

IN THE OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

HELD AT PRETORIA

CASE NUMBER: FOC 1253/05/GP/ (3)

In the matter between:

MATTHEW JOHN RAVENSCROFT

Complainant

and

ESTEEM INSURANCE BROKERS CC

Respondent

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

The Parties

- [1] Complainant is Matthew John Ravenscroft, adult male, residing at 5 Villa Adina, Palmiet Street, Mayberry Park, Alberton.
- [2] Respondent is Esteem Insurance Brokers CC ('Esteem') an authorised financial services provider in terms of the FAIS Act and a duly registered close corporation in terms of the laws of the Republic, with its principal place of business at 6 Fergies Place, Elanie No. 4, Eldoglen, Pretoria.

Complaint

- [3] Complainant submitted a complaint on 22 June 2005 to the Ombudsman for Short-Term Insurance. That Office could not adjudicate the matter and referred the complaint to this Office.
- [4] A duly completed complaint form was received by this Office on 28 July 2005.
- [5] The complaint relates to the conduct of a representative of Esteem, one Hilton Zeiler ('Zeiler'). The Complainant alleges that he suffered financial loss as a result of the failure on part of Respondent to advise Complainant of additional security requirements stipulated by the insurer Quicksure Nationwide Insurance Administrators ('Quicksure'). The additional security

requirements imposed by Quicksure, was that Complainant install a linked radio alarm system at the insured premises. The insured premises at all material times was the Complainant's rented townhouse at Unit 43, 1 Somerset, Farm Road, Equestria, Pretoria.

Background

[6] Complainant suffered a series of break-ins at his premises mentioned in paragraph 5 above. According to the record at Quicksure the first break in occurred on 25 September 2004. A claim in the amount of R13 774.05 was paid by Quicksure. Another break-in occurred on 20 October 2004. A claim in the amount of R41 447.55 was also paid by Quicksure. A further break-in occurred on 20 May 2005. However this claim was repudiated and forms the subject matter of this complaint.

[7] After the second break-in on 20 October 2004, Quicksure on the 31 October 2004, suspended theft cover due to adverse claims by Complainant. In order to enjoy cover, Quicksure imposed additional security requirements as set out in paragraph 5 above. The specific wording relating to the additional security requirements as per the policy document is:-

'In terms of item 3.5 of Section 2 of the Policy Wording it is warranted that the building of the private dwelling, inclusive of any outbuildings comply with the following:

Burglar Alarm System:

3.5.1 The alarm is connected to an armed response service and a valid contract is in force.

3.5.2 The alarm is maintained in proper working order.

3.5.3 The Alarm is activated whenever the dwelling is left unoccupied.

3.5.4 If the alarm has a bypass facility it is activated at night when you have retired to bed.

Theft cover on the contents is excluded until the residence complies with the above.'

[8] On 03 November 2004 Quicksure alleges that it posted the policy document with the above mentioned additional security requirements to the Complainant's postal address at PO Box 12070, Centurion, 0046.

[9] Respondent alleges that it sent the new policy document containing the new policy endorsement via e-mail to Complainant on the 03 November 2004.

[10] Complainant avers that he did have discussions with Zeiler who informed him to increase the security requirements at his premises due to the adverse claims. Pursuant to this discussion the Complainant avers that he increased security measures at his premises as follows: -

'[10.1] I had the Trellidor replaced with an expensive model with "anti force-open" features as well as anti lock tamper (about R4k).

[10.2] I had additional top and bottom "deadlocks" inserted on my back door.

[10.3] The complex linked our electric fencing to ADT.

[10.4] The wall which was broken down was repaired in full and re-inforced.

[10.5] Had a latch and padlock attached to the door.

[10.6] I had movement sensor spotlights inserted into the garden.

[10.7] I changed the lock on the back door.

[10.8] A security guard was posted to patrol the complex every night.

[10.9] I personally spent a day chopping down trees and removing bushes from the adjacent property to make it more difficult for the criminals to scout outside.

[10.10] I also attached ADT and Mapogo a Mathamaga boards to the exterior of the property to deter would be thieves.'

[11] Notwithstanding the provision of additional security measures as set out above, Complainant's house was broken into for the third time on 20 May 2005. Complainant's household contents to the value of R44 171.35 are alleged to have been stolen.

