



ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA

THE EAAB AND PASCO MANDATES

Monday, 03 August, 2011

It may at the outset be mentioned that during the previous six month period the Estate Agency Affairs Board (EAAB) has caused numerous investigations into a number of estate agency enterprises to be conducted especially in cases where there has been any suspicion of non-compliance. This fact underscores the commitment of the EAAB to efficiently, effectively and successfully discharge its statutory mandate of protecting consumers in their dealings with estate agents.

In response to your request for information as to why the Estate Agency Affairs Board (EAAB) cancelled the investigation mandates granted to Pasco Risk Management (Pasco), the EAAB would confirm that, acting on a resolution of the Executive Committee passed after careful consideration of all relevant matters, a letter immediately terminating the investigation mandates that had been granted by the EAAB to Pasco, was duly addressed to Pasco by Mr. Ashpol, the Executive Manager: Enforcement of the EAAB. Such letter was received and acknowledged by Pasco.

It should be pointed out that a question which frequently arises when investigations are to be conducted, and which was particularly relevant in the case of Pasco, lies in determining when, in fact, an investigation actually commences and when that investigation terminates. The bounded rationality model indicates that such investigations should cease, and so avoid the incurrence of fruitless and wasteful expenditure, immediately sufficient information has been gathered to enable the EAAB either to pursue the matter further through the civil courts, as has been done in a number of cases, or, alternatively, conclude that there is no valid cause of action.

The EAAB, in addition, does not wish to find itself in a situation where it seems to be dependent on any single service provider, especially bearing in mind the challenges of transformation in South Africa. The EAAB is currently appointing a panel of suitable service providers to engage in investigations and who will, in addition, be committed to ensuring a transfer of relevant skills to appropriate EAAB staff members. The EAAB, moreover, intends shortly to establish an 'in-house' inspectorate to undertake all future investigation functions.

Insofar as both the Wendy Machanik Property Holdings (WMPH) and Constantia Sectional Title Management (CSTM) matters are concerned the EAAB is entirely satisfied that all aspects relating to these two particular cases are presently well under control.

Mr. Mervyn Swartz, the Court appointed Curator of WMPH recently indicated that he was presently finalising all aspects in relation to the trust accounts after which a final report would be compiled. The Liquidator of WMPH is, similarly, continuing to wind up the affairs of the liquidated close corporation.

The return date of the rule nisi issued in respect of the CSTM matter was 2 August 2011 when the EAAB was able to confirm the Order which it had obtained on 24 May 2011. The effect of the order that was obtained on 2 August 2011 is that:

1. CSTM and Mr Quintin Brown were finally interdicted from rendering any services as estate agents for so long as they do not hold valid fidelity fund certificates (such certificates having been withdrawn by order of the Court on 24 May 2011);
2. CSTM and Mr Quintin Brown were finally interdicted from operating in any manner on any trust account of CSTM;
3. Mr Lawrence Moepi's appointment as *curator bonis*, with the powers set out in the order, was confirmed; and
4. CSTM and Mr Quintin Brown were ordered to pay the legal costs of the EAAB on a punitive scale.

The fact that the EAAB was able to obtain the abovementioned Order on 2 August 2011 serves as unequivocal proof, if any proof were needed, that all matters in which the EAAB is involved continue to receive its ongoing and dedicated attention. The EAAB would never permit its compliance investigations or consumer protection role to be in any way prejudiced.

The investigation by the Commercial Branch of the South African Police of the criminal complaint laid in the matter by the EAAB is ongoing as is the case with the matter of Wendy Machanik and Dusty Moon.

It is, however, to be emphasised that the successful criminal prosecution of estate agents is not a function of the EAAB. Criminal prosecutions, of course, lie entirely in the hands of the National Prosecuting Authority (NPA). The EAAB, while it will certainly do whatever may be required of it to expedite the finalisation of such prosecutions and render any such further advice and assistance as it can, wishes to emphasise that it reposes full faith and confidence in the professional ability of the NPA in this respect. The EAAB, indeed, is satisfied that the NPA has, thus far, undertaken all necessary criminal investigations in a knowledgeable, skilled and professional manner. The EAAB believes that the NPA should be allowed the necessary opportunity to continue to pursue such criminal matters to finality.

The investigations launched by the EAAB into the other matters referred to by you, where this is considered to be necessary and appropriate, will also be continued. It may, for the sake of

interest, be indicated that the EAAB is presently investigating a number of additional matters and that it is envisaged that two appropriate High Court actions will shortly be launched to obtain necessary redress. Press releases issued by the EAAB from time to time will serve to keep the public apprised of these developments.

The EAAB, in conclusion, remains committed to efficiently and effectively discharging its statutory mandate. The EAAB will not under any circumstances or in any manner compromise the protection that it offers to consumers in their dealings with estate agency practitioners.

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