

**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: **14/2011**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES  
PROVIDERS**

The Applicant

and

**NOTHEMBA FUNERAL AND FINANCIAL SERVICES CC  
t/a NOTHEMBA FUNERAL SERVICES**

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(1) of the Financial Advisory and Intermediary Services Act, No 37 of 2002, and impose a penalty of R20 000 to be paid on or before 31 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**

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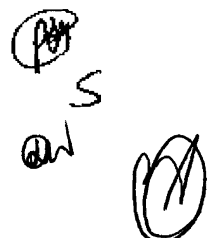
**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF  
THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT,  
28 OF 2001**

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**1. The parties**

1.1. The Registrar of Financial Services Providers is the Applicant in this matter that will be referred to the Enforcement Committee under case number 14/2011. The Applicant is herein represented by German Emmanuel Anderson.

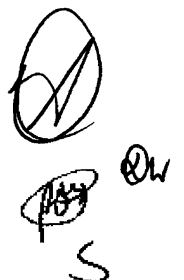
1.2. Nothemba Funeral and Financial Services CC is the Respondent in this matter. The Respondent is a close corporation incorporated in terms of the laws of the Republic of South

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Africa. The Respondent is herein represented by Mr Sindi Gqamana ("Gqamana"), its managing member.

## 2. Background information to the agreement

- 2.1. 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 Respondent, and it was therefore not necessary for the Respondent to obtain a licence to act as a financial services provider.
- 2.2. 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

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registered Gqamana as a representative. This was an administrative oversight by African Unity.

2.3. The Respondent has in the meantime successfully applied for a FAIS licence (granted in September 2010).

**3. The contravention**

3.1. 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.

**4. The mitigating circumstances**

4.1. The parties are in agreement that the contravention was a *bona fide* oversight. The Respondent accepted that African Unity would attend to the necessary certificates that would have made its conduct lawful.

4.2. Nobody suffered prejudice as a result of the contravention.

S  
BY  
PW

4.3. The Respondent co-operated with the Registrar's investigation and the enforcement action.

4.4. The Respondent has since cured the contravention by successfully applying for an FSP licence.

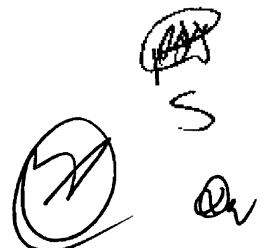
**5. The agreed penalty**

5.1. 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 the Respondent will pay a penalty of R20 000 in settlement of the matter, on or before 31 August 2011.

5.2. 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.

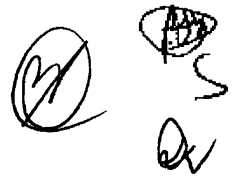
**6. Other conditions**

6.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are

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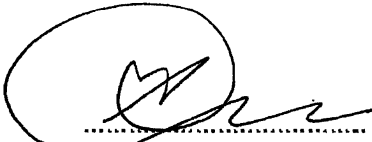
aware of the possibility that the Enforcement Committee may not accept the terms of this agreement.

- 6.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, the Respondent 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.
- 6.3. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 6.4. For purposes of the notification in terms of section 6E of the FI Act, the Respondent elects to receive notification via e-mail at [nothemba@mweb.co.za](mailto:nothemba@mweb.co.za).

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6.5. 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 ~~KHAYE LITSA~~ on 28/06/2011 on behalf of the Respondent.



S Gqamane



Witness