

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

Case Number: FAIS 04705/11-12 GP1

FAIS 04707/11-12 GP 1

In the matter between:-

ANDRE DU TOIT THOMPSON

1ST Complainant

VALENCIA THOMPSON

2ND Complainant

and

JOHANNA SUSANNA PETRONELLA DU PREEZ

Respondent

**DETERMINATION IN TERMS OF SECTION 28(1) OF THE FINANCIAL ADVISORY
AND INTERMEDIARY SERVICES ACT NO. 37 OF 2002 ('FAIS ACT')**

A. INTRODUCTION

- [1] In this determination I deal with two separate complaints simultaneously. Notwithstanding being notified of the complaints in terms of the Rules of this Office, in particular Rule 6 (c) and Section 27(4) of the FAIS Act, the respondent refused to file responses to the complaints. The complaints are therefore determined on the basis of complainants' version supported by documentation independently obtained by this Office from product providers.
- [2] The complaints relate to investments made with Liberty Life (Liberty) and Sanlam on the advice of the respondent. Their first interaction with the respondent goes as far back as 1999 when the respondent offered her

services to 2nd complainant. Second complainant appointed the respondent as her broker and simultaneously made an offshore investment on her advice. After being introduced to respondent by 2nd complainant in 2003, 1st complainant appointed respondent as his broker. In the years that followed, the complainants made numerous investments on the respondent's advice. Due to what complainants refer to as their limited investment experience and the trust they placed in the respondent, the complainants never questioned her advice. However, when the complainants made enquiries about the maturity values of their policies at the end of 2010, they learnt that they had attained significantly low growth on their investments, which was as a result of the hefty penalties complainants paid over the years, due to early termination of their policies.

[3] Upon being confronted by the complainants, the respondent denied any wrongdoing, but nonetheless told complainants that she had sought assistance from another broker who was 'well connected with management at Sanlam' to reduce the investment term of complainants' existing policies. Sanlam refused, the complainants then lodged complaints with this Office.

B. THE PARTIES

[4] The 1st complainant is Andre du Toit Thompson who is married out of community of property without accrual to 2nd complainant, Valencia Thompson. Complainants reside in Lyttelton, Centurion, 0157.

[5] The respondent is Johanna Susanna Petronella du Preez of 549 Farm Way, Sandalwood Park no. 6, The Willows, 0041. At all material times the

respondent was a licensed financial services provider (license number 21116). The license lapsed on 26 August 2011.

C. THE COMPLAINTS

[6] What follows is a summary of the complaints. As the respondent made numerous alterations to the complainants' investment portfolios, it will not be practical to set out the full extent thereof at this point. I do so later in this determination.

First complaint

- a) According to the 1st complainant, he requested the respondent in 2006 to assist him with retirement planning. First complainant was sixty two years of age at the time and five years away from retirement. His investment portfolio consisted of investments with Liberty and Sanlam. The complainant also had numerous investments in property syndications made on the advice of the respondent.¹
- b) The 1st complainant asserts that although the respondent knew he was retiring in five years' time, she invested in an eight year retirement annuity ('RA') and a ten year endowment. The respondent also prematurely surrendered a number of the complainant's endowments and used the proceeds thereof to invest in new endowments and property syndications. In turn, the income generated by said products was used to invest in other long term policies². According to the

¹The property syndication investments do not form part of this complaint.

²RA, voluntary annuity and endowments.

complainant the penalties paid on early termination of the endowments were not disclosed to him.

- c) The complainant is aggrieved by the respondent who he says merely replaced his policies to earn commission. At retirement, he could no longer afford the premiums payable on the RA and ten year endowment. Left with no alternative, he prematurely terminated the policies. The complaint emphasises that he signed the necessary documents to effect the changes to his portfolio as he trusted the respondent.

Second complaint

- d) According to the 2nd complainant, she requested the respondent in 2006 to assist her with retirement planning. She was sixty years of age at the time.

- e) Although the complainant was only five years from retirement, the respondent invested in two ten year endowments and a nine year RA. These policies were funded from her salary and income generated by property syndication investments³ made on the advice of the respondent. When the complainant retired in 2011, she could no longer afford to pay the premiums on her policies. She had no alternative but to terminate the policies and pay hefty early termination penalties.

- f) The complainant is aggrieved by the respondent's conduct who she says did not act in her interests, but was only concerned with her commission. She asserts that she did not understand the policy schedules sent to her.

³The property syndication investments do not form part of this complaint.

She signed the necessary application form at the exact places that were indicated with an "X" by respondent. She claims she did so because she trusted respondent.

D. RELIEF SOUGHT

- [7] The complainants have asked this Office to order the respondent to repay them the full amounts that they paid as penalties when their investments were prematurely terminated.

E. DETERMINATION AND REASONS

Changes made to complainants' portfolios

- [8] The complainants provided the Office with a breakdown of alterations made to their portfolios, which was supplemented by policy schedules. The changes and sequence thereof were verified with Sanlam and Liberty.⁴

1st complainant

June 2004

- i. The full fund values of retirement annuities, no's 18103581000 and 57150913800 totalling R129 908.56 were transferred to Liberty linked life annuity, no. 0026160746.⁵
- ii. Monthly income of R2 121.84⁶ generated by Liberty linked life annuity was used to fund the premiums of a ten year Liberty Investment Builder policy ('IB policy'), no. 0026160665.

February 2006

⁴See Annexure A1 and A2 for diagrams of changes made to complainants' portfolios.

⁵ Pre-FAIS

⁶ 20% draw down rate. Income tax on withdrawals paid to SARS by insurer.

