

FAIS OMBUD DETERMINATION: SCOTT VS. QUANTUM LEAP

Brokers who received repeated warnings not to deal with certain international clearing houses for forex investments, were this week ordered to pay a complainant for losses suffered as a result of their inappropriate conduct.

Brothers Wayne and Gary Gray who are licensed financial services providers recommended investments over a period of time to a retiree, Ian George Buchanan Scott. Wayne Gray was a representative of the financial firm Quantum Leap Forex 181 (Pty) Limited, whilst his brother Gary Gray was the authorised representative and key individual of the company. Quantum Leap was a discretionary financial services provider that was only authorised to render intermediary services and not advice in terms of its licence.

Complainant had over a period of time from August 2004 to July 2005 invested various amounts of his retirement capital totalling R600 000,00 into forex currency trading on the advice of respondents. The FAIS Ombud only assumed jurisdiction to entertain complaints for investigation and adjudication from 30 September 2004. Thus the Ombud could only look at two investments made in January 2005 in the sum of R130 000,00 and July 2005 in the sum of R200 000,00 (R330 000,00).

In all the transactions, complainant would transfer funds on the advice of respondents into Reymount Investment Limited (Reymount). Reymount was described by respondents as 'a clearing house with branches all over the world'. Reymount had its origins in the island of Jersey (one of the islands in the British Channel). The trading company known as Kerford (Pty) Ltd (Kerford) had its principal place of business in Sandton. Its directors at the time were one H. Kalladi, SH Kaadoth and one ADK Muhammed. The person who conducted the trade was an employee of Kerford, one Krishnamoorthy Thiruvengadam also known as Kiran, a person whose investment decisions according to respondents was 'exceptional'.

Kerford accepted Quantum Leap as an 'introducing broker'. Kerford had applied on the 29 September 2004, a day before the deadline announced by then Minister of Finance –Trevor Manuel for all fsp's to be licensed, to be registered as a discretionary financial services provider.

The investigation by the Ombud found that as early as April 2004, Quantum Leap became aware of an e-mail circulated by the Jersey Financial Services Commission. The e-mail dated 14 April 2004, was a public statement warning the public against investing with Reymount. It read as follows:

'The Commission has issued a direction under Article 20 (1) of the Financial Services (Jersey) Law 1998 as amended, (The Financial Services Law') to Reymount, a company incorporated in the island, requiring Reymount to cease conducting

unauthorised investment business contrary to Article 6(1)(b) of the Financial Services Law.....'.

The Commission wishes it to be known that:

'Reymount has never been registered, or applied for registration, under the Financial Services Law. Therefore any financial services business, as defined in Article 2 of the Financial Services Law and carried out since 1 July 1999, is a breach of Article 6 of the Financial Services Law.'

Quantum Leap queried this e-mail with Kerford and was assured that the statement was only applicable to residents of the island of Jersey. Gary of Quantum Leap also flew to London to meet with representatives of Reymount. According to Gary he was in London from 21 to 28 May 2004. According to Gary 'he spoke to a gentlemen whose name he cannot recall'. At no stage, however was there any attempt to contact the Jersey Financial Services Commission, from whom the e-mail emanated. The Ombud found that Quantum Leap was aware as early as 'April 2004 that Reymount is not a registered financial services provider. Not in Jersey and not in South Africa'.

Despite the fact that Reymount was not a registered financial services provider in its country of origin respondents, it was found nevertheless advised complainant to make a second investment of R130 000,00 in January 2005. They obtained a new client mandate referring to Reymount as 'Reymount Investment Ltd, an Internationally Registered Clearing Firm'.

Kerford's (the trading arm's) licence to render financial services was declined by the FSB on 12 April 2005. On 11 May 2005 the FSB warned Quantum Leap that Reymount would not be recognised as a clearing firm for forex trading as required by the regulations. Despite the warning by the FSB regarding the licence status of Kerford and the fact that Reymount would not be recognised, Quantum Leap nevertheless decided to invest further funds in the very same entities. According to Gary Gray:

'Trading was going well and I (Gary Gray) decided to invest additional funds with Reymount ... for myself and transferred funds to Reymount, Burling Bank, Chicago, USA.'.....

'Kiran's investment decisions where (sic) exceptional as can be seen by the following examples. ...'

Complainant was not informed of any of the developments that were privy to the respondents and made a further investment of R200 000,00 in July 2005.

Although the complainants investments were in forex trading, Quantum Leap in conjunction with Kerford decided to take investment positions in gold, sometime in September 2005. They held the position in gold until April 2006 by which time 'all investors' accounts were down by a record 90%'. Although respondents cited several reasons for holding on to the gold position, the Ombud found that 'respondents are simply looking for ways to justify what happened to their clients' funds, when they actually do not have a clue as to the fate of those funds'.

Sometime in May 2006, Quantum Leap became aware of an article which appeared in the Chicago Tribune under the banner '*Loophole allows currency schemes to flourish*'. The article details how federal agents confiscated assets and froze bank accounts of one Puthankote Aboobaker, the man allegedly behind both Reymount and Kerford. When Gary Gray showed this article to 'the trusted trader' Kiran-he fled the country and is now believed to be trading somewhere in Botswana.

After a detailed and thorough examination of all the facts and the various codes of conduct applicable to financial services providers, Charles Pillai the FAIS Ombud found that :

51.1 Respondents actively advised and assisted clients to invest in unknown entities;

51.2 the advice provided was negligent considering that the authorisation status of the entities was never disclosed;

51.3 in so far as the investments made after the FSB had warned the respondents that the licence of the entities was not approved, the advice was wholly inappropriate and borders on reckless conduct;

51.4 important and critical information relating to the rejection of the licence of the two entities was withheld from complainant in total disregard of the law;

51.5 the respondents failed to act with due skill care and diligence.'

In computing compensation, the Ombud took into account that of the R330 000, 00 invested, complainant received R134 514, 00 by way of monthly advances. He was also remitted an amount equivalent to R95 311.25 at the time he closed the investment in June 2006. The Ombud therefore ordered the respondents to pay the complainant the sum of R100 174, 75 together with interest. The respondents were also ordered to pay the case fees of the FAIS Ombud.