

**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: 34/2017

In the matter of:

REGISTRAR OF FINANCIAL SERVICES PROVIDERS	First Applicant
FINANCIAL SERVICES BOARD	Second Applicant

and

REFINERY 5 (PTY) LIMITED	Respondent
---------------------------------	------------

ORDER

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 section 7(1) of the Financial Advisory and Intermediary Services Act, 37 of 2002.

I hereby impose on the Respondent a penalty of R20 000 (twenty thousand rand) inclusive of costs.

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

Signed at **DURBAN** on the 20TH day of **OCTOBER 2017**.


.....
E A MOOLLA
Deputy 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: 34/2017

In the matter of:

REGISTRAR OF FINANCIAL SERVICES PROVIDERS	First Applicant
FINANCIAL SERVICES BOARD	Second Applicant
REFINERY 5 (PTY) LIMITED	Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 68 (7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO.28 OF 2001**

1. PARTIES TO THE AGREEMENT

1.1 The First Applicant is the Registrar of Financial Services Providers (the Registrar) herein represented by Mrs Caroline da Silva in her capacity as the Deputy Executive Officer of Financial Services Providers.

1.2 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

1.2 The Respondent is Refinery 5 (Pty) Limited a company duly registered in terms of the laws of the Republic of South Africa with company registration number: 2015/354874/07. The Respondent's business address is at suite 102, Ridge 2, 77 Richerond Circle, Ridgeside, Umhlanga, KwaZulu Natal, 4320.

2. THE CONTRAVENTION OF SECTION 7(1) OF THE ACT

2.1. The First Applicant is of the opinion that the Respondent contravened section 7(1) of the Financial Advisory and Intermediary Services Act No.37 of 2002 (the Act).

2.2. 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").

2.3. It is agreed between the parties that during the period February until April 2017 the Respondent contravened section 7(1) of the Act in that it rendered financial services to an existing derivative client, to an employee and an employee's sister whilst its terms of authorization permitted it to render financial services only in derivatives instruments.

3. THE MITIGATING FACTORS

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

3.1.1. The Respondent voluntarily disclosed to the First and Second Applicant that it had inadvertently provided the said financial services and accepted responsibility for the contravention.

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

4. THE AGGRAVATING FACTORS

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

4.1.1. The Respondent earned commission of R6000 in respect of the unlicensed financial services comprising a limited number of share trades at the express instance and request of an employee, an employee's sister and an existing derivative client;

4.1.2. The Respondent's conduct had the potential of causing prejudice to clients and disrepute to the financial services industry.

5. THE AGREED PENALTY

5.1. In light of the above, the parties have agreed that the Respondent will pay a penalty of R20 000 (Twenty Thousand Rand) inclusive of costs.

6. OTHER CONDITIONS

6.1. 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.

6.2. 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.

6.3. No leniency or postponement given by the Registrar to the Respondents 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.

6.4. 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.

6.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.

6.6. 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.

6.7. 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

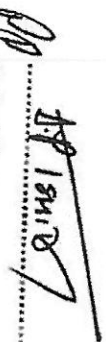
0081

The Respondent:

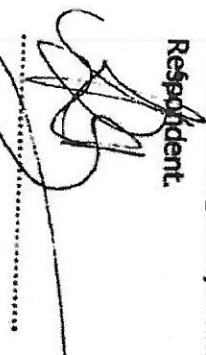
c/o Ms Ronnel Zabora Bird
Suite102
Ridge 2
77 Richerford Circle
Ridgeside
Umhlanga
ronnel@refinery5.com

6.8. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B (7)(b) of the F I Act.

Signed at PRETORIA on on behalf of the Applicants.


.....
C da Silva

Signed at Ridgeside, Umhlanga on the 13th of October 2017 on behalf of the Respondent.


.....
R Bird