attempt to have the figures ready by the end of that week. This was followed up by further empty promises that the claim would be finalised.
- 9.5 Aggrieved by the respondent's continued failure to honour his claim, the complainant lodged a complaint with the Ombudsman for Short-Term Insurance ('OSTI') who in turn referred the complaint to this Office.

E. RELIEF SOUGHT

- [10] The complainant seeks an order compelling the respondent to indemnify him for the loss of his vehicle.

⁴ E-mails sent to the Complainant dated 12, 15 and 16 September 2011.

F. RESPONDENT'S VERSION

[11] The complaint was sent to the respondent requesting him to resolve it with the complainant, alternatively to furnish this Office with a detailed response. The respondent failed to address this Office on the merits of the complaint. Subsequent thereto, the complaint was formally accepted for investigation in terms of Section 27(4) of the FAIS Act and the respondent was again invited to file a response to the complaint. Although the respondent for a second time failed to address the Office on the merits of the complaint, it is worth quoting two e-mails he sent to this Office.

11.1 In his first e-mail to this Office, the respondent stated:

'I don't know why all of this is happening and why you are wanting to open a case against me, I have told you that we are busy with MR CRESSWELLS claim and only found out the other day that the vehicle id written off, I am now leasing with he's bank to settle this matter and await an email from the bank of deregistration and a settlement figure so we can settle the vehicle. please do not damage our company further as it has been damaged very much for nothing as it is.'

11.2 In response to the Section 27(4) notice the respondent stated:

'I have received the mail... and if I am currently unemployed and unable to pay what then'⁵

'i have on numerous cations tried to get silence for two years and have leased with the registrar at the FSB to find a way forward but was told

⁵ E-mail dated 20 August 2014. Errors not omitted.

that i would need 10 million rand in cash for that or hand over the clients to a registered company which i did hand over to Sapcor as i was told , we did pay claims until the FSB warned the public about model insurance and so we started having a lot of cancellations and was unable to pay claims in the last period so at the moment i would like to settle these amounts but can't due to unemployment and would like to make an offer once I have a job⁶

- [12] Given the admissions made by the respondent in the two e-mails, it is no surprise that he did not respond to the merits of the complaint. Quite simply, the respondent has no defence against the allegations made against him. Therefore, the complaint must succeed.

G. FINDINGS

- [13] From the undisputed facts before this Office, it can be concluded that:

- 13.1 The respondent misrepresented to the public that he was an authorised short-term insurer and financial services provider;
- 13.2 The respondent collected premiums from members of the public but had no financial means to honour claims as they arose;
- 13.3 Although the respondent was not a registered short-term insurer, he entered into a binding short-term insurance agreement with the complainant;.

⁶ E-mail dated 21 August 2014. Errors not omitted.

13.4 In terms of the short-term insurance agreement the respondent agreed to indemnify the complainant for the full market value of his vehicle at a monthly premium of R700.73;

13.5 The respondent was at risk and liable to pay the complainant in terms of the contract of insurance.

H. QUANTUM

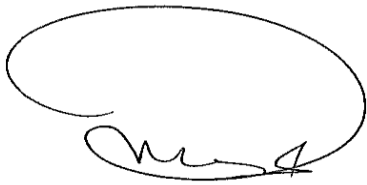
[14] The complainant lodged a claim in the amount of R180 000. According to TransUnion's Auto Dealers' Guide the replacement value of the vehicle at the time of loss was R164 300. The respondent paid an amount of R2 575 towards the claim. I therefore intend to make an order in the amount of R164 300 less R2 575 less excess of R3 250.

I. ORDER

[15] In the premises the following order is made:

1. The complaint is upheld;
2. Respondent is hereby ordered to pay to the Complainant the amount of R158 475;
3. Interest at a rate of 9% per annum, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 16th DAY OF SEPTEMBER 2014.

A handwritten signature in black ink, consisting of a large, loopy initial 'N' followed by 'BAM'. The signature is enclosed within a hand-drawn oval shape.

NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS