

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

PRETORIA

CASE NUMBER: FAIS – 05878-14/15 FS 1

In the matter between:

RUDI ROELOFSE

Complainant

and

SILVER SEED CAPITAL (PTY) LTD

First Respondent

SANDRO MANUEL AZEVEDO VELOZA

Second Respondent

JOHN LAW

Third Respondent

**DETERMINATION IN TERMS OF SECTION 28 (1) OF THE FINANCIAL ADVISORY AND
INTERMEDIARY SERVICES ACT 37 OF 2002 (“FAIS ACT”)**

A. THE PARTIES

- [1] Complainant is Rudi Roelofse, an adult male whose details are on file with this Office.
- [2] First respondent is Silver Seed Capital (Pty) Ltd, a private company duly incorporated in terms of the company laws of South Africa with registration number 2001/012586/07 and [Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud](tel:0800111509)

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its principal place of business at 202 Tyger Lake, Niagara Avenue, Tyger Falls, Bellville, Western Cape. First respondent's license was approved on 14 October 2004 and withdrawn by the regulator on 9 September 2014.

[3] Second respondent is Sandro Manuel Azevedo Veloza, an adult male representative and key individual of first respondent, whose last known address was 78 Bergshoop Estate, Langeberg Road, Durbanville, Western Cape.

[4] Fourth respondent is John Law, an adult male representative of first respondent whose last known address was 46 Porter House, 6 Belmont Road, Rondebosch, Western Cape, 7700. At all times material hereto, third respondent rendered financial services to complainant.

[5] Respondent or respondents must be read to mean all respondents, unless otherwise stated.

B. COMPLAINT

[6] In 2013 the complainant, a resident of the United Kingdom, along with his wife Mrs Leandi Roelofse, intended to invest in or through a South African financial services provider. To this end, it appears that the complainant and his wife sought the assistance of the complainant's father in law to facilitate the investment, since he was resident in South Africa.

[7] In June 2013, the complainant's father in law informed the complainant and his wife that he had received a comparative quote from one of the respondent's representatives, a Mr John Law. The quote was prepared in respect of an investment offered by the [Call 0800 111 509 to anonymously report incidences of fraud at the FAIS Ombud](#)

respondent, on the assumption of the investment amount being R100 000. The complainant's father in law was advised in writing that the investment would be for a limited period of twelve months, there would be no costs attached to the investment, the return rate offered by the investment was 12% and an investor would have no access to the capital and the return during the investment term. The complainant's father in law was also advised that the return of 12% was guaranteed.

[8] In response to the aforesaid, Mrs Roelofse sent an email to Mr Law and mentioned that while they had indicated that they wanted to invest R100 000, the amount would likely be more since they transferred £10 000 out of the UK for investment in South Africa.

- Mrs Roelofse mentioned that before they could proceed with the investment, there were a few questions which they wanted the respondent to address; which are noted below: How guaranteed the 12% return was;
- How much the respondent would request in fees in order to 'make' the investment for them;
- If the amount was higher than R100 000, what would change?
- How the money would be transferred to the respondent, since it was held in the complainant's account to which the complainants' mother was a signatory;
- Since the respondent indicated that the deadline for the investment was for Friday, 28 June 2013, whether the money had to be transferred into the investment by that Friday and if not, what the deadline 'entailed'.

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- [9] In addition to the above, the complainant noted that the interest rate offered by the respondent was 'exceptionally high for the current climate'. Because of this, she assumed that the rate was not fixed, but asked the respondent if the return was in fact guaranteed or if there was a possibility of the investment losing value.
- [10] The third respondent acknowledged that the rate of return was 'above normal', and explained that this was because it was a promotional product which the respondent used to grow their business to cater for private clients. The third respondent also indicated that the return was fixed for the duration of the investment period, and that it would not fluctuate. Furthermore, the capital and return were underwritten by the respondent through the contract, and he mentioned that the risks in terms of the tax, investment, underlying asset and liquidity were disclosed in the product brochure attached to his email. In response to the question regarding the deadline for the investment, the respondent's representative advised that if he received the application form by 30 June 2013, that he would be happy to receive the funds by 1 July 2013.
- [11] The third respondent also advised that their structured investments attracted no fees; the only restriction to the amount that could be invested was that it could not be less than R12 000 and the funds could be transferred electronically.
- [12] On receipt of the response from the third respondent, the complainant's wife indicated that she and the complainant discussed the investment, and wanted to proceed with it. The complainant's wife noted she assumed that because the investment capital would be paid from the complainant's account, the respondent would want to speak to him. She

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indicated that an alternative to speaking to the complainant would be to arrange for a Skype call and confirmed that the amount they intended to invest was R150 000.

