



## **FSB Bites the Big Boys**

At one stage it seemed that only the small operators in the industry were being punished for transgressions of the FAIS Act. This seems to have changed now. We recently saw a number of fines imposed on product providers for various misdemeanors.

## **African Unity**

African Unity contravened section 7(3) of the Financial Advisory and Intermediary Services Act, No 37 of 2002 (the FAIS Act) in that it entered into an agreement with Nothemba Funeral and Financial Services CC. In terms of the agreement, Nothemba marketed insurance financial products on behalf of African Unity. Whilst marketing said products, Nothemba was not authorised to act as financial services provider in terms of section 8 of the FAIS Act. Nothemba was only licensed on 11 August 2010.

In arriving at penalty of R100 000, the Registrar considered that there was no prejudice resulting from the contravention; that African Unity accepted accountability and was remorseful for its actions and that the contravention was as a result of a bona fide oversight.

### **Ditiro:**

Ditiro was contracted to underwrite, administer and market funeral insurance policies in respect of certain the funeral parlours.. The entities were, as at January 2011, not lawfully issued with a licence for the rendering of financial or intermediary services in terms of section 8 of the FAIS Act although they offered financial services, and were not representatives as contemplated by the FAIS Act. It is therefore common cause between the parties that Ditiro has contravened section 7 (3) of the FAIS Act.

Order: R40 000 + Conditions

### **Nothemba:**

The Respondent is a funeral parlour and has been engaged in the selling of funeral policies for some years. During 2005, the Respondent entered into an agreement with African Unity Administrators (African Unity Insurance Administrators (Pty) Limited) who was an insurance administrator. African Unity Administrators issued a representative certificate in favour of the Respondents and it was therefore not necessary for the Respondent to obtain a licence to act as a financial services provider. On 4 November 2008, Algoa Insurance Company Limited took over this particular long-term book of African Unity Administrators and changed its name to African Unity Insurance Limited (African Unity). African Unity entered into a new administrative agreement with the Respondent. Instead of registering the Respondent as a juristic representative, it registered Gqamana as a representative. This was an administrative oversight by African Unity. The Respondent has in the meantime successfully applied for a FAIS licence (granted in September 2010). For the period November 2008 to September 2010, the Respondent acted as an FSP without having been issued with a licence to do so under section 8 of the FAIS Act, in contravention of section 7(1) of the FAIS Act.

Order: R20 000 + Conditions

**Nestlife:**

On the dates set out in column 1 of Annexure “A”, Nestlife entered into group funeral benefits scheme agreements with the entities as set out in column 2 of Annexure “A” (‘the funeral schemes’). The effect of these agreements was that Nestlife would underwrite funeral policies of the clients of the funeral schemes. These agreements dealt with the detail of the policies including premiums, benefits, admission requirements and claims. The funeral Schemes, at the time of entering into the aforesaid agreements, were not lawfully issued with a license for the rendering of the intermediary services in terms of section 8 of the FAIS Act, and were not representatives of intermediaries as contemplated in the FAIS Act. It is therefore common cause that Nestlife is in contravention of section 7(3) of the FAIS Act.

It is also recorded that Nestlife has contravened rule 5.1(a)(i) of the PPR for Long-Term Insurance, promulgated under section 62 of the Act, but as a contravention of rule 5.1(a)(i) of the PPR would be based on substantially the same evidence as a contravention of section 7(3) of the FAIS Act, it has been agreed between the parties that the PPR contravention would not form part of this enforcement action.

Order: R100 000 + Conditions

**Hollard:**

It is agreed between the parties that Hollard contravened section 45 of the Act read with regulations 4.1 and 4.2 of the Act in that during the period 01 November 2008 to 31 March 2011 Hollard permitted 173 independent intermediaries to receive, hold and deal with premiums payable to Hollard in relation to short-term policies, without such independent intermediaries providing security in the form of a guarantee policy issued by a short-term insurer or a contractual guarantee provided by a bank as prescribed in regulations 4.1 and 4.2 of the Act.

Order: R70 000 + Conditions