

**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: **18/2012**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

Applicant

and

PHAKANE, CLEMENT KARABO

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 3(a) of the Financial Advisory Services Regulations, 2003, prescribed in terms of section 35 of the Financial Advisory and Intermediary Services Act, No 37 of 2002, during the period 4 May 2011 to 25 January 2012, and impose a penalty of R25 000 to be paid on or before 30 September 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 14 day of May 2012.



C F Eloff
Chairperson of the Enforcement Committee

**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: 18/2012

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES
PROVIDERS**

Applicant

and

PHAKANE, CLEMENT KARABO

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

Mr Clement Karabo Phakane ("the Respondent"), an adult male (identity number 811210 5786 086) residing at number 10287 Mathebula Street, KwaThema, 1575.



C.K.

2. WHEREAS

- 2.1. The Registrar is of the opinion that the Respondent contravened the provisions of section 3(a) of the Financial Advisory Services Regulations, 2003 (Regulations) prescribed in terms of section 35 of the Financial Advisory and Intermediary Services Act, No 37 of 2002 ("the 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 contravention

- 3.1. It is agreed between the parties that the Respondent contravened the provisions of section 3(a) of the Regulations in that:
- 3.1.1. The Respondent during the period 4 May 2011 to 25 January 2012 and within the Republic of South Africa, canvassed for, marketed and/or advertised the rendering of financial services by a foreign based company, namely Safecap Investments Ltd trading as Markets.com.



C.K.

3.1.2. Markets.com was neither authorised as a financial services provider nor was it lawfully appointed as a juristic representative of an authorised financial services provider during the period 4 May 2011 to 25 January 2012.

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; and

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 penalty of R25 000 on or before 30 September 2012 in settlement of the matter.



C.K.

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. 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.

6.3. If the Respondent does not comply with the terms of this agreement and it is necessary for the Registrar and/or the Financial



C.K.

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.

- 6.4. 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 this contravention.
- 6.7. The parties choose as their *domicilium citandi et executandi* their respective addresses 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



C.K.

email. For the purpose of this agreement the parties' respective addresses shall be:

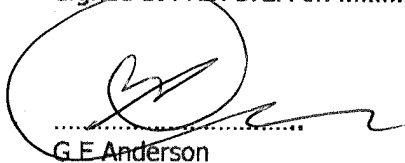
6.7.1. Financial Services Board

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

6.7.2. Respondent:

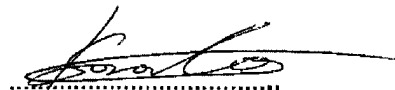
The Business Centre
377 Rivonia Boulevard,
2128
E-mail: karabo.toka@live.co.za

Signed at PRETORIA on 11 May 2012 on behalf of the Registrar.



G.E. Anderson

Signed at RIVONIA on 10/05/2012 on behalf of the Respondent.



C K Phakane

