

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

CASE NO: 07/2013

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

Applicant

and


**MARTINDALE SECURITIES AND INVESTMENTS
(PTY) LIMITED (FSP NUMBER 744)**

Respondent

ORDER

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 3A(2)(a) and 11 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003, and section 8(3)(j) of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008, and impose a penalty of R20 000 to be paid on or before 30 May 2013. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ²²..... day of **APRIL 2013**.



C F Eloff
Chairperson of the Enforcement Committee

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In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

and

MARTINDALE SECURITIES AND INVESTMENTS (PTY) LIMITED (FSP NUMBER 744)

FINANCIAL SERVICES BOARD
RECEIVED
22 APR 2013
REPRODUCTION & MAINTENANCE
ADMIN DEPARTMENT

Applicant

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 Mr German Emanuel Anderson in his capacity as the Deputy Registrar of Financial Services Providers; and
- 1.2. The Respondent is Martindale Securities and Investments (Pty) Limited ("Respondent"), a company duly incorporated in accordance with the laws of the Republic of South Africa, bearing the registration number 1996/004953/07. The Respondent is a registered financial services provider bearing the FSP number 744.
- 1.3. The Respondent is represented by Mr. John Donald Martindale in his capacity as a managing director of the Respondent and who warrants that he is authorized by the Respondent to conclude this agreement.

2. Introduction

2.1. The Registrar is of the opinion that the Respondent contravened the following provisions:

2.1.1. Section 3A(2)(a) of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 (General Code);

2.1.2. Section 8(3)(j) of the Determination of Fit and Proper Requirements for Financial Services Providers, 2008 (The Fit and Proper Determination); and

2.1.3. Section 11 of the General Code.

2.2. The Respondent wishes to enter into a settlement agreement with the Registrar as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").

3. The contravention

3.1. It is agreed between the parties that the Respondent contravened the following provisions during the period 1 February 2011 to 2 April 2012:

3.1.1. Section 3A(2)(a) of the General Code in that the Respondent failed to adopt, maintain and implement a conflict of interest management policy.

3.1.2. Section 8(3)(j) of The Fit and Proper Determination in that the Respondent failed to have a business continuity plan in place.



3.1.3. Section 11 of the General Code in that the Respondent did not have a documented risk management plan in place.

4. The mitigating circumstances

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

4.1.1. The Respondent accepted responsibility for the contravention.

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

4.1.3. The Respondent remedied the contraventions.

5. The agreed penalty

5.1. In light of the above, and in terms of section 6B(7)(a) of the FI Act, the parties have agreed that the Respondent will pay a cumulative penalty of R20 000 on or before 30 May 2013 in settlement of the matter.

5.2. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the FI Act.

6. Other conditions

6.1. 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. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.

- 6.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Registrar and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar and/or 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. No leniency or postponement given by the Registrar to the Respondent 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. Any leniency or postponement granted by the Registrar or any amendment to this Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 6.4. Any receipt of a payment by the Registrar and/or the FSB after the due date shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 6.5. This Agreement constitutes the whole agreement between the parties and is in full and final settlement of the Respondents liability for an administrative sanction to the Registrar arising from these contraventions.
- 6.6. 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. For the purpose of this agreement the parties' respective addresses shall be:
- 6.6.1. Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road



Ashlea Gardens ext 6
Pretoria
0081

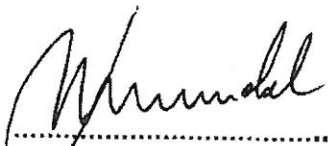
6.6.2. Respondent:
514 Horseshoe Crescent
Kyalami Estates
1684

Signed at PRETORIA on the 22nd day of April 2013 on behalf of the Registrar



G E Anderson

Signed at KYALAMI on the 17 day of APRIL 2013
on behalf of the Respondent



J D Martindale