

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF SECTION  
10(3) OF THE FINANCIAL SERVICES BOARD ACT, 97 OF 1990**

CASE NO: **EC 35/2017**

In the matter of:

**THE REGISTRAR OF LONG-TERM INSURANCE  
FINANCIAL SERVICES BOARD**

First Applicant  
Second Applicant

and

**AVBOB MUTUAL ASSURANCE SOCIETY**

Respondent

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**ORDER**

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In terms of section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 and with due consideration to the settlement agreement attached marked annexure "A", I hereby determine that the Respondent contravened Rule 5.1 (a)(i) of the Policyholder Protection Rules (Long-term Insurance), 2004, issued in terms of section 62 of the Long-term Insurance Act, No.52 of 1998.

I hereby impose on the Respondent a penalty of R100 000 (one hundred thousand rand) inclusive of costs. The Respondent must pay the penalty within 20 working days 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 Durban on the .....<sup>15<sup>th</sup></sup> day of **December 2017**.



.....  
**Mr E A Moolla**

**Deputy Chairperson of the Enforcement Committee**

" Annex 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 NO: EC 35/2017

In the matter of:

**THE REGISTRAR OF LONG-TERM INSURANCE**

First Applicant

**FINANCIAL SERVICES BOARD**

Second Applicant

and

**AVBOB MUTUAL ASSURANCE SOCIETY**

Respondent

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

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**PARTIES TO THE AGREEMENT**

1. The First Applicant is the Registrar of Long-term Insurance.
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 in particular the conduct of long-term insurance business.

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3. The First and Second Applicants are represented by Mrs Caroline da Silva in her capacity as the Deputy Registrar of Long-term Insurance and as the Deputy Executive Officer for Insurance.

and

4. The Respondent is AVBOB Mutual Assurance Society, a company incorporated under Private Act No.7 of 1951. The Respondent's registered office is situated at 368 Madiba Road, Pretoria. The Respondent was at all relevant times registered as a long-term insurer in terms of the Long-term Insurance Act, No. 52 of 1998 (Act). The Respondent is herein represented by Mr Jakobus Frederik Rademan in his capacity as the public officer of the Respondent, who warrants that he is duly authorised by the Respondent to enter into and sign this agreement on its behalf.

#### **WHEREAS**

5. The First Applicant is of the opinion that the Respondent contravened rule 5.1(a)(i) of the Policyholder Protection Rules (Long-term Insurance), 2004 (hereafter referred to as the PPRs).
6. 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**

7. The Respondent contravened rule 5(a)(i) of the PPRs in that:
  - 7.1. On 28 October 2010 the Respondent had entered into an intermediary agreement with Mr T Nyadombo (Nyadombo) in respect of which Nyadombo

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undertook to render services as intermediary in respect of, inter alia, a savings product that was underwritten by the Respondent.

7.2. On 10 December 2014 Nyadombo's authorization to render services as an intermediary in respect of certain financial products, which included savings products, was withdrawn.

7.3. During the period 11 December 2014 until April 2016 Nyadombo continued to render services as intermediary for and on behalf of the Respondent with regard to the savings product that was underwritten by the Respondent, whilst he was not authorised to render financial services in respect of this product.

#### **8. The mitigating circumstances**

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

8.1.1. The Respondent accepted responsibility for the contravention.

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

8.1.3. The Respondent has undertaken to implement measures to prevent the future breach of the PPRs from recurring.

#### **9. The aggravating circumstances**

9.1. It is also agreed that the following aggravating factors are relevant to the matter:

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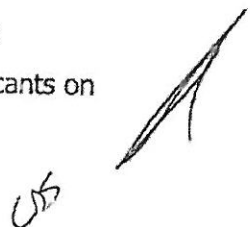
- 9.1.1. The conduct of the Respondent failed to demonstrate sound insurance principles and practice in the interests of the policyholders.
- 9.1.2. Nyadombo rendered intermediary services to 69 clients in respect of the savings product underwritten by the Respondent.
- 9.1.3. The Respondent was not aware of the license changes on Nyadombo's FSP license until the contravention was brought to its attention by the staff of the Second Applicant.
- 9.1.4. The contravention continued for a considerable period from December 2014 until April 2016.

#### **Penalty**

10. In light of the above, the parties have agreed that the Respondent will pay a penalty of R100 000 (One Hundred Thousand Rand) inclusive of costs, to be paid within 20 working days from the date on which this settlement agreement is made an order of the Enforcement Committee.

#### **11. Other conditions**

- 11.1. 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.
- 11.2. 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.

- 11.3. 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.
- 11.4. 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.
- 11.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 11.6. 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.
- 11.7. 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 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:
- 11.7.1. First and Second Applicants  
Financial Services Board:



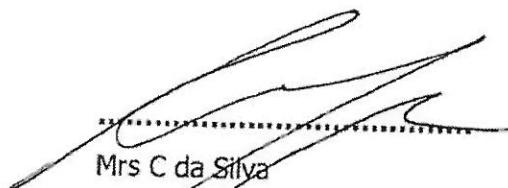
Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens ext. 6  
Pretoria  
0081

The Respondent:

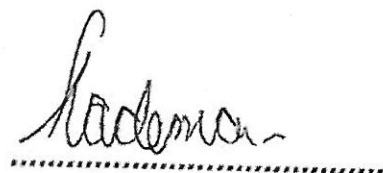
368 Madiba Road  
Pretoria  
Email address: [fikrademan@avbob.co.za](mailto:fikrademan@avbob.co.za)

12. The parties humbly request that the settlement agreement is made an order of the Enforcement Committee, as envisaged in section 6B (7)(b) of the FI Act.

Signed at PRETORIA on 29 NOVEMBER 2017 on behalf of the Applicants.

  
.....  
Mrs C da Silva

Signed at PRETORIA on 27 NOVEMBER 2017 on behalf of the Respondent.

  
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Mr JF Rademan