

TO BE PUBLISHED BY THE FSCA

Case No: 2106

In the matter between:

The Financial Sector Conduct Authority

And

Mrs Gloria Mmaphefo Modibana

Mr Thabang Edwln Maswanganye

Omphile Boitumelo Funeral Services (Pty) Ltd

**ENFORCEABLE UNDERTAKING IN TERMS OF SECTION 151(1) OF THE FINANCIAL
SECTOR REGULATION ACT, 2017**

DEFINITIONS

1. For purposes of this undertaking, the following definitions shall apply:
 - 1.1. **"Omphile Boitumelo Funeral Services"** means **Omphile Boitumelo Funeral Services (Pty) Ltd**, a private company with limited liability, duly incorporated and registered in accordance with the company laws (*Companies Act No. 71 of 2008, as amended*) of the Republic of South Africa, under registration number 2021/651220/07, with its principal place of business situated at 420 Block P, Soshanguve, Pretoria, Gauteng, 0152.
 - 1.2. **"Effective Date"** means the date on which this undertaking becomes enforceable which is upon signature by a duly authorised officer acting on behalf of the Authority.
 - 1.3. **"Enforceable Undertaking"** means this undertaking duly signed and concluded between the Authority and Omphile Boitumelo Funeral Services.
 - 1.4. **"FAIS Act"** means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.

Executive Committee:

Commissioner: U. Kamlana

Deputy Commissioners: A. Ludin

K. Gibson

F. Badat

G. Mmodibana
T. E. Maswanganye

- 1.5. **"The Authority"** means the Financial Sector Conduct Authority.
- 1.6. **"FSR Act"** means the Financial Sector Regulation Act No. 9 of 2017, as amended.
- 1.7. **"Modibana"** means Ms Gloria Mmaphefo Modibana, the director of Omphile Boitumelo Funeral Services.
- 1.8. **"Maswanganye"** means Mr Thabang Edwin Maswanganye, the director of Omphile Boitumelo Funeral Services.
- 1.9. **"Tribunal"** means the independent Financial Services Tribunal, a statutory body established in terms of section 219 of the FSR Act, with its principal place of business at Kasteel Office Park, Orange Building, 546 Jochemus street, Erasmuskloof, Pretoria, Gauteng.

COMPLAINT

2. The Authority is the market conduct regulator of financial institutions that are licensed in terms of financial sector laws. The Authority is empowered by the FSR Act to supervise and enforce compliance with financial sector laws.
3. The Authority received information that Omphile Boitumelo Funeral Services issued funeral policies without having an underwriter, which is a contravention of section 5 of the Insurance Act 18 of 2017 (the Insurance Act).
4. Modibana and Maswanganye confirmed that from 31 May 2021 to 13 December 2022, Omphile Boitumelo Funeral Services collected premiums and processed claims. It conducted one funeral to date.
5. Modibana and Maswanganye further confirmed that Omphile Boitumelo Funeral Services never had any licensed underwriter for its funeral scheme.

INVESTIGATION AND CONTRAVENTIONS

6. The Authority commenced an enquiry into the conduct of Omphile Boitumelo Funeral Services, Modibana and Maswanganye, as empowered by section 131(1)(a) of the FSR Act. The enquiry was in respect of their conduct during the period 31 May 2021 to 13 December 2022, to determine whether there was a reasonable suspicion of contraventions of:
- 6.1. Section 7(1) of the FAIS Act which states that a person may not act or offer to act as a financial services provider unless such person has been issued with a license under section 8, or, unless such a person has been appointed

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as a representative of an authorised financial services provider under section 13;

- 6.2. Section 5(1) of the Insurance Act which states that no person may conduct insurance business in the Republic unless that person is licensed under the Act;
 - 6.3. Section 8(3)(a) and (b) of the Long-term Insurance which provides that subject to this Act, no person shall render services as intermediary, in relation to a long-term policy, unless long-term insurers are the only underwriters in terms of the long-term policy concerned; or that person does so with the approval of the Authority.
7. Modibana and Maswanganye, caused and/or permitted Omphile Boitumelo Funeral Services to issue funeral policies without having a licensed underwriter. Modibana and Maswanganye further collected premiums and processed claims on behalf of policy holders.
 8. Modibana and Maswanganye did not dispute their knowledge and/or involvement in the conduct of Omphile Boitumelo Funeral Services and as a result, they caused and/or permitted the contraventions of sections 7(1) of the FAIS Act, 5(1) of the Insurance Act and 8(3)(a) and (b) of the Long-term Insurance Act. Omphile Boitumelo Funeral Services, Modibana and Maswanganye have admitted all the contraventions.

ENFORCEABLE UNDERTAKING

9. Omphile Boitumelo Funeral Services, Modibana and Maswanganye tender the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act:
 - 9.1. They will ensure that at all relevant times their clients' insurance business is placed with a licensed underwriter.

NON-COMPLIANCE WITH THE UNDERTAKING

10. Omphile Boitumelo Funeral Services, Modibana and Maswanganye understands that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:
 - 10.1. may impose an administrative penalty against Omphile Boitumelo Funeral Services, Modibana and/or Maswanganye, on the basis of joint and several liability;

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- 10.2. may debar Omphile Boitumelo Funeral Services, Modibana and Maswanganye; and/or
- 10.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.
11. Omphile Boitumelo Funeral Services, Modibana and Maswanganye acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT SOSHANGUKE ON THIS 26 DAY OF FEBRUARY 2023.

G. M. Modibana

Ms Gloria Mmaphefo Modibana

T. E. Maswanganye

Mr Thabang Edwin Maswanganye

(On behalf of Omphile Boitumelo Funeral Services)

G. M. Modibana

Ms Gloria Mmaphefo Modibana

T. E. Maswanganye

Mr Thabang Edwin Maswanganye

(In their personal capacity)

The aforesaid Enforceable Undertaking is accepted by the Financial Conduct Authority in terms of section 151(1) of the Financial Sector Regulation Act, 2017

DATED AT PRETORIA ON THIS 1ST DAY OF JUNE 2023.

Gerhard van Deventer

Gerhard van Deventer

(For the Authority)

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