

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10(3) READ WITH SECTION 10A OF
THE FINANCIAL SERVICES BOARD ACT, NO 97 OF 1990**

CASE NO.: 26 / 2015

In the matter between:

THE REGISTRAR OF LONG-TERM INSURANCE

First Applicant

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Second Applicant

and

MHLANGAVEZA FAMILY ASSURANCE (PTY) LTD

(Registration Number: 2012/152807/07)

First Respondent

MHLANGAVEZA FUNERAL SERVICES CC

(Registration Number: 2001/076232/23)

Second Respondent

PAPANI LOT MACEVE

(Identity Number: 6612305700086)

Third Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached hereto 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 Respondents contravened section 7(1) of Long-term Insurance Act, No 52 of 1998 as well as section 7(1) of the Financial Advisory and Intermediary Services Act, No 37 of 2002, and impose a penalty of R200 000.00 (two hundred thousand rand) to be paid by the Respondents, jointly and severally, the one paying the other to be absolved, on or before 31 August 2015.

In terms of section 6D(5)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine further that the administrative penalty imposed includes inspection costs, the costs of instituting the panel and all expenses reasonably incurred by the Applicants investigating the non-compliance and referring this matter to the Enforcement Committee.

In terms of section 6D(5)(b) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine further that in the premises of the Respondents failing to pay the administrative penalty of R200 000.00 (two hundred thousand rand) imposed on the Respondents on or before 31 August 2015, interest will be charged on the said amount at the rate of 9% per annum from date of the order to date of payment.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

SIGNED at **PRETORIA** on this the **21st** day of **JULY 2015**.

A handwritten signature in black ink, appearing to read 'C F Eloff', written over a horizontal line.

C F ELOFF
CHAIRPERSON OF THE
ENFORCEMENT COMMITTEE

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Second Respondent

PAPANI LOT MACEVE

(Identity Number: 6612305700086)

Third Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO 28 OF 2001**

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1. The parties

1.1 The parties to the agreement are:

1.1.1 The Registrar of Long-term Insurance, herein represented by the Deputy Executive Officer of Insurance, Mr J I Dixon; and

1.1.2 The Registrar of Financial Services Providers, herein represented by the Deputy Executive Officer of the Financial Advisory and Intermediary Services, Mrs C D Da Silva.

1.1.3 The parties mentioned in paragraph 1.1.1 and 1.1.2 above will herein be referred to as 'the Applicants'.

1.1.4 Mhlangaveza Family Assurance (Pty) Ltd, registration number 2012/152807/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa.

1.1.5 Mhlangaveza Funeral Services CC, registration number 2001/076232/23, a close corporation duly registered in terms of the laws of the Republic of South Africa.

1.1.6 Mr P L Maceve, an adult male businessman, with identity number 6612305700086.

Handwritten signatures and initials at the bottom right of the page. On the left, there is a signature that appears to be 'J I Dixon' with 'GDA' written below it. To the right, there are initials 'P.L.M.' and 'D.M.' written above a large, stylized signature that looks like 'C.D.S.'.

1.1.7 Mhlangaveza Family Assurance (Pty) Ltd and Mhlangaveza Funeral Services CC are duly represented herein by Mr P L Maceve in his capacity as the Chief Executive Officer of Mhlangaveza Family Assurance (Pty) Ltd and sole member of Mhlangaveza Funeral Services CC.

1.1.8 The parties mentioned in paragraphs 1.1.4, 1.1.5 and 1.1.6 above will herein be referred to as 'the Respondents'.

2. The contraventions

2.1 This matter relates to funeral insurance and the issuing of funeral policies (assistance policies) that provides funeral insurance cover. The funeral insurance involved an undertaking by the Respondents to their policyholders to provide, in return for the payment of a premium payable at a specified period, a funeral service or a cash benefit on the death of the life assured. In terms of the Long-term Insurance Act, No 52 of 1988, only a registered long-term insurer is authorised to carry on this kind of long-term insurance business.


2.2 The Respondents attracted clients by means of various marketing strategies to enter into long-term policies in terms of which the Respondents undertook to provide benefits to the policyholders. Agents were also utilised to market and sell funeral policies.


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- 2.3 The Respondents marketed and sold assistance policies to approximately 4000 (four thousand) policyholders.
- 2.4 The Respondents structured and compiled different funeral insurance cover options on which they gave advice to their clients and chose the most suitable insurance cover option on behalf of their clients.
- 2.5 The Respondents issued long-term policies and membership certificates to the policyholders.
- 2.6 The Respondents collected and accounted for premiums in respect of the long-term policies. During the period November 2013 to June 2014 the Respondents collected R4 908 645.50 (four million nine hundred and 8 thousand six hundred and forty five rand and fifty cent) in premiums through debit orders. The Respondents maintained, serviced and dealt with long-terms policies.
- 2.7 During the period October 2013 to May 2014 the Respondents received claims and settled approximately 48 (forty eight) claims.
- 2.8 During the period November 2013 to at least October 2014 the First Respondent issued funeral assistance policies to policyholders which long-term policies were not underwritten by a registered long-term insurer.


