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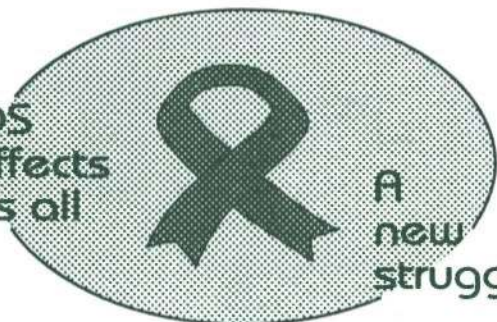
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PRETORIA, 12 MAY
MEI 2000

No. 21163

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

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DEPARTMENT OF HEALTH

CONTENTS • INHOUD*No.**Page
No. Gazette
No.***GENERAL NOTICES****Trade and Industry, Department of***General Notices*

1819	Consumer Affairs (Unfair Business Practices) Act (71/1988): Consumer Affairs Committee: Report in terms of section 10 (1): Report No. 77	3	21163
1820	do.: do.: In terms of section 12 (l) (b) and (c)	22	21163

GENERAL NOTICES

NOTICE 1819 OF 2000

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 597 of 1999 as published in Government Gazette No. 19987 dated 23 April 1999, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (HARMFUL BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)

Report No. 77

**FINANCIAL RESEARCH FOUNDATION (PTY) LTD, A "DIVISION" OF
FINANCIAL RESEARCH CORPORATION (PTY) LTD, AL FRIEDMAN,
FJL FRIEDMAN, LP FRIEDMAN, MICHELLE FRIEDMAN AND FRITZ
FRIEDMAN**

Contents

1. Introduction
2. Further complaints that led to the section 4(1)(c) investigation
3. The questions of 17 November 1998
4. Letter from the Financial Services Board
5. The BPC resolves to formally investigate FRF and the publication of the notice
6. Notification of a further section 8(1)(b) investigation
7. The experiences of some FRF clients or victims
8. Financial Research Foundation in liquidation
9. Conclusion
10. Recommendation

1. Introduction

On 12 September 1997 the Business Practices Committee (BPC) published its intention to investigate, in terms of section 8(1)(b)⁽¹⁾ of the Harmful Business Practices Act, 71 of 1988,⁽²⁾ the business practice whereby "interest recalculators"⁽³⁾ required payment in advance (an up-front consideration) for services to be rendered. Notice of this proposed investigation (the 1998 general investigation) was published under Notice 1325 of 1997 in Government Gazette 18263. The report of the BPC on interest recalculators was published as Report 58 under Notice 1763 of 1997 in Government Gazette 18443 dated 21 November 1997. *On 23 October 1998 the Minister, in Notice 2422 of 1998 in Government Gazette 19353, declared unlawful the business practice whereby interest recalculators accept up-front payments before the rendering of such service in full. "Service fully performed" meant that the recalcuator has fulfilled all the services offered to the debtor, and the creditor had agreed to or rejected any claim for disbursement in writing. The creditor had to agree to or reject the claim within 90 days after receiving the claim, failing which service is presumed to have been fully performed.*

On 11 September 1997 the BPC informed Financial Research Foundation (Pty) Ltd (FRF)⁽⁴⁾ by letter about the impending 1998 general investigation. The attorneys of FRF, WN Reyneke Incorporated⁽⁵⁾ (Reyneke), acknowledged receipt of this letter and made a number of irrelevant allegations in its response. This letter of theirs was followed up by equally irrelevant letters dated 19 January 1998, 29 January 1998 and 3 February 1998. On 9 February 1998 the BPC responded to a letter of WN Reyneke

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- (1) The BPC could conduct two types of formal investigations. *Firstly*, in terms of section 8 of the Act, the BPC may on its own initiative, and shall on the directions of the Minister, make such investigation as it may consider necessary into any harmful business practice of a particular entity which the committee has reason to believe exists or may come into existence. *Secondly*, the BPC could make such investigation into any business practice in general which is commonly applied by entities for the purposes of creating or maintaining a harmful business practice. The first type of investigation is known as a section 8(1)(a) investigation in terms of the Act and the second is called a section 8(1)(b) investigation.
 - (2) Amendments to this Act were published in the Government Gazette of 14 May 1999. The Act is now known as the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 and is administered by the Consumer Affairs Committee and not the Business Practices Committee.
 - (3) "Interest recalculators" or "recalcuator" means any business or person who provides any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions. Interest recalculators invariably employ telemarketers who call prospective clients, usually at random. The telemarketer then arranges a meeting between a "consultant" of the interest recalcuator and the prospective clients. The telemarketers and "consultants" are usually remunerated on a commission basis. See also Report 58 of the BPC.
 - (4) Financial Research Foundation (Pty) Ltd [FRF] was a "division" of Financial Research Corporation (Pty) Ltd [FRC]. The directors of FRC were Cornelius Wouter van der Merwe (ID 490612 5131 00 7), Gerhardt Dieter Friedman (ID 611126 5085 08 3) and Willem Nicolaas Reyneke (ID 480330 5026 08 3). On 31 March 1995 the name of the proprietary company Florenburg Investments 53 was changed by special resolution to FRC.
 - (5) WN Reyneke was a director of Financial Research Corporation.

dated 19 January 1998. The response of the BPC gives an indication of the trivial issues raised by Reyneke.

