

*Petite Models
(Determination)*

CHAIRPERSON: I shall now proceed to deliver the judgement. This committee has been entrusted with the task of deciding whether a charge brought by the Registrar of Short-term Insurance against the close corporation Petite Models Close Corporation and Mr Pieter De Wet and Samantha De Wet, whether that was adequately established. The applicant is represented by Mr JI Dixon who is the Registrar of Short-term Insurance. His founding affidavit sets out the relevant facts and the grounds on the basis of which he sets out his contentions in his affidavit.

10 The essence of the charge is cogently set out in the notice filed in terms of Section 6B(1) of Act 28 of 2001 and I quote *“from 1 October 2010 to 30 April 2013 the second and third respondents operated a business under the name and style of Model Insurance (the first respondent). During the relevant period the respondents*
15 *offered short-term insurance policy benefits to members of the public. The policy benefits included inter alia comprehensive cover for motor vehicles, cover against theft of household contents, 24-hour road assistance in the event of breakdown and windscreen replacement and/or repairs.*

20 *In return for the insurance cover, the respondents collected premiums from clients. As at 30 April 2013 the respondents had collected an amount of R5 219 520.028 in premiums. The premiums*

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were deposited by a debit order collection agency into the first respondent's banking account held at First National Bank, bearing account number 62244181757. Although clients paid premiums for the cover, the respondents did not transfer the premiums or a portion thereof to an underwriter who would assume the risk covered by the first respondent's policies.

During the relevant period, the respondents settled some of the claims submitted by its clients under the policies. Whilst operating the short-term insurance mentioned above, the respondents were not registered insurers nor were they deemed to be registered or authorised to carry on the kind of short-term insurance business referred to in the preceding paragraphs. Now therefore the respondents contravened Section 7(1)(a) of the STIA in that from 1 April 2010 to 30 April 2013 they conducted short-term insurance business whilst they were not registered insurers or authorised to carry on short-term insurance business".

In his founding affidavit Mr Dixon presents adequate proof of the averments set out in the notice just referred to. He adds thereto when he came to hear of the fact that the respondents were conducting short-term insurance business, he obtained a court order prohibiting such conduct and he took steps to warn the public of dealing with the respondents. It is to be noted that the contravention is

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alleged to be of Section 7(1) of the STIA and I quote “7, registration
required in order to carry on certain short-term insurance business;
(1) no person shall carry on any kind of short-term insurance
business unless that person – (a) is registered or deemed to be
5 registered as a short-term insurer and is authorised to carry on the
kind of short-term insurance business concerned under this Act...”

The law further provides that short-term insurance is to be
defined to mean “business of providing or undertaking to provide
policy benefits under short-term policies”. It is further said in the Act
10 that short-term policy is defined to include motor policy, accident
policy, property policy and a contract comprising of a combination of
any of those products and lastly, policy benefits are defined to include
any or more sums of money other than an annuity or services or other
benefits.

15 None of the respondents filed any affidavits. An unsworn
statement was filed presumably drafted by the second respondent in
which he does not dispute that Petite Models conducted short-term
insurance and that the first respondent was not duly licensed. Mr
Dixon further provided an affidavit in response to the unsworn
20 statement and added proof that the second respondent admitted the
conduct attributed to him.

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The following facts will, at the end of the day, be deemed common cause. Firstly that Petite Model CC, trading as Model Insurance, was a close corporation duly registered in the Republic of South Africa with its sole member being Mrs Samantha De Wet, the
5 third respondent. Secondly, Model Insurance, the first respondent in this matter, was in operation during the period from October 2010 to April 2013.

During the aforementioned period the second respondent was managing and was in control of the business of Model Insurance.

10 The person, the second respondent, issued short-term insurance policies to members of the public. The policies were motor vehicle policies and household policies providing the following benefits: (1), cover against motor vehicle theft and accidental damage; (2), cover against theft of household contents; (3), 24-hour road assistance; (4),
15 cover against hail damage; (5), public liability insurance; (6) cover against theft of car accessories and PSG Glass fitment for windscreen damage.

