

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 NUMBER: **03/2016**

In the matter between:

THE DIRECTORATE OF MARKET ABUSE

First Applicant

THE FINANCIAL SERVICES BOARD

Second Applicant

and

BERNARD MELVIN JOHNSON

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 section 78 (1) (a) and section 78 (5) of the Financial Markets Act, 19 of 2012. I hereby impose a penalty of R850 000 (Eight Hundred and Fifty Thousand Rand) on the Respondent.

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

Signed at **PRETORIA** on the day of **May 2016**.


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C F Eloff
Chairperson of the Enforcement Committee

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In the matter of:

**THE DIRECTORATE OF MARKET ABUSE
THE FINANCIAL SERVICES BOARD**

First Applicant

Second Applicant

and

BERNARD MELVIN JOHNSON

Respondent

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

1. Introduction

- 1.1. The Directorate of Market Abuse (the First Applicant) exercised its powers in terms of section 85 (1) (c) of the Financial Markets Act, 19 of 2012 ("the FMA") and investigated certain transactions concluded by an account in the name of Mr Bernard Johnson ("the Respondent") in the shares of Basil Read Holdings Limited ("Basil Read").
- 1.2. Upon completion of the investigation the First Applicant, as empowered by section 6A (2) of the Financial Institutions (Protection of Funds) Act, 28 of 2001 ("the FI Act"), referred the matter to the Enforcement Committee of the Financial Services Board (" the EC"). The Applicants seek an administrative penalty to be imposed on the Respondent.



1.3. The Respondent wishes for the matter to be dealt with by way of an order pursuant to a settlement agreement as contemplated in section 6(B)(7)(a) of the FI Act.

1.4. The parties have agreed to the facts set out below as the basis of the settlement.

2. **The Parties**

2.1. The First Applicant is the Directorate of Market Abuse ("the DMA"), a committee of the Financial Services Board ("the FSB") established in terms of section 85(1)(a) of the FMA. The First Applicant exercises the powers of the FSB to investigate any matter relating to market abuse including insider trading, and to refer matters relating to market abuse to the EC.

2.2. The Second Applicant is the FSB, a juristic person established in terms of section 2 of the Financial Services Board Act, 97 of 1990 to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services, including the FMA.

2.3. The Applicants are herein represented by Mr Cuthbert King Chanetsa, the Deputy Executive Officer: Investment Institutions at the FSB and the Chairperson of the First Applicant.

2.4. The Respondent is Mr Bernard Melvin Johnson, an adult male businessman.

2.5. At all times relevant to this matter Basil Read shares were listed on the Johannesburg Stock Exchange, a regulated market as contemplated by section 77 of the FMA.



3. The Basis of the Contravention

- 3.1. During May 2014 the Respondent was in the employ of Basil Read and held the position of HR: Group Remuneration and Service Manager. The Respondent was also a member of the board of directors of Basil Read.
- 3.2. During May 2014 the Respondent came to know that Basil Read had incurred an actual loss of R54 million for the four month period ended April 2014 and that the company expected to report a loss of R100 million for the six month period ended 31 June 2014.
- 3.3. On 21 May 2016 the Respondent instructed his broker to dispose of his entire shareholding of 67 575 Basil Read shares. On the dates mentioned in **Table 1** below, the Respondent's broker executed the instruction and sold the Basil Read shares as follows:

TABLE 1

Transaction Date	Quantity	Price (c)	Proceeds (R)
22/05/2014	900	904	8 136
03/06/2014	46 675	820	382 735
04/06/2014	20 000	810	162 000
Total	67 575		R552 871

- 3.4. On or about 27 May 2014 the Respondent disclosed the details of the losses to a third party who also sold 23 352 Basil Read shares at 870 cps upon learning of the losses.
- 3.5. On 6 June 2014 at 16:45, Basil Read published the details of the expected losses on the Stock Exchange News Service (SENS). The Basil Read share price declined from a closing price of 778 cents per share (cps) on 6 June 2014 to a closing price of 700 cps on 9 June 2014.



- 3.6. Publication of the information pertaining to the expected losses caused a material decline to the Basil Read share price and thus constituted inside information as defined.
- 3.7. The Respondent's conduct in selling his holding in Basil Read shares whilst in possession of inside information constituted a contravention of section 78 (1) (a) of the FMA. His conduct in causing a third party to trade in Basil Read shares constituted a contravention of section 78 (5).

4. The Mitigating Circumstances

- 4.1. When the Respondent acted in the manner mentioned above he did not apply his mind to the applicable legislation prohibiting insider trading and the implications of breaching the prohibitions. He now realizes the wrongfulness of his conduct and deeply regrets his actions;
- 4.2. The Respondent has never been found to have breached the FMA prior to this matter.

5. The agreed penalty

- 5.1. In terms of section 6B(7)(a) of the FI Act, the parties agreed that the Respondent will pay a penalty of R850 000 (eight hundred and fifty thousand rand) on or before 31 July 2016 in settlement of this 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, on the terms set out above (the "Settlement Order").

BMD



6. Other conditions

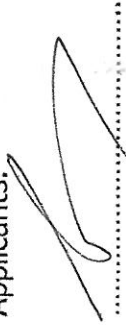
- 6.1. This agreement is subject to approval by the EC and the parties specifically record that they are aware of the possibility that the EC may not accept the terms of this agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms hereof nor will this document be capable of being used in any proceedings against the Respondent in the future.
- 6.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, the Respondent 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 and interest on the outstanding amount, at the rate prescribed in terms of section 1 (2) of the Prescribed Rate of Interest Act, 55 of 1975.
- 6.3. No leniency or postponement given by the FSB 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;
- 6.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB;
- 6.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay the penalty and costs.
- 6.6. The parties elect the addresses below as their *domicilium citandi et executandi* for the purposes of service of the EC order and any Notice or pleadings related to the breach of this agreement:



6.6.1. The Financial Services Board
Block B, Riverwalk Office Park
No. 41 Matroosberg Road
Ashlea Gardens
Pretoria

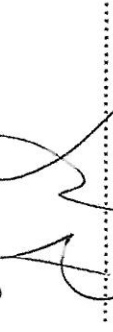
6.6.2. B M Johnson
bjohnson@basilread.co.za

Signed at PRETORIA on 23 MAY 2016 on behalf of the First and second Applicants.


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CK Chanetsa

Signed at Boksburg on 19 May 2016


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B M Johnson