[12] Complainant obtained claim forms via e-mail from Zeiler which he duly completed and returned. On the 24 May 2005 Zeiler faxed the completed claim forms to Quicksure. On 15 June 2005 Quicksure repudiated the claim on the grounds that endorsement instructions as provided in the new policy schedule were not adhered to.

[13] Complainant maintains that the critical e-mail relating to the additional security requirements allegedly sent to him by Respondent was blocked and thus he could not open the attachment. Complainant further maintains that he did not receive the letter allegedly posted by Quicksure on 03 November 2004.

[14] This Office dispatched a letter together with the complaint on 16 August 2005 to the Respondent, for it to resolve the complaint within the time prescribed by Rule 6 (b) of the Rules on Proceedings of the Office of the Ombud for Financial Services Providers.

The Response

[15] A letter dated 29 August 2005 was received by this Office from the Respondent. Briefly the response is as follows;

[15.1] On 3 November 2004 Zeiler e-mailed and telephoned Complainant about the new policy schedule setting out new security requirements that the Complainant must install a radio linked alarm system in his house. Respondent also attached statements from Vodacom cellular services provider and Telkom indicating the number of calls made to the Complainant. According to the statements: -

[i] 4 calls were made from the Respondent's Telkom phone on 4 November 2004, and

[ii] 10 calls were made from Zeiler's mobile phone between the period 2 November 2004 to 12 November 2004.

[15.2] According to Respondent, Complainant advised Zeiler that he was only renting the house and that he was in the process of increasing the security there. However he was unwilling to install a radio linked alarm as required by the insurer. The reason given to Zeiler by Complainant was that he was only renting the premises and that he was going to move out in near future.

[15.3] Respondent states that Complainant was of the view that the measures he undertook to improve security at his house were sufficient. Zeiler requested Complainant to put down in writing, the additional security measures undertaken. Zeiler undertook to forward this to Quicksure for possible lifting of the endorsement on the policy.

[15.4] Complainant is said to have failed to have informed Quicksure about the security measures undertaken despite being reminded several times by Zeiler using both cell phone and telephone.

- [15.5] In response to Complainant's averment that he could not open the e-mail sent to him because it was blocked, Respondent avers that it contacted Tracker (Complainant's employer) to establish if there were any restrictions on receiving of e-mails and their attachments.
- [15.6] On 2 September 2005, the Respondent forwarded a voice recorded e-mail to this Office in an effort to prove that the Complainant did receive the e-mail sent to him on 3 November 2004. The recorded conversations contained two discussions.
- [15.7] An examination of the voice recording reveals the following: -
- [15.7.1] A discussion between Zeiler and one Mr. Eduan Erasmus, System Support Technician from Tracker IT department confirming that e-mails without video or graphic material and with less than 2 MB in size would go through the mail marshal unblocked.
- [15.7.2] A discussion between Zeiler and Mrs. Miranda Pretoria (Complainant's colleague at Tracker who was in same position as Complainant) confirming that e-mails without graphics wouldn't be blocked if they were sent on Acrobat format. Mrs. Miranda Pretoria further states that if the e-mails were blocked, it would require special permission to be released by the IT Department. She indicated that it was a very easy process.
- [15.8] The Respondent alleged that its e-mail sent to Complainant was only 14 KB in size. It further alleged that Tracker would have sent them back a report stating that its e-mail was blocked and that never happened. According to the Respondent 1 MB consists of 1024 KB's.

Determination and reasons therefore

- [16] On 03 November 2004 Quicksure posted a new policy schedule imposing additional security requirement to the Complainant's postal address as mentioned in paragraph [8] above.
- [16.1] In a letter dated 29 November 2005 written by a Mrs Anne Downham ['Downham'], Claims Director with Quicksure, she avers that there is no doubt that the Complainant did receive

this revised policy endorsement because the normal mail sent to him was not returned to Quicksure by the Post Office.

