

**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: 3/2018

In the matter of:

REGISTRAR OF FINANCIAL SERVICES PROVIDERS	First Applicant
FINANCIAL SERVICES BOARD	Second Applicant
DELL COMPUTER (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 R100 000 (One hundred 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 13TH day of **March 2018**.


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E A MOOLLA
Deputy Chairperson of the Enforcement Committee

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DELL COMPUTER (PTY) LIMITED	Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (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

1.3. The Respondent is Dell Computer (Pty) Limited a company duly registered in terms of the laws of South Africa with company registration number 1995/007883/07 and whose principal place of business is situated at Ground Floor, Lords Building, The Campus, Corner Sloane and Main Road, Bryanston.

1.4. The Respondent was authorised as a financial services provider on 2 August 2016 and was issued with a Category 1 FSP licence under license number 47015.

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CS 1.5. The Respondent is herein represented by Mr Seth Angel who warrants that she is duly authorised by the Respondent to enter into this agreement.

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 FAIS 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 the following facts are relevant to the contravention:

2.3.1. During the period from 1 November 2015 to 3 June 2016 the Respondent collected insurance premiums in respect of insurance products that covered accidental damage to Dell Computer (Pty) Limited devices sold to customers.

2.3.2. When the Respondent collected said premiums it was not an authorized financial services provider and was thus not permitted to render said financial services.

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 accepted responsibility for the contravention and elected to settle the matter with the Registrar.

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

3.1.3. During the period of the contravention the Respondent settled all claims it received and the Registrar is not aware of any complaints from the Respondent's clients in this regard.

3.1.4. The Respondent has rectified the contravention by obtaining the relevant authorization.

4. THE AGGRAVATING FACTORS

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

4.1.1. Rendering of unlicensed financial services is prevalent and undermines regulation.

4.1.2. The contravention took place over a seven month period.

4.1.3. The Respondent's conduct showed a disregard for regulation especially because the Respondent had been advised prior to collecting premiums that it should obtain the necessary authorization. Nonetheless, the Respondent failed to follow the advice.

5. THE AGREED PENALTY

5.1. In light of the above, the parties have agreed that the Respondent will pay a penalty of R100 000 (Hundred 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

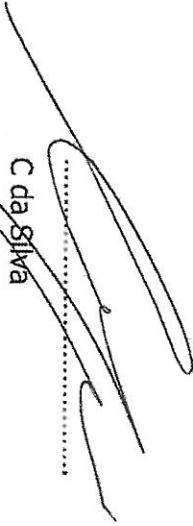
The Respondent:

Dell Computer (Pty) Limited
Ground Floor Lords Building
The Campus
Cnr Sloane and Main Road
Bryanston


c/o Carolyn.Arnold@dell.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 08 MARCH 2018 on behalf of the Applicants.


.....
C da Silva

Signed at SHANSTON on 6 MARCH 2018 on behalf of the Respondent.


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Carolyn S. Arnold