"Thank you for your letter and annexures dated 19 January 1998. You raised a great number of issues and the Committee would endeavour to respond to all of them.

① Page 1, paragraph 2, last sentence: You stated: "This harmful business practice is being applied despite the clear provisions of various legislation to the contrary". As you are aware, the Business Practices Committee (the Committee) administers the Harmful Business Practices Act, No 71 of 1988 (the Act). The sole purpose of the Act is to make provision for the discontinuance of harmful business practices as defined in section 1. The Committee would not investigate contraventions of existing legislation. A contravention of, for example, the Companies Act, constitutes a criminal offence and this contravention needs to be investigated by the South African Police Services (SAPS). The SAPS would then prepare a dossier which will be forwarded to the public prosecutor who would decide whether or not there are sufficient grounds to prosecute. If you contend that practices are being applied that are clearly contraventions of various existing legislation, then these practices should be brought to the attention of the SAPS.

② Page 1, paragraph 3, first sentence: You stated "... the practice clearly followed according to an undeniably design by a number of banks and/or financial instances to refuse their customers ... such information as they are required by law and/or contract to produce". If there is "... an undeniably design by a number of banks" this could constitute a contravention of Regulation 801 of 2 May 1986 which was issued in terms of the Maintenance and Promotion of Competition Act of 1979. In terms of Regulation 801 it is a criminal offence to, *inter alia*, collude on the terms of conditions of supply of goods or services. It is suggested that you approach the Chairman, Competition Board, Private Bag X84, Pretoria, 0001, or the SAPS about this allegation. If this refusal constitutes a contravention of other legislation, please see ① above. Should the refusal be in breach of a contract, the remedy lies in a civil action against the banks concerned. The Committee has wide investigative powers but only make recommendations to the Minister of Trade and Industry (the Minister) which powers he should exercise to ensure the discontinuance of a particular harmful business practice. The Minister does not have the power to intervene in a civil action between two parties.

③ Page 2, points 1 and 2. The Committee is aware that your client is not the only entity which recalculates interest and the Committee does not deny that some clients of banks could have been overcharged.

④ Page 2, points 3, 4, 5 and 6 and page 3, points 7 and 8. If banks have "... combined to apply a deliberate policy of obfuscating and delaying claims",

please see ② above. Contraventions of the Usury Act should be brought to the attention of the SAPS or the Registrar of the Usury Act. The Act does not make provision for the Committee to interpret and apply the Constitution of South Africa.

⑤ Page 4, last paragraph. You state "... banks are all part of a vast campaign ..." Please see the reference to the Competition Board under ② above.

⑥ Page 5, points a to c. It would be worthwhile if you could quantify these allegations and bring it to the attention of the relevant authorities, such as respectively Vice-President Mbeki who is charge of the RDP programme, the Chief Director: Small and Medium Small Enterprises, Department of Trade and Industry and the President of the South African Reserve Bank.

⑦ Page 5, point 1. The Committee has no powers to rectify this situation or to ensure that enforcement takes place. It is recommended that you bring this complaint to the attention of the Minister of Justice.

⑧ Page 6, points 1, 2 and page 7 point 3. Please address these requests to the Minister of Trade and Industry. It is not a function of the Committee to review or draft existing legislation.

⑨ Page 7, penultimate paragraph. The issues reiterated by you were in my opinion answered in the paragraphs above. However, please do not hesitate to call me should you wish to discuss any of the aspects raised above".

In another letter, Reyneke suggested that the software of FRF "... is far more advanced than anything available to any of the banks in South Africa". This remark was probably made with "tongue in cheek". Reyneke also stated that banks were "... playing other silly games", promoted "distrust" and "disrespect for the law" and were short-sighted.

The BPC received a number of complaints from consumers against FRF after publication of the notice of the 1998 general investigation. Because of the pending general investigation in terms of section 8(1)(b) of the Act, these complaints were not followed up with FRF. The following were consumers who lodged complaints against FRF during the 1998 general investigation and a brief summary of their complaints. Only the first three letters of their surnames are given.

Bes: FRF had a sloppy administration. FRF and Friedman do not return any calls.

Bot: Paid R5 400 to FRF on 13 December 1996. FRF alleged that it had problems in obtaining the required bank statements.

Bur: He and his son each paid R2 250 to FRF. His son had not heard from them yet.

Caa: No feedback from FRF

Fer: Paid R900 to FRF on 15 January 1997 and heard nothing from them since then

Lor: Heard nothing from FRF since paying them R1 350 on 26 February 1997.

Oli: Paid R1 500 to FRF on 20 June 1997 for services to be rendered. Have heard nothing from them since then.

Rin He had no cash and they talked her into "... putting in on my husband's credit card. A friend of mine heard nothing after ten months. They said everything would be completed within six to eight weeks. The telephones just rang".

See: Tried to communicate with FRF for six months without success.

Sem: "They told me that they could make my bank repay me for the bond money they are owing me" and "...I am a pensioner and need that money".

Sen: Furnished the names of 18 persons who paid upfront fees to FRF and whose claims were rejected by the banks. They received no refunds from their so-called deposits

2. Further complaints that led to the section 4(1)(c) investigation

One of the complainants during the 1998 general investigation was Mr Sem (Sem). The BPC again received a complaint from him and on 7 September 1998 the BPC referred his complaint to Mr William Pietersen of FRF. On 23 September 1998 FRF⁽⁶⁾ responded and said:

"Please obtain the information as a matter of urgency to enable us to finalize the audit as we had no response from the client".

The information required were the "... interest rates from 25 July 1996 to 23 March 1993, a copy of the granting of the loan, a copy of the first mortgage bond and a copy of the original contract". On 7 October 1998 the BPC wrote to G Friedman of FRF informing him that Sem alleged that he had already furnished the required information. Sem also stated in his letter that "... they told me that they could make my bank repay me for the bond money that they are owing me". On 23 October 1998 FRF was sent a reminder to respond to the complaint of Sem.

(6) Note that the Minister, on 23 October 1998, in Notice 2422 of 1998 in Government Gazette 19353, declared unlawful the business practice whereby interest recalculators accept up-front payments

The directors of FRF were also informed on 7 October 1998 by the BPC that it resolved at its meeting on 1 September 1998 to undertake a section 4(1)(c) investigation⁽⁷⁾ into the business practices of FRF. Since then the BPC received a steady flow of complaints against FRF.

Gro, in an undated letter, said: "Regarding Financial Research Foundation's business practices, I myself am one of the people they conned in their recovery of so-called overcharged interests charged by our banks. Attached are copies of my dealings with this crowd. I am also including other information, such as telephone and cell phone numbers, I'm not even sure if all are still operational. As I understood they will open an office and not pay the rent and then move off to new premises". The crux of the complaint by **Gro** was that the contact agreement "... for solving my interest rate query was 3-6 months. It is now 8 months and you have not achieved anything. You have not kept your side of the contact and when I spoke to Mr Friedman earlier this week he threw the phone down". A complaint by **Dav** was received on 28 October 1998. He alleged that he paid R1 200 to FRF during 1996 and received no results. Attorneys on the behalf of **Bra** alleged that their client paid R4 500 to FRF during August 1996 but subsequently received no signs of finalisation of the matter. On 21 February 1999 **Ms Her** complained that she paid R1 500 to FRF during August 1997. Since then: "I have phoned them literally hundreds of times, written letters, sent faxes, supplied all the information they asked for and more. Over time I have come to realise that we have been defrauded out of our hard earned money. They keep changing their phone numbers, moving offices and even when I track them down they never return phone calls".

3. The questions of 17 November 1998

On 17 November 1998 the BPC wrote the following letter to G Friedman of FRF:

"On 7 October 1998 the Committee informed you about its decision to undertake a section 4(1)(c) investigation in terms of the Harmful Business Practices Act, 71 of 1988, into the business practices of FRF.

Would you now please furnish the Committee, as a matter of urgency, with the following information?

1. The number (x) of new clients who entered into agreements with FRF during the latest financial year (y) for which annual financial statements are available.

(7) The purpose of section 4(1)(c) or informal investigations is twofold. It enables the BPC to make a more informed decision as to whether a section 8(1)(a) investigation is called for. The Minister is not empowered to make any decisions on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8 investigation. The other purpose is to give the entity or person complained about, an opportunity to respond to allegations made against the entity or person. No publicity is given to informal investigations

2. Number of claims submitted to the banks within 6 months, >6 months \leq 12 months, >12 months \leq 18 months and >18 months during period (y). The total should match (x) in question 1.
3. The number and value of the claims (in question 2) submitted to the banks, classified by bank. The number in this question should match (x) in question 1, less the number of clients that had no claims according to the calculations by FRF.
4. The number of claims (in question 2) entertained by the banks and the amounts paid to clients, classified by bank.
5. The same information as in question four, but please classify the number and value by: (a) immediate payments by the banks (b) negotiated settlements (c) court orders.
6. Turnover (deposits received) of FRF for the financial years ended y, y-1 and y-2.
7. The number of clients and amounts refunded in terms of FRF's "Money Back Guarantee⁽⁸⁾ - Applies if client adheres to the conditions as stipulated in the conditions schedule".
8. Please define the "success rate" of FRF as quoted by the "consultants".
9. Please furnish the highest academic qualifications of each of your "consultants".

Would you please also respond to the Committee's letter dated 23 October 1998?"

On 7 December 1998 FRF acknowledged receipt of the Committee's letter dated 17 November 1998⁽⁹⁾ and said that the matter was receiving attention. A reminder was sent to FRF on 1 February 1999. This reminder was returned by the Post Office marked "Unclaimed".

(8) FRF offered a money back guarantee which read: "In the event of the claim pay out being less than the up-front fee FRF will refund the difference to the client on settlement of claim, provided that the period of recalculation is not less than 5 years and all statements are provided or obtained at clients cost".

(9) During June 1999 it was learnt that the High Court of South Africa (Provincial Division of the Cape of Good Hope, Case 14795/97) on 21 January 1998 ordered that an order *nisi* issued on 26 November 1997 be ratified. In terms of this order Financial Research Corporation (Pty) Ltd was placed under final liquidation.

4. Letter from the Financial Services Board

The BPC received a letter from the Financial Services Board on 4 February 1999 in which it was stated:

"The FSB has been approached by members of the public who have lodged complaints against the above company (FRF). These complaints fall outside the jurisdiction of the FSB. Attempts to have the SAPS assist in these complaints have been futile. It is our considered opinion that the actions of the above company do constitute harmful business practices. Enclosed please find the original complaints lodged with this office for your further investigation".

The documents received from the FSB *inter alia* revealed that:

(a) The auditor of FRF, on 22 January 1999, lodged a complaint with the Public Accountant's and Auditors' Board in terms of section 20(5) of the Public Accountant's and Auditors' Act (No 80 of 1991) in respect of alleged material irregularities in the conduct of the affairs of FRF.

In his letter to the Public Accountant's and Auditors' Board the auditor stated:

- "> The extent of summonses received from clients and suppliers is considerable;
- > The company is unlikely to fulfil contractual obligations to clients;
- > Complete reliance for cash flow funding on rests a loan promised by an external company".

(b) In a letter dated 15 December 1998 to the directors of FRF, marked for the attention of Aileen Friedman, the auditor stated that: "It is apparent that the company's liabilities exceed its assets".

(c) In a letter dated 14 January 1999 to the auditor, Reyneke disagreed that the company's liabilities exceeded its assets. It was also stated in this letter from Reyneke *inter alia* that:

"It is admitted that the company received various summonses from clients for alleged non-performance of interest calculations. Most of these are defended as, in our opinion, the company is not liable. Some of these had been settled.

It is correct that summonses have been received from creditors of the company, although we are not aware of the exact amount. The company does not accept further deposits from clients. When the bank accounts were frozen, the life-line of the company had in fact been cut off. The direct debit order system by way of which clients have to pay money to the company had also been cancelled by the bank.

The company has entered into negotiations since approximately October 1998 with another firm, Foundation Finance Auditors, with the view to amalgamate the respective businesses, or to make other suitable arrangements ensuring that the company could meet its commitments with regard to clients and creditors. Naturally funds are required at this point in time to achieve this purpose. These funds are being raised by Foundation Finance Auditors off-shore and should be completed by not later than the end of February 1999.

In view of the foregoing it is our opinion that no irregularities have taken place or is taking place. It is reiterated that adequate steps have been taken for the prevention of any loss likely to be caused to creditors and/or clients".

5. The BPC resolves to formally investigate FRF and the publication of the notice

At a meeting of the BPC on 23 March 1999 it resolved to undertake a section 8(1)(a) investigation into the business practices of Financial Research Foundation (Pty) Ltd (96/17090//07), a division of Financial Research Corporation (Pty) Ltd (94/07073/07), AL Friedman, FJL Friedman, L P Friedman, Michelle Friedman, Fritz Friedman and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Financial Research Foundation (Pty) Ltd and Financial Research Corporation (Pty) Ltd.

The names and initials of the Friedman family were taken from documents on the BPC file on FRF. Michelle Friedman signed a letter to a client dated 13 October 1997 on the behalf of the "Legal Department" of FRF. Seetharam. A L Friedman and FJL Friedman were named as directors and LP Friedman as manager of FRF in a letter dated 14 November 1997 to NBS. Fritz Friedman signed a letter on the behalf of "FRF Head Office" in a letter dated 17 June 1998 to a client.

On 25 March 1999 the BPC wrote a letter to Reyneke, informing him of the proposed investigation. This letter was faxed to Reyneke at 08h29 on 25 March 1999. In the letter the BPC extended an invitation to his clients to address the BPC at its meeting on 8 April 1999. The fax was received by Reyneke. This is clear from the following letter dated 14 April 1999 which was sent by the BPC to Reyneke:

"The letter of the Committee dated 25 March 1998, which was faxed to your office at 08h29 of an even date, refers. Receipt of this fax was confirmed by you on 7 April 1999 during a telephone discussion with an official of the Committee. You indicated that the fax was handed to Mr Cubitt of your office. The following notice will be published in the Government Gazette of 23 April 1999.

"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Financial Research Foundation (Pty) Ltd (96/17090//07), a division of Financial Research Corporation (Pty) Ltd (94/07073/07), AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman, Fritz Friedman and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Financial Research Foundation (Pty) Ltd and Financial Research Corporation (Pty) Ltd".

On 15 April 1999 Reyneke responded to the letters of the BPC dated 25 March 1999 and 14 April 1999. The BPC was informed that: "This firm, however, no longer represents the Financial Research Foundation or any of its branches. There is accordingly nothing that this firm can do for and/or on behalf of that organisation in this matter". Reyneke also suggested that "... if your Committee really wish to undertake an investigation of a harmful business practice that is causing actual - as opposed to theoretical - harm to the commercial life of South Africa, your Committee launch an investigation into the failure by commercial banks and money lending institutions in general, to comply with section 10 of Act 73 of 1968".

On 14 June 1999 Reyneke was advised to direct the complaints to the state organs responsible for applying the relevant statutes. It was also stated in the letter that Reyneke would figure in the report of the Consumer Affairs Committee to the Minister because of his involvement with FRF.

6. Notification of a further section 8(1)(b) investigation

It was stated above (see section 1) that the Minister, in Notice 2422 of 1998 in Government Gazette 19353, declared unlawful the business practice whereby interest recalculators accept up-front payments. In spite of the order by the Minister, the BPC unfortunately still received a steady flow of complaints against interest recalculators. It would appear that there were interest recalculators who eluded the order of the Minister. It came to the attention of the BPC, for example, that there are interest recalculators who now sell computer software programmes apparently to enable consumers to calculate fees, charges, and/or interest charged on their account, including accounts held at financial institutions. It further appears that consumers could be misled by statements made by these recalculators. The BPC thus resolved to revisit the business practices of interest recalculators, hence the following notice in Notice 517 of 1999 in Government Gazette No 19896 dated 1 April 1998.

"In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking a further investigation in terms of section 8(1)(b) of the said Act into the business practices of interest recalculators. This would include a reconsideration of payment in advance for services to be rendered as well as other possible harmful business practices.

Interested parties were to make written representations regarding the investigation to the Secretary of the BPC.

7. The experiences of some FRF clients or victims

The BPC received a number of responses from irate clients of FRF after publication of the notice of the section 8(1)(a) investigation. The following are excerpts from these complaints. The first three letters of the surnames of the clients, in bold, are followed by the dates of their complaints and short synopses of the complaints. They serve to illustrate FRF's handling of their clients as well as the nature of FRF's investor audience.

Ada (letter dated 21 May 1999) "I signed a contract on 25 November 1997 and paid R1 500 in full to the consultant, Mr Agenbacht. The first correspondence received was on 22 January 1998. The company requested bank statements and certain documents that I have obtained from the bank. I arranged with the bank to get the relevant documents. I received them within one month and advised FRF to collect. The rep only picked up the documents on 8 June 1998 after several telephone calls. I then tried to contact FRF's management to report back but in vain. Nobody bothered to call me. After several attempts to contact FRF in 1999 and now I'm turning to you to please check up on this company".

Bur (letter dated 18 June 1999) "During 1997 I gave FRF instructions to do an interest audit on my account with the bank. I paid them R1 500 in advance. In spite of numerous calls and correspondence, and notwithstanding the fact that I obtained all the information required by them, none of their promises materialised".

Dup (letter dated 24 May 1999) "On 5 September 1997, after making a telephone appointment, I was visited at my house by Mr Chris Bam who told me that he represented FRF who examines financial records on behalf of clients in order to obtain refunds made by the relevant financial institutions as it was proven the financial frequently overcharge on interest. I paid R1 500 when signing the contract and was told that although the documents I signed state that a result should be forthcoming after 60 days, due to the amount of work the company has, the investigation would take approximately three months, after which I would be informed of the result. When hearing nothing, I phoned Mr Bam on 19 January 1998 who informed me that he could not handle enquiries and I must phone the company directly. When I phoned the number, a lady informed me that I must phone another number. I phoned at various times but every time only received an engaged tone".

Far (letter dated 25 May 1999) "Attached please find correspondence relating to attempts to recover funds paid to FRF. This was as a result of my signing with this firm to investigate my bond with the Standard Bank and statements that they could recover substantial amounts from the bank. After no action on the part of this company I have attempted to recover my funds without success".

Gam and three acquaintances (undated letter) "We paid R7 200 to FRF on May 1997. We had, on numerous occasions, requested them for a refund, without success. They last communicated with us in November 1998. The present situation is that we are unable to trace them and I have been told they recently sold their property which includes a Hotel "Keerom Case" in Villiersdorp".

Gre, on behalf of Ngc (letter dated 13 October 1996) "The client paid R3 000 to FRF. Unfortunately, despite numerous letters and threats of legal action, no response whatsoever has ever been received".

