

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10 (3) READ WITH SECTION 10 A OF
THE FINANCIAL SERVICES BOARD ACT, ACT NO 97 OF 1990**

CASE NO.: 24 / 2015

In the matter between:

THE REGISTRAR OF

FINANCIAL SERVICES PROVIDERS

Applicant

And

NESTLIFE ASSURANCE CORPORATION LIMITED

(REGISTRATION NUMBER: 1988/070306/06)

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, Act 28 of 2001, I hereby determine that the Respondent contravened Section 7 (3) of the Financial Advisory and Intermediary Services Act, Act 37 of 2002, and impose a penalty of R100 000.00 (one hundred thousand rand) to be paid on or before 1 June 2015.

In terms of Section 6D (5) (a) and (b) of the Financial Institutions (Protection of Funds) Act, Act 28 of 2001, I hereby determine further that the Respondent will pay R21 350.00 (twenty one thousand three hundred and fifty rand) plus interest at the rate of 9% per annum from date of the order, on or before 1 June 2015, relating to the costs reasonably incurred by the Applicant in investigating the non-compliance and referring the matter to the Enforcement Committee.

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

SIGNED at **PRETORIA** on this the **22nd** day of **MAY 2015**.



C. F. ELOFF C. F. ELOFF
CHAIRPERSON OF THE
ENFORCEMENT COMMITTEE

ANNEXURE 'A'

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

1. The Parties

1.1 The parties to the agreement are:

1.1.1 The Registrar of Financial Services Providers (the Registrar), herein
represented by Mrs C D Da Silva; and

1.1.2 Nestlife Assurance Corporation Limited (Nestlife), a registered insurance company authorised by the Registrar of Long-Term Insurance to carry on long-term insurance business in terms of the Long-Term Insurance Act, Act 52 of 1998.

1.1.3 Nestlife is also an authorised financial services provider in the terms of the Financial Advisory and Intermediary Services Act, Act 37 of 2002 (FAIS Act), with licence number 6409.

1.1.4 Nestlife is duly represented herein by Mr H V Sithole, identity number 5710015746083, in his capacity as Managing Director of Nestlife.

2. The Contraventions

2.1 During the period of December 2013 to March 2014 Nestlife conducted financial services related business with Mhlangaveza Family Assurance (Pty) Ltd (Mhlangaveza) in that Nestlife would underwrite funeral policies of the clients of a funeral scheme.

2.2 The material consensus between Nestlife and Mhlangaveza dealt with the details of the policies including the collection of premiums, benefits, admission requirements and claims.

2.3 Nestlife and Mhlangaveza did not enter into a formal written agreement with Mhlangaveza. However in terms of the material consensus between Nestlife and Mhlangaveza, Mhlangaveza was the administrator of the group funeral benefits scheme.

2.4 Mhlangaveza was not lawfully issued with a licence for the rendering of intermediary services in terms of Section 8 of the FAIS Act, and was not a representative of an intermediary as contemplated in the FAIS Act.

2.5 Nestlife collected premiums from policyholders on behalf of Mhlangaveza.

2.6 It is therefore common cause that Nestlife contravened Section 7(3) of the FAIS Act, that reads as follows:

"An authorised financial services provider or representative may only conduct financial services related business with a person rendering financial services if that person has, where lawfully required, been issued with a licence for the rendering of such financial services and the conditions and restrictions of that licence authorises the rendering of those financial services, or is a representative as contemplated in this Act".

3. Mitigating Circumstances

3.1 It is agreed that the following mitigating factors are relevant to the matter:

- 3.1.1 Nestlife fully co-operated with the Enforcement Council and displayed sincere remorse for the contraventions.
- 3.1.2 Nestlife has refined its steps to secure that it knows their clients and entities they deal with and undertook to continue to put steps in place to aid compliance with FSB legislation.
- 3.1.3 Nestlife had disclosed to the Registrar's Office that their engagement was with Bataung Insurance and Funeral Services (Pty) Ltd (Bataung) and not directly with Mhlangaveza.
- 3.1.4 The contraventions were as a result of Nestlife's attempt to assist a funeral parlour to regularise their business.

4. Aggravating Circumstances

4.1 It is agreed that the following aggravating factor is relevant to this matter:

4.1.1 Nestlife is a repeat offender.

4.1.2 With reference to paragraph 3.1.3 above, Nestlife paid the premiums collected back to Mhlangaveza and not to Bataung. There is no evidence to the effect that these funds were refunded to the relevant policyholders and / or allocated to the policyholders' accounts.

5. The agreed Administrative Penalty

5.1 In light of the above and in terms of Section 6B (7) (a) of the Financial Institutions (Protection of Funds) Act, the parties have agreed that Nestlife will pay a penalty of R100 000.00 (one hundred thousand rand) in settlement of the matter, subject to Section 6D (2) (a) of the Financial Institutions (Protection of Funds) Act, on or before 1 June 2015.

5.2 The parties have agreed that Nestlife will pay the in the amount of R21 350.00 (twenty one thousand three hundred and fifty rand) plus interest at the rate of 9% per annum from date of the order, subject to Section 6D (5) (a) and (b) of the Financial Institutions (Protection of Funds) Act, on or before 1 June 2015 relating to the costs reasonably incurred by the Applicant in investigating the non-compliance and referring the matter to the Enforcement Committee.

5.3 The parties humbly request that the Honourable Chairperson makes the settlement an order, as contemplated 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 Nestlife does not comply with the terms of this agreement and it is necessary for the Financial Services Board (FSB) to proceed with legal proceedings, Nestlife herewith consents to pay all legal costs to the FSB on an Attorney and Client Scale in terms of the High Court Rules inclusive of collection commission and VAT.

6.3 Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.

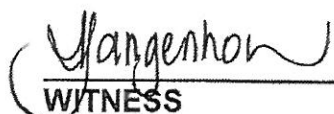
6.4 For purposes of the notification in terms of section 6E of the FI Act, Nestlife elects to receive notification via e-mail at portia@nestlife.co.za and vusi@nestlife.co.za.

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

SIGNED at **PRETORIA** on this the 21st day of **MAY 2015**.

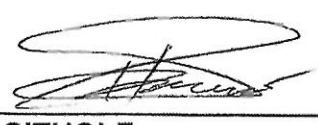


C D DA SILVA
ON BEHALF OF APPLICANT

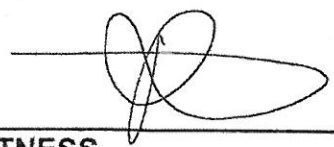


WITNESS

SIGNED at **PRETORIA** on this the 14 day of **MAY 2015**.



H V SITHOLE
ON BEHALF OF RESPONDENT



WITNESS