

**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: 12/2013

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

Applicant

and

**FINSTATE CC
(Registration number 2005/068505/23)**

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 Respondent contravened: 1) Section 13(2)(a) of the Financial Advisory and Intermediary Services Act, No 37 of 2002 ("FAIS Act"); and 2) Section 12(c) of the General Code of Conduct for Authorised Financial Services Providers and Representatives published in Board Notice 80 of 2003 in Government Gazette 25299 of 8 August 2003 in terms of section 15 of the FAIS Act.

I hereby impose a penalty of R40 000 (forty thousand rand) on the Respondent to be paid on or before 16 August 2013.

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

Signed at **PRETORIA** on the¹⁵ day of **JULY 2013**.



.....
C F Eloff
Chairperson of the Enforcement Committee

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: 12/2013

In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Applicant

and

**FINSTATE CC
(Registration number 2005/068505/23)**

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 German Emmanuel Anderson in his capacity as the Deputy Registrar of Financial Services Providers; and
- 1.2. Finstate CC ("Respondent"), herein represented by Mr Nicholas Anastasio Stanlissis in his capacity as member and key individual of the Respondent.

2. Contravention of section 13(2)(a) of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act)

- 2.1. It is agreed between the parties that the Respondent contravened Section 13(2)(a) of the FAIS Act, in that:



2.1.1. During the period October 2011 and October 2012, some of the Respondents representatives rendered financial services to its clients in respect of health services benefits from Discovery Health whilst said representatives were not competent to do so due to the fact that they were not duly accredited in terms of the provisions of Regulation 28 B under the Medical Schemes Act, 1998 as required in terms of Part III, section 8 of Board Notice 106 in Government Gazette 31514 of 15 October 2008.

3. Contravention of section 12(c) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("General Code of Conduct")

3.1. It is further agreed between the parties that the Respondent contravened section 12(c) of the General Code of Conduct, in that the Respondent failed to structure its internal control procedures so as to provide reasonable assurance that all applicable laws were complied with. In this regard the Respondent failed to carry out the required checks to ensure that its representatives were competent to render financial services to its clients in respect of health services benefits from Discovery. Its failure to do so resulted in a contravention of section 13(2)(a) of the FAIS Act.

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 reported the transgressions;

4.1.2. The Respondent accepted responsibility for the contraventions;

4.1.3. The Respondent has already taken measures to rectify the breach;

4.1.4. There is no evidence of any prejudice resulting from the contraventions.



5. The agreed penalty

- 5.1. In terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties agreed that the Respondent will pay a penalty of R40 000 (forty thousand rand) on or before 16 August 2013 in settlement of the matter.
- 5.2. No order is made in relation to costs in terms of section 6D(5) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001.
- 5.3. 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.

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;
- 6.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Financial Services Board (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;
- 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;



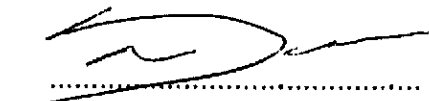
6.5. This Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act; and

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

Signed at PRETORIA on *12th July 2013* on behalf of the Registrar


.....
G E Anderson

Signed at **DURBAN** on **3 JULY 2013**, on behalf of Finstate CC


.....
Nicholas Anastasio Stanassis
For: FINSTATE CC