

TO BE PUBLISHED BY THE FSCA

Case No: 1899

In the matter between:

The Financial Sector Conduct Authority

And

Mr Tshepo Hope Thubela

Tshepo and Hope 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. **"Tshepo Hope Funerals"** means **Tshepo and Hope 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 2012/054860/07, with its principal place of business situated at 8076 Moleleki Section, Extension 2, Katlehong, Gauteng, 1432.
 - 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 Tshepo Hope Funerals.

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. **"FSP"** means an authorised Financial Services Provider.
- 1.8. **"Thubela"** means Mr Tshepo Hope Thubela, the sole director of Tshepo Hope Funerals.
- 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 a financial sector law. The Authority is empowered by the FSR Act to supervise and enforce compliance with financial sector laws.
3. The Authority received information that Tshepo Hope Funerals 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. Thubela confirmed that Tshepo Hope Funerals started conducting unregistered insurance business from 16 March 2012.
5. Thubela further confirmed that from 16 March 2012 to 14 October 2022, Tshepo Hope Funerals collected insurance premiums and processed claims.

INVESTIGATION AND CONTRAVENTIONS

6. The Authority commenced an enquiry into the conduct of Tshepo Hope Funerals and Thubela, as empowered by section 131(1)(a) of the FSR Act. The enquiry was in respect of their conduct during the period 16 March 2012 to 14 October 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 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 underwriters in terms of the long-term policy concerned; or that person does so with the approval of the Authority.
7. Thubela, in his capacity as director of Tshepo Hope Funerals, caused and/or permitted Tshepo Hope Funerals to issue funeral policies without having a licensed underwriter. Thubela further collected premiums and processed claims on behalf of policy holders.
8. Thubela did not dispute his knowledge and/or involvement in the conduct of Tshepo Hope Funerals and as a result, he 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. Tshepo Hope Funerals and Thubela have admitted all the contraventions.



INVESTIGATION AND CONTRAVENTIONS

6. The Authority commenced an enquiry into the conduct of Tshepo Hope Funerals and Thubela, as empowered by section 131(1)(a) of the FSR Act. The enquiry was in respect of their conduct during the period 16 March 2012 to 14 October 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 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 underwriters in terms of the long-term policy concerned; or that person does so with the approval of the Authority.
7. Thubela, in his capacity as director of Tshepo Hope Funerals, caused and/or permitted Tshepo Hope Funerals to issue funeral policies without having a licensed underwriter. Thubela further collected premiums and processed claims on behalf of policy holders.
8. Thubela did not dispute his knowledge and/or involvement in the conduct of Tshepo Hope Funerals and as a result, he 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. Tshepo Hope Funerals and Thubela have admitted all the contraventions.



ENFORCEABLE UNDERTAKING

9. Tshepo Hope Funerals and Thubela gives 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.
- 9.2. They will ensure that at all relevant times Tshepo Hope Funerals and all its representatives are registered as juristic representatives/ representatives of an authorised FSP.

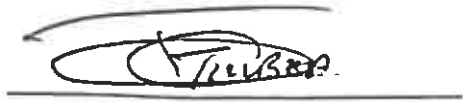
NON-COMPLIANCE WITH THE UNDERTAKING

10. Tshepo Hope Funerals and Thubela understand that if any term contained in this Enforceable Undertaking is breached or contravened, the Authority:

- 10.1. may impose an administrative penalty against Tshepo Hope Funerals and/or Thubela on the basis of joint and several liability;
- 10.2. may debar Tshepo Hope Funerals and Thubela; and/or
- 10.3. may approach the Tribunal to make certain orders in respect of the Enforceable Undertaking.

11. Tshepo Hope Funerals and Thubela acknowledge that they are familiar with all the provisions of section 151 of the FSR Act.

DATED AT 28/02/23 ON THIS 28 DAY OF FEB 2023.
GERMISTON



Mr Tshepo Hope Thubela

(On behalf of Tshepo Hope Funerals)



Mr Tshepo Hope Thubela

In his 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 18th DAY OF JUNE 2023.



Gerhard van Deventer

(For the Authority)