Hen (letter dated 26 May 1999) "I paid R12 00 on 28 January 1997 to FRF. The whole affair is very clear to me now:

- (1) Promises based on bogus (?) letters from clients
- (2) Regular meaningless correspondence as a delaying tactic.
- (3) Requests for info they already have
- (4) Suggest a visit to some far-off location
- (5) On visiting their "office" at Villiersdorp I was shocked at the chaos and unprofessional state - their wooden racks were full of brown manilla folders in dusty conditions
- (6) They must have made millions of rands out of this scam - I would take great pleasure to see they get their just deserts".

How (letter dated 4 June 1999) "I received an evening phone call from a Chris Long. This man was phoning people at random canvassing business for Financial Research Foundation. I demanded that he give me a contact name so that I could phone them the next day. I phoned the contact, Vollaria, explained the facts and asked her to follow up my contract. This lady stated that they are not an interest recalculation company, instead they are a firm of forensic auditors. Needless to say that was the last I heard from that lady".

Ket (letter dated 31 May 1999) "They have in the recent past been the topic of a presentation on SABC Radio Monitor. I myself have fallen victim, having paid R4 000 deposit and nearly 26 months later had no results. My personal experiences:

Deposits are taken and work, if any, is either delayed or does not take place. When questioned about delays, one is informed that relevant information on the account was requested from the bank, but had not been received or was received late.

At a personal visit to FRF's offices I requested to inspect their correspondence with my bank, but was told that this was stored in another office and the person with the key had gone on holiday.

I was further informed that my claim had actually been sent to my bank's head office and received a copy of their letter to my bank, where an acknowledgement or receipt was requested from my bank.

I was requested to pay my outstanding balance of R5 900 for their interest research.

I commented that I was a little cautious, based on the radio presentation and certain other adverse news on their firm and their industry in general, but was prepared to settle upon acknowledgement of receipt of their claim by my bank.

I emphasized that I was at that stage only interested in receipt of claim and not even any assurance that their claim was valid.

I was threatened with summonses and received a highly abusive telephone call from their director. Needless to say, today - nearly four months later, I have received neither summons nor any confirmation that my claim had been received by my bank.

My own belief, together with views of other ex-clients on Radio Monitor, is that deposits are invested for interest gain and, if at all returned, only to those shouting the loudest.

With this particular firm there are literally thousands of customers involved, with millions of Rand having been handed over in total, most of whom we assume have written their deposits off, due to the high costs of litigation".

Kim (undated letter) "I entered into a contract with FRF on 30 June 1997 and paid them R1 500. I have this far not had any response from them and this has even led to a strain on my marriage as well as I being the laughing stock of my family and friends. I have since on numerous times tried to make contact with this company by fax and telephonically - but to no avail".

Kri (fax dated 8 July 1999) "I feel that no progress is being made as this has now been going on from 4 April 1997. I would like to have my R1 5000 refunded back to me".

Lab (fax dated 13 July 1999) "During the afternoon of 1 May 1997 Mr Meintjes, a financial consultant of FRF knocked on our door. He explained to us that banks charged their clients too much interest, in other words, we are being done in. He also told us that we could easily expect R15 000 as a refund and that the investigation would be completed within a month. He said that the investigation would cost R1 500. We told him that we could not afford that amount but he said we could pay it by credit card. Should the investigation be unsuccessful, he said, the company would refund us the R1 500 at an interest rate of 15.5 per cent per annum. He later convinced us to have them undertake the investigation. He looked honest and even sang the Lord's Prayer during our discussion. This convinced us that he was a Christian and that he would not defraud us. Everything looked so promising and at that stage we suffered financially".

From June 1997 to January 1999 this FRF client tried to contact FRF to get a refund on the money paid to the "consultant". He said that it was surprising that the employee at FRF that he spoke to on a previous occasion was never available on the next occasion. The usual explanation to him was that the employee to whom he wanted to speak "... had left the company". FRF employees he spoke to were *inter alia* Nola, Michelle Friedman, Janine, Gaynor and Charmaine.

"We, as husband and wife, already had heated arguments because of FRF. There were accusations because of the R1 500 plus interest "... that unnecessarily left the house" and because we suffer hardship and could have bought clothes and food for our three children".

Lau (letter dated 19 May 1999) "On 13 May 1997 I paid them R4 875. They would have kept this in trust and I would have received 15.5 per cent annually. Is the company a deposit taking institution? I learned that FRF found that the bank owes me R8 000. I am prepared to cede the R8 000 together with the 15.5% to FRF on the condition that they refund my deposit".

Lou, Bri and Mul (letter dated 4 June 1999) These three FRF clients worked for the same institution. Each of them paid R1 500 to FRF towards the middle of 1997. They have since then not heard from FRF.

Mat (letter dated 16 June 1999) "The amount is too small to justify a private person and a pensioner going to court or even to accrue legal costs. The attached correspondence and other documents cover all of the details of my experience with the FRF but I would add that I had a number of telephone calls to the company as well".

