

NOTICE OF SANCTION OF DISCIPLINARY PROCEEDINGS BROUGHT BY THE AGRICULTURAL PRODUCE AGENT'S COUNCIL ("APAC") AGAINST EGOLY MARKET AGENTS (PTY) LTD (1st Accused) and MTHUNZI THEOPHILUS HADEBE (2nd Accused)

On