

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF  
SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES  
BOARD ACT, 97 OF 1990**

CASE NO: **11/2011**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES  
PROVIDERS**

The Applicant

and

**NESTLIFE ASSURANCE CORPORATION LIMITED**

Respondent

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**ORDER**

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WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, I hereby determine that the Respondent contravened sections 7(3) of the Financial Advisory and Intermediary Services Act, No 37 of 2002, and impose a penalty of R100 000 to be paid on or before 1 August 2011. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

I make no order regarding costs.

Signed at **PRETORIA** on the 30 day of **JUNE 2011**.

  
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**C F Eloff**  
**Chairperson of the Enforcement Committee**

**Annexure A**

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**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF  
THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT,  
28 OF 2001**

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**1. The parties**

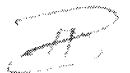
1.1. The parties to the agreement are:

1.1.1. The Registrar ("the Registrar of Financial Services  
Providers") herein represented by German Emmanuel  
Anderson; and

1.1.2. Nestlife ("Nestlife Assurance Corporation Limited"), a  
registered insurance company authorized by the Registrar  
of Long-Term Insurance to carry on long-term insurance



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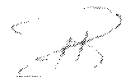
business in terms of the Act ("the Long-Term Insurance Act, No 52 of 1998").

1.2. Nestlife is also an authorised financial services provider in terms of the FAIS Act ("the Financial Advisory and Intermediaries Services Act, No 37 of 2002"), with licence number 6409.

1.3. Nestlife is herein represented by Mr Vusi Sithole, its Managing Director.

## 2. The contraventions

2.1. 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.



2.2. The funeral schemes, at the time of entering into the aforesaid agreements, were not lawfully issued with a licence for the rendering of intermediary services in terms of section 8 of the FAIS Act, and were not representatives of intermediaries as contemplated in the FAIS Act.

2.3. It is therefore common cause that Nestlife is in contravention of section 7(3) of the FAIS Act, that reads as follows:

*"An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, been issued with a licence for the rendering of such financial services ..."*

2.4. It is also recorded that Nestlife has contravened rule 5.1(a)(i) of the PPR ("Policyholder Protection Rules") 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.



### 3. The mitigating circumstances

3.1. It is also been agreed that the following mitigating factors are relevant to the matter:

3.1.1. There is no evidence of any prejudice resulting from the contraventions;

3.1.2. The contraventions were as a result of Nestlife's attempt to assist funeral parlours to regularise their business;

3.1.3. Nestlife fully co-operated with the Registrar's investigation and the enforcement action, and displayed sincere remorse for the contraventions.

### 4. The agreed penalty

4.1. In the light of the above, and in terms of section 6B(7)(a) of the FI Act (Financial Institutions (Protection of Funds) Act, No 28 of 2001), the parties have agreed that Nestlife will pay a penalty of R100 000 in settlement of the matter, on or before 1 August 2011.



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- 4.2. The parties humbly request that the Honourable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act.

**5. Other conditions**

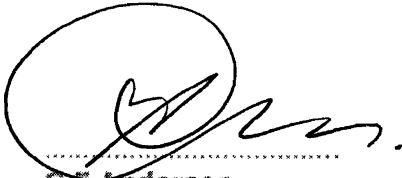
- 5.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement.
- 5.2. If Nestlife does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, Nestlife herewith consents to pay all legal costs to the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 5.3. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.



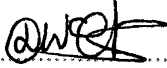
5.4. For purposes of the notification in terms of section 6E of the FI Act, Nestlife elects to receive notification via e-mail at jenny@nestlife.co.za and yusi@nestlife.co.za.

5.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.

Signed at **PRETORIA** on 29 June 2011 on behalf of the Registrar.

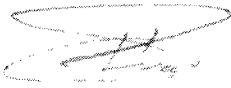


G E Anderson



Witness

Signed at SABITLÉ on 27 June 2011 on behalf of Nestlife.



V Sithole



Witness