The documentation the consumers made available to the Committee included registered letters to FRF. He stated that he furnished FRF with the original bank statements, but it was again requested by FRF at a later stage. He asked for cancellation of the contract because of non-performance by FRF. The client paid R250 on 3 January 1996.

Rei (undated letter received on 10 June 1999) "I hereby submit copies of documents relating to my own dealings with Financial Research Foundation (Pty) Ltd. I was given a sweet verbal assurance that, because of the promising returns on my claim, the term of recalculation would be extended to 25 years. The whole affair stank like ten skunks but, in the hope that I could get a couple of bob back from the bank, I met all payments and terms of the contract. In attempts to follow up progress on my account I was faced with the frustrations of a bandy man trying to catch a greased pig in a passage. Wet soap is as slippery as sandpaper compared to these operators. Suffice to say that I had not success in contacting FRF and had written of any further developments".

Rid (letter dated 24 May 1999) "I signed a contract with FRF on 22 January 1997, when I was informed that the matter should be concluded after a few months. Needless to say, this has not happened. I only received a reply once after requests for information as could be seen from the enclosed documentation".

Roe (undated letter) "I appointed FRF two years ago to recalculate the interest on my bond. Up to date I have heard very little from them. I paid R1 500. What is now going to happen to my money?"

Sny (letter dated 9 June 1999) "The co-operative and the bank threatened to have us liquidated because we could not pay our debt because of poor crops. We were then approached by FRF. The appointed attorneys EB and WN Reyneke and adv DMDEL to handle our case. We incurred heavy losses because of court cases. The involvement of FRF cost us another ±R200 000 in legal fees. We never heard from the Friedmans again. They refused to talk to us. The end of the story is that we mediated with the bank and the co-operative to pay our debt over three years".

Sty (letter dated 1 June 1999) Styles paid R1 500 to FRF on 5 May 1997. He said: "After several letters I learned they had gone into liquidation". Yet, on 6 February 1999 he again signed an agreement with another interest recalculation. He paid R2 500 and was promised that he would receive a report back within 8 weeks. "On 24 April 99 I faxed a letter and phoned their Cape Town office. At no time have I received any written acknowledgement from them".

Wak (undated letter received on 1 July 1999) "I have tried unsuccessfully to contact them, by phone and mail (as well as fax) and am getting nowhere. I have a pile of 'bumph'." (paperwork).

Wei (letter dated 25 May 1999) "During November 1997 I paid R1 500 to FRF who promised that the investigation would be completed within six weeks. Nothing happened".

Wil (letter dated 21 May 1999) "I paid R1 500 to FRF during 1997. Up to date I received no reaction from the firm and they cannot be traced anywhere. It would seem that they committed fraud on a grand scale".

8. Financial Research Foundation in liquidation

On 6 July 1999 a letter was received from the liquidator of Financial Research Foundation. He requested the whereabouts of Mrs Aileen Friedman or her father-in-law, Mr Laurie (LP) Friedman. He stated that they had left Villersdorp and taken all their assets with them.

9. Conclusion

The BPC received a great number of complaints from consumers who, as clients of FRF, lost their money. The BPC did not receive any letters or calls from consumers who expressed satisfaction with the services rendered by FRF. It is clear from the complaints received that Financial Research Foundation (Pty) Ltd and its "division", Financial Research Corporation (Pty) Ltd, were instruments to accept money from many consumers without rendering any services. Due to the non-response of FRF to the questions of the BPC, it is not possible to calculate how much money has been lost by consumers. The money lost by consumers was in all probability gained by the directors of FRF and the Friedman family. The information on the file suggests that these two companies were run by AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman and Fritz Friedman.

It is likely that the names of the two companies, Financial Research Foundation and Financial Research Corporation, could also have misled consumers. A "foundation" is an endowed institution⁽¹⁰⁾ which Financial Research Foundation certainly was not. "Corporation" could be described as a body of persons constituting a single legal entity

or a body appointed by election to conduct civic business.⁽¹¹⁾ It is not common in South Africa to use "corporation" as part of the name of a relatively small company. Most South Africans would regard an organisation with the word "corporation" in its name as an organisation with certain official "links", such as the South African Broadcasting Corporation.

A complainant stated that FRF was involved in meaningless correspondence as a delaying tactic. This was also the experience of the BPC. The following are examples. On 7 September 1998 the BPC referred the complaint of Sem to FRF, who responded by asking for information which that the complainant had already supplied to them. On 23 October 1998 FRF was sent a reminder to respond to the complaint of Semono. They did not do so.

On 17 November 1998⁽¹²⁾ the BPC sent a letter to FRF which contained a number of questions. On 7 December 1998 FRF acknowledged receipt of the BPC's letter and said that the matter was receiving attention. No further communication was received and a reminder sent to FRF on 1 February 1999 was returned by the Post Office marked "Unclaimed". FRF did not furnish the answers to the questions put by the BPC. On 15 December 1998 the auditor of FRF wrote to Aileen Friedman that the company's liabilities exceeded its assets. On 14 January 1999 Reyneke admitted in writing that the company received various summonses from clients for alleged non-performance of interest calculations. He understandably added that FRF was not liable. He also stated that "... some of these had been settled". The BPC has no evidence that this was indeed the case.

