

**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: **7/2011**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

The Applicant

and

AFRICAN UNITY INSURANCE LIMITED

Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement attached hereto and 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. 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 the⁶ day of **JULY 2011**.


C F Eloff
Chairperson of the Enforcement Committee

**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: **07/2011**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

The Applicant

and

AFRICAN UNITY INSURANCE LIMITED

Respondent

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

1. The parties

1.1. The parties to the agreement are the Registrar of Financial Services Providers ("the Registrar") herein represented by German Emanuel Anderson; and

1.2. African Unity Insurance Limited ("African Unity"), herein represented by Carl Frederik Kirstein ("Kirstein").



2. The contravention

2.1. It is agreed between the parties that African Unity contravened section 7(3) of the Financial Advisory and Intermediary Services Act, no 37 of 2002 ("the Act"), in that:

2.1.1. African Unity entered into an agreement with Nothemba Funeral and Financial Services CC ("Nothemba") in November 2008. In terms of the agreement, Nothemba marketed long-term insurance financial products of African Unity to clients. Nothemba is a long-term insurance administrator with a number of funeral parlours as clients;

2.1.2. Whilst marketing said products, Nothemba was acting as a financial services provider in spite of the fact that it was not an authorized financial services provider. Nothemba was only authorized as a financial services provider on 11 August 2010.

2.1.3. At all times relevant to this case, Kirstein acted on behalf of African Unity.

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3. The mitigating circumstances



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

3.1.1. The contravention was a *bona fide* oversight and African Unity and Kirstein (as authorized representative of African Unity) accepted accountability for it;

3.1.2. There is no evidence of any prejudice resulting from the contravention;

3.1.3. When African Unity became aware of the contravention, they immediately contacted Nothemba in an attempt to rectify the situation. In the meantime, Nothemba was approved as a financial services provider;

3.1.4. African Unity has realized that the contravention arose as a result of an inadequacy in their systems. They have rectified this by appointing a full time compliance officer

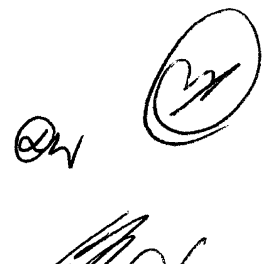
@W 


who will ensure that the entity complies with applicable legislation and regulations;

3.1.5. African Unity and Kirstein (as duly authorized representative of African Unity) fully co-operated with the Registrar's investigation and the enforcement action, and displayed sincere remorse for the oversight.

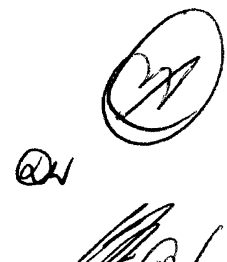
4. **The agreed penalty**

- 4.1. In the light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that African Unity will pay a penalty of R100 000 in settlement of the matter.
- 4.2. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act.

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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 African Unity does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, African Unity 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. No leniency or postponement given by the FSB to African Unity or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 5.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.



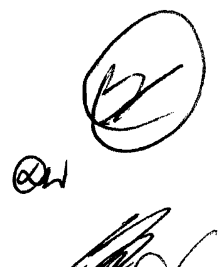
5.5. This Agreement shall not be a novation of the cause of action in terms whereof African Unity was found to have contravened the Act.

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

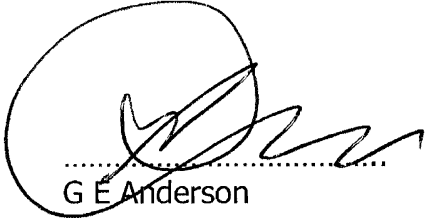
6. Domicilium Citandi et Executandi

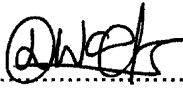
6.1. The Registrar acting on behalf of the FSB elects that the *domicilium citandi executandi* for service of any legal process and notices will be: Riverwalk Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens, Extension 6, Pretoria.

6.2. The Respondent (African Unity) elects that the *domicilium citandi et executandi* for service of any legal process and notices will be: African Unity Insurance Limited, 1st Floor, Old Museum Building, 28 Bird Street, Port Elizabeth.


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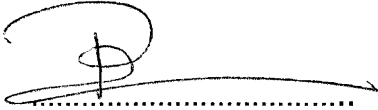
Signed at PRETORIA on 5 July 2011 on behalf of the Registrar


.....
G E Anderson


.....
Witness

Signed at PORT ELIZABETH on on behalf of African Unity Insurance Limited.


.....
C F Kirstein


.....
Witness