

PROPERTY SYNDICATIONS—THE CHALLENGE CONTINUES

Written by:

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“Justice cannot be for one side alone, but must be for both”

Eleanor Roosevelt

Property syndication complaints are no laughing matter, especially for the many individuals affected by the loss of investments.

The Office is cognisant of the frustrations caused by the delays in finalising a long list of complaints. A process plagued by litigation has seen the Office shelving these matters for the past couple of years. Having finally received an outcome, the Office is once again actively pursuing the outstanding complaints.

This exercise is not painless either. Unfortunately not every property syndication complaint is justiciable. There are a number of hurdles that has to be crossed before a matter reach determination stage.

The first challenge is in respect of whom a complainant perceive his complaint to be against. In this regard, the former Appeal Board (now the Tribunal) made it clear in the matters of *Siegrist* and *Bekker* (FAIS cases 00039/11-12/GP1 and FAIS0661/10-11/WC1) that is it not within the scope of the Rules governing the procedures in this Office, to consider a complaint without reference to the actual complaint filed. In other words, the complaint may not be extended to a party not mentioned in the complaint. If the com-

plaint has not cited the correct respondent, the Office may therefore not direct the complaint elsewhere.

The purpose of this Office is to assist consumers—the man on the street—with complaints against financial services providers. Here lies our challenges. Our interpretation of the law is not that the legislature intended for this process to be cumbersome, so that it necessitates the appointment of a legal representative to draft pleadings in order to formulate a complaint.

To overcome this problem, a new complaint form was recently launched to guide complainants to provide as much detail as possible about the party they are complaining against, and on which grounds.

The second obstacle is that of prescription. In terms of Section 27 (3) (a) of the FAIS Act, the Ombud must decline to investigate a complaint which relates to an act or omission which occurred on or after the date of commencement of the Act, but on a date more than three years before the date of receipt of the complaint by the Office. It can be better explained as the date upon which a person became aware, or ought to have been

aware of the problem with the investment.

No complaint can be pursued without having regard to the common law principle of *audi alteram partem*; to hear both sides of the story. The Rules on proceedings of the Office in conjunction with the Act, provides for certain processes to be followed that allow all parties involved to make representations on a matter. The complaint would only move to determination stage if both versions were heard, but despite conciliation attempts, it could not be resolved amicably.

The Office has employed additional resources to assist with the pending property syndication matters.

It might be small consolation to those who have been waiting for years for an outcome, but we trust that we can move these matters to resolution in the next couple of months.