- iii. The IB policy (0026160665) was prematurely surrendered. Liberty levied an early termination penalty of R17 408.73. The net proceeds of R36 993.57 were invested in property syndication.
- iv. Liberty Active policy, no. 84837796000 was prematurely surrendered. Liberty levied a penalty of R4 785.38. The net proceeds of R23 251.82 were invested in property syndication.
- v. A ten year Sanlam endowment, no. 041131425X5 was purchased at a monthly premium of R3 000. When the policy was prematurely surrendered on 31 October 2008, a penalty of R22 277.18 was levied. The net proceeds of R65 204.37 were invested in property syndication.

May 2006

- vi. A five year Sanlam voluntary purchase annuity ('VPA'), no. 041640446X5 was purchased at a lump sum premium of R300 000. The monthly income of R5 829.81 generated by the VPA was used to fund the premiums of a five year Sanlam endowment, no. 041641095X9. Due to affordability, the complainant surrendered the Sanlam endowment in February 2011, three months before maturity. Sanlam levied an early termination penalty of R3 118.96. The net proceeds of R335 219.73 were transferred to Glacier investment plan, no 3202942.

July 2006

- vii. A ten year Sanlam endowment, no. 041641096X7⁷ was purchased at a monthly premium of R6 000. When the endowment was prematurely

⁷Multi-Managed Balanced Fund - underlying fund of policies 041641096X7, 041131425X5 and 041641095X9

surrendered on 31 October 2008, Sanlam levied a penalty of R44 020.07. The net proceeds of R103 514.60 were invested in property syndication.

January 2007

viii. Investment was made in an eight year RA, no. 041925985X8. Due to affordability, 1st complainant terminated the RA in January 2011. Sanlam levied an early termination penalty of R32 527.75. The RAs net cash value of R225 629.03 was utilised as follows:

- One-third cash lump sum transferred to Glacier investment plan, no 3202942.
- Compulsory two-thirds transferred to Glacier linked life annuity no. 3194396.

2nd complainant

July 2003

ix. The offshore investment which the respondent made in 1999⁸ was replaced with a ten year Liberty endowment, no. 84805727000 in 2003⁹. When the endowment was prematurely surrendered in 2006, Liberty levied a penalty of R5 224.81. The net proceeds of R20 780.23 were invested in property syndication.

January 2006

x. Ten year Sanlam endowment, no. 041072692X1 was purchased at a monthly premium of R1000.00. Due to affordability, 2nd complainant terminated the endowment in February 2011. Sanlam levied an early

⁸See paragraph 2.

⁹ Pre-FAIS

termination penalty of R10 248.64. The net proceeds of R67 650.15 were transferred to Glacier investment plan, no 3189339.

June 2006

- xi. Ten year Sanlam endowment, no. 041622332X9 was purchased at a monthly premium of R2 000.00.¹⁰ Due to affordability, 2nd complainant prematurely terminated the endowment in February 2011. Sanlam levied an early termination penalty of R15 388.80. The net proceeds of R101 720.15 were transferred to Glacier investment plan, no 3189339.

January 2007

- xii. Investment made in a nine year Sanlam RA, no. 041939110X7 at a monthly premium of R5 000.00. Due to affordability, 2nd complainant had no alternative, but to make the RA paid up in February 2011. Sanlam levied an early termination penalty of R35 265.33. The net proceeds were transferred to Glacier investment plan, no. 3189339 and Glacier linked life annuity no. 3201605.

Appropriateness of advice

- [9] According to 1st complainant, the respondent prematurely surrendered and replaced his Sanlam endowment policies, which resulted in him paying early termination penalties. The policy schedules reflect that the underlying investment¹¹ of the replaced and replacement policies remained unchanged. In the circumstances, there appears to be no justification for replacing the endowments. In any event, if there was a need to change the underlying

¹⁰ Multi-Managed Balanced Fund - underlying fund of policies, 041072692X1 and 041622332X9.

¹¹ Multi-Managed Balanced Fund

investments, it could have been done within the existing endowment policy structure at minimal cost to 1st complainant.

[10] Compounding the problem is the fact that, although the complainants were five years from retirement, the respondent invested their funds for terms extending way beyond their retirement dates. The net effect of the unsuitable advice was that when the complainants retired in 2011, they could no longer afford the premiums payable on their policies. They had no alternative but to prematurely terminate the policies and pay penalties.

[11] Given the evidence, I am not surprised by the respondent's refusal to file a response to the complaints. The respondent simply would not be able to defend her advice. Based on the total circumstances of this case, the likelihood that the complainants signed the quotations knowing what they were getting themselves into is slim. It is unlikely that they would have agreed to policies with investment terms that extend way beyond their retirement dates. It is equally unlikely that they would have agreed to the incessant replacement of their investments had they been made aware of the financial consequences thereof.

Cause of loss and quantum

[12] The respondent's senseless switching of policies was self-serving and meant to maximise commission. The respondent ought to have known that the complainants could not afford the premiums on their policies post retirement. The fact that the complainants had to pay early termination penalties on a number of policies did not discourage respondent in the least. Had it not been

for the inappropriate advice of the respondent, the complainants would not have been saddled with the penalties.

[13] Figures provided by Sanlam and Liberty show that 1st complainant and 2nd complainant respectively paid penalties of R124 138.07 and R66 127.58 on early termination of policies.

F. ORDER

[14] In the premises, the following order is made:

1. The complaints are upheld;
2. Respondent is hereby ordered to pay 1st complainant the amount of R124 138.07 and 2nd complainant the amount of R66 127.58;
3. Interest at the rate of 15.5 %, per annum, seven (7) days from date of this order to date of final payment.

DATED AT PRETORIA ON THIS THE 25th DAY OF JULY 2013



NOLUNTU N BAM

OMBUD FOR FINANCIAL SERVICES PROVIDERS