

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 16/2016

In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS First Applicant

FINANCIAL SERVICES BOARD Second Applicant

and

BAYPORT FINANCIAL SERVICES 2010 (PTY) LTD Respondent

ORDER

WITH DUE CONSIDERATION of the settlement agreement (attached marked annexure "A") filed in terms of section 6B (7) (b) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened section 13(2)(a) of the Financial Advisory and Intermediary Services Act, 37 of 2002. I hereby impose a penalty of R500 000 (Five Hundred Thousand Rand) inclusive of costs to be paid by the Respondent within one month from the date of this order.

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

Signed at **PRETORIA** on the ^{1st}..... day of **September 2016**.


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

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THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS First Applicant

FINANCIAL SERVICES BOARD Second Applicant

and

BAYPORT FINANCIAL SERVICES 2010 (PTY) LTD Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO. 28 OF 2001

PARTIES TO THE AGREEMENT

1. The First Applicant is the Registrar of Financial Services Providers.
2. The Second Applicant is the Financial Services Board (FSB), a juristic person established in terms of section 2 of the Financial Services Board Act, No. 97 of 1990. The functions of the FSB are *inter alia* to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services.

3. The First and Second Applicants are represented by Mrs Caroline Da Silva in her capacity as the Deputy Registrar of Financial Services Providers and as the Deputy Executive Officer: Financial Services Providers.

and

4. The Respondent is Bayport Financial Services 2010 (Pty) Ltd a private company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing the registration number 2009/018403/07. The Respondent has its registered office at 23A 10th Avenue, Rivonia, Gauteng. The Respondent is an authorised financial services provider bearing the license number 42380.
5. The Respondent is herein represented by Mr Nhlanhla Hlubi, a key individual of the Respondent, who warrants that he is duly authorised by the Respondent to enter into and sign this agreement on its behalf.

WHEREAS

6. The First Applicant is of the opinion that the Respondent contravened section Section 13 (2)(a) of Financial Advisory and Intermediary Services Act 37 of 2002 (the Act).
7. The Respondent wishes to enter into a settlement agreement with the First Applicant as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").

NOW THEREFORE IT IS AGREED AS FOLLOWS

8. The Respondent was at all relevant times authorised to render financial services in respect of, amongst others, assistance policies.
9. During the period 01 November 2012 until 30 June 2015, the Respondent allowed its agents to render financial services, in respect of assistance policies,

for and on its behalf without properly appointing these agents as representatives and satisfying itself that these agents complied with the prescribed fit and proper requirements in contravention of section 13 (2)(a) of the Act.

10. The mitigating circumstances

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

10.1.1. The Respondent has previously not been found by the Enforcement Committee to have contravened any law.

10.1.2. The Respondent accepted responsibility for the contravention.

10.1.3. The Respondent co-operated with the Applicants with regard to the enforcement action.

10.1.4. The Respondent discontinued its assistance policy business.

11. In light of the above, the parties have agreed that the Respondent will pay a penalty of R500 000 (five hundred thousand rand) inclusive of costs to be paid within one month of this agreement being made an order of the Enforcement Committee.

12. Other conditions

12.1. 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.

- 12.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Applicants to institute legal proceedings, the Respondent herewith consents to pay all legal costs to the Applicants on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 12.3. No leniency or postponement given by the Applicants 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 Applicants 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.
- 12.4. Any receipt of a payment by the Second Applicant after the due date shall be without prejudice to any of the rights of the Applicants.
- 12.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 12.6. This agreement is in full and final settlement only in respect of the Respondent's liability for an administrative sanction to the Applicants arising from this contravention.
- 12.7. 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:

12.7.1. First and Second Applicants
Financial Services Board:
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext. 6
Pretoria
0081

12.7.2. The Respondent:
23A, 10th Avenue
Rivonia
Gauteng

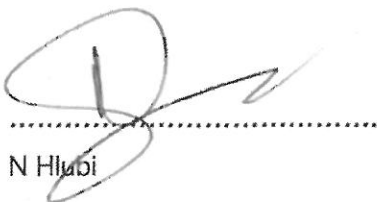
Email address: Arthur.Hlubi@bayport.co.za

13. The parties humbly request that the Honorable Chairperson makes the settlement an order of the Enforcement Committee, as envisaged in section 6B (7)(b) of the FI Act.

Signed at PRETORIA on 15TH.9.2016..... on behalf of the Applicants.


.....
C Da Silva

Signed at RIVONIA..... on 15 SEPTEMBER 2016..... on behalf
of the Respondent.


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N Hlubi