

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NO: FAIS 00083/12-13 EC 1

In the matter between:

ANDREW PARKER **1st Complainant**

DEIDRE PARKER **2nd Complainant**

and

CHARLIE SHARE **1st Respondent**

DYNAMIC SHARE'S CC **2nd Respondent**

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT 37 OF 2002 ('FAIS Act')**

A. THE PARTIES

[1] The 1st complainant is Mr Andrew Parker, an adult male whose full contact details are on file with the office.

[2] The 2nd complainant is Mrs Deidre Parker, an adult female married to the 1st complainant in terms of an antenuptial contract.

[3] The 1st respondent is Mr Charlie Share ('Share') a member and representative

of 2nd respondent, residing at 31 Langenhoven Street, Vanes Estate, Uitenhage. Share at all material times rendered financial advice to complainants.

- [4] The 2nd respondent and the entity into which complainants' funds were deposited is Dynamic Share's CC, a close corporation with its registered address being 37A Main Road, Wellington, 7655.

B. COMPLAINTS VERSION

- [5] In the beginning of 2009 and on the referral of an ex-colleague, the 1st complainant was contacted by Share and an after-hours meeting arranged at the complainants' residence.
- [6] At the meeting Share brought maps and information on, as the complainant puts it, 'a certain platinum mine with the name of Platfields.' Share explained that he was a broker for Platfields and that they were just in time as the shares would be listing on the Johannesburg Stock Exchange 'JSE' in three months' time, at which point the shares would climb dramatically from the purchase price of R3 to between R12 and R14 a share.
- [7] Having never invested in shares before, the complainants requested a few days to think it over. However, the very next day he (1st complainant) was again contacted by Share who requested a follow up visit in order to present additional literature.
- [8] 1st Complainant in turn contacted his ex-colleague who informed him that he knew Share very well and that Share had done well for him. It later transpired that the ex-colleague was in fact Share's brother in law.

- [9] The subsequent meeting was then agreed to, at which point complainants stated that they felt comfortable investing R100 000.00. Share in turn advised that this was a once in a lifetime opportunity to buy shares in a company about to list and had himself bought shares.
- [10] Share once again stated that he was a broker for Platfields; to this end when questioned by the complainants as to commission, Share reportedly advised that he would be remunerated directly by Platfields.
- [11] Their concerns having been assuaged, complainants invested R600 000.00 being the proceeds of an inheritance from 1st complainants late mother, monies which they intended to be for their children's future.
- [12] As instructed by Share a cheque was made out in the name of the 2nd respondent on the 7th March 2009 and then personally collected by Share at complainants' residence. Thereafter and at a cost of R3 per share, share certificates dated 11th March 2009, in the amounts of 135 000 (R405 000) and 65 000 (R195 000) shares, were issued in the names of 1st and 2nd complainant respectively.
- [13] The promised imminent listing never materialised¹ and upon contacting Share, complainants were subjected to one excuse after another.
- [14] Complainants then contacted Platfields directly whereupon they were informed both, that Share was never a broker for Platfields and that the shares for which they had paid R3 each were not worth that.
- [15] It is telling that shortly after complainants purchased the shares, Platfields issued

¹ Platfields listed in late 2010

a media release essentially warning against offers for its shares by individuals, financial brokers or advisers.

[16] Complainants then arranged a meeting with Share at which point and after their threatening to take the matter further Share stated that he was very sorry and that he would sort it out.

[17] According to 1st complainant, in December 2011 Share left a sealed envelope at his work, containing a share certificate dated 04/11/2011 in his name for 100 000 shares. Similarly but later in 2012 another share certificate dated 03/02/2012 and also for 100 000 shares was delivered. According to complainants the value of these 200 000 shares at a share price of 0.04 cents amounted to R8 000.00.

[18] Complainants conclude by stating that had they been given the correct information about Platfields' they would not have invested R600 000.00. Accordingly they would like to recoup their investment along with the lost interest.

