

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

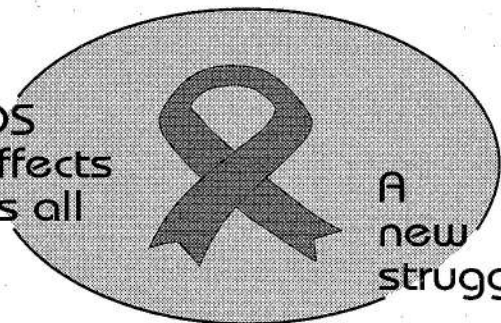
Vol. 423

PRETORIA, 29 SEPTEMBER 2000

No. 21611

We all have the power to prevent AIDS

AIDS
affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPLINE**

0800 012 322

DEPARTMENT OF HEALTH

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

3430	Consumer Affairs (Unfair Business Practices) Act (71/1988): Report in terms of section 40 (1): Report No. 80	3	21611
3431	do.: do.....	26	21611

GENERAL NOTICES

NOTICE 3430 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 1271 of 2000 as published in Government Gazette No. 20994 dated 24 March 2000, as set out in the Schedule.

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

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

Report No. 80

PROPALUX 46 LTD, LUCKY MOTLALEPULA MTHOMBENI AND OTHERS

Contents:

1. Introduction
2. The scheme
3. Issues raised during the meeting on 23 February 2000
4. The Committee resolves to undertake a formal investigation
5. A further meeting with Mthombeni on 29 March 2000
6. Contact with the bookkeeper and auditor of Propalux
7. A further meeting with Mthombeni on 17 April 2000
8. A letter dated 26 April 2000 from the Committee to Mthombeni
9. The meeting of the Committee held on 26 May 2000
10. Consideration
11. Recommendation

1. Introduction

Marketing material of Propalux 46 Ltd (97/05827/06) (Propalux) came to the attention of the Committee⁽¹⁾ during November 1999. An unknown woman presented an official of the Committee with a flier of Propalux at the offices of the Committee. On 29 November 1999 officials of the Committee visited Propalux where it conducts business in the Vanderbijlpark and Vereeniging areas, although it is possible that consumers living in the Free State are also clients of Propalux. The officials held discussions with two sales managers, namely Mrs J Seleanyane and Mr D Tjelele. The sales managers were reluctant to answer questions put to them because the "general manager," Mr Lucky Mthombeni (Mthombeni) was unavailable. They said that Mthombeni was in London. It appeared from an A-4 page flier that Propalux clients could invest in Propalux or buy an "income provider".

Officials again held discussions with Mthombeni at his offices in Vanderbijlpark on 23 February 2000, 29 March 2000, 17 April 2000 and 24 April 2000. It appears that Mthombeni is a director of four companies, namely, Propalux 46 Ltd (97/05827/06), Sekheleng Propalux (99/20003/07) L Mthombeni and Associates (Pty) Ltd (99/20004/07) and LM Fibas Padec Estate (Pty) Ltd. Fibas is the acronym for Financial Investment Business Account Services and Padec stands for Property Agent Developers (in all aspects) and Electrical Construction. It was extremely difficult to establish:

(a) the shareholding of Mthombeni in these companies, although it appears that he holds 46 percent of the Propalux shares, between 33 and 48 per cent of L Mthombeni and Associates (Pty) Ltd and 100 percent in LM Fibas Padec Estate (Pty) Ltd and

(b) the relationship and/or difference between these businesses. Mthombeni described the business of Propalux as "... an investment company in moveable and immovable property." L Mthombeni and Associates (Pty) Ltd is concerned with "legal work" and LM Fibas Padec Estate (Pty) Ltd is allegedly involved in property development. Sekheleng Propalux "... carries on the business of an umbrella for funeral services and insurance brokers".

(1) The Consumer Affairs Committee (the Committee) administers the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). It is a statutory committee, resorts under the Department of Trade and Industry and reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of unfair business practices. An "unfair business practice" is defined in the Act as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer. The definition makes no distinction between unfair business practices that come about by design and those that come about intentionally.

Another name appeared on advertising boards in the reception area of Propalux, namely Funeral Society Umbrella. It, however, has the same registration (97/05827/06) than Propalux.

2. The scheme

Propalux commenced business in May 1997. It accepts investments from clients. The alleged minimum amount accepted is R5 000, although it was later established that smaller amounts were accepted. A 40 percent return on these shares is promised after 12, 24 or more months. An investor who is prepared to invest his money for 15, 27 or 39 months is promised a return of 50 per cent per annum. The returns are calculated at simple interest. Propalux also has an "income provider" plan. An investment of R200 000 provides for an income of R4 500 per month for 10 months and investing R20 000 would yield R650 monthly for 10 months. The first "incomes" are paid during the third month after the investments were made. Investors in the "income provider" plan are refunded the capital invested after a certain period.

3. Issues raised during the meeting on 23 February 2000

Although Propalux commenced business in May 1997 it could not furnish any annual financial statements. Mthombeni said that the annual financial statements would be available soon. The officials were of the opinion that the lack of books of account would have made this event impossible. Mthombeni said that the motive in accepting deposits was to help people. When consumers wanted to invest in Propalux, they were first given advice about their financial problems. Propalux would then, through its agents, establish whether it could be of "assistance". If Propalux could not assist a consumer with his/her problem, it would not accept the investment. This explanation was rather garbled. Mthombeni said that Propalux had between 300 and 400 investors.

Propalux has 48 employees of whom eight receive salaries. The remaining 40 receive a commission of 10 per cent on the amounts invested by the consumers/investors consulted by them. It appears that these 40 "consultants" are also shareholders in Propalux, Sekheleng Propalux and L Mthombeni and Associates (Pty) Ltd.

Mthombeni was asked how it was possible to pay an annual interest rate of 40 percent to investors, keeping in mind that 10 per cent of each investment is paid as commission to "consultants". An investment of R10 000 is immediately reduced to R9 000 after the commission has been paid. To pay the required R4 000 interest

implies that the yield on R9 000 would have to be 44.44 per cent per annum. This return would only provide for the interest to be paid and would not contribute to Propalux's costs or profits. Mthombeni said that he was an astute property dealer and his business deals provided enough to pay the required interest and his costs. He then quoted a number of examples of properties bought at bargain prices and sold at "enormous" profits. He also digressed about a hotel he bought for R650 000 and which now provides a monthly income of R200 000.

