

[TO BE PUBLISHED BY THE FSCA]

Case No: 2587

In the matter between:

The Financial Sector Conduct Authority

And

BKK FS (Pty) Ltd

Daphne Matsomela

Ulbrain-Joy Kabelo Ntho

**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. “**BKK FS**” means **BKK FS (Pty) Ltd** 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 2023/541654/07, with its principal place of business situated at 9 Fisant Street, Helikon Park, Randfontein, Gauteng, 1759.
 - 1.2. “**Matsomela**” means Daphne Matsomela, an adult female, director and key person of BKK FS.

Executive Committee:

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

- 1.3. “**Ntho**” means Ulbrain-Joy Kabelo Ntho, an adult female, director and key person of BKK FS.
- 1.4. “**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.
- 1.5. “**Enforceable Undertaking**” means this undertaking duly signed and concluded between the Authority, Matsomela and Ntho and BKK FS.
- 1.6. “**FAIS Act**” means the Financial Advisory and Intermediary Services Act No. 37 of 2002, as amended.
- 1.7. “**The Authority**” means the Financial Sector Conduct Authority.
- 1.8. “**FSR Act**” means the Financial Sector Regulation Act No. 9 of 2017 as amended.
- 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 Financial Sector Conduct Authority (Authority) is the market conduct regulator of financial institutions that are licensed or required to be licenced in terms of financial sector laws. The Authority is empowered by the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act) to supervise and enforce compliance with financial sector laws.
3. The Authority received information that BKK FS (Pty) Ltd (BKK FS) issued funeral polices without having an underwriter, which is a contravention of section 5 of the Insurance Act, No. 18 of 2017 (Insurance Act).
4. Ms Daphne Matsomela (Matsomela) and Ms Ulbrain-Joy Kabelo Ntho (Ntho) confirmed that during the period 1 January 2024 to 30 April 2024 BKK FS advised a

gvd *U.J.K. Δ.M*

total of 35 clients/policyholders, collected a total amount of R26 870.00 in premiums and settled 1(one) claims valued at R8000.00.

INVESTIGATION AND CONTRAVENTIONS

5. The Authority commenced an investigation into the conduct of BKK FS, Matsomela and Ntho, as empowered by section 135(1)(a) of the FSR Act. The enquiry was in respect of their conduct during the period 1 January 2024 to 30 April 2024, to determine whether the aforementioned persons contravened:
 - 5.1. 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; and
 - 5.2. 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 FSR Act.
6. During the period from 1 January 2024 to 30 April 2024, Matsomela and Ntho, caused and/or permitted BKK FS to issue funeral policies without having a licensed underwriter. Matsomela and Ntho further caused and/ or permitted BKK FS to collect premiums and processed claims in respect of BKK FS' policy holders.
7. Matsomela and Ntho did not dispute their knowledge and/or involvement in the conduct of BKK FS and as a result, they caused and/or permitted the contraventions of section 7(1) of the FAIS Act and section 5(1) of the Insurance Act. Matsomela, Ntho and BKK FS have admitted all the contraventions.
8. Matsomela and Ntho fully co-operated with the Authority during the investigation.

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ENFORCEABLE UNDERTAKING

9. Matsomela, Ntho and BKK FS gives the following Enforceable Undertaking to the Authority in terms of section 151(1) of the FSR Act:
- 9.1. In order to comply with 5(1) of the Insurance Act, they will move all insurance business to a licenced underwriter of their choice within 60 working days, from the date of the signature of this Enforceable undertaking;
- 9.2. In order to comply with 7(1) of the FAIS Act, BKK FS and all its representatives are registered as juristic representatives/ representatives of an authorised Financial Services Provider (FSP), within 14 working days from the date of the signature of this Enforceable undertaking;
- 9.3. They will ensure that at all relevant times their clients' insurance business is placed with a licensed underwriter; and
- 9.4. They will ensure that at all relevant times BKK FS and all its representatives are registered as juristic representatives/ representatives of an authorised FSP.

NON-COMPLIANCE WITH THE UNDERTAKING

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

JVD U.J.K D.M

SIGNED AT Randfontein ON THIS 14 DAY OF May 2024.

D. Matsomela

Daphne Matsomela
(In her personal capacity)

D. Matsomela

Daphne Matsomela
(On behalf of BKK FS)

UJ

Ulbrain-Joy Kabelo Ntho
(In her personal capacity)

UJ

Ulbrain-Joy Kabelo Ntho
(On behalf of BKK FS)

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

SIGNED AT Pretoria ON THIS 14 DAY OF May 2024.

Gerhard van Deventer

Gerhard van Deventer
(For the Authority)