C. INVESTIGATION AND RESPONDENTS' REPLY THERETO

[19] The complaint was submitted to both respondents, to which a reply thereto was received from a firm of attorneys representing Share. In a nutshell Share responded as follows:

- 19.1. The shares were in his, (Share's) personal name as part of his private stock which he sold on the basis of willing buyer and seller, hence Share was not registered as a financial services provider or representative;
- 19.2. At the November 2011 meeting between the parties, the complainants agreed to accept 200 000 free shares as a resolution to the matter;

- 19.3. That Share in any way influenced the complainants decision to purchase the shares is denied, and it is specifically denied that the complainants were informed that the shares were worth between R12,00 and R14,00 rand;
- 19.4. The basis of the complaint is investment performance and Share cannot be held responsible for the fact that the share price had depreciated; complainants had after all made the decision to purchase the shares after having done their research;
- 19.5. Accordingly the FAIS Ombud does not have jurisdiction.

[20] Thereafter the Office commenced an investigation in terms of section 27(4) of the FAIS Act. As might be expected given the name of the entity into which complainants' funds were deposited namely, Dynamic Share's CC, information on the 2nd respondent was obtained from the Companies and Intellectual Property Commission.

[21] As contained in the CIPC report the 'Description of Principal Business' is listed as 'TRADING IN SHARES, MANUFACTURING OF BOTTLED WATER AND RELATED ACTIVITIES'

[22] Appropriately and as one would expect the business name itself aligns directly with one of its principal business activities namely, the 'TRADING IN SHARES.'

[23] This is significant on its own account, then to this, one adds the fact that complainants' cheque was made out to and deposited in the name of Dynamic Share's.

[24] Quite simply had the shares been Share's private stock as contended, then the

funds should have been transferred into his personal account from the onset.

[25] It is little wonder that Share's legal representative saw fit not to make any mention of these three key facts in the response referred to in paragraph 19.

[26] However given such a glaring anomaly; and whilst making specific reference to the description of the principal business and the payment which went into the bank account of Dynamic Share, additional correspondence was directed to the respondents on the 11th March 2014. This both questioned the submission that the transaction was on a private basis and as might be expected, requested copies of Dynamic Share's bank statements.

[27] Additionally the Office requested a record of all verbal and written communications relating to the financial service rendered to the complainants, as well as proof of compliance with various sections of the FAIS Act and General Code.

[28] To date said information has not been forthcoming.

D. DETERMINATION

[29] It is revealing that and despite being afforded ample opportunity Share is unwilling or unable to challenge any of the key facts as put to him. The failure to provide bank statements challenges the credibility of his version.

[30] Thus the objective facts as they stand confirm the fact Share was involved in the business of selling shares through his business Dynamic Share's CC. In so doing there is no question that he would have had to recommend and promote such shares, an activity in contravention of the FAIS Act given that he was not so

licensed.

[31] One then also has the version of the complainants that they purchased the shares on the advice and recommendation of Share. Over and above the complainants' statement itself, this version is also supported by the surrounding evidence.

[32] Firstly and as part of its investigation this Office received a statement from a Mr Kitching who alleged that he had also been sold Platfields shares by Share; the marketing and manner whereof as contained in his statement, essentially matches that of the complainants' version.

[33] Secondly and indicative that its shares were being improperly promoted by various individuals Platfields' itself felt sufficiently moved so as to issue a media release on the 7th April 2009. I quote therefrom as follows:

'With regard to offers of Platfields shares made from time to time by various individuals, financial brokers or advisors, the company advises that it neither endorses nor approves of such offers, their content, supporting documentation and the marketing materials associated with such offers, the basis of such offers or any of the terms thereof.

The Board has previously announced that Platfields is in the process of applying to the JSE Limited for the listing of Platfields' ordinary shares. The listing process is ongoing and is being pursued by Platfields with determination, but it remains subject to regulatory approval and to market conditions prevailing at or around the time such regulatory approvals have been obtained. Platfields shares are not available to the public for trade or exchange at this stage.'

