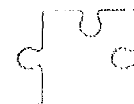
SETTLEMENTS



Complainant: Van Dyk
Issue: Failure to provide a reasonable and appropriate general explanation of the nature and material terms of the contract.

The complainant had sought financial advice from a representative of the respondent in relation to securing his outstanding bond. The complainant required a life cover policy with disability benefits. A policy was issued, which the complainant presumed covered his requirements. Sometime later, the complainant was injured at work and was unable to perform his duties. He was subsequently released from his employment. The complainant lodged a claim for disability under the policy. His claim was rejected on the grounds that the policy only provided cover in terms of physical impairment. Aggrieved by the respondent's failure to have provided him with disability benefits, the complainant turned to our office for assistance.

The respondent was requested to provide documentation showing that the representative had explained the difference between Physical Impairment and Disability.

The respondent responded by making an offer to the complainant, which was accepted in full and final settlement.

SETTLEMENT: R 20 000.00

Complainant: Wiid
Issue: Failure to disclose the actual and potential financial implications, costs and consequences of the replacement product.

The complainant alleged that he was advised by his financial advisor, a representative of the respondent, to replace an existing investment at Insurer A with a similar investment offered by the respondent. The complainant alleged that the respondent's representative assured him that he would not pay any commission. After receiving his policy schedule for the new investment, the complainant noticed that commission had been collected from his investment. After numerous attempts to have the matter resolved the complainant turned to this Office for assistance.

The matter was directed to the respondent who argued that the complainant had consented to the commission by signing both the quotation and the application form. This Office however directed the respondent's attention to its own documentation which reflected that the policy had been issued with a "100% allocation." This, in our view appeared to have created the illusion that commission should not have been deducted, but rather that all the funds paid in by the complainant had been invested.

The respondent agreed to repay the commission which was accepted by the complainant.

SETTLEMENT: R 44 533.17

Complainant: Twynham
Issue: Failure to act with due skill care and diligence in the best interests of the complainant.

The complainant's late father had approached the respondent to replace his existing life policy with a life policy from another life insurer. The policy was due to commence on 8th September 2011. The complainant's father however passed away on 3 September 2011, 5 days before the new life policy commenced. It appeared that by this time the existing policy had been cancelled.

The complainant, on behalf of the deceased's estate, lodged a complaint with this Office arguing that the respondent had a duty to ensure that the new policy was in place before cancelling the existing one. The complaint was sent to the respondent requesting it to either resolve the matter with the complainant, alternatively to revert with a response to the complainant's allegations. The respondent advised that the premium for the existing policy had been payable on the 10th of every month – in other words that the existing policy's cover was in place up until the 10th September 2011. Therefore the new policy would have incepted while the old policy was still in place.

Our investigations however revealed that this was not the case. The specific terms of the existing policy provided that although the premiums were deducted on 10th of every month, the benefits were only applicable for that specific calendar month, and that by cancelling the policy effective 31 August 2011, no benefits were provided for September 2011. This Office was of the view that the respondent's failure to adequately familiarize himself with the terms and conditions of the replaced policy had allowed the deceased to labour under the misconception that he had enjoyed cover.

The respondent agreed to make an offer to the complainant, which the latter accepted.

SETTLEMENT: R 400 000.00

Complainant: Ballim
Issue: Failure to provide the client with reasonable and appropriate information that would reasonably be expected to enable the client to make an informed decision.

With the assistance of the respondent, the complainant applied for medical aid cover. Unbeknown to the complainant the cover was granted with a three month general waiting period. The complainant subsequently incurred medical costs in the 1st three months and lodged a claim for reimbursement with the medical scheme. The claim was declined due to the three month waiting period restriction.

The complainant approached this Office alleging that the respondent had assured her that she had full cover from inception. Our office approached the respondent requesting proof that firstly, the waiting period had been disclosed; and secondly, that the complainant had been put in a position to make an informed decision. We further

highlighted the requirement to furnish factually correct information to a client. In turn, the respondent agreed to settle the complaint.

The complainant accepted the offer.

SETTLEMENT: R 10 000.00

Complainant: Kose
Issue: Failure to render the financial service in accordance with the contractual relationship and reasonable requests or instructions of the client.

The complainant took out a home loan with the respondent and had instructed the respondent to arrange for a home loan protection plan in respect of the loan. When the complainant's wife passed away, he lodged a claim with the respondent under the home loan protection plan in place. It was at this stage that the complainant discovered that his request had not been adhered to and approached the respondent to enquire about the plan. The respondent was evasive and did not provide the complainant with the necessary assistance. The complainant accordingly approached our Office for assistance in this matter.

