

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FAB50/2023

FAIS OMBUD REF: FAIS-05701/11-12/ FS 1

MARIUS OOSTHUIZEN

APPLICANT

and

**ANDRE JACOBS
(ANDRE JACOBS INSURANCE BROKERS)**

FIRST RESPONDENT

OFFICE OF THE OMBUD FOR FINANCIAL SERVICES PROVIDERS

SECOND RESPONDENT

RULING BY THE DEPUTY CHAIRPERSON

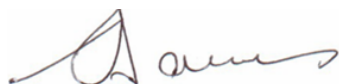
The application for permission to apply for reconsideration (appeal) in terms of sec 28(5) of the FAIS Act is dismissed.

The Tribunal may reconsider "final determinations" made by the Ombud. These are defined in sec 28(1) of the FAIS Act. The "decision" to decline to entertain a complaint is not such a determination also because it does not finally determine the rights of the parties and cannot be made an order of court as required by sec 28(4) and (5). The jurisdiction of the Tribunal is thus limited to a reconsideration of "final decisions/determinations".

Despite the lack of jurisdiction, the decision to decline to entertain the complaint was fully motivated by the Ombud and was justified on "reasonable grounds". The Ombud exercised a discretion, and the Tribunal may only interfere with the discretion on limited grounds:

"The ordinary rule is that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle." Not one of these grounds has been alleged or established.

There is, accordingly, no reasonable likelihood that the Tribunal may reach a different conclusion.



LTC HARMS

Deputy Chairperson

26 July 2023