- [34] Thirdly, the marketing of these shares bears all the hallmarks of a scheme all too familiar to this Office, namely, pressure selling and glossy misleading brochures and presentations. The latter usually involves the sale of unlisted shares at a price well beyond their true value on the allegation that they will sharply rise in value upon the imminent listing.
- [35] A further aspect that casts doubt on the veracity of respondents' version is that there are almost no records², not even so much as a receipt or basic purchase and sale agreement involving what is after all a business transaction involving a relatively large amount..
- [36] This is aside from the fact that in terms of section 3(2)(a) (i) of the General Code 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 as are contemplated in the Act.
- [37] Given this lack of documentation, respondents then have the temerity to expect this Office to believe its version that the matter was resolved at the meeting in December 2011 on the understanding that respondents would transfer 200 000 supposedly free shares.
- [38] At a price of 0.04 cents each, these 'free shares' were worth some R8 000.00. Given that the complainants had invested R600 000.00 it is inconceivable that they would have settled for a mere pittance.
- [39] Additionally nothing supports respondents' bald allegation that complainants

² All we have are the share certificates provided by the complainants

made the decision to purchase the shares after they had done research thereon.

[40] Instead and as stated by complainants had they been aware of the true value of the shares they would never have invested. In this regard there can be no question that the information that induced them to purchase did indeed come from Share. On the contrary had they conducted even the most basic independent research they would have realised that Platfields was a speculative investment and an entity that had not earned so much as single cent in profit; further that the shares as they later learnt were not worth R3 each.

[41] Under 'Corporate profile' within the Platfields Limited website I note the following; 'Platfields Limited (Platfields) was founded in 2002.....Platfield's strategy is to advance rapidly from its current status as an emerging precious metals explorer to become a developer and operator of precious metals mining operations..' Platfields listed in late 2010 but the listing on the JSE is currently suspended.

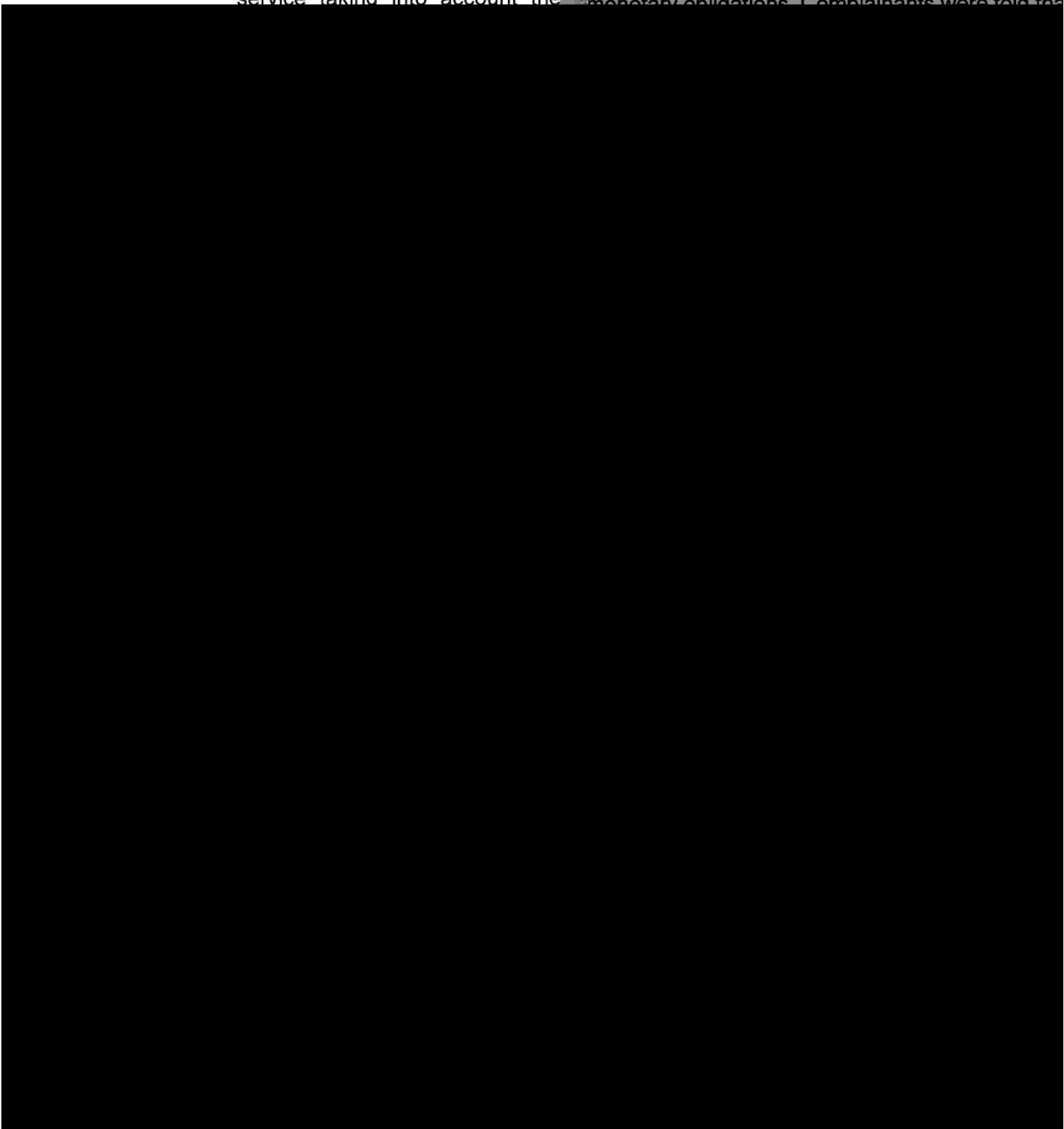
[42] From the evidence it is clear that Share was engaged in the business of promoting and selling shares. The objective facts evidence that the monies were transferred into the business account of an entity called Dynamic Share's which itself lists the trading of shares as one of its principal businesses.