Officials asked Mthombeni whether they could inspect his accountancy books. The officials were presented with two "books." These books contained the names of the investors, the amounts invested and the maturity dates of the investments. The last entries in the books were made on 4 October 1999 and Mthombeni said that "they" did not have the time to update the books. A spot check was made of the amounts invested. From 1 to 4 October 1999 Propalux accepted R255 000 from investors, during September 1999 consumers invested R1 626 500 and during August 1999 Propalux took R955 000 from investors.

4. The Committee resolves to undertake a formal investigation

With the information at its disposal, the Committee resolved to undertake a section 8(1)(a) investigation⁽²⁾ into the business practices of Propalux and its directors, and any employee, agent and/or representative of Propalux and its directors in respect of the activities of Propalux Limited. The following notice was published as Notice 1271 of 2000 in Government Gazette 20994 of 24 March 2000.

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given

-
- (2) The Committee has wide investigative powers in terms of the Act. The Committee could undertake two types of investigations, namely formal and informal investigations. Informal investigations and formal investigations are undertaken in terms of sections 4(1)(c) and section 8(1)(a) of the Act respectively. The Committee is not obliged to undertake a section 4(1)(c) investigation into the business practices of a particular entity or individuals before it embarks on a section 8(1)(a) investigation. This route is followed when the Committee has reason to believe that it has sufficient information at its disposal to forego the section 4(1)(c) investigation.

Notice of a formal investigation in terms of the Act [section 8(1)(a)] is published in the Government Gazette. Should the Committee, after an investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act. Orders of the Minister are published in the Government Gazette. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment

that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Propalux 46 Limited (97/05827/06), Tabile Patricia Gumbi, Ntseuwa Elizaberth Liratsagae, Selope Alfred Maeda, William Motsama Mashinini, Noliqhwa Nancy Masipa, Nompumelelo Ester Matewane, Lucky Motlalepula Mthombeni, Mamange Dinah Mofokeng, Mothibi Elias Mogoera, Lefu Daniel Moloi, Samueal Letlakana Mosoge, Motshudi Jacobeth Sealanyahe, Nkuba Salaminah Thabe, Daniel Tjelele, Maditlhare Josephine Theletsane and any employee, agent and/or representative of any of the aforementioned in respect of the activities of Propalux 46 Limited.

Any person may within a period of fourteen (14) days from the date of this notice make written representations regarding the above-mentioned investigation to:

The Secretary, Consumer Affairs Committee,
Private Bag X84, Pretoria, 0001.
Tel: 012-310-9665, Fax: 012-320-0579.
SH vd Berg, Ref. H101/20/10/7(2000)".

5. A further meeting with Mthombeni on 29 March 2000

Officials of the Committee again visited Propalux on 29 March 2000 and held discussions with Mthombeni. In terms of section 7 of the Act, investigating officers may, *inter alia*, at all reasonable times, enter any premises in which any book, statement or document connected with a particular investigation is or is reasonably suspected to be, and may inspect or search those premises and examine any book, statement or document found. Investigating officers shall enter premises and exercise any powers in terms of section 7 only under a search warrant issued by a magistrate, unless the owner or person in charge of the premises concerned has consented thereto in writing.

Mthombeni signed a consent confirming that the two investigating officers of the Committee presented him with their letters of appointment as investigating officers as well as their identity documents. He confirmed that he had read sections 7.3, 7.3A, 7.3B and 7.4 of the Act and that he consented to the investigating officials entering the offices of Propalux and exercising any powers contemplated in subsection 7.3 of the Act without obtaining a search warrant. This consent applied for the duration of the investigation.

At the end of the meeting Mthombeni presented the officials with a number of documents. It was arranged that a further meeting would be held on 17 April 2000.

6. Contact with the bookkeeper and auditor of Propalux

The auditor of Propalux is Mr SA Greyling. An official of the Committee called Greyling on 28 March 2000 and asked him to furnish the Committee with the annual financial statements of Propalux for the financial years 1997, 1998 and 1999. He informed the official that he was unable to draw up annual financial statements because he had received no information from Mthombeni. The bookkeeper of Propalux is Mr S van Vuuren. He is not in the employ of Propalux but is an independent self-employed person. He informed the official that he had been unable to draw up a trial balance because he had received no information from Propalux. Propalux has, since its inception (May 1997) failed to prepare annual financial statements. This also applies to Sekheleng Propalux, L Mthombeni and Associates (Pty) Ltd and LM Fibas Padec Estate (Pty) Ltd. These entities appear to be separate legal entities on paper only. Rather, it is apparent that Mthombeni regards his financial affairs and that of all the companies as part of a single entity under his personal control.

7. A further meeting with Mthombeni on 17 April 2000

At this meeting an attempt was made to discuss with Mthombeni the documents given to the officials at the meeting on 29 March 2000 and to acquire further information. Aspects which were discussed included the share register, the Propalux "family", the commission register, the commingling of the funds of the various companies (Propalux, Sekheleng Propalux, L Mthombeni and Associates and L M Fibas) and Mthombeni, the amount owed to investors or shareholders, Mthombeni's attitude towards company expenses and whether the shareholders or investors could be refunded out of income generated by Propalux's assets.

The share register: When asked about the share register of the company, Mthombeni again produced the two "books" referred to during the meeting on 23 February 2000. These "books" contained the names of the investors, the amounts invested and the maturity dates of the investments. The "books" were now updated to 9 December 1999 and a spot check revealed that Propalux took R4 755 300 from 4 October 1999 to 9 December 1999. Thus from 1 August 1999 to 9 December 1999 Propalux accepted R7 591 800 as loans or shares from consumers. The "books" were ordinary A4 ledgers with hard covers. The names of the investors were written in handwriting and the following were the headings under which the names were

written: "Number", "Initial", "Surname", "Investment Date", "Maturity Date", "Amount Invested" and "Amount at Maturity".

The Propalux "family": Mthombeni tried to explain at length that it was immaterial whether the clients of Propalux bought shares in the company or whether they advanced loans to the company. They were all members of Propalux and regarded themselves as members of one big family. Mthombeni tried to explain that the culture of his clients, exclusively from the African community, shaped the philosophy and operation of Propalux. It was explained to Mthombeni that the Registrar of Companies does not have on his register Afrikaans, Chinese, English, Venda or Zulu companies which have to comply with different versions of the Companies Act, No 61 of 1973, as amended, but that all companies registered in South Africa had to comply with the provisions of a single Companies Act. Mthombeni, however, continued to argue that all that interested his clients was that they would be refunded their money, albeit shares or loans. It was explained to him that in terms of the Companies Act, dividends on shares could only be paid out of profits and that a company may only buy shares back from shareholders under certain conditions.