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- 2.9 The Respondents did not only carry on long-term insurance business in respect of their own clients and policies issued by them, but the Respondents also undertook to act as a long-term insurer and underwriter of funeral policies for another entity, namely Stallion Global Trading Resources (Stallion). In terms of the latter the Respondents undertook to collect the premiums on behalf of Stallion's clients, maintain such long-term policies and settle claims.
- 2.10 In terms of the agreement entered into between Stallion and the Respondents, the Respondents caused Stallion's clients' bank accounts to be debited without having been authorised by those clients to debit their accounts.
- 2.11 All the documents issued by the Respondents, including marketing brochures, policy documents, application forms etc., reflected that Mhlangaveza Family Assurance (Pty) Ltd was an authorised financial services provider (FSP) and was the holder of a FSP licence 36121.
- 2.12 Mhlangaveza Family Assurance (Pty) Ltd had never been issued with a FSP licence.
- 2.13 Mhlangaveza Funeral Services CC was the holder of a FSP licence 36121, but such licence was withdrawn on 13 December 2010 due to its failure to submit financial statements and compliance reports.


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2.14 As juristic persons, Mhlangaveza Family Assurance (Pty) Ltd and Mhlangaveza Funeral Services CC could not act on their own and acted through Mr P L Maceve. Mr P L Maceve was at all relevant times the directing and controlling mind of the aforementioned entities. At all relevant times to this matter Mr P L Maceve was not appointed as a representative of an authorised financial services provider.

2.15 The parties agreed that the Respondents contravened section 7(1) of the Long-term Insurance Act, No 52 of 1998, which reads as follows:

“(1) No person shall carry on any kind of long-term insurance business, unless that person-

(a) Is registered or deemed to be registered as a long-term insurer, and is authorised to carry on the kind of long-term insurance business concerned, under this Act; and

(b) Carries on that business in accordance with this Act.”

2.16 The parties further agreed that the Respondents contravened section 7(1) of the Financial Advisory and Intermediary Services Act, No 37 of 2002, which reads as follows:

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"(1) *With effect from a date* (*30 September 2004) determined by the Minister by notice in the Gazette, a person may not act or offer to act as a-*

(a) *Financial services provider, unless such person has been issued with a licence under section 8; or*

(b) *A representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13."*

3. Mitigating factors

3.1 It is agreed that the following mitigating factor is relevant to this matter:

3.1.1 The Respondents are in the process of regularising their business within the regulatory framework.

4. Aggravating factors

4.1 It is agreed that the following aggravating factors are relevant to this matter:

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4.1.1 The Respondents have conducted unregistered long-term insurance business and rendered unauthorised financial services for at least 3½ (three and a half) years. The Respondents marketed and sold funeral policies to policyholders which policies were not underwritten by a registered long-term insurer, leaving the policyholders unprotected.

4.1.2 The Respondents knew that in order to render this business lawfully it had to be the holder of a FSP licence. The Respondents knew that it had to be a registered long-term insurer. The Respondents knew that such funeral policies had to be underwritten by a long-term insurer. Notwithstanding the aforementioned, the Respondents continued conducting unregistered business and specifically held itself out to be an authorised financial services provider.

4.1.3 The Respondents have made a considerable profit in the monies derived from policyholders.

4.1.4 The Respondents caused premiums to be deducted from persons' (non-clients) bank accounts without having been authorised to do so.

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5. The agreed administrative penalty

- 5.1 In light of the above and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (FI Act), the parties have agreed that the Respondents, jointly and severally, the one paying the other to be absolved, will pay a penalty of R200 000.00 (two hundred thousand rand) in settlement of the matter, subject to section 6D(2)(a) of the FI Act, on or before 31 August 2015.
- 5.2 The parties have agreed that the penalty of R200 000.00 (two hundred thousand rand) includes inspection costs, the cost of instituting the panel and all expenses reasonably incurred by the Applicants in investigating the non-compliance and referring this matter to the Enforcement Committee.
- 5.3 The parties have agreed further that in the event of the Respondents failure to pay the agreed administrative penalty of R200 000.00 (two hundred thousand rand) on or before 31 August 2015, interest will be charged on said amount at the rate of 9% per annum from date of the order to date of payment, subject to section 6D(5)(b) of the FI Act.
- 5.4 The parties humbly request that the Honourable Chairperson make this settlement agreement an order, as contemplated in section 6B(7)(b) of the FI Act.



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6. Other conditions

- 6.1 This settlement 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 the agreement.
- 6.2 Should any of the Respondents not comply with the terms of this settlement agreement and it becomes necessary for the Financial Services Board (FSB) to proceed with legal proceedings, the Respondents herewith consent to pay the legal costs to the FSB on an Attorney and Client Scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 6.3 The parties agreed that any receipt of a payment by the FSB after 31 August 2015 shall be made without prejudice to any rights of the FSB.
- 6.4 The parties choose as their *domicilium citandi et executandi* their respective addresses set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However, the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For purpose of this agreement the parties' respective addresses shall be:


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6.4.1 The Applicants

Financial Services Board:

Block B, Riverwalk Office Park

41 Matroosberg Road

Ashlea Gardens ext. 6

Pretoria

6.4.2 The Respondents:

No. 50 Tonnetti Street

Midlink Place

Midrand

Gauteng

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

SIGNED at **PRETORIA** on this the 13th day of **JULY 2015**



MR J I DIXON
ON BEHALF OF REGISTRAR OF
LONG-TERM INSURANCE



WITNESS




SIGNED at **PRETORIA** on this the 6th day of **JULY 2015**




MRS C D DA SILVA
ON BEHALF OF REGISTRAR OF
FINANCIAL SERVICES PROVIDERS



WITNESS

SIGNED at **PRETORIA** on this the 6 day of **JULY 2015**



MR P L MACEVE
ON BEHALF OF THE FIRST, SECOND
AND THIRD RESPONDENTS



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