[43] It is little wonder then that despite being afforded the opportunity to present its bank statement Dynamic Share's failed to do so.

[44] Turning now to the FAIS Act, I note that section 1, thereof defines advice as being 'any recommendation, guidance or proposal of a financial nature furnished by any means or medium to any client or group of clients..'

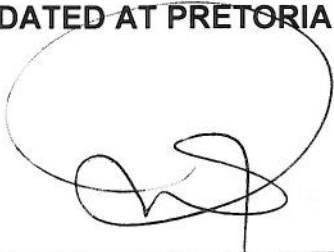
- [45] That the shares were recommended to complainants as part of respondents' business of trading shares is on the evidence irrefutable, for quite simply and as already mentioned, had they conducted the most elementary of enquiries they would have realised that they were being ripped off, not to put too fine a point on it.
- [46] The respondent's version lacks any shred of credibility; the version proffered is totally at odds with the objective and irrefutable facts. In fact I have no hesitation in going so far as stating that Share's version is improbable.
- [47] As for the rendering of advice which clearly occurred in this instance, section 7(1) of the FAIS Act requires that a person obtain a licence before acting as a financial services providers no such license exists. However, notwithstanding this lack of approval, subsection (2) ensures that Share cannot escape the provisions of the FAIS Act. Transactions concluded without the requisite authorisation are nevertheless enforceable.
- [48] Failure to acquire such license as required by section 7(1) of the FAIS Act is an offence in terms of section 36 of the FAIS Act punishable by a fine not exceeding R1 000 000 or to imprisonment not exceeding 10 years or to both such fine and such imprisonment. From the facts before me there is clear prima facie evidence of such criminal conduct.
- [49] In making the investment Share breached practically every single section of the General Code of Conduct for Authorised Financial Service Providers ('the code'). To name but a few:
- 49.1. Section 2 thereof requires that '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. I have already dealt with Share's lack of honesty and integrity.

- 49.2. Section 3.(1) (a) (iii) requires that representations to the client must be adequate and appropriate in the circumstances of the particular financial service taking into account the ~~factually established or reasonably~~
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2. The Respondents are hereby ordered, jointly and severally, the one paying the other to be absolved, to pay to 1st complainant the amount of R405 000.00 and 2nd complainant the amount of R195 000.00.
3. Interest on the aforesaid amount at the rate of 15.5%, per annum seven (7) days from the date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 22nd DAY OF APRIL 2014



NOLUNTU N BAM
OMBUD FOR FINANCIAL SERVICES PROVIDERS