

[TO BE PUBLISHED BY THE FSCA]

Case No: 2297

In the matter between:

The Financial Sector Conduct Authority

And

Mr Pitso Pieter Mofokeng

Mrs Sibongile Emily Tshabalala

Sizwe Setshaba Funerals

**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. **"Sizwe Setshaba"** means **Sizwe Setshaba Funerals**, a private company with limited liability, duly incorporated and registered in accordance with the Companies Act No. 71 of 2008 of the Republic of South Africa, under registration number 2016/094530/07, with its principal place of business situated At No 1 Kruger Str, Witbank, Emalahleni, Mpumalanga, 1035.
 - 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 Melumzansi.

Executive Committee:

Commissioner: U. Kamlana | **Deputy Commissioners: A. Ludin** | **K. Gibson** | **F. Badat**

- 1.4. **"FAIS Act"** means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.
- 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. **"Mofokeng"** means Mr Pitso Pieter Mofokeng, a director of Sizwe Setshaba.
- 1.8. **"Tshabalala"** means Mrs Sibongile Emily Tshabalala, a director of Sizwe Setshaba.
- 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 or required to be licenced in terms of financial sector laws. The FSR Act empowers the Authority to supervise and enforce compliance with financial sector laws.
3. On 23 February 2023, the Authority received information that Sizwe Setshaba was issuing funeral policies (insurance business) without having an insurer, which was a contravention of section 5 of the Insurance Act 18 of 2017 (the Insurance Act).
4. Mofokeng has confirmed that from 01 January 2018 to 09 May 2023, Sizwe Setshaba advised a total of 85 clients, collected a total amount of R480 000 in premiums and settled a total number of 142 claims valued R312 400
5. Mofokeng further confirmed that the 85 clients/policyholders advised were never placed with any licensed insurer.

INVESTIGATION AND CONTRAVENTIONS

6. On 9 May 2023, the Authority commenced an investigation into the conduct of Sizwe Setshaba, Mofokeng and Tshabalala, in terms of section 135 of the FSR Act. The

investigation was in respect of their conduct during the period 1 January 2018 to 09 May 2023, to determine whether there was a contravention of:

- 6.1. Section 7(1) of the Financial Advisory and Intermediary Services Act No. 37 of 2002 (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 as a representative of an authorised financial services provider under section 13 of the FAIS Act; and
- 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 Insurance Act; The investigation revealed that during the period from 1 January 2018 to 9 May 2023, Sizwe Setshaba, Mofokeng and Tshabalala issued 85 funeral policies without a licensed insurer in contravention of Section 5(1) of the Insurance Act.
- 6.3. The investigation revealed that during the period from 1 January 2018 to 09 May, Sizwe Setshaba, Mofokeng and Tshabalala advised, collected R480 600 premiums and settled 142 claims valued R312 400 on behalf of policyholders.
7. Mofokeng and Tshabalala did not dispute their knowledge and/or involvement in the conduct of Sizwe Setshaba and as a result, they caused and/or permitted the contraventions of sections 7(1) of the FAIS Act and 5(1) of the Insurance Act.
8. Sizwe Setshaba, Mofokeng and Tshabalala have cooperated with the Authority and admitted all the facts and contraventions in respect of this investigation.

ENFORCEABLE UNDERTAKING


9. Sizwe Setshaba, Mofokeng and Tshabalala tender the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act:
 - 9.1. In order to comply with section 5(1) of the Insurance Act, Sizwe Setshaba, Mofokeng and Tshabalala will move all insurance business to a licenced underwriter of their choice within 90 working days, from the date of the signature of this Enforceable undertaking;

- 9.2. In order to comply with section 7(1)(b) of the FAIS Act, Sizwe Setshaba, Mofokeng and Tshabalala will ensure that they and all their representatives are registered as juristic representatives/ representatives of an authorised FSP, within 14 working days from the date of the signature of this Enforceable undertaking;
- 9.3. Sizwe Setshaba, Mofokeng and Tshabalala will ensure that at all relevant times their clients' insurance business is placed with a licensed insurer;
- 9.4. Sizwe Setshaba, Mofokeng and Tshabalala will submit proof within 90 working days from the date of the signature of this Enforceable undertaking, that paragraph 9.1 and 9.2 above was complied with; and
- 9.5. Sizwe Setshaba, Mofokeng and Tshabalala will ensure that at all relevant times they and all its representatives are registered as juristic representatives /or representatives of an authorised FSP.

NON-COMPLIANCE WITH THE UNDERTAKING

10. Sizwe Setshaba, Mofokeng and Tshabalala understands that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:
- 10.1. may impose an administrative penalty against Sizwe Setshaba, Mofokeng and/or Tshabalala, on the basis of joint and several liability;
- 10.2. may debar Sizwe Setshaba, Mofokeng and Tshabalala; and/or
- 10.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.
11. Sizwe Setshaba, Mofokeng and Tshabalala acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT Pretoria _____ ON THIS ____4th DAY OF _____July____ 2023.



Mr Pitso Pieter Mofokeng

(On behalf of Sizwe Setshaba)



Mrs Sibongile Emily Tshabalala

(On behalf of Sizwe Setshaba)



Mr Pitso Pieter Mofokeng

(In his personal capacity)



Mrs Sibongile Emily Tshabalala

(In her 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** 4TH **DAY OF** JULY **2023.**



Gerhard van Deventer

(For the Authority)