

Press Release: 8 April 2019
FAIS Ombud Determination

JACOBUS FREDERIK ROUX T/A GRANDE ROUX STUD AND FEEDS
And
TOP LIFE FINANCIAL SERVICES CC, MORGAN ROODT

The complete determination can be viewed on our website at www.faisombud.co.za

The determination discussed below is a matter that was received and determined by this Office within a period of nine months, further evidence of our ongoing commitment to resolve complaints in accordance with our mandate in an expeditious manner, whilst also ensuring that the investigation is conducted procedurally fair, informally and economically, with due regard for what is equitable in all circumstances.

The issuing of press releases based on determinations issued by this Office, which highlights the duty on Financial Services Providers (“FSPs”) in terms of the General Code of Conduct for Authorised Financial Services Providers (“the Code of Conduct”), reaffirms our commitment to educate those we serve about what we do and the services we provide.

The complainant is Mr. Jacobus Frederik Roux, an adult male, whose full details are on file with this Office, lodged a complaint against Top Life Financial Services, a close corporation duly incorporated in terms of South African law, with registration number (2010/149091/23) (hereinafter the respondent). The aforesaid company, is an authorised Financial Services Provider, with license number 48089.

The complaint arises from the loss incurred by the complainant as a result of the respondent’s failure to ensure that the complainant’s agriculture policy, which was utilised in the service of the complainant’s business of breeding horses and the supply of grass feeds, was appropriately insured. In the determination, the Ombud highlighted the role of the advisor in this instance being an agent of the complainant, a relationship governed by the law of agency. The determination highlights applicable case law which details the obligations and duties of an advisor to exercise reasonable care to ensure that an insured is appropriately covered, obligations and duties which are encapsulated in the Code of Conduct.

The complainant, self-employed in the business of farming, and who operated a stud farm, where his core business is the breeding of horses and the supply of grass feeds, met with the respondent during April 2016. In reference to the agriculture policy held by the complainant, the respondent advised the complainant to add a policy on the life of his 10 horses. In the circumstances, the complaint specifically indicated that the aforesaid horses should be covered for breeding purposes.

Subsequent to the meeting, the complainant was provided with a quotation via e-mail by the respondent, which, amongst others, confirmed that each horse would be covered for R200 000. The complainant duly accepted the cover.

On 8 September 2017, a pregnant mare suffered a uterine artery complication, and euthanasia was performed on humane grounds. The complainant submitted a claim to the respondent for the death of the mare. Following submission of the necessary veterinary reports, the claim was rejected on the basis that the loss did not fall within the ambit of the policy. The respondent advised that the complainant held an agricultural policy, in terms of which cover is only provided for the death of an insured animal caused by fire, lightning or explosion. The policy held by the complainant did not provide "life insurance" on his horses. The policy was one of short-term insurance and was based on pre-determined perils.

The complainant was aggrieved with the outcome, as he claimed to have specifically instructed the respondent to provide life cover his horses. He had been under the impression that the respondent had adequately provided for this cover after having insured the horses for business use. The complainant claimed to have never been informed that the insurer does not provide cover on the life of the animals and that it only provided short term insurance cover.

Despite numerous attempts made by this Office to resolve the matter, the respondent failed to appreciate that the recommended policy was not appropriate to the complainant's needs and circumstances. The respondent should have made provision for a mortality policy for the horses having instead of having insured the horses as stock in terms of an agricultural policy, which would have adequately addressed the complainant's needs and circumstances.

The gist of the Ombud's findings against respondent can be summarised as the respondent having failed in his duty to ensure that the complainant was adequately insured. This is evinced by:

- There is no question that a contractual relationship to render financial advice existed between the complainant and the respondent. In discharging these obligations towards the complainant, the respondent was duty bound to observe the FAIS Act and the Code and align the standard of such service to the Code.
- It is clear that the respondent failed to comply with the provisions of the Code that require a Financial Services Provider, after having obtained all relevant and available information, to make a recommendation that is appropriate in terms of the complainant's needs and circumstances.
- Had the respondent in fact complied with this section, it would have been in a position to recommend to the complainant that a mortality policy would have been the appropriate option, considering the purpose for which cover was required. Instead, the respondent resorted to placing the complainant in a short-term insurance policy, which was based on pre-determined perils.
- More importantly, the respondent was unable to recommend a suitable product, as he did not have the required expertise and or access to suitable cover, cover that this Office has determined is available through specialised FSPs. The respondent ought to have, in the interests of the complainant, informed the complainant accordingly and recommended to him that he seek specialised advice in that regard.
- The respondent was out of his depth and as a result failed to conduct the financial service in accordance with the required due skill care and diligence as provided for in section 2 of the Code.
- Section 9 of the Code, read in conjunction with section 3 (2) requires that a provider must maintain and keep a record of the advice furnished to a client. This record must reflect the basis on which the advice was given, a brief summary of the information and material on which the advice was based, the financial products considered and the financial product ultimately recommended, together with an explanation of why the product selected is likely to satisfy the client's identified needs.
- The respondent had failed to provide this Office with documentation showing compliance with section 9 of the Code. The aforesaid documentation is relevant in determining whether the provider has complied with the provisions of the Code and discharged his duty of care towards the client.

The Ombud found that the respondent acted contrary to his duties as required in terms of the Code. The respondent was ordered to pay the complainant an amount of R180 000.