

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

CASE NO: EC 30/2017

In the matter of:

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

First Applicant
Second Applicant

and

THE SMART LIFE INSURANCE COMPANY LTD

Respondent

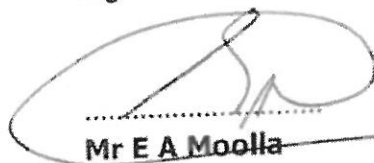
ORDER

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 Rules 16.1(c) (ii) and (iii) 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 R150 000 (one hundred and fifty thousand rand) inclusive of costs. The Respondent must pay the penalty within 14 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 ^{14TH}..... day of **June 2017**.



.....
Mr E A Moolla

Deputy Chairperson of the Enforcement Committee

"Annexure 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 30/2017

In the matter of:

THE REGISTRAR OF LONG-TERM INSURANCE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

and

THE SMART LIFE INSURANCE COMPANY 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 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.



3. The First and Second Applicants are represented by Mr Jonathan Ian Dixon in his capacity as the Deputy Registrar of Long-term Insurance and as the Deputy Executive Officer for Insurance.

and

4. The Respondent is The Smart Life Insurance Company Limited, a public company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing the registration number ^{1965/003119/06} ~~2010/025003/06~~. The Respondent's registered office is situated at 3rd Floor President Place, corner Jan Smuts avenue and Bolton Road, Rosebank, Johannesburg. 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 Simon Hebron, the Public Officer and Chief Executive 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 Rules 16.1(c) (ii) and (iii) of the Policyholder Protection Rules (Long-term Insurance), 2004 (hereafter referred to as the PPR's).
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. During the period 15 April 2013 until 24 June 2016 the Respondent rejected 61 policyholders claims without advising the policyholders, in its notice of rejection, of their following rights:

- 7.1. To make representations regarding the Respondent's decision to reject the claim within 90 days of receipt of the rejection notice in contravention of Rule 16.1(c) (ii) of the PPR's.
- 7.2. To lodge a complaint with the appropriate Ombud under the Financial Services Ombud Schemes Act of 2004, in contravention of Rule 16.1(c) (iii) of the PPR's.

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:
 - 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. The Respondent's conduct with respect to its notice of rejection of claims had the potential of causing prejudice to the policyholders whose claims were rejected.

Penalty

10. In light of the above, the parties have agreed that the Respondent will pay a penalty of R150 000 (One Hundred and Fifty Thousand Rand) inclusive of costs, to be paid within 14 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.

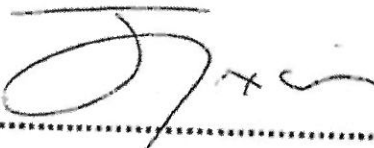
- 11.4. Any receipt of a payment by the Second Applicant after the due date shall be without prejudice to any of the rights of the Applicants.
- 11.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 11.6. This agreement is in full and final 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




12.7.2 The Respondent:
3rd Floor President Place
Corner Jan Smuts Avenue and Bolton Road
Rosebank
Johannesburg
Email address: simon.hebron@smartlife.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 13 June 2017 on behalf of the Applicants.


.....
Mr J I Dixon

Signed at Rosebank on 26th May 2017 on behalf of the Respondent.


.....
Mr S Hebron