It is common cause that a list provided by the second respondent to the applicant's attorneys contained a total of 880 clients
20 who were clients of the respondents.

Overwhelming support showing the type of short-term insurance purchased is contained in a sworn statement of their clients,

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which formed part of the record. These clients confirmed taking out short-term policies, mostly motor vehicle comprehensive cover issued by the respondent.

5 Further confirmation of the type of insurance business conducted by the respondents is found in averments made by the aforesaid clients in their sworn statements. They confirm that they submitted insurance claims to the first respondents. In some instances those claims were settled and others were not.

10 The respondent offered the aforementioned policy benefit in exchange for premiums paid by the clients. The premiums were collected by debit collection agencies who were ostensibly authorised by the third respondent. These premiums were paid into the respondent's bank account held at FNB under account number 62244181757.

15 The record shows that from October 2010 to April 2013 R5 219 520.28 in premium funds were collected by the debit collection agency on behalf of the respondents.

The second respondent operated the bank account and the third respondent was a signatory to the abovementioned account.

20 None of the premiums received from clients were ever transferred to a registered insurer.

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Lastly, none of the respondents were registered short-term insurers nor is there evidence that they utilised the services of a registered insurer who covered the policies issued by the respondents.

The only defence raised by the second respondent in interviews
5 was that he operated Model Insurance under an authorised financial
services provider. This does not assist them at all. It does not relieve
the first respondent from the act requiring registration as a short-term
insurer and it is no defence at all. The result is that the only defence
worth a mention has not been established and is dismissed. We
10 according hold that the charge against the first respondent and the
second respondent was firmly established and they are found guilty as
charged.

I turn now to the position of the third respondent. In her
answering statement she avers that she took no part in the fraudulent
15 conduct of the second respondent and had very limited knowledge of
the activities of the second respondent. This is a factual issue. The
onus is on the applicant to disprove this averment in her Heads of
Argument. In the Heads several points are made. None of these can
be described as anything more than miscellaneous bits and pieces,
20 which individually or collectively does not prove anything.

The nub of the matter is that what had to be proved and which
was not proved was that the third respondent actively participated in

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any activities of first respondent with knowledge of the illegality thereof. In our view the evidence fall short of establishing this and the case against her is dismissed.

5 What remains then is to decide on the administrative penalties to be imposed on the first and second respondents. In her Heads of Argument the counsel for the applicant sets forth various factors, which we endorsed. These are serious offences, which not only carries with it a potential of harm, but in actual fact caused harm in the manner set out in some of the affidavits. For instance, there is the
10 claim by Mr Mbentce who has lost R172 000.00. That was also the case with Mr Bansee whose claim in the amount of R33 609.00 was not settled and Mrs Safia also had a claim for damage, which was not settled.

15 So, there were losses by several people. The first and second respondent gained substantial amounts by reason of receiving benefits in substantial amounts. They showed no remorse and the only answer suggested was that there are difficulties in the way of obtaining licensing for the type of insurance which they were guilty of.

20 It is also important to bear in mind the deterrent effect. We were given the advantage of a list of penalties imposed by the Enforcement Committee over the years and for the sake of consistency and having regard to all the circumstances, we consider

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the penalty should be R75 000.00 for respondent number one and R75 000.00 for the second respondent. The respondents are ordered to pay the costs of the enquiry, which includes any actual expenditure and the fees of the panel of members of the Enforcement Committee.

5 In summary then, the charge against third respondent is dismissed. The first and second respondents are found guilty as charged and respondent number one is ordered as an administrative penalty to pay the amount of R75 000.00 and respondent number two ordered to pay R75 000.00. The costs of the action are all to be paid
10 by the first and second respondent jointly and severally the one paying to be absolved. That is your order.

ADV DE VOS: I agree.

ADVOCATE GOLDEN: I agree.

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JUDGE C F ELOFF

10/10/16