

**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: **31/2012**

In the matter of:

**THE REGISTRAR OF FINANCIAL
SERVICES PROVIDERS**

Applicant

and

CUCAMLA FINANSIËLE DIENSTE CC

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(1) 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 May 2013. 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^{8th} day of^{February} 2013.



C F Eloff

Chairperson of the Enforcement Committee

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In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

APPLICANT

and

CUCAMLA FINANSIËLE DIENSTE CC

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 Emanuel Anderson; and
- 1.2 Cucamla Finansiële Dienste CC, ("the Respondent"), a close corporation incorporated in accordance with the laws of the Republic of South Africa, bearing the registration number 2008/186065/23 herein represented by Dr Willem Daniël Labuschagne in his capacity as a sole member of the Respondent.

2. THE CONTRAVENTION:

- 2.1 On 15 July 2008, the Respondent, who at the time was still registered as a



private company known as Cucamla Financial Services (Pty) Limited, and trading as Zuntal entered into an agreement with an authorized insurer, namely Channel Life, the terms of which were *inter alia* that the Respondent was to receive premiums, settle claims and market insurance policies on behalf of the insurer.

- 2.2 From 15 July 2009 to February 2012, the Respondent offered financial services as stipulated in the aforesaid agreement. Whilst doing so, the Respondent was not lawfully issued with a license authorizing it to render financial services.
- 2.3 It is agreed between the parties that the Respondent contravened section 7 (1) of the Financial Advisory and Intermediary Services Act, no 37 of 2002 ("the Act"), in that the Respondent conducted financial services business without authorization by the Registrar.

3. **THE MITIGATING CIRCUMSTANCES:**

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

- 3.1 The Respondent accepted responsibility for the contravention; fully cooperated with the Registrar's investigation and the enforcement action, and displayed sincere regret for the contravention;
- 3.2 There is no evidence of any prejudice resulting from the contravention;
- 3.3 The Respondent has rectified the contravention and its sole member is now authorized as a financial services provider, under FSP number 44019;



3.4 Cucamla was not issued with a licence for the rendering of intermediary services as contemplated in section 8 of the Act, however, at all times the Respondent was under the impression that the licence was indeed issued. The actions of the Respondent were therefore as a result of a *bona fide* oversight for which the Respondent accepts and accepted full responsibility.

3.5 The Respondent's representative was on a number of occasions assured that the Respondent and more specifically when it was still registered as a company was duly registered. The Respondent therefore at all times acted *bona fide*.

4. **THE AGREED PENALTY:**

4.1 In the light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that the Respondent will pay a penalty of R100 000.00 on or before 31 May 2013.

4.3 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, No 28 of 2001.

5. **OTHER CONDITIONS:**

5.1 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.

5.2 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.

- 5.3 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.
- 5.4 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.
- 5.5 This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 5.6 This agreement is in full and final settlement of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 5.7 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 may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

- (i) Financial Services Board:



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

(ii) Respondent:

Dr W D Labuschagne
c/o Cox & Partners
P O Box 5
Vryheid, 3100
E-mail: lit2@coxlex.co.za

SIGNED AT PRETORIA ON THIS 7th DAY OF ~~JANUARY~~ ^{FEBRUARY} 2013 ON BEHALF
OF THE REGISTRAR



GERMAN EMANUEL ANDERSON

SIGNED AT VRYHEID ON THIS 04th DAY OF ~~JANUARY~~ ^{FEBRUARY} 2013 ON BEHALF OF
THE RESPONDENT.



DR WILLEM DANIËL LABUSCHAGNE