A resolution was taken by the board of Propalux to the effect that directors could withdraw money from their "shares". Resolution 11, undated, reads as follows:

"Directors who draw some funds from their shares their share certificates can be changed or a new share Certificate be given. A share allotment should be adjusted before only changes takes place and the borrower should give notice in writing 30 days prior to a material change".

The argument that shareholders, investors and directors were all "members" of Propalux was reflected in resolution 13, again undated, taken from the board minutes. This resolution reads:

"The members agreed that the current share capital be increased to R2 million. However it was obvious that a certain number of shares have not been paid in full. The estimated available number of outstanding was +-580-000. So new investors will crab the remaining lot" (Own underlining).

Undated minutes of a meeting held at "the opening of Nasua Building" also reflected the "family" philosophy of Mthombeni. The following four paragraphs are quoted from these minutes.

"Speech by Mr Mthombeni"

He thanked everybody who came, he also point out that the business is for black is here to help black people to improve their lives. The company has improved compared to other companies on the black empowerment.

He also noted that the previous education, which was given in our country, gave black people problems than helping them but the Company will help them.

The company will also help its members in Transportation, Finance, and Education for the kids, etc.

The company is all about helping each other meaning even the members will have to help each other. He also talked about those who were in the business with him and left the company, at the moment they are suffering and other are poor so the is no place like Propalux Sekheleng."

Investors and shareholders are required to complete a form called a "Letter of Appointment of Financier". A copy of this unusual document is reproduced below. The words and letters in the font Lucida Handwriting and underlined are those which are to be completed by the "financier" and the "consultant".

"LETTER OF APPOINTMENT OF FINANCIER"

NAME: Mrs Maria Mogabe

IDENTITY: 680912 4208 08 4

ADDRESS: 54 Honeysuckle Place, Three Rivers

Tel. No.: 234-078

Code: 1929

Code: 016

We hereby confirm the appointment of Mr./Ms./Mrs Mogabe as our FINANCIER; as the company requires a substantial financing to carry out its operation, we however pledge ourselves to the following terms and conditions. The company needs a financial boost of R50 000 (Fifty thousand Rand), in the next twelve months.

We however pledge ourselves to refund the amount 1.5 times, meaning the amount of R50 000 (Fifty thousand Rand), will yield the investor a guaranteed of R130 600 (One Hundred and Thirty Thousand and Six Hundred), this amount is the gross, which includes the investment portion plus the interest.

We also acknowledge that this investment is not subjected to risks/upswings/downfalls/ fluctuations in the operation, this is a sum fixed and will be refunded in full after thirty nine months months or years.

To confirm the above undertaking a letter of Loan for the (share certificate) will be signed and kept for the time illustrated. And can only be used if the above sum of R130 600 (One Hundred and Thirty Thousand and Six Hundred) is not repaid out of the proceeds of the company in due time frame.

We further renounce the investor's right to claim for more if the company proves beyond doubt that it can put its potential abilities, expertise, strengths to fullest and generates more income, e.g. Five times more, therefore the investor shall does accept the distribution share as fair and equitable just as the company shall be expected to pay the full amount if it does not meet it's obligation.

The company shall prefer that the amount loaned to be paid directly to investor's account or bond. The option of receiving regular income of NIL can be paid upfront monthly but shall be deducted from the investor's maturity capital.

Last but not least we would like to have the opinions or recommendation, changes from the investor and we would like to have the advice of competent, knowledgeable, expert, professional personalities. We will appreciate that if it's not going to harm/ change the above undertaking unreasonably or unknowledgeably or make the above business proposition unworkable under our limited financial resources strengths or abilities.

We believe that this proposition is going to benefit the company very much as well as the investor, therefore we are looking forward for the co-operation and commitments from both of us.

The investor ~~Mr/Mrs~~ Mogabe shall be entitled to loan from this investment immediately after 6 (six months), so that he/she can still pursue his life style however all the monies he shall have received will be deducted.

Thank you for considering this propositions favourably.

Yours faithfully,

L.M. MTHOMBENI

Signed at Vanderbijlpark this 14 day of April 2000

Signature: Director of Propalux signed other Director of company Director signature

Investor: Maria Mogabe

Signature: Signature of Maria Mogabe

Place: Vanderbijlpark

Witness: 1.
2.

COMPANY OFFICIAL STAMP:

THIS CONTRACT SHOULD ONLY BE SIGNED AT THE COMPANIES REGISTERED OFFICE. MONEY FROM THE INVESTOR SHOULD BE PAID AS SOON AS POSSIBLE BECAUSE THE PAY OUT WILL BE MADE ON THE 13 July 2003

**INVESTOR'S BENEFICIARIES: 1.....
2....."**

In the "Letter of appointment of financier", undersigned by Mthombeni, the investor or shareholder is "appointed" as as Propalux's "financier" because the company requires a "... substantial financing to carry out its operation". The pledge to refund the invested R50 000 1.5 times (50 per cent annual interest rate), after 39 months, should amount to R131 250, but Propalux calculated it at a "guaranteed" R130 600. Investors are led to believe that the investment is not subject to risks and "downfalls". This cannot be said for any investment.

The document does not make it clear whether the investor grants a loan to Propalux or whether she bought Propalux shares. It states "To confirm the above undertaking a letter of Loan ..." but in the same sentence it proclaims "... for the share certificate...".

The paragraph "We further renounce the investor's right to claim for more if the company proves beyond doubt that it can put its potential abilities, expertise, strengths to fullest and generates more income, e.g. Five times more, therefore the investor shall does accept the distribution share as fair and equitable just as the company shall be expected to pay file the full amount if it does not meet it's obligation" is incomprehensible.

The request to the investor that "... we would like to have the opinions or recommendation, changes from the investor and we would like to have the advice of competent, knowledgeable, expert, professional personalities" is probably one that few companies would insert in their share application forms.

The document further clearly states that the investor shall be entitled to loan from this investment immediately after six months, so that "... he/she can still pursue his life style however all the monies he shall have received will be deducted".

The commission register: Officials of the Committee were presented with the commission register or part of the commission register. This consisted of 11 A-4 pages. It contained a handwritten list of the names of the investors or shareholders, the amount invested and the consultant or agent who solicited the investor. A casual examination of the 11 pages revealed that directors of Propalux, such as Motshudi Jacobeth Sealanyahe and Daniel Tjelele, also acted as agents. Other directors may also have been involved.

As already stated, agents received a commission of 10 per cent on the amounts invested by consumers or investors who consulted them. The commission was reduced to three percent by Mthombeni as from 1 March 2000.

