

to members of the public. The principal complaint is that the investment in Sharemax was inappropriate for the profile and needs of the complainant and there was a failure to comply with the Act and the Code.

C. THE ISSUES

[12] The following are issues for determination:

- 12.1 Whether the first respondent rendered the financial service herein negligently and/or in a manner which is not compliant with the Act and Code;
- 12.2 If it is found that the first respondent did render the financial service negligently and/or failed to comply with the Act and Code, whether it was such conduct that caused the complainant loss; and
- 12.3 What is the role and consequences of the second to seventh respondents conduct in this investment as licensed FSPs, product providers and principals in terms of section 13 of the Act?
- 12.4 What are the consequences of any breach of the law by the second to seventh respondents?

Summary of Findings

[13] Due to the length of this determination, I deem it necessary to set out, briefly, the main findings. They are as follows:

- 13.1 The first respondent provided financial services to the complainant as defined in section 1 of the Act.

- 13.2 In providing such service the first respondent committed breach of the Act and Code. The Sharemax investment was inappropriate for the complainant.
- 13.3 Such breach caused the complainant loss.
- 13.4 In providing such service the first respondent was not licensed to do so and at all material times was acting as a representative of FSP Network, as contemplated in section 13 of the Act.
- 13.5 FSP Network was set up to market Sharemax products through a network of brokers, most of who were acting as section 13 representatives of FSP Network.
- 13.6 FSP Network is responsible for the consequences of the conduct of their representatives who almost without fail targeted pensioners.
- 13.7 Sharemax was a licensed FSP and subject to the Act and Code.
- 13.8 In marketing the Sharemax investments, Sharemax provided financial and intermediary services as defined in section 1 of the Act.
- 13.9 FSP Network was nothing more than an extension of Sharemax. FSP Network did not conduct its business of marketing Sharemax's products as an independent broker acting at arm's length.
- 13.10 Sharemax failed to make a full disclosure of the scheme in the prospectus and investors were misled.

13.11 Investors' funds were lent to the developer in terms of an agreement that was not disclosed to investors, which agreement contravened provisions of the GG.

13.12 The effect was that Investors were paid interest out of their own funds.

13.13 The directors of Sharemax and FSP Network were aware of the fact that the scheme was both illegal and not commercially viable and yet they recklessly took investors' funds. Investors whom within their knowledge were almost without exception pensioners who could ill afford the inevitable loss.

13.14 The directors of FSP Network and Sharemax must be held personally liable for the complainant's loss.

D. FACTUAL BACKGROUND

[14] This determination concerns the property syndication known as Zambezi Retail Park. The syndication was promoted by Sharemax, the second respondent, through the services of USSA, the third respondent, and independent brokers. On 13 September 2005, Sharemax was granted a licence to act as an Authorised Financial Services Provider in terms of section 8 of the FAIS Act. In terms of the licence, Sharemax is authorised as a Category 1 Financial Services Provider to render advisory and intermediary services with regard to Securities and Instruments, shares (1.8) and debentures (1.10).