

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
OF THE FINANCIAL SERVICES BOARD**

CASE NO: **15/2011**

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

and

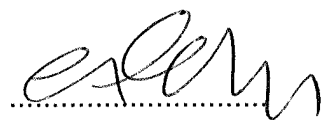
COLLINS, JOHAN KLUE

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 73 of the Securities Services Act, No 36 of 2004, and impose a penalty of R31 500. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ...12... day of **November 2012**.



C F Eloff
Chairperson of the Enforcement Committee

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT
COMMITTEE ESTABLISHED IN TERMS OF SECTION 10(1),
READ WITH 10A OF THE FINANCIAL SERVICES BOARD ACT,
NO 97 OF 1990**

CASE NO: **15/2011**

In the matter of:

DIRECTORATE OF MARKET ABUSE **FIRST APPLICANT**

FINANCIAL SERVICES BOARD **SECOND APPLICANT**

and

COLLINS, JOHAN KLUE **RESPONDENT**

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

WHEREAS the Directorate of Market Abuse (DMA) investigated certain share transactions in Africa Cellular Towers Limited (ACT) in terms of section 82(2)(a) of the Securities Services Act No 36 of 2004 (SSA);

AND **WHEREAS** the DMA resolved to refer the matter to the Enforcement Committee of the Financial Services Board (FSB) in terms of section 6A(2) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (FI Act);



AND WHEREAS the Respondent wishes for the matter to be dealt with by way of an agreed penalty;

NOW THEREFORE the parties agree as follows:

1. The parties to the agreement

- 1.1. The First Applicant is the DMA, a committee of the FSB established in terms of section 83(1) of the Securities Services Act, No 36 of 2004 (the SSA). The DMA exercises the powers of the FSB to investigate any matter relating to a market abuse offence.
- 1.2. The Second Applicant is the FSB, a juristic person established in terms of section 2 of the Financial Services Board Act, No 97 of 1990. The functions of the FSB are *inter alia* to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services.
- 1.3. The First and Second Applicant are herein represented by Cuthbert King Chanetsa, the Deputy Executive Officer of Investment Institutions of the FSB, and the Acting Chairperson of the DMA.



- 1.4. The Respondent is Johan Klue Collins an adult male chartered accountant who at all times relevant to this referral was employed at AJP Investments (Pty) Limited (AJP) as a financial director.

2. Background facts

- 2.1. AJP traded under the name Harrison & White Construction a subsidiary of Harrison and White Investments (Pty) Limited (Harrison and White). In turn Harrison and White holds 75% of the issued shares in AJP. The Respondent was for purposes of this matter and at the time of the transactions discussed hereunder in the employ of the Harrison and White Group of companies.
- 2.2. During the period from December 2010 to February 2011 AJP conducted a due diligence on Africa Cellular Towers Limited (ACT) with a view to acquire a majority stake in ACT. During this process the Respondent came to possess the following information:
 - 2.2.1. Forecasts prepared by ACT's management including forecasted revenues for the five year period commencing from 2011 to 2015;



2.2.2. Details contained in ACT's management accounts for the period ended 31 December 2010 and

2.2.3. Details of a loan granted to ACT by the Industrial Development Corporation in the amount of R99 million payable over 6 years. The loan would enable ACT's capital expenditure and contribute to working capital.

3. The Contraventions

3.1. The information mentioned in paragraph 2.2 was not available to the public and was of such a nature that if it were to be made public, it would have a material effect on the ACT share price. The aforesaid information thus qualified as inside information as described in section 72 of the SSA.

3.2. Whilst possessing the aforesaid inside information, the Respondent admits that on 8 March 2011 he purchased 150 000 ACT shares at 11 cents per share (cps).

3.3. In the circumstances, the Respondent dealt in ACT shares whilst in possession of inside information, and thus contravened section 73 (1) (a) of the SSA.



4. Mitigating Circumstances

4.1. The parties record that the following constitute mitigating circumstances which have been taken into consideration in this matter:

4.1.1. The Respondent was at the time of the transactions not aware that he was breaching the insider trading provisions contained in the SSA. After considering his actions and having taken advice he now admits to have contravened section 73 of the SSA;

4.1.2. He has never appeared before the Enforcement Committee and has never been found to have breached any provisions of the SSA before;

4.1.3. The investigation and enforcement matter have caused considerable strain to him especially because of the implications on his career as a chartered accountant and a member of the South African Institute of Chartered Accountants ("SAICA");

4.1.4. He has admitted guilt and have not wasted the Enforcement Committee's resources on a prolonged contested case and



4.1.5. He expressed remorse and embarrassment for having contravened the SSA.

5. The Agreed Penalties

5.1. The Respondent hereby tenders to pay a penalty of R31 500. The Applicants have accepted the penalty offered by the Respondent.

5.2. Wherefore the parties humbly request that the Honourable Enforcement Committee make the agreement an order as envisaged in section 6B(7)(b) of the FI Act.

6. Other Conditions

6.1. The parties acknowledge that this agreement is subject to the approval of the Enforcement Committee and the parties further specifically record that they are aware of the possibility that the Enforcement Committee 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.



- 6.2. If any of the Respondents do not comply with the terms of this agreement and it becomes necessary for the DMA to proceed with legal proceedings, such Respondent herewith consents to pay all legal costs to the DMA 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 DMA or the FSB to the Respondents 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 DMA or the FSB.
- 6.5. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.
- 6.6. The parties select the addresses below as their *domicilium citandi et executandi* for the purposes of service of the




Enforcement Committee order and for any notice or pleading related to a breach of this agreement:

6.6.1. The Directorate of Market Abuse
c/o The Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria

6.6.2. Mr J C Collins
c/o Mr Connie Myburgh
1st Floor
Building B54, Peter Place
Peter Place
Bryanston

SIGNED AT PRETORIA on the 9 day of November 2012.



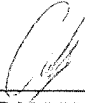
FOR AND ON BEHALF OF THE APPLICANTS

SIGNED at Johannesburg on the 9 day of November 2012.

FOR THE APPLICANT



SIGNED at Johannesburg on the 9 day of November
2012.



JOHAN KLUE COLLINS
RESPONDENT