

Moonstone: Enforcement Committee Penalties



In the last two weeks we saw a spate of media releases on Administrative Penalties meted out by the Enforcement Committee of the Financial Services Board. It is difficult to determine the basis on which penalties are determined, as is clear from the following recent examples:



A broker was fined R150 000 for the following contraventions:

1. Failure to maintain a **register of his representatives**, and failure to appoint a **compliance officer**.
2. Failure to, at all times have, and effectively employ, a **risk management system**.
3. Failure to conduct a financial analysis on 15 clients. There was **no record** of the advice given to these clients and 8 clients were not provided with **details of the financial product sold**.

In October, another broker was fined R150 000 for roughly the same transgressions, this time involving 2 clients. In this instance, he also neglected to have the applications signed.

Another broker was fined R20 000 for the following contraventions:

1. A representative in the employ of the FSP submitted **fictitious applications**, which were submitted to the insurer by the FSP.
2. The respondents failed to employ resources or have procedures and systems that could reasonably be expected to **eliminate the risk** that clients will suffer financial loss through fraud or other dishonest acts.

This FSP, and the representative mentioned in the determination, are still listed as active on the FSB website.

Why is there a difference of R130 000 in the fines levied in the examples above? Did the benefit accruing to the broker determine the fine, as we were told in July? Was it possible to attach a monetary value to the impact on the clients, hence the huge difference?

We recently saw a new record fine of R3 million for a broker, plus a R1 million fine for his representative. *In order to secure sales at inflated prices, the broker made various **misrepresentations** regarding fictitious listing dates, listing prices and exorbitant growth projections of shares in an unlisted mining exploration company.*

In its findings, the Committee concluded that the conduct of the broker "... amounts to a flagrant disregard of the statutory directives of what is to be expected of an FSP. He did not obey the dictate that he should act in the interest of his clients. He acted solely in the promotion of his own interests, which were adverse to the interest of his clients. The use of misrepresentations in order to secure sales at relatively high prices for Platfield shares, amounts to a complete absence of honesty and fairness. He displayed marked lack of skill and diligence."

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Should any distinction be made between *flagrant disregard of the statutory directives*, and blatant dishonesty?

One has to ask whether any further action will flow from these cases? If other legislation was contravened, will criminal procedures be implemented?

While Trevor Manuel was still Minister of Finance, he said that no amount of legislation will prevent crime, or words to that effect. Unfortunately, those who are guilty of transgressions, despite representing a very minor section of the industry, are causing untold harm to the remaining, law abiding incumbents.

These findings should act as a warning to all of us to mind our P's and Q's. It appears that the screws are being tightened, but as pointed out in the past, not in a consistent manner.

Could it be that some nuts are harder to crack than others?

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