

**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: **02/2010**

In the matter of:

**THE REGISTRAR OF LONG TERM INSURANCE**      The Applicant

and

**MNTUNGWA FUNERAL SERVICES CC**      First Respondent

**SANDILE MNTUNGWA**      Second Respondent

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**ORDER**

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WITH DUE CONSIDERATION to the settlement agreement 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 have contravened section 7 (1) of the Long – Term Insurance Act, 52 of 1998 and impose a penalty of R50 000 on the Respondents. I order the Respondents to be jointly and severally liable for the said R50 000.

I make no order regarding costs.

Signed at **PRETORIA** on the 17 day of **SEPTEMBER 2010**.



**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 to the agreement are the Registrar of Long Term Insurance ("the Registrar") herein represented by Mr Jonathan Dixon  
  
and  
  
Mr Sandile Mtungwa the sole member of Mtungwa Funeral Services CC ("Mtungwa"). Mtungwa's main business is the provision of funeral services.
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2. It is agreed between the parties that Mtungwa contravened section 7 (1) of the Long – Term Insurance Act, 52 of 1998 (the Act) which reads as follows:

*“no person shall carry on any kind of long – term insurance business, unless that person is registered or deemed to be registered as a long- term insurer, and is authorized to carry on the kind of long term insurance business concerned, under this Act.”*

3. The contravention is read together with section 7 (3) (b) (ii) of the Act which states that:

*“for purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on long- term insurance business in the Republic, in relation to a long- term policy, other than a re-insurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at, collecting or accounting for premiums payable under the long-term policy.”*

4. The facts upon which the agreement is based are as follows:

4.1. On 1 December 2008, the office of the Registrar received notification from KGA Life Limited (KGA), to the effect that they no longer underwrite the business of Mtungwa. The underwriting agreement was cancelled due to non-payment of premiums by Mtungwa.

4.2. In terms of the underwriting agreement, KGA was contracted to provide death cover for members of the funeral scheme, in return for premiums collected by Mtungwa from clients.

4.3. Mntungwa is not a registered insurer as contemplated by section 7 (1) of the Act, and as such is not authorized to operate without a registered insurer underwriting their insurance business.

4.4. The underwriting agreement between Mtungwa and KGA was re-instated in May 2009. However, from January 2008 to May 2009, Mtungwa received premiums from clients and settled approximately 12 claims regarding the death cover. In doing so, Mtungwa acted as a long term insurer even though it was not a registered insurer.

5. Mntungwa admits that during the aforesaid period, it conducted unregistered insurance business as contemplated by section 7 (1) of the Act.

6. The parties agree that the following factors are relevant to this matter:

6.1. Mtungwa is a very small business operation, and due to a lack of proper computer software, did not have effective mechanisms of collecting and recording premiums received from clients. As a result, when clients submitted claims there was no proper mechanism of checking if such client's

payments were up to date. Claims were therefore settled even for members who had not contributed to the scheme;

6.2. Prior to the cancellation of the underwriting agreement, Mtungwa was required to pay over to KGA an amount of approximately R53 000 monthly for its members. However, during these months approximately R23 000 was collected from premiums. The difference was paid by Mtungwa from its own cash resources. This resulted in Mtungwa incurring considerable financial strain and not paying over the premiums to KGA, hence the cancellation of the underwriting agreement;

6.3. The duration of the non-compliance was for four months, after which it was rectified by KGA, who obtained the required computer software for Mtungwa. This has resulted in a much improved premium collection system;

6.4. The Registrar is not aware of any financial prejudice incurred by any person as a result of the contravention;

6.5. Mtungwa co-operated with the Registrar's investigation and queries, admitted to the contravention and did not waste this Honourable Enforcement Committee's time;

6.6. Mtungwa has never been found guilty of non-compliance in respect of any of the laws administered by the Financial Services Board (FSB); and

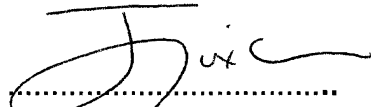
6.7. Has shown a sincere commitment to adhere to FSB regulations.

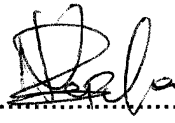
7. In light of the above, the parties have agreed that Mtungwa will pay a penalty of R50 000 (fifty thousand rand) in settlement of the matter.

8. 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 28 of 2008.


9. The parties further agree that payment of the aforesaid penalty will be in monthly instalments of R3 000 per month commencing on the 1<sup>st</sup> day of ..... *October* ..... payable on or before the 7<sup>th</sup> day of each month up until full payment is made. Should any payment not be made timeously or in full, the full penalty less any payments made to date will become immediately due and payable.

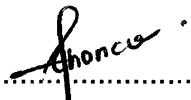
Signed at PRETORIA on this 24<sup>th</sup> day of August 2010 on behalf of the Registrar.

  
.....  
J Dixon

  
.....  
Witness

Signed at Estcourt on this 27<sup>th</sup> day of August 2010 on behalf of Mtungwa.

  
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S Mtungwa

  
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Witness