

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS
PRETORIA

Case Number: FOC377/06-07/LP (3)

In the matter between:-

KHAYROON OSMAN

Complainant

and

NOORD-WES MAKELAARS BK

Respondent

THE FAIS OMBUD'S RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL IN TERMS OF RULE 12 (c) and (d) of the Rules of the Ombud's Office read with SECTION 28(5)(b) OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')

A. PARTIES

[1] The Appellant is Mrs Khayroon Osman, an adult female, resident at 4, Flamboyant Crescent, Akasia, Potgietersrus, 0601.

[2] The Respondent is Noord-Wes Makelaars BK (Registration No. CK 90/07103/23) a close corporation duly registered as such and an authorised financial services provider, of 67, Van Riebeeck Road, Potgietersrus, 0600 and herein represented by Mr Peter Blignaut ('Blignaut').

B. THE APPLICATION

[3] Appellant, in a letter dated 27 February 2008 seeks leave to appeal against the Determination of this Office dated 7 February 2008 wherein the appellant's complaint against the Respondent was dismissed.

The Grounds for Application for Leave to Appeal

[4] There are essentially two grounds for appeal, as I understand them:

- 4.1 That Respondent did not get instructions from appellant's son to cancel the insurance cover for the BMW motor vehicle; and
- 4.2 That Appellant's son in any event had no authority to act for Appellant when he purportedly cancelled the cover.

Dismissal of the application and reasons therefore

[5] It is common cause that Respondent was appointed as broker for Complainant on 1st September 2004. Complainant was represented by her son Osman from the beginning and it was he who signed the broker's appointment on her behalf. During September 2004 the policy endorsement reflecting the placing of the BMW under insurance cover was sent to the Complainant. Appellant admits being aware that the BMW was insured and therefore, by implication that her son Osman acted on her behalf. She did not dispute the fact that the BMW was in fact insured through Respondent. Nor did she say that she herself insured it through Respondent. The

inescapable inference was that her son in fact did so as alleged (and supported by written notes kept of the verbal communication by Respondent) and he acted on her authority.

[6] It was determined that appellant herself telephoned the insurer on 8 December 2005 with a request that the BMW be placed on cover again. Respondent says according to Santam Insurance Company's tape recordings it was appellant's son who telephoned the insurer on 8 December 2005 with a request that the BMW be placed under cover again. The next day appellant herself telephoned the Respondent with a similar request but this time it was directed to the Respondent. I am of the view that this fact reinforces the findings on the merits of the complaint.

[7] I should also mention, although it was not stated in the determination, that the signature on the complaint form is similar to that on the 'Appointment of Broker' form. The Respondent says the signature on the latter document is that of appellant's son as he signed it at its office. It means that although the Complainant is stated to be Mrs Khayroon Osman the complaint form has in fact been signed by her son. There is no indication that he was authorised to do so. It therefore appears that the complaint has been lodged and driven by appellant's son in the name of his mother. Appellant's signature on the appeal application letter is markedly different from these other signatures. The signature, ostensibly that of appellant, is different yet again on a letter dated 24 January 2006 addressed to the Respondent.

[8] Appellant did not provide a pertinent denial from her son that he did not give instructions to Respondent to cancel the insurance cover for the BMW and to that extent is hearsay or conjecture on her part.

[9] It is also not appellant's case that she at any time informed Respondent that any authority her son had to act on her behalf had been cancelled by her. Respondent at all times dealt with appellant's son prior to the loss having arisen except when it sought confirmation from her that the Audi vehicle had to be insured. It was only on 9 December 2005 (after the claim for the BMW arose) that she informed Respondent not to take instructions from her son anymore.

[10] It is noted that in the application for leave to appeal, appellant for the first time furnishes a case number from the police. This information was not provided to Respondent or its attorneys even though they specifically asked for it in a letter dated 8 March 2006 and addressed to appellant, nor provided to this Office although the complaint was lodged here on 8 February 2006 already.

[11] I am accordingly of the view that another tribunal will not come to a different conclusion and therefore the application for leave to appeal is refused.

C. TIME LIMITS

Appellant is advised that in terms of the FAIS Act and Rule 12(e) framed thereunder, she may, within one month of date of this refusal of application for leave to appeal, apply to the chairperson of the board of appeal for leave to appeal against the determination. Appellant must inform the Ombud in writing if she wishes to do so.

Dated at PRETORIA this 22nd day of April, 2008.



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS