



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

**The Ombud for Financial Services Providers v CS Brokers CC and Others
(Case no 781/2020) [2021] ZASCA 117**

Today the Supreme Court of Appeal dismissed an appeal from the Gauteng Division of the High Court, Johannesburg (per Fabricius J). The Ombud for Financial Services Providers, appointed under the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS), dealt with a complaint lodged by Mr J B Wallace (Mr Wallace) against CS Brokers CC and Mr Storm, who was a financial services provider functioning through CS Brokers (together referred to as CS Brokers). The complaint related to two investments made by Mr Wallace through CS Brokers in two of the investment schemes formed by a company known as Sharemax. Mr Wallace felt that he had been promised interim payments which did not eventuate and lodged a claim for repayment of the monies invested. This claim was not met.

The Ombud has extensive substantive and procedural powers under FAIS. A determination is akin to a civil judgment of a court and the Ombud is accorded wide discretions as to the procedure of determining a complaint. Amongst other things, the Ombud may refer a complaint to a court and may receive oral evidence. CS Brokers applied under s 27(3) of FAIS to the Ombud to either refer the complaint

of Mr Wallace to court or to receive oral evidence. This application was simply responded to by a letter which, as regards the application to receive oral evidence, said 'this Office does not hold hearings'. The Ombud then made a determination ordering CS Brokers to repay the amount of the investment to Mr Wallace. An appeal to the Board constituted to deal with such appeals also failed.

CS Brokers approached the Gauteng Division of the High Court, Pretoria to review the refusal of the Ombud to receive oral evidence and for relief setting aside the subsequent decisions. Fabricius J granted the relief sought. The Ombud, not satisfied, appealed to the Supreme Court of Appeal on the basis that she was vested with a wide discretion and had exercised it appropriately. A debate ensued concerning the nature of the discretion to be exercised in the circumstances. The Supreme Court of Appeal held that it was unnecessary on the facts of that matter to decide that debate. Whatever test one applied, the Ombud had clearly responded to the application with a predetermined policy not to hold hearings without exercising any discretion at all. In the circumstances, the appeal of the Ombud was dismissed with costs.