

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: **28/2015**

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE Applicant

and

DISCOVERY INSURE 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 44 of the Short-term Insurance Act, 53 of 1998 and impose a penalty of R100 000 (One hundred thousand rand).

I make no order as to costs.

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

Signed at **PRETORIA** on the day of **November 2015**.



C F Eloff
Chairperson of the Enforcement Committee

**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: 28/2015

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

Applicant

and

DISCOVERY INSURE LIMITED

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) herein represented by Jonathan Ian Dixon in his dual capacities as the Deputy Registrar of Short-term Insurance and the Deputy Executive Officer for Insurance.

and

1.2 The Respondent is Discovery Insure Limited (the Respondent), a company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing the registration number 2009/011882/06. The Respondent is herein represented by Mr Anton Ossip, Chief Executive

Officer of Discovery Insure Limited who warrants that he has been duly authorised by the Respondent to enter into this agreement.

- 1.3 The Respondent's registered address is at 155 West Street, Sandton. The Respondent is a registered insurer in terms of the Short-term Insurance Act, 53 of 1998 (the STIA) and an authorised financial services provider under FSP licence 43064 issued in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002.

2. THE CONTRAVENTION OF SECTION 44 OF THE STIA

- 2.1. It is agreed between the parties that during the period September 2014 to January 2015 the Respondent through its Vitality Drive program offered a premium waiver to members of the public using the Gautrain if they took up the Respondent's short-term insurance products before 31 October 2014. The premium waiver was viewed by the Registrar as an inducement to take up short-term insurance policies and resulted in a contravention of section 44 of the STIA.

- 2.2. The Respondent had offered insurance cover for the month of January 2015 for free to new policyholders that joined between October and November 2014 and who used the Gautrain for a defined number of times. Given the varying interpretations of section 44 that exist in the market, the Registrar is of the view that it is important to clarify its interpretation.

3. THE MITIGATING CIRCUMSTANCES

- 3.1. It is agreed that *inter alia* the following mitigating factors are relevant to the matter:
 - 3.1.1 The Registrar is of the view that the Respondent misinterpreted the relevant provision which resulted in the contravention


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3.1.2 Due to the said misinterpretation, the Respondent's conduct did not constitute an intentional breach of the provisions;

3.1.3 The Respondent expressed regret for its actions, admitted the contravention and gave its full co-operation to the Registrar to ensure that this matter is brought to finality; and

3.1.4 The Registrar is not aware of any policyholders who were prejudiced by the contravention.

4. THE AGREED PENALTY

4.1. In 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 FI Act), the parties have agreed that the Respondent will pay a penalty of R100 000 (One Hundred Thousand Rand), inclusive of costs incurred by the Applicant in bringing this matter before the Enforcement Committee.

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 Should the Respondent not comply with the terms of this agreement and it becomes necessary for the Registrar and/or the 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, interest 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, which date shall be outlined in an invoice for payment of the penalty 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 only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 5.7. 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:

The Applicant

Financial Services Board:
Block B, Riverwalk Office Park

41 Matroosberg Road
Ashlea Gardens ext. 6
Pretoria
0081

The Respondent:


Discovery Insure Limited
155 West Street
Sandton
E-mail: SurinaM@discovery.co.za

5.8 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 4 November 2015 on behalf of the FSB and the Registrar of Short-term Insurance.


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J I Dixon

Signed at Sandton on 30/10/2015 on behalf of the Respondent.


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A. Ossip