We referred the complaint to the respondent and requested a comprehensive reply to the complaint. The respondent could not provide any relevant compliance documentation evidencing that the complainant declined the home loan protection plan. In fact, the finance application forms reflected that the complainant had requested this cover.

In light of the evidence the respondent agreed to settle the outstanding loan amount.

SETTLEMENT: R 399 023.00

Complainant: Van Boetticher
Issue: Failure to render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.

The complainant sought investment advice from the respondent after having received a lump sum pay out from her divorce settlement. On the respondent's advice the complainant invested her lump sum of R1 million into a single premium investment which would yield a monthly income, which in turn was used to fund a monthly premium of R30 000.00 for an endowment investment. Sometime later, the complainant discovered that her initial lump sum investment was rapidly depleting due to the fact that the endowment's premium was being funded from the capital of her single premium investment and not as she had thought, from the interest of the investment. Furthermore, it appeared that the respondent had increased the premium from R30 000.00 to R50 000.00 per month. As she could no longer afford the monthly premiums of R 50 000.00, she was compelled to surrender the endowment. The complainant was however surprised at a heavy penalty she had to incur as a result of the surrender.

The complainant approached our office for assistance alleging that she had been misled by the respondent who had failed to inform her that she would suffer a financial loss in the form of penalties should she stop contributing towards the investment. She further alleged that all commissions and fees were not properly disclosed or even negotiated prior to the inception of the policy.

The complaint was referred to the respondent for his version of events. The respondent refuted liability as he believed that all disclosures where made to the complainant and he acted in accordance with the relevant legislation. The respondent was thereafter requested to provide documentary evidence substantiating his statement that all disclosures were made including proof that the complainant agreed to the commission for the higher monthly premium, proof that the advisory fee, terms and conditions were explained to the complainant, compliance documentation demonstrating why the initial monthly premium was changed from R30 000.00 p.m. to R50 000.00 and proof that the complainant was made aware that she would pay penalties should she surrender the investment within the first 5 years.

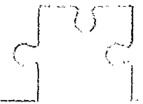
The respondent was unable to furnish the necessary compliance documentation requested from him. A recommendation was therefore made to the respondent to settle the complaint. The respondent made a full and final offer which was accepted by the complainant.

SETTLEMENT: R 60 000.00

Complainant: Meandes
Issue: Failure to render the financial service in accordance with the contractual relationship and reasonable requests or instructions of the client.

The deceased purchased a vehicle at a dealership and had sought advice from an F&I Manager on the various insurance options available to him. During this meeting, the deceased accepted an Auto Settlement Policy. Due to his existing illness (diabetes) which was disclosed during application, the cover was restricted to death and retrenchment cover only. The deceased accepted this cover on these grounds. The insurer thereafter sent a letter to the respondent requesting the deceased to sign a disclosure notice and acceptance declaration prior to inception of the policy. It is unclear whether this letter was ever brought to the attention of the deceased. Upon the deceased's death, the complainant who is the insured's son and executor of his estate, lodged a claim with the insurer. The complainant maintains that the deceased was under the impression that the request for death and retrenchment cover had been granted as he had never been informed that such cover was not initiated and had clearly expressed his intention to take out the credit life policy.

The complainant approached our Office for assistance after being unsuccessful in his endeavours to resolve the matter with the insurer. The respondent in their response alleged that they had contacted the deceased telephonically and had during such conversation



received an instruction that the deceased no longer wished to take out the credit life insurance with restricted benefits. The respondent could however not provide any documentation or record confirming the purported telephone call or any other communication with the insured regarding the policy.

Based on their inability to provide documentary evidence of their submissions, the respondent offered to pay R597 100.76 in settlement of the deceased's account.

The complainant accepted this offer in full and final settlement of the matter.

SETTLEMENT: R 597 100.76

Complainant: T.T. v M
Issue: Failure to adhere to the obligations and requirements imposed by the general code of conduct for authorised financial services providers and representatives, when client funds are received.

The complainant had completed an investment application form with a representative of the respondent and had authorised the transfer of the funds. Subsequent to the completion of the application form, the representative had vacated his position with the respondent, and the application was never processed which resulted in the complainants funds being transferred to a suspension account.

When the complainant became aware of the respondents failure to allocate the funds as per the signed application form, he requested that he be provided with a full refund of his capital together with the growth he would have enjoyed had the funds been invested as per his instructions.

The matter was directed to the respondent who failed to adhere to the complainants claims for a refund, as the complainant had not been able to provide proof of payment. The respondent was reminded that the transaction had been a replacement of an existing investment also with the respondent, and that an unfair burden of proof had been placed upon the complainant.

The respondent agreed to the refund as requested by the complainant.

SETTLEMENT: R102 219.95