The commingling of the funds of Mthombeni, Propalux, Sekheleng Propalux, L Mthombeni and Associates and LM Fibas Padec: The first page of a "Memorandum of Agreement of Sale" reflected that Mthombeni bought Meyerton Victuallers and Investments CC (CK86/089836/23) and Meyerton Hotel CC (CK95/03925/23) in his own name. Mthombeni readily agreed that he bought the close corporations in his own name with Propalux funds. It was difficult to establish whether Mthombeni was pretending that he did not understand that he, Propalux and the other companies were separate legal entities or whether he sincerely believed that he was Propalux and that all properties (including money) owned by the various companies also belonged to him.

Mthombeni did not appear to be hiding anything from the investigating officials. He informed the officials that he bought a shopping center in De Deur for himself. On 24 February 2000 Mthombeni signed a Propalux cheque for R750 000 in favour of the seller of the shopping center. The cheque was not co-signed by anyone else. The R750 000 included a deposit of R600 000 and the payment of "... the loan for three months".

At other times the directors resolved that Mthombeni be authorized to sign all the necessary documents to give effect to a particular acquisition. For example, an undated extract of a meeting of directors of Propalux read:

"Resolved

(i) that the Company buy and take transfer of the following property, namely Holding 152, Unitas Park Agricultural Holdings, Registration Division I Q, Province Gauteng, in extent 1,6098 hectares; from Pro-Rep Building CC (CK92/27708/23) for an amount of R300 000

(ii) that Lucky Motlalepula Mthombeni in his/her/their capacity as director of Propalux 46 Limited (97/05827/06) be and is/are hereby authorised to sign all the necessary documents to take transfer and all other documents which may be required to give effect to the foregoing”.

The amount owed to investors or shareholders: Due to an absence of proper accounting records, Mthombeni could not say with any degree of certainty what outstanding amounts were owed to investors or shareholders. He ventured a guesstimate of R7.5 million. When asked by an official where the funds will come from to repay the shareholders or investors in the company should he meet with a fatal accident, he said that had taken out a life policy of R11 million rand and that the beneficiary was Propalux.

Mthombeni's attitude towards company expenses: During the discussion about the unavailability of the annual financial statements, Mthombeni expressed the view that Propalux paid its own costs such as salaries and rent and that “... we do not claim from the Government as other companies do”. This naive view merits no discussion. It can be said with certainty that the chaotic state of the financial records of Propalux, and the other companies, prevented a conclusive assessment of its financial position.

Could the shareholders of and investors in Propalux be refunded out of income generated by Propalux assets? Mthombeni was adamant that the outstanding amount owed to shareholders and investors could be generated from Propalux assets and the assets registered under his own name. He agreed to compile a register of the total assets of Propalux, the other companies and himself. A list of the total assets was not available when officials visited Mthombeni on 24 April 2000.

8. A letter dated 26 April 2000 from the Committee to Mthombeni

On 26 April 2000 the following letter was faxed to Mthombeni

“The visit by officials of the Consumer Affairs Committee (the Committee) to your offices on 17 April 2000 and 24 April 2000 and other dates refer. It appears that there may have been a misunderstanding as to exactly it was what the Committee required.

On 17 April 2000 you said that Propalux 46 still owed investors or shareholders approximately R7½ million. You were not certain as to the exact amount but you were adamant that you and/or Propalux 46 could repay the loans or shares out of the profits generated by the returns on the assets in your name and those in the name of Propalux 46. You confirmed on more than one occasion, and it is now common cause, that there are assets

registered in your name, possibly the names of other businesses such as Sekheleng Propalux, L Mthombeni and Associates (Pty) Ltd and LM Fibas Padec Estate (Pty) Ltd and the names of other individuals that were paid for from Propalux funds.

The next meeting of the Committee is scheduled for 26 May 2000. You already indicated your willingness to address the Committee at 11h00 on that day. You would, I assume, amongst others, attempt to persuade the Committee that you/Propalux46/LM Fibas/L Mthombeni and Associates/Sekheleng Propalux could repay the loans or shares out of the profits generated by the returns on the relevant assets.

What is now required from you is to provide the Committee with the following information:

1. A list of all vehicles bought out of your own personal funds and registered in the name of Lucky Motlalepula Mthombeni. The list must contain the information in the following order: the registration number (GP or other province) of the vehicle, the year of the first registration, the make and the series, when the vehicle was bought, what was paid for vehicle and the present value thereof, for example LMM007GP (the registration number of the vehicle), 1999 (the year of the first registration), Mercedes Benz (the make of the vehicle), C220 (the series), 31 October 1999 (when the vehicle was bought), R210 000 (what was paid for the vehicle) and R180 000 (the present value of the vehicle), thus: LMM007GP, 1999, Mercedes Benz, C220, 31 October 1999, R210 000, R180 000.
2. A list of all vehicles bought out of Propalux funds and registered in the name of Lucky Motlalepula Mthombeni. The list must contain the same information as in the preceding paragraph.
3. A list of all vehicles registered in the name of Propalux 46 Ltd. The list must contain the same information as already explained above.
4. A list of all vehicles bought out of Propalux 46 funds and registered in the names of directors/members/shareholders of Propalux 46. The names of the persons must be followed by the same information as requested under points 1 and 2 and 3 above.
5. A list of all fixed properties bought out of your personal own funds and registered in the name of Lucky Motlalepula Mthombeni. The list must contain a full description of the property, for example, remaining extent of erf number, Duncanville Township, Reg Division I Q Gauteng, measuring 1 234m², or erf 123 and 345, De Deur.

6. A list of all fixed properties bought out of Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates funds and registered in the name of Lucky Motlalepula Mthombeni. The list must contain a full description of the property as set out in 5 above.
7. A list of all fixed properties bought out of Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates funds and registered in the names of Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates. The list must contain a full description of the property as set out in 5 or 6 above.
8. A list of all companies and close corporations bought out of your own personal funds. The list must contain the full names and registration numbers of the companies and close corporations.
9. A list of all companies and close corporations bought out of Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates funds and of which Lucky Motlalepula Mthombeni now has effective control.
10. A list of all fixed properties bought out of Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates funds and of which Propalux46/Sekheleng Propalux/LM Fibas/L Mthombeni and Associates now has effective control.
11. A list of all bank accounts, including current accounts, savings accounts and investment accounts in the name of Lucky Motlalepula Mthombeni. Please indicate the numbers of the account and the bank names.
12. A list of all bank accounts, including current accounts, savings accounts and investment accounts in the name of Propalux46, Sekheleng Propalux, L M Fibas, and L Mthombeni and Associates funds. This should include Propalux 46 Ltd (No 2) account, 4047859381, held at ABSA, Vanderbijlpark. Please indicate the numbers of the account and the banks where the accounts are held.
13. A list of any other assets in the possession of Lucky Motlalepula Mthombeni, Propalux46, Sekheleng Propalux, L M Fibas, and L Mthombeni and Associates which were bought out of Propalux46 funds and which you would wish to bring to the attention of the Committee.

