

**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: **20/2012**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

Applicant

and

NESS CONSULTING SERVICES (PTY) LIMITED

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 7(3) of the Financial Advisory and Intermediary Services Act, No 37 of 2002 and impose a penalty of R100 000 to be paid on or before 31 August 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 21..... day of May 2012.



C F Eloff
Chairperson of the Enforcement Committee

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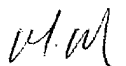
**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF
THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT,
28 OF 2001**

PARTIES TO THE AGREEMENT

1. The parties to this 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

Ness Consulting Services (Pty) Limited ("Ness"), bearing registration number 2005/020315/07 ("the Respondent"), herein represented by Mr Maqubela Mbulelo in his capacity as a director of the Respondent and who warrants that he is authorized by the Respondent to conclude this agreement. The Respondent is an authorized financial services



provider in terms of section 8 of the Financial Advisory and Intermediary Services Act, No 37 of 2002 ("the FAIS Act").

WHEREAS

2. The Registrar is of the opinion that the Respondent contravened section 7(3) of the FAIS Act.
3. 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").

NOW THEREFORE IT IS AGREED AS FOLLOWS

4. It is agreed between the parties that the Respondent contravened section 7(3) of the FAIS Act, in that during the period 1 January 2009 to 30 September 2010 in its capacity as the underwriting manager, acted as an administrator in respect of the Fidelity Group Funeral Scheme ("the Scheme") which was sold and marketed by Prospercare Benefit Solutions (Pty) Ltd ("Prospercare") whilst Prospercare was not authorized in terms of the FAIS Act or lawfully appointed as a juristic representative of an authorized financial services provider to render financial services in respect of funeral benefit policies.

5. The mitigating circumstances

- 5.1. It is also agreed that the following mitigating factors are relevant to the matter:



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5.1.1. The Respondent accepted responsibility for the contraventions;

5.1.2. The Respondent fully co-operated with the Registrar's investigation and the enforcement action;

5.1.3. The Respondent remedied the breach; and

5.1.4. There was no prejudice or harm to any policyholders

6. In the light of the above, the parties have agreed that the Respondent will pay a penalty of R100 000 on or before 31 August 2012, in settlement of the matter.

7. Other conditions

7.1. 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.

7.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Registrar/s and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar/s 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.



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- 7.3. No leniency or postponement given by the Registrar/s 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/s 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.
- 7.4. Any receipt of a payment by the Registrar/s and/or the FSB after the due date shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 7.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 7.6. This agreement is in full and final settlement of the Respondent's liability for an administrative sanction to the Registrars arising from these contraventions.
- 7.7. The parties choose as their domicilium 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 may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:



7.7.1. Financial Services Board:

Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext 6
Pretoria
0081


7.7.2. Respondent:

3rd Floor UCS Building
209 Smit Street
Braamfontein
2001

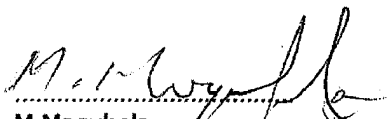
mbulelo@nessgroup.co.za

8. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of "the FI Act".

Signed at PRETORIA on 11 May 2011 on behalf of the Registrar of Financial Services Providers.


G.E. Anderson

Signed at Johannesburg on 10th May 2012 on behalf of the Respondent.


M Maqubela