

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

CASE NO: **EC 22/2015**

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

Applicant

and

DEFENSIVE LEGAL PROTECTION CC (in liquidation)

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 Short-term Insurance Act, 53 of 1998.

I hereby impose a penalty inclusive of costs of R100 000 to be paid by the Respondent on or before 31 January 2016.

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

Signed at **PRETORIA** on the 07 day of **DECEMBER 2015**



.....
C F Eloff
Chairperson of the Enforcement Committee

"A"

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

CASE NUMBER: 22/2015

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE Applicant

and

DEFENSIVE LEGAL PROTECTION CC (in liquidation) Respondent



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

1. PARTIES TO THE AGREEMENT

1.1 The Applicant is the Registrar of Short-term Insurance ("the Registrar"). The Applicant is herein represented by Jonathan Ian Dixon in his capacity as the Deputy Registrar of Short-term Insurance and as the Deputy Executive Officer for Insurance.

and

1.2 The Respondent is Defensive Legal Protection CC trading as Legal Exec (herein after referred to as "the Respondent"), a close corporation registered and incorporated in accordance with the company laws of the Republic of South Africa bearing the registration number 2010/149965/23, in liquidation. The Respondent is herein represented by Gert Louwrens Steyn de Wet N.O. in his capacity as

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liquidator and duly appointed thereto on 23 June 2015 as reflected in the Certificate of Appointment attached hereto as Annexure "A".

2. THE CONTRAVENTION OF SECTION 7(1) OF THE SHORT-TERM INSURANCE ACT,

- 2.1 The principal business of the Respondent is the providing of legal advice and assistance to members of the public. Since February 2011, the Respondent has been offering these services in terms of a legal assistance and legal advice plan.
- 2.2 In essence the Respondent stands in for legal expenses in cases of criminal prosecution, or if its clients are involved in a legal dispute. In addition clients are also entitled to telephonic legal advice.
- 2.3 Generally the so-called legal advice plan is offered at a monthly premium payment of R35.00 and the legal assistance plan is offered at a monthly premium payment of R85.00.
- 2.4 The agreement between the Respondent and its clients amounts to an insurance policy, the benefits received by the client's amount to policy benefits, the monthly payments made by the clients amount to premiums, and as such the Respondent was carrying on short-term insurance business in contravention of section 7(1) of the Short-term Insurance Act from February 2011 to 4 December 2014.
- 2.5 On 4 December 2014, after some interaction with the Financial Services Board, the Respondent arranged for its clients to be underwritten by Genric Insurance Company Limited ("Genric"), and for the Respondent to become a juristic representative of Genric.

3. The mitigating circumstances

- 3.1. It is agreed that *inter alia* the following mitigating factors are relevant to the matter:

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- 3.1.1. The Respondent believed it was not contravening the law based on advice it had received at the time. When the Respondent realised that it was in fact contravening the Short-term Insurance Act, it regularised its business by arranging for all the clients to be underwritten by a registered insurance company.
- 3.1.2. The Respondent took full responsibility for its unlawful actions, and co-operated fully with the Applicant.
- 3.1.3. No persons were prejudiced as a result of the contravention.

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 to a penalty in the amount of R100 000.00, inclusive of costs incurred by the Applicant in investigating and settling this matter.
- 4.2. As agreed with the members of the Respondent ("the members"), the penalty will be paid by the members, on behalf of the Respondent.

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. 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

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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.

- 5.3. 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.
 - 5.4. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
 - 5.5. This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
6. 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 03/12/2015 on behalf of the FSB and the Registrar of Short-term Insurance.

.....
J I Dixon

Signed at Doornfontein on 1/12/2015 on behalf of the Respondent.

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GLS de Wet, JOINT LIQUIDATOR