

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL
SERVICES BOARD ACT, 97 OF 1990**

CASE NO: **17/2014**

In the matter of:

REGISTRAR OF SECURITIES SERVICES

Applicant

and

THEBE STOCKBROKING PTY LIMITED

Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened section 21(1)(a) and 21(2)(a) of the Financial Intelligence Centre Act, 38 of 2001 and impose a penalty of R500 000 (five hundred thousand rand only), inclusive of costs.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ^{20th}..... day of **OCTOBER 2015**.



.....
C F Eloff

Chairperson of the Enforcement Committee

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10(1), READ WITH 10A OF THE
FINANCIAL SERVICES BOARD ACT, NO 97 OF 1990**

CASE NO: 17/2014

In the matter of:

REGISTRAR OF SECURITIES SERVICES

APPLICANT

and

THEBE STOCKBROKING (PTY) LIMITED

RESPONDENT

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT 28 OF 2001**

1. The parties to the agreement

- 1.1. The Applicant is the Registrar of Securities Services as defined in section 5(1) of the (now repealed) Securities Services Act, No 36 of 2004. This section has since been replaced with section 6 of the Financial Markets Act, No 19 of 2012. The Applicant is represented herein by Cuthbert King Chanetsa with identity number 550704 5766 085 ("the registrar").
- 1.2. The Respondent is Thebe Stockbroking (Pty) Limited, a private company incorporated in terms of the laws of South Africa, with registration number 1969/013227/07 ("Thebe Stockbroking"). Thebe Stockbroking is an authorised user of the JSE Limited ("the JSE"), and an authorised financial services provider with FSP number 18047. Thebe Stockbroking provides investment and trading services to institutional and private clients.

2. The Referral

- 2.1. Section 45C of the Financial Intelligence Centre Act, No 38 of 2001 ("the Act"), provides for a supervisory body to impose administrative sanctions



on accountable institutions for a failure to comply with the Act. The Financial Services Board is a supervisory body as defined in the Act.

- 2.2. In terms of section 6A of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act"), the Registrar must refer a contravention of the Act to the Enforcement Committee to impose a penalty. This matter is so referred by virtue of the filing of this agreement with the Honourable Chairperson of the Enforcement Committee.

3. The law applicable to this settlement

- 3.1. Section 21(1)(a) and 21(2)(a) of the Act, read as follows:

"21. Identification of clients and other persons.— (1) *An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps—*

- (a) *to establish and verify the identity of the client;*
- (b) *...*"

"(2) If an accountable institution had established a business relationship with a client before this Act took effect, the accountable institution may not conclude a transaction in the course of that business relationship, unless the accountable institution has taken the prescribed steps—

- (a) *to establish and verify the identity of the client;*
- (b) *..."*

- 3.2. In terms of the Act regulations were promulgated (*Money Laundering and Terrorist Financing Control Regulations*, published under Government Notice R1595 in Government Gazette 24176 of 20 December 2002) ("the regulations"). Regulation 2 of these regulations reads as follows:

"When an accountable institution in terms of the Act must establish and verify the identity of a natural or legal person or a trust, the institution must establish and verify identity in accordance with regulations 2 to 18."

- 3.3. Regulation 3(1) of the Regulations reads as follows:

"An accountable institution must obtain from, or in respect of, a natural person who is a citizen of, or resident in, the Republic, that person's—

- (a) *full names;*
- (b) *date of birth;*

- (c) *identity number;*
- (d) *income tax registration number, if such a number has been issued to that person; and*
- (e) *residential address."*

4. Contravention of section 21(1) and 21(2) of the Act, read with Regulation 2(2), 3(1) and 4(1) and (3)

4.1. At all times material to this agreement Thebe Stockbroking was an authorised user of the JSE, and as such, it was an accountable institution in terms of the Act. It therefore had a duty to establish and verify the personal details of its clients as set out in section 21(1) and 21(2) of the Act, read with Regulation 2(2), 3(1) and 4(1) and (3).

4.2. Thebe Stockbroking provided investment and securities trading services to approximately 4 300 private clients. Following an internal audit conducted by Thebe Stockbroking in 2010, Thebe Stockbroking identified that in respect of a number of these private clients:


4.2.1. established a business relationship (as authorised user) with these clients; or

4.2.2. it had previously established a business relationship, and concluded securities transactions on behalf of these clients, and failed to:

take all the prescribed steps to establish or verify the identity of these clients (including the clients' full names, date of birth, identity number and residential address).

4.3. Since 2010, Thebe Stockbroking has put in a concerted effort to rectify the non-compliant client accounts identified and the number of non-compliant accounts has systematically decreased to an immaterial number.

4.4. Therefore Thebe Stockbroking contravened section 21(1) and (2) of the Act read with regulation 2(2) and 3(1) of the regulations.



5. Mitigating Circumstances

- 5.1. The registrar, in agreeing to the penalty, took *inter alia* the following mitigating circumstances into account:
 - 5.1.1. The Respondent willingly disclosed the irregularities to its direct supervisor, i.e. the JSE;
 - 5.1.2. The Respondent took extensive steps to rectify its compliance with the Act, including mandating a call centre to obtain outstanding client information, dedicating specific resources to collecting the outstanding client information, freezing client accounts that were not compliant, and appointed an additional external compliance officer to deal with the issue;
 - 5.1.3. By the time that these irregularities became known to the Respondent, the Respondent had already implemented systems to ensure future compliance with the Act at the time of opening client accounts;
 - 5.1.4. Many of the non-compliant accounts were already dormant when the relevant provisions of the Act came into operation;
 - 5.1.5. The Enforcement Committee has not made a determination against the Respondent before.

6. The agreed penalty and costs

- 6.1. The parties have agreed that the Respondent will pay a penalty of R500 000 in settlement of this enforcement action.
- 6.2. The parties have also agreed that no cost order will be requested against any party.



6.3. The parties humbly request that the Honourable Enforcement Committee make the agreement an order as envisaged in section 6B(7)(b) of the FI Act.

7. Other conditions


- 7.1. The parties acknowledge that this agreement is subject to the approval of the Enforcement Committee and the parties further specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms hereof nor will this document be capable of being used in any proceedings against the Respondent in the future.
- 7.2. No leniency or postponement given by the FSB to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 7.3. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 7.4. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.
- 7.5. The parties select the addresses below as their *domicilium citandi et executandi* for the purposes of service of the Enforcement Committee order and for any notice or pleading related to a breach of this agreement:

The Registrar of Securities Services
c/o The Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria
0081

The Respondent
Thebe Stockbroking (Pty) Limited
The Crescent
Georgian Crescent East
2nd Floor
Bryanston
2021




Signed at PRETORIA on this the 12 day of OCTOBER 2015.



FOR AND ON BEHALF
OF THE REFERRING PARTY

Signed at PRETORIA on this the 08th day of OCTOBER 2015.



FOR AND ON BEHALF
OF THE RESPONDENT