- [16.2] According to Downham, all policy amendments would be sent to customers through normal post and if they are undelivered, then the Post Office will return them to the sender, in this case Quicksure.
- [16.3] Downham said that there is only one undelivered letter to the Complainant and that was the repudiation letter for the third burglary claim. A phone call was then made by Quicksure to Zeiler to advise the Complainant that his burglary claim had been rejected.
- [16.4] Downham further referred to a copy of a fax that they forwarded to the Respondent on the 01 September 2005 confirming that Quicksure had posted the document in question to the Complainant directly.
- [16.5] The said fax copy read 'We furthermore confirm that we've posted the policy schedule stipulating the alarm endorsement directly to Mr Ravenscraft on 03 November 2004 to the following Postal address: P.O. Box 12070, Centurion, 0046'.
- [17] It appears from the file of papers that the preferred method of communication between Complainant and the Respondent was mainly electronic mail and/or phone calls.
 - [17.1] On the 3 November 2004, the Respondent sent an e-mail to Complainant advising him of new minimum security requirements imposed by Quicksure.
 - [17.2] The Complainant does not dispute the fact that this e-mail was sent to him by Respondent but only maintains that it was blocked.
 - [17.3] Complainant, however in an e-mail sent to the Financial Services Board on 15 June 2005 says 'I have a mail marshal which blocks all attachments on my system at work so I didn't even get the attachment I was supposed to read, if I had known that it contained amendments to the standard policy I would certainly have requested special permission from my mail-marshall to have it opened. I expected that everything remained unchanged except the new insured value which was increased after the break in.'

[17.4] On 17 June 2005, an e-mail was sent to Zeiler by Complainant, stating 'I will only ask special permission if I feel that there is a document which is very important, in your mail you simply stated "your latest policy schedule after the house break in claim", there was no mention of integral changes to the policy at all!'. It is probable that Complainant regarded this e-mail as less important and thought that his insurance policy was unchanged because he said that he would ask for special permission to open an e-mail if the document was important. He confirms that he did in fact receive an e-mail that said 'your latest policy schedule' and the probabilities are that he did not bother opening it, regarding it as not important.

[17.5] It is clear from Complainant's averments as set out above that whilst he does not deny that an e-mail was sent to him by Zeiler, he sets out at least four different reasons for not reading it:-

[17.5.1] Firstly he maintains that the e-mail did not contain attachments;

[17.5.2] Secondly that the e-mail was blocked;

[17.5.3] Thirdly that there was no mention of integral changes to his insurance policy, and

[17.5.4] Fourthly he did not consider this e-mail as important enough to have read it.

This casts serious doubts on Complainant's credibility on this issue.

[17.6] It is clear that it is a fairly simple matter to have e-mails released if they were indeed blocked.

[17.7] The Complainant avers that the e-mail sent to him on the 03 November 2004 did not contain attachments. In Complainant's e-mail sent to Zeiler on 15 June 2005 Complainant maintains 'I did not receive the attachments in the mail sent to me in November. Tracker has a mail-marshall which blocks all attachments unless I specifically request that they be opened (permission needs to be granted etc).'

[17.8] The above averment by Complainant that he did not receive attachments is not true. On the e-mail copy sent to Complainant on 15 June 2005, there is a subject line that says 'Policy Schedule for RAVENSCROFT, MJ

(NNS0015/24289/0603) as on 3/11/2004 08:26 it contains inverted double ended sharp points indicating that a policy schedule was indeed attached to the e-mail sent to Complainant.

This attachment reads as follows.

'<<Schedule_NNS0015242890603_20041103_082603.pdf>>'

Policy numbers and the date when the attachment was sent to Complainant appears. The attachment mark on this e-mail also shows that the e-mail sent was done on a "pdf" format.

- [18] It is clear that documents sent to Complainant were neither video material nor contained graphics and this document was only 14 KB in size. Therefore, it is clear that the Respondent's e-mail could not have been blocked as it was less than 2 MB in size. If it was blocked because of attachments or for some other reasons then it would have required Complainant to simply request his manager for special permission to unblock it.
- [19] On e-mails dated 23 May 2005 and 24 May 2005, Complainant did request for special permission from the mail marshal to release claim forms. The reason for this e-mail was to provide the Complainant with claim forms following the third break-in. The subject heading of the e-mail says 'PROPERTY LOSS CLAIM FORM (HOUSE BREAK IN)'. It is evident that the Complainant did not request special permission to have this e-mail released when he needed. This indicates that the Complainant was at liberty to chose when he wished to have his e-mail or attachments released.
- [20] In the e-mails referred to in paragraph 19, it is clear that Complainant did not request special permission first from his manager but went directly to the mail marshal to unblock the e-mail. An examination of the e-mails indicates that he did make requests to the mail marshal to release his e-mails. However, it is odd that when he receives his policy schedule he now maintains that he needs special permission. It is evident that Complainant's version that he needed special permission from his manager to release this e-mail is false and is to be rejected.
- [21] If it was totally impossible to have private e-mails released by the Complainant's employer, then the Complainant could have informed Zeiler earlier to refrain from using e-mail and resort to other modes of communication for instance facsimile or postage. This was not done by the Complainant.
- [22] The Respondent made 14 calls to Complainant between 02 November 2004 and 12 November 2004. This indicates that the Respondent was in regular contact with his client at all material times. It is improbable that the Respondent would have spoken to the Complainant about other things than

additional security requirements. It is therefore more probable that the Respondent did numerously remind his client about the additional security measures to be taken so that he could continue enjoy theft cover.

