

**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: **22/2012**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES  
PROVIDERS**

Applicant

and

**FUSION PROPERTIES 268 CC  
T/A BROKER'S CHOICE**

Respondent

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**ORDER**

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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 8(1)(d)(i), 8(1)(d)(ii), and 3(1)(c)(i)(bb) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the Code") prescribed in terms of 15 of the Financial Advisory and Intermediary Services Act ("FAIS Act"), and impose a cumulative penalty of R50 000 to be paid before 31 December 2012. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

I make no order regarding costs.

Signed at **PRETORIA** on the <sup>10</sup>..... day of **July 2012**.

  
.....  
**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**

1.1. The parties to the agreement are the Registrar of Financial Services Providers ("the Registrar") herein represented by Mr German Emmanuel Anderson in his capacity as the Deputy Registrar of Financial Services Providers; and

1.2. Fusion Properties 268 CC trading as Broker's Choice ("Respondent"), a close corporation duly incorporated in accordance with the laws of the Republic of South Africa, bearing the registration number 2004/117658/23. The Respondent is an authorized financial services provider bearing the FSP number 23563. The Respondent is represented by Mr Sean Byron Botha in his capacity as the sole member and a key individual of the Respondent and



who warrants that he is authorized by the Respondent to conclude this agreement.

**2. WHEREAS**

- 2.1. Whereas the Registrar is of the opinion that the Respondent contravened sections 8(1)(d)(i), 8(1)(d)(ii), and 3(1)(c)(i)(bb) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the Code") prescribed in terms of 15 of the Financial Advisory and Intermediary Services Act ("FAIS Act").
- 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 contraventions**

- 3.1. It is agreed between the parties that the Respondent contravened sections 8(1)(d)(i) and 8(1)(d)(ii) of the Code in that:
  - 3.1.1. On 24 August 2011, fourteen (14) clients of the Respondent replaced their short-term policies on the advice of the Respondent. The Respondent, prior to advising its clients to replace their policies, failed to disclose to its clients the following:
    - 3.1.1.1. The actual and potential financial implications, costs and consequences of the replacement policy;



3.1.1.2. The fees and charges in respect of the replacement policy compared to the terminated short-term policy (policy); and

3.1.1.3. Exclusions of liability, excesses, restrictions of benefits and special terms and conditions which are applicable to the replacement policy compared to the replaced policy.

3.1.2. It is also agreed between the parties that the Respondent contravened section 3(1)(c)(i)(bb) of the Code in that:

3.1.2.1. The replacement policies were administered by Counterpoint Trading 328 CC t/a Policy Provider (Policy Provider). At all material times Policy Provider was an authorized financial services provider;

3.1.2.2. The Respondent failed to disclose to its clients that a key individual and sole member of the Respondent, being Mr Sean Byron Botha, is also the sole member and a key individual of Policy Provider; and

3.1.2.3. Therefore the Respondent on 24 August 2011 failed to disclose to its clients the conflict of interest that its key individual, Mr Sean Byron Botha, had an "ownership



interest" and a "financial interest" in the replacement policies.

**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;

**5. The agreed penalty**

5.1. In the 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 R50 000 in respect of all contraventions on or before 31 December 2012 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 in respect of the offer to pay a penalty.
- 6.6. This agreement is in full and final settlement of the Respondent's liability for an administrative sanction to the Registrar arising from these contraventions.



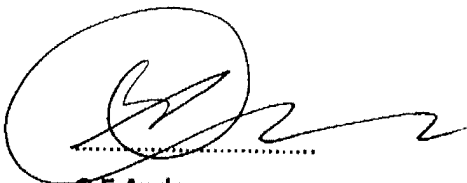
6.7. The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act will be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

A handwritten signature consisting of a stylized, cursive letter 'N' enclosed within a circle, with a long, sweeping flourish extending downwards and to the right.

6.7.1. Financial Services Board:  
Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens ext 6  
Pretoria  
0081


6.7.2. Respondent:  
Suite 103  
11 Palazzo  
Cnr Sennith and Solstice Roads  
Umhlanga Ridge  
Email:sean@policyprovider.co.za

Signed at PRETORIA on 10 July 2012 on behalf of the  
Registrar



**G E Anderson**

Signed at Durban on 9th July 2012 on behalf of the  
Respondent.

  
**S B Botha**