[13] The complainant then, after confirmation from his wife that they would proceed with the investment, completed the application forms received from the respondent and transferred R150 000.

[14] Since the complainant was advised that the investment period would be twelve months, at the end of this period, he submitted written notice to the respondent to sell his shares back. In the written notice, which the complainant had received from the respondent and which he was required to complete by providing his account details and signature, the complainant was advised that the buy-back price of his shares was R170 240. The complainant however did not receive his capital back from the respondent, let alone the buy-back amount. In fact, there was no response at all to his request.

[15] Following the respondent's failure to pay the complainant the buy-back amount for his shares, the complainant instructed a firm of attorneys to see if they would be more successful in recovering his money. The letters sent by the complainant's attorneys were however also met with silence. To date, the complainant has not received the buy-back amount indicated in the written notice, nor has he received his capital back.

[16] It is for this reason that the complainant approached this Office for assistance. When asked how he wanted the complaint to be resolved, the complainant indicated that he wants the respondent to pay to him the amount of R170 240, as well as *mora* interest from the date on which the amount was to be redeemed.

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C. RESPONDENT'S RESPONSE

[17] During December 2014, the complaint was referred to respondent in terms of Rule 6 (c) of the Rules on Proceedings of the Office of the Ombud for Financial Services Providers (the Rules). This was done to bring the complaint to the respondent's attention and to afford the respondent an opportunity to either resolve the matter with the complainant, or to respond to the allegations detailed therein. No response to this letter has ever been received, despite several reminders drawing the respondent's attention to the fact that the response remains outstanding and should no response be received, that the matter would be investigated by this Office.

[18] The reminders to the respondent yielded no results, and on 2 October 2017, this office sent a notice in accordance with section 27(4) of the Financial Advisory Services Act 32 of 2002 (FAIS Act) to the respondent advising that the matter had been formally accepted for investigation.

[19] In this notice, the respondent was called to address this Office on firstly, the allegations raised by complainant, as well as the perceived contraventions of the Code of Conduct for Authorised Financial Services Providers and Representatives (the Code) which emanated from the complaint. Again, no response was received from the respondent.

D. DETERMINATION AND REASONS

[20] Having received neither the requested response nor the supporting documentation, the matter is determined on the basis of complainant's version.

[21] The issues for determination are:

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21.1 Whether the respondent in rendering financial services complied with the provisions of the FAIS Act and the General Code of Conduct, (the Code)

21.2 Whether respondent's conduct caused the complainant's loss.

21.3 Quantum of such loss.

Whether respondents violated the FAIS Act and the Code

[22] It appears in Annexure A of the application form that the investment into which the complainant invested was a UG2 Ltd share and that the UGS Ltd share was the underlying asset. UGS Ltd shares were unlisted and this means that the complainant then also concluded an investment into unlisted shares in UG2 Ltd. It does not seem however that this fact was ever disclosed to the complainant.

[23] One of the selling points presented to the complainant was that there were no costs of whatever nature payable from complainant's investment¹. However, hidden in the application form is a statement 'that consultants do not earn in excess of 5% commission on structured investments. Furthermore, the form states that 'respondents derive more than 30% of their commission from one product'.

[24] The application form confirms that Silver Seed may have an interest of 15% or more in the company where the shares are being purchased. Following previous investigations², this

¹ This statement was noted on the FixedGRO Comparative Quote document

² See in this regard the matter of KKK Boemah v Silver Seed Capital (Pty) Ltd, FAIS-04229-14/15 NW 1, available on www.faisombud.co.za/determinations

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Office was able to verify that second and third respondents (both directors of first respondent), are in fact directors of UG2 Platinum Ltd, together with two other individuals. Second respondent is noted in the CIPC records as the company secretary of UG2 Platinum Ltd. From this, it is evident that the first and second respondents were conflicted in this matter but they failed to disclose this to the complainant. Section 3 (1) (c)³ of the Code aims to mitigate the far-reaching consequences of conflict of interest and the vague statement contained in the application form cannot assist respondents, as it fails to meet the requirements of section 3 (1) (c).

[25] In addition to the conflict of interest, which would have demonstrated to the complainant how the respondent may have been presenting information that is not as objective as it seemed, the respondent also withheld other pertinent information from the complainant.

[26] When presented with the opportunity to disclose to the complainant all the features of the investment that would place the complainant in a position to make an informed decision prior to concluding the investment, the respondent opted only to refer to the fixed nature of the return rate, how there would be no additional costs payable by the complainant and to simply refer to the product investment brochure. While this information was provided to the complainant in response to the questions posed by the complainant's wife, the

³ Section 3 (1) (c) calls upon providers, at the earliest reasonable opportunity, to:
(i) *disclose to a client any conflict of interest in respect of that client including*
(aa) *the measures taken, in accordance with the conflict of interest management policy of the provider referred to in section 3 A (2), to avoid or mitigate the conflict;*
(bb) *any ownership interest or financial interest, other than an immaterial financial interest, that the provider or representative may be or become eligible for;*
(cc) *the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to a client to enable the client to understand the exact nature of the relationship or arrangement and the conflict of interest....'*

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respondent was required, in accordance with section 7 of the Code, to make full and frank disclosure of any information that would reasonably be expected to enable the client to make an informed decision.