The information requested in 1 to 13 above will be collected and discussed with you at 11h00 at your offices on 2 May 2000.

You might be interested to know that the Minister of Trade and Industry appointed the members of the Committee during January 2000. The members are Adv R M Nzimande (Chairperson), Prof T A Woker (Vice-chairperson), Ms O S Davids, Dr B C Dumisa, Ms C Duval, Ms J K Mabotja, Mr R S Mokua and Mr D Solomon".

It appeared that Mthombeni tried his best to furnish the information required, but it was certainly not given in the format as requested in the letter of 26 April 2000. A list of the assets as furnished by Mthombeni is attached as Annex "A".

9. The meeting of the Committee held on 26 May 2000

Mthombeni attended the meeting of the Committee held on 26 May 2000. He again answered all the questions put to him, apparently to the best of his ability. It was arranged that Mthombeni address the Committee at 11h00, but he informed an official of the Committee during the morning that he experienced some difficulties and that he would be late for his appointment. He did, however, fax two documents to the Committee during the morning of 26 May 2000. One of the documents was typed and the other written by hand.

Both documents were rather confusing and it was not clear what Mthombeni wanted to convey to the Committee. He appeared to justify the use of Propalux funds for his own purposes because Propalux "owed" him money. He wrote in the handwritten document that he paid R133 000 for Propalux and "... next R90 000".

Referring to the investigation by the Committee, he wrote:

"So for me the above investigation is a help to correct and remedy other problems that should follow in future. The problems that Propalux has is not other members/directors or affiliates it is Mthombenis. I am absolving them for any blame or damage in the affairs of Propalux. So, Propalux (ineligible) is a one man show. I will be very much appreciative to dissolve this company but with a mechanism to fulfill the obligations of the public. I am a responsible citizen, I have not harmed anyone in the past, also not wish to harm anyone in the future. My solution is to be enabled to change the Propalux 46 Ltd convert it back to private with one director to enable us for speedy refunds and some (ineligible) relaxation of about 3 months of a certain target of income".

He also said:

"I must say it under certainty that the company have enough assets to refund all the monies, but it will cause a lot of jeopardy/harm to its members. It is advantageous to keep those assets and strategies of generating the income from all these"

and

"The company at certain times was unable to pay its costs. There was no money in the bank accounts of Propalux 46 Ltd. First account the cheques bounced and fixed costs/commitments have to be fulfilled. The status quo challenged the authority of the leader. Then he brought in a formula that would help alleviate the situation. However, there is still a problem as the company overall financial status would be on a minus until it starts selling. So it is difficult to predict a positive until all properties have appreciated. These explanations are made to the Committee with a trust of bringing of a working solution".

The difficulties experienced by the Committee and the investigating officers in attempting to decipher Mthombeni's written documents were not solved in the interview. Another example is the following passage from the handwritten document:

"The company Propalux/LMFibas or LM Mthombeni have got ongoing lease payments. They have 3 cars on hire purchase agreements. They have two houses and mortgage bonds; have got staff and people to look after. Has been a very effective participant in the business world; the owner is busy concluding his marriage with a very dynamic international lady who is going to be an asset to our SA business world. Have advertised to train and employ people for his new factory; if his nearly ±10 000 followers are left the potential to useless activities will effect the country. His ability to create and generate job opportunities".

9.1 Resolution taken by the Committee on 26 May 2000

On 29 February 2000 the Committee resolved to undertake a section 8(1)(a) investigation into the business practices of *inter alia* Phalatse Stephen Khaole, Letta Sesinyana Langeni, Jafia Matlapeng Letsoela, Maletsatsi Wilhelmina Makgapa, Samuel Mantshi Mofokeng, Modishi Johannes Mokwana and Ellen Nthabiseng Skosana. These persons were no longer directors of Propalux and were thus omitted from Notice 1271 of 2000 in Government Gazette 20994 of 24 March 2000. In the same notice the name of Daniel Tjelele was added to the list of Propalux

directors. The Committee resolved to confirm the omissions of the names from and the addition of the one name to the original names mentioned in its resolution on 29 February 2000.

10. Consideration

It is almost certain that Propalux transgressed the order issued by the Minister about multiplication schemes. The Minister declared harmful the practice whereby, in the course of business, any person who operates a multiplication scheme, offers or promises or guaranteeing an effective annual interest rate of 20 per cent and more above the REPO rate, as determined by the South African Reserve Bank, to any investor, whether or not the investor becomes a member of the lending entity. The applicable REPO rate is that which applied at the date of the investment. The effective annual interest rate is:

$$r = \frac{R \times 1200}{C \times T}, \text{ where: } r = \text{the effective interest rate,}$$

R=the interest in rand, which is the difference between the amount paid out to the investor and the amount invested,
C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and
T= the period of the investment in months.

This report will be brought to the attention of the Commercial Crime Unit of the South African Police Services.

It is clear that various sections of the Companies Act have been transgressed by Mthombeni, his fellow directors and the companies concerned. This report will also be brought to the attention of the South African Companies Registration Office.

During 1994 the former Business Practices Committee (BPC) investigated the business practices of Afri-Unity Homes CC, Stander, Handke, Kadir, Swart and Bluequest International Group (Pty) Ltd. These persons and entities represented, through its numerous agents as well as directly, that it could build or sell houses in the townships surrounding Cape Town. Anxious potential home owners were required to make an immediate payment of an initial joining fee or administrative fee of R180 and monthly repayments for a period of 24 months in order to "qualify for the house". No homes were forthcoming. The persons and entities investigated failed to keep proper accounting books and the BPC said in Report 34: AfriUnity:

"They (the consumers) were grossly misled. Afri's accounting records and financial affairs were and are in a complete disarray. The total absence of an

operational accounting system and commingling of the affairs and funds of Bluequest, Afri and the Standers meant that the management of Afri had no means of understanding and appreciating the financial state of the firms. These factors were prejudicial to all Afri's and Bluequest's clients".

This paragraph applies to Propalux, the other companies and Mthombeni. The clients of Propalux were grossly misled. The absence of rudimentary accounting records and the almost total absence of an operational accounting system together with the commingling of the affairs and funds of Mthombeni and the companies meant that Mthombeni and his fellow directors had no means of understanding and appreciating the financial state of the various businesses. These factors are prejudicial to all the clients of Propalux and the other companies. It is not possible to pay the returns offered by Propalux. The interest paid to the earlier investors is without doubt paid from deposits taken from more recent investors.

11. Recommendation

Whether the business practices of Propalux and the directors Tabile Patricia Gumbi, Ntseuwa Elizaberth Liratsagae, Seloape Alfred Maeda, William Motsama Mashinini, Noliqhwa Nancy Masipa, Nompumelelo Ester Matewane, Lucky Motlalepula Mthombeni, Mamange Dinah Mofokeng, Mothibi Elias Mogoera, Lefu Daniel Moloi, Samueal Letlakana Mosoge, Motshudi Jacobeth Sealanyahe,, Nkuba Salaminah Thabe, Daniel Tjelele, Maditlhare Josephine Theletsane were devised or whether it came about by accident, they constitute unfair business practices. There are no grounds justifying the practices in the public interest.

The Committee therefore recommends that the Minister under section 12(1)(b) of the Act, declare unlawful the business practice whereby Propalux 46 Limited and the directors Tabile Patricia Gumbi, Ntseuwa Elizaberth Liratsagae, Seloape Alfred Maeda, William Motsama Mashinini, Noliqhwa Nancy Masipa, Nompumelelo Ester Matewane, Lucky Motlalepula Mthombeni, Mamange Dinah Mofokeng, Mothibi Elias Mogoera, Lefu Daniel Moloi, Samueal Letlakana Mosoge, Motshudi Jacobeth Sealanyahe,, Nkuba Salaminah Thabe, Daniel Tjelele, Maditlhare Josephine Theletsane, directly or indirectly:

- (a) invite any persons to advance loans or take up shares in any business in which they have a direct or indirect interest, and/or
- (b) accept appointments as employees or directors in companies or close corporations in which they are shareholders or members and/or
- (c) invite any persons to make investments in companies or close corporations in which they are shareholders or members

(d) pay interest to previous investors from monies obtained from more recent investors.

The Committee further recommends that the Minister, in terms of section 12(1)(d) of the Act, appoint a curator, in order to realize the assets which the investigating officials are aware of, of Lucky Motlalepula Mthombeni, Propalux 46 Ltd (97/05827/06), Sekheleng Propalux (99/20003/07) L Mthombeni and Associates (Pty) Ltd (99/20004/07) and LM Fibas Padec Estate (Pty) Ltd, and to distribute them between the investors concerned and to take control of or manage the whole or any part of the relevant businesses.

PROF T A WOKER

VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE

23 June 2000

Annex "A"

Assets**1. Bank accounts****Banks, account numbers and names of account holders**

ABSA	404785-9381	Propalux 46 Limited account
ABSA	404779-3050	L M Mthombeni account
ABSA	80506-8914	L M Mthombeni account
ABSA	404812-1721	L M Fibas Padec Estate account
Standard	22114-9252	Lucky Mthombeni & Associates account
Standard	22114-9260	Sekheleng Propalux account
ABSA	57055-0102	Meyerton Hotel account
ABSA	51014-7936	Meyerton Virtualities account
ABSA	34309-779	Special account

2. Fixed property

The estimated current values, according to Mthombeni, is given in brackets after the purchase price. The registered owner is indicated in italics and underlined.

1. 9 Paul Roos Street, a standard plot in Unitaspark. The outstanding bond is R210 000 and the property is insured for R3 million. Propalux.
2. 9 Delville street, Duncanville. The outstanding bond is R45 000 and the insured value is R220 000. LM Mthombeni.
3. 1644 Zone 10, Sebokeng. A dwelling that was purchased at R120 000 (R160 000). Propalux.
4. 1684 Zone 10 Sebokeng. A dwelling that was bought at R100 000 (R180 000). Propalux.
5. 733 Zone 6 Ext.2 Sebokeng. This property was acquired at R80 000 (R140 000) Propalux.
6. 1 Kliprivier LVN, Three Rivers. The property was purchased R265 000 (R750 000) Propalux.
7. 6 Lubner Park, Sonlandpark. Property bought at R220 000 (R560 000) Propalux.

8. 24 Paul Roos Street, Vanderbijlpark. Acquired at R330 000 (R660 000), Sekheleng Propalux.
9. Scrapyard, 19,20,21 Ironside. Bought at R280 000 (R660 000), LM Mthombeni.
10. Meyerton Hotel. Acquired at R2 200 000, L M Mthombeni
11. De Deur Shopping centre, bought at R2 400 000 (R5 million) L M Mthombeni
12. 51/39 Building, Langmarket Street, Heilbron. Purchased at R150 000 (R250 000). Sekheleng Propalux
13. Portion 10 of erf 2458, zone 2 Three Rivers, with approved share block or town housing rights. Bought at R150 000 (R1 million). LM Mthombeni
14. Erf 1184, Sonlandpark. Bought at R240 000 (R560 000) LM Mthombeni
15. Plot 250 Houtkop Rd 6, Unitaspark. Acquired at R400 000 (R800 000). LM Mthombeni
16. Mohlakeng, 16 rooms. Purchased at R120 000 (R300 000). LM Mthombeni
17. 19 Ronnie Gibson Street, Unitas Park. Bought at R325 000 (R990 000). L M Fibas
18. 35 Cassandra, Bedworthpark. Acquired at R255 000 (R750 000). LM Fibas
19. 11 Jimmy Sintclair, Van der Merweskroon. Purchased at R330 000 (R750 000) L M Fibas
20. 37 Japie Krige Street. Unitas Park. Bought at R360 000 (R850 000). L M Fibas
21. 16 Reg Olivier Street, Sonlandpark. Bought at R225 000 (R600 000). Sekheleng Propalux
22. Plot 43, Protea Street, Lenteland. Acquired at R315 000 (R750 000). L M Fibas

3. Vehicles

Mthombeni, some of the directors and some of the related "entities" own 63 vehicles. Six of these are registered in Mthombeni's name and were allegedly bought from his personal funds, 32 others were registered in the name of directors and the remaining 25 are also registered in Mthombeni's name. All the vehicles, except for the six that Mthombeni alleged were bought from his personal funds, were paid for from Propalux funds.

NOTICE 3431 OF 2000**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 1271 of 2000 published in Government Gazette No. 20994 of 24 March 2000, which report was published in Notice 3430 in Government Gazette No. 21611 of 29 September 2000, and being of the opinion that an unfair 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 -

"unfair business practice" means the business practice whereby the parties, in the course of business, directly or indirectly

- (a) invite any persons to advance loans or take up shares in any business in which they have a direct or indirect interest, and/or**
- (b) accept appointments as employees or directors in companies or close corporations in which they are shareholders or members and/or**
- (c) invite any persons to make investments in companies or close corporations in which they are shareholders or members and/or**
- (d) pay interest to previous investors from monies obtained from more recent investors.**

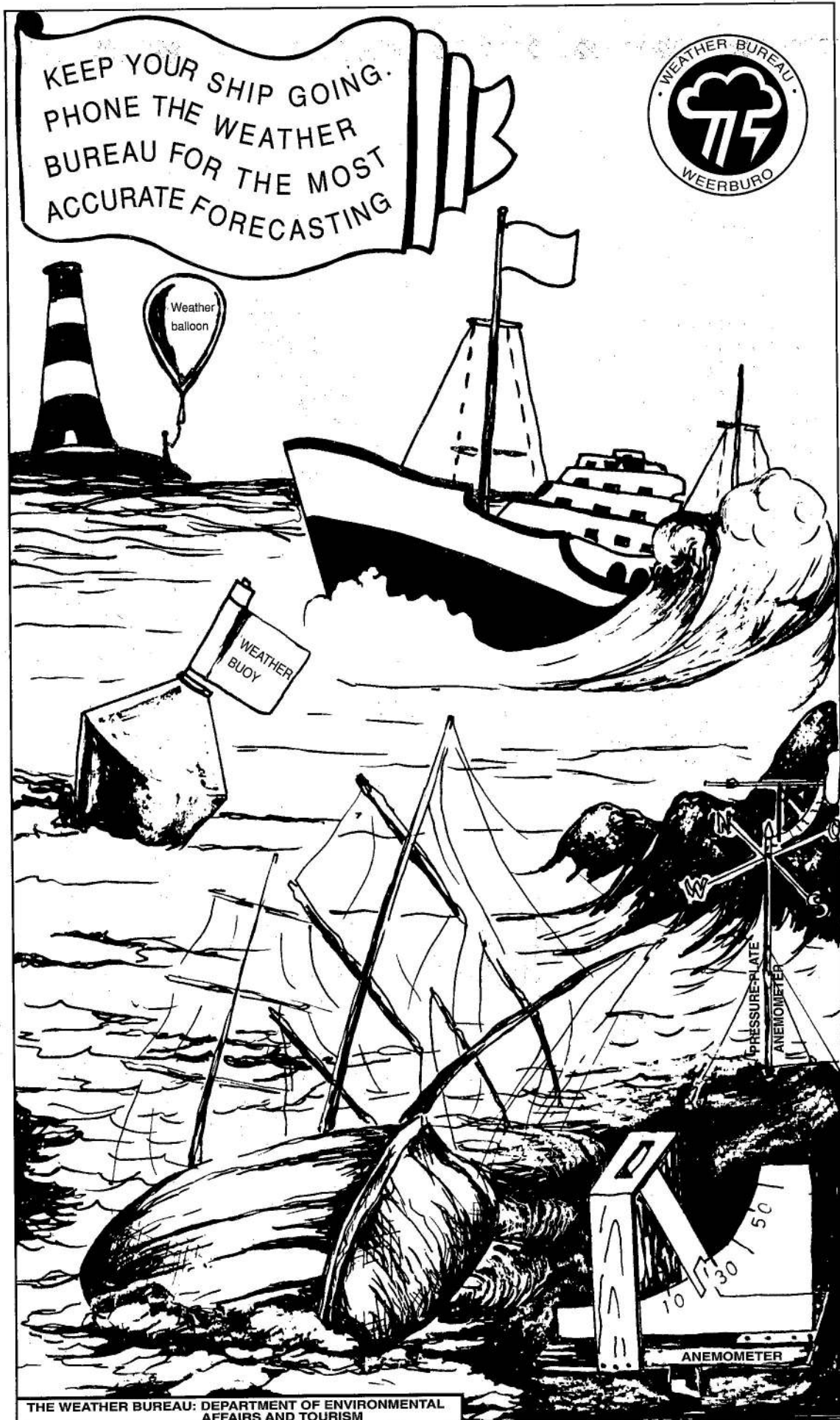
"the parties" means Propalux 46 Limited and the directors Tabile Patricia Gumbi, Ntseawa Elizabeth Liratsagae, Selope Alfred Maeda, William Motsama Mashinini, Noliqhwa Nancy Masipa, Nompumelelo Ester Matewane, Lucky Motlalepula Mthombeni, Mamange Dinah Mofokeng, Mothibi Elias Mogoera, Lefu Daniel Moloi, Samueal Letlakana Mosoge, Motshudi Jacobeth Sealanyahe, Nkuba Salaminah Thabe, Daniel Tjelele and Maditlhare Josephine Theletsane.

-
1. **The unfair business practice(s) is hereby declared unlawful in respect of the parties.**
 2. **The parties are hereby directed to -**
 - (a) **refrain from applying the unfair business practice;**
 - (b) **cease to have any interest in a business or type of business which applies the unfair business practice or to derive any income therefrom; and**
 - (c) **refrain from at any time applying the unfair business practice.**
 3. **This notice shall come into operation upon the date of publication hereof.**
-