[23] In *Lappeman Diamond Cutting Works (Pty) Ltd v MIB Group (Pty) Ltd & Another, 2004 (4) SA 1 (A)* the following was said at 138-C:

'A broker does not, and cannot be expected to, control the business of the insured. Even the specialist broker's duty does not encompass a duty to ensure that the insured complies with his obligations under the policy. He is not the insured's keeper. His duty, as a specialist broker, is discharged when he has done everything reasonably necessary to draw the attention of the insured to obligations imposed by the policy. It is the insured's responsibility to ensure compliance.'

[24] The Respondent's duty as an insurance broker was discharged when it had done everything reasonably necessary to draw the Complainant's attention to the additional security requirements. In this case Respondent did send an e-mail and confirmed the requirements stipulated in the insurance policy by making 14 calls to Complainant. In addition to the Respondents efforts, Quicksure did post the policy schedule stating additional security requirements directly to Complainant.

[25] The Respondent's duty does not and cannot be expected to encompass a duty to ensure that the Complainant complies with his obligations under the policy. It was the Complainant's responsibility to have regarded additional security requirements as important and to have complied with them as expected by the insurer.

[26] Quicksure did in fact post the policy schedule stipulating the alarm endorsement to the Complainant. Downham, confirmed this statement in her letter dated 29 November 2005. The fact that there was not returned mail to Quicksure favours the probabilities that Complainant did indeed receive these documents long before the burglary.

[27] It is reasonable to expect that Quicksure would have wanted the additional requirements to be put in place because of adverse claims. Had Complainant adhered to the additional security requirements by installing a radio linked alarm system at his premises, then there would have been either a response by an armed security guard or at least a record of a triggered alarm from the security company control room to prove that something was amiss.

[28] The Complainant therefore has only himself to blame for repudiation of his claim and cannot shift responsibility to the Respondent.

Conclusion

- [29] There is no mention by Complainant that he did submit the increased/improved security measures at his premises to Quicksure to check if it was sufficient and to enable it to lift the theft cover suspension as advised by Zeiler. Therefore the Complainant failed to comply with Zeiler's request and cannot hold the Respondent responsible for not helping him to request Quicksure to lift theft cover suspension from his policy. The Complainant left the matter as it was after receiving payment for the second burglary.
- [30] It is therefore reasonable to conclude that the Complainant did receive the e-mail version and the amended policy document sent by post from Quicksure.
- [31] In my view there is nothing to suggest that Respondent did not do everything necessary to bring the new security requirements to Complainant's attention.
- [32] Complainant's failure to adhere to it cannot be imputed in any way to the negligence of the Respondent. Indeed it is probable that Complainant did not want to adhere to these additional security requirements, as he was merely renting the insured premises.
- [33] The Complainant's various excuses as to why the additional security requirements did not come to his attention are disingenuous. The Complainant should have made some efforts to release the blocked e-mail, if the e-mail was indeed blocked as Complainant avers. It would have been a simple matter to have them released. It is evident that Complainant did not do so as in his own words he did not regard it as important enough.
- [34] The Complainant should have regarded the e-mail sent to him as of importance and should have taken it seriously. Complainant was at all material times working as a consultant for Tracker. Tracker is a firm which is entrusted with fitting of devices which are requirements by short-term insurers. The Complainant would have had knowledge of security requirements required by insurers as his field of work is related to the short-term insurance industry and he is deemed to know the requirements imposed by insurers.
- [35] Therefore based on the totality of the evidence before me I am of the view that Complainant was fully aware of the additional security requirements imposed by insurer and failed to adhere to them.

Order

I therefore dismiss this complaint in terms of Section 28 (1) (a).

DATED AT PRETORIA ON THIS 22nd OF FEBRUARY 2006



CHARLES PILLAI

OMBUD FOR FINANCIAL SERVICES PROVIDERS