The efforts of FRF were concentrated on obtaining money from clients. Invariably prospective clients were told by the "consultants" that South African banks, as a matter of policy, deliberately overcharge their clients. The prospective clients were also misled into believing that the "recalculation" would be completed within months and that the banks would, upon the receipt of claims, immediately pay the amounts "overcharged", without questioning the claims. What the clients were not told was that banks do not cheerfully accept the recalculations by interest recalculators and are, invariably, willing to contest claims in the courts. It is common knowledge that this is an expensive and time-consuming route. It appears from the complaints received that once FRF was paid, the clients were forgotten. Many of them tried to contact FRF's management for report back but in vain. It also appears that FRF presented themselves to prospective clients as "forensic auditors".

From the complaints received against FRF it appears that the money back guarantee was not as straight forward as suggested. For example, the guarantees only applied *inter alia* should the client provide the necessary bank statements. Many clients could, for various reasons, not obtain these statements. FRF was aware that clients experienced problems in obtaining their bank statements, but did not inform prospective clients of this.

(11) Ibid.

(12) See section 3.

It is relatively easy to become an "interest recalculator". One requires personal computers, an office, telemarketers and "consultants". The computers and the office can be leased and the costs involved in remunerating telemarketers and "consultants" are directly proportionate to the business they generate, assuming that they are remunerated on a commission basis only. The overheads are thus low and entry into the market is easy. Unfortunately, it is as easy to withdraw from the market as it is to enter. The BPC is aware of interest recalculators who vacated their premises overnight to surface again a few months later assuming another "interest recalculating" identity.

According to Reyneke, FRF has entered into negotiations with another firm, Foundation Finance Auditors, with the view to amalgamate the respective businesses. It would not be in the public interest to let the Friedmans continue their activities under the banner of another legal entity.

10. Recommendation

It was stated in footnote 2 that amendments to the former Business Practices Act were published in the Government Gazette of 14 May 1999. The terms of office of the members of the former BPC expired on that date and the members of the Consumer Affairs Committee were appointed during January 2000 and held their first meeting on 29 February 2000. During this period, 14 May 1999 to 29 February 2000, no resolutions were taken. For this reason this recommendation has been delayed.

Whether the business practices conducted by Financial Research Foundation (Pty) Ltd, Financial Research Corporation (Pty) Ltd, AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman and Fritz Friedman to relieve consumers of their money were devised or whether they came about by accident, they constitute harmful business practices. There are no grounds justifying the practices in the public interest. It is accordingly recommended that the Minister:

- (a) in terms of section 12(1)(b) of the Act declares unlawful the business practice whereby Financial Research Foundation (Pty) Ltd, Financial Research Corporation (Pty) Ltd, AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman and Fritz Friedman, directly or indirectly,
 - (i) provide any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions;
 - (ii) invite any persons to buy any programme, including any computer software programme, in return for money or any other valuable consideration, for the express or implied purpose to use the programme to calculate fees, charges, and/or interest charged on any account(s), including accounts held at financial institutions; and

- (iii) obtain any interest in or deriving any income from a business or type of business applying the harmful business practice.
- (b) in terms of section 12(1)(c) of the Act directs Financial Research Foundation (Pty) Ltd, Financial Research Corporation (Pty) Ltd, AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman and Fritz Friedman to refrain from applying the harmful business practice.



Prof T A Woker

VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE

Date ...17... March 2000

NOTICE 1820 OF 2000**DEPARTMENT OF TRADE AND INDUSTRY****CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 597 of 1999 published in Government Gazette No. 19987 of 23 April 1999, which report was published in Notice 1819 in Government Gazette No. 21163 of 12 May 2000, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) and (c) of the Consumer Affairs (Unfair Business Practices), Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

In this notice, unless the context indicates otherwise -

"harmful business practice" means the business practice whereby the parties, directly or indirectly -

- (i) provide any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions,
- (ii) invite any persons to buy any programme, including any computer software programme, in return for money or any other valuable consideration, for the express or implied purpose to use the programme to calculate fees, charges, and/or interest charged on any account(s), including accounts held at financial institutions, and
- (iii) obtain any interest in or deriving any income from a business or type of business applying the harmful business practice.

"the parties" mean Financial Research Foundation (Pty) Ltd, Financial Research Corporation (Pty) Ltd, AL Friedman, FJL Friedman, LP Friedman, Michelle Friedman and Fritz Friedman.

1. The harmful business practice is hereby declared unlawful in respect of the

parties.

2. The parties are hereby directed to -

- (a) refrain from applying the harmful business practice;
- (b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income there from;
and
- (c) refrain from at any time applying the harmful business practice.

3. This notice shall come into operation upon the date of publication hereof.

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