[27] Some of the information that section 7 of the Code requires be provided to a client include, concise details of the manner in which the value of the investment is positioned, including concise details of any underlying assets or other financial instruments, and any material investment or other risks associated with the product, including any risk of loss of any capital amount(s) invested due to market fluctuations. This information was omitted from the information that was provided to the complainant in direct contravention of the Code, and thus deprived the complainant the opportunity to make an informed decision.

[28] In addition, the Code required that the respondent, prior to providing advice to the complainant, collect from the complainant all relevant and available information regarding the complainant's financial situation, financial product experience and objectives so as to enable the provider to provide the client with appropriate advice. However, the information the respondent requested did nothing to give insight to the respondent on the suitability of the product to the complainant and his personal circumstances. The respondent was happy to simply process information such as the complainant's address and identity number and to then render a product to the complainant that he had not judged against the needs of the complainant. The respondent did not consider the investment objective(s) of the complainant, if there was a particular goal that he wanted to save towards, and if the complainant's liquidity needs accorded with the fact that the investment was not liquid at all. Neither did the respondent consider whether the risk profile of the investment accorded

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with the complainant's risk profile and capacity. All of this was to the complainant's detriment.

[29] At the end of the twelve months, when complainant requested that the amount due to him in terms of the investment agreement be paid, his request and demands were met with silence. This despite the fact that the investment agreement stated that *'should the client choose to exit the investment on the maturity date, then Silver Seed shall pay the client the repurchase price'*. It has been almost six (6) years since the complainant was meant to receive what the investment promised, but the complainant has not heard from the respondent since. It is evident that the complainant has lost the capital he invested and that the respondent caused this loss.

E. CAUSATION

[30] There is sufficient information to demonstrate that respondent had not been candid with complainant about the nature of the investment, in that he was in fact purchasing unlisted shares. Had the respondent explained to the complainant the true nature of the investment as well as the associated risks, it seems probable that he would not have proceeded. This is evident from the initiative that the complainant's wife took to gather from the respondent certain information regarding the investment and to clarify other details prior to the complainant investing.

[31] By requesting the additional information, she clearly wanted assurance that the product would be safe. The questions she asked are indicative of this. The complainant was copied in all the correspondence exchanged with the respondent and there is no cause to doubt that he contributed to the questions put to the respondent and the information sought from

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him. The respondent repeated the information that was contained in his initial email to the complainant's father in law. He did not caution the complainant to the fact that liquidity was not the only concern but that there existed a high risk that the complainant could lose his capital. Rather, from his initial email, the third respondent positioned the investment as being suitable, even for someone who was of advanced age, (like the complainant's father in law), and referred to how it could be of benefit to him. The respondent quite evidently, given the definition in section 1 of the FAIS Act, provided advice to the complainant.

[32] In providing the advice, the third respondent knew that the complainant was going to rely on his advice. Indeed, when complainant made this investment, he based it solely on the representations made by the respondent. Consequently, as a result of respondent's failure to observe the Code, (the failure to appropriately advise) complainant made the investment and found himself in a situation where he lost his capital.

[33] For the reasons detailed above, I am satisfied that the respondent's conduct is the sole cause of complainant's loss, both factually and legally.

[34] Respondent failed to inform complainant that this was a high risk investment where he could in fact lose all his capital. There is also no record as to what happened to complainant's funds.

[35] From the information before this Office, respondent failed to comply with sections 2, 3 (1), 8 (1) and 9 of the Code.

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F. FINDINGS

[36] As a result of respondent's conduct, complainant lost his capital in the amount of R152 000. Respondent is liable to compensate complainant for his loss.

G. ORDER

[37] In the premises the following order is made:

1. The complaint is upheld.
2. Respondents are hereby ordered jointly and severally, the one paying the other to be absolved, to pay to complainant the amount of R152 000.
3. Interest at the rate of 10.25%, per annum, seven (7) days from date of this order to date of final payment.
4. Should any party be aggrieved with the decision, leave to appeal is granted in terms of section 28 (5) (b) (i), read with section 230 of the Financial Sector Regulation Act 9 of 2017.

DATED AT PRETORIA ON THIS THE 26th DAY OF AUGUST 2019.



NARESH S TULSIE

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