



**ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA**

**IMMEDIATE RELEASE
25 MARCH 2014**

**MEDIA RELEASE: ESTATE AGENCY AFFAIRS BOARD RESPONDS TO THE
ORDER GRANTED IN PHILIP vs ESTATE AGENCY AFFAIRS BOARD (39922/12)
[2013] ZAGPPHC 276**

The above case, relating to the payment of interest and legal costs in respect of a claim instituted against the Fidelity Fund, resulted in an order being granted against the Estate Agency Affairs Board (EAAB) for payment of the amount stated in the order sought.

In April 2013 an application for leave to appeal the order and to apply for condonation for late filing was brought by the EAAB, which application was refused, with Judge Mabuse providing reasons for the judgment in the above on 2 October 2013. The reasons for the judgment contributed the EAAB's procedure and process and the alleged failures, as presented by the complainant, unjustly to Pierre Olivier, as the application contained only certain extracts of some correspondence and did not include those aspects which in fact indicated the true course of events in considering the merits of the initial complaint / claim herein and the delay caused by the complainant in the submission of substantiating evidence for consideration.

The EAAB, with respect to the judge's decision on the papers presented in court, submits that critique levelled against Pierre Olivier, a Legal Officer with the EAAB at the time, in the performance of his duties as an employee and in terms of the claims procedures and requirements determined by the Claims Committee was unjustified, specifically when taking into consideration the true course of the consideration of the merits by him.

It is specifically noted that, in the investigation of complaints, whether this includes a claims element or not, the EAAB is required to show good cause, should charges be brought against an estate agent.

The EAAB wishes to confirm that, in the handling of this particular matter certain pertinent factors which, if made part of the papers before the court, would have clearly indicated that Pierre Olivier had at all relevant times performed the duties assigned to him with the analytical skill and professionalism which has always exemplified his work ethic as an attorney and legal professional.

The EAAB confirms that Pierre Olivier had informed the complainant within 3 weeks of the initial complaint / claim, dated 25 June 2009, that no evidence had been submitted to support charges against the principal, nor had evidence been provided to support the allegation that the employee had acted as an estate agent, specifically due thereto that the EAAB does not have jurisdiction over employees, whom do not act as an estate agent.

In further correspondence, it was pointed out to the complainant and the complainant's attorney of record that the complaint / claim affidavit, as well as the judgment from Judge Murphy (in respect of the urgent application to High Court, which had been brought prior to any suggested action by the EAAB) highlighted that the employee of the agency had been cited by the complainant himself as being an administrative clerk / secretary. Judge Murphy had also stated there was no clear evidence in support of vicarious liability of the principal in this regard.

The Claims Committee of the Board, as standard practice, required claimants to excuss (exhaust all other options) prior to considering any claim and Legal Officers were required to advise possible claimants of the requirements relating to excussion as soon as possible, so as to avoid unnecessary delays in the finalization of claims;

On 7 August 2009 the EAAB confirmed that due to the fact that there is no evidence of improper conduct by an estate agent, acting as such, the Board has resolved, pursuant to the provisions of regulation 3(3)(a) of Government Notice R51 of 26 January 2001, not to proceed further with a formal disciplinary inquiry on the basis that there is no reasonable likelihood that a committee will find that the conduct complained of, even if proven, constitutes conduct deserving of sanction. The merits of the documentation submitted were therefore considered, as required in terms of the Regulations and the response, as required, was sent, less than 2 months following receipt of the complaint / claim. This fact was not evident in the papers before the court and was never presented in the complainant's application.

On 4 November 2010, close to 15 months following the EAAB's correspondence rejecting the complaint due to a lack of evidence, the EAAB received an e-mail from the complainant's attorney to inform the EAAB that they were still in the process of obtaining affidavits in order to substantiate a complaint against the employee, with a new complaint /claim having been submitted later in November 2010 against the employee together with affidavits confirming the employee to have acted as an estate agent.

The EAAB, in July 2011, was informed by the complainant's attorney of the criminal conviction of the employee and, with no further requirement for disciplinary proceedings; the documentation was submitted to the Claims Department, supported by the new complaint /

claim documentation and affidavits to substantiate a complaint / claim, as well as the criminal conviction.

Subsequently, the Claims Department proceeded with its consideration of the claim and submitted this to the Claims Committee, which approved the claim amount only thus giving rise to the application brought against EAAB in July 2012, which in itself made no mention of the delay in obtaining the substantiating evidence required for consideration by the EAAB, nor the numerous requests by Pierre Olivier for substantiating evidence to be submitted in support of the initial complaint / claim.

The EAAB fully supports Pierre Olivier's consideration of the merits herein and believes that the chronology of events and the true consideration of the merits of the initial documentation by Pierre Olivier would have been crucial and, if placed before the court, would have clarified that the regulations relating to conduct deserving of sanction had been satisfied however, without this information the court was left to consider the application and that of the leave for appeal, purely on the position submitted by the complainant herein.

For further information please contact our Marketing and Publications Manager Ms Margie Campbell on margie@eaab.org.za

Yours faithfully

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ESTATE AGENCY AFFAIRS BOARD

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