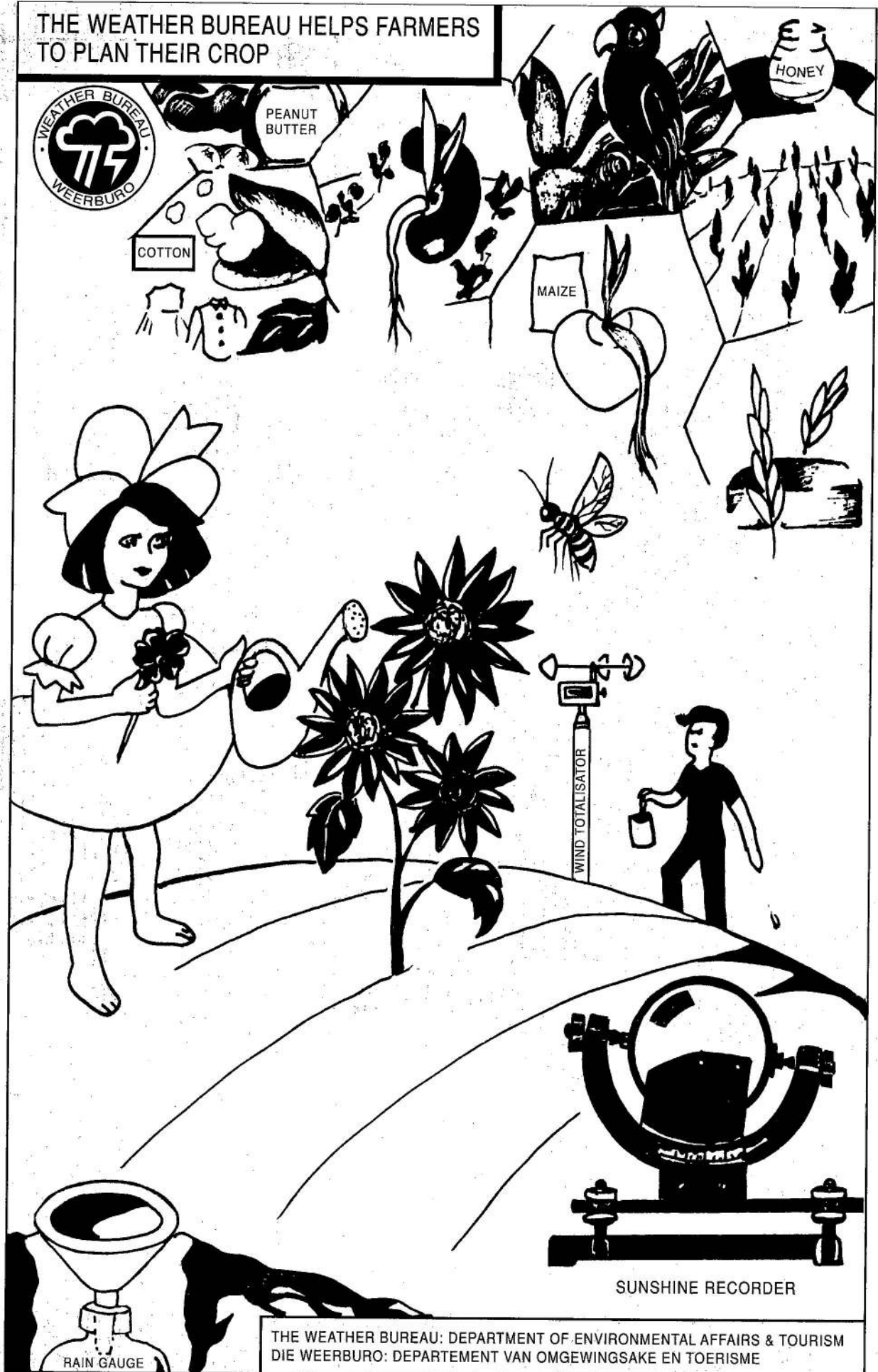
Wetlands are wonderlands!



Department of Environmental Affairs and Tourism

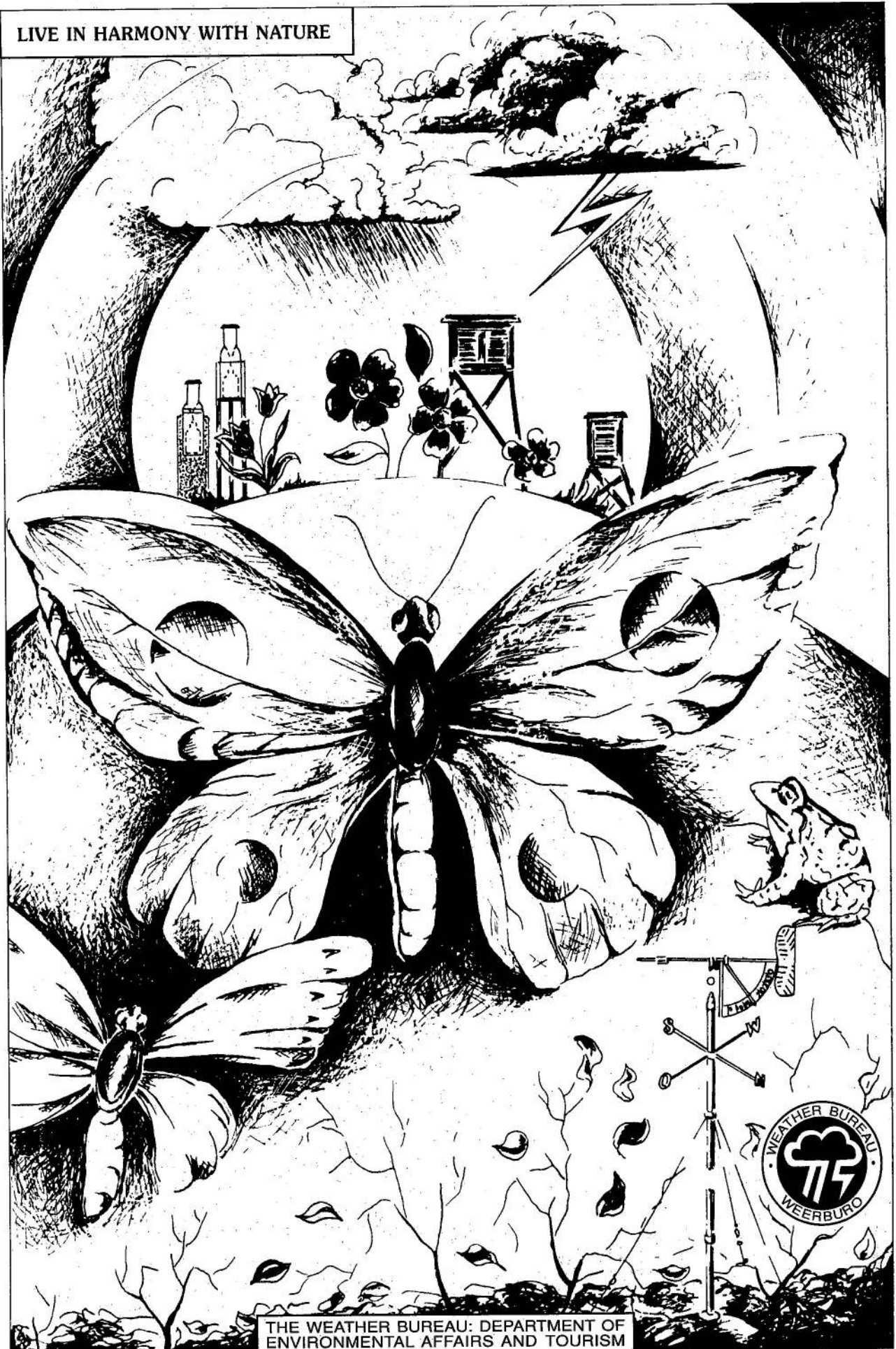


THE WEATHER BUREAU HELPS FARMERS TO PLAN THEIR CROP



THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM
DIE WEERBURO: DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

LIVE IN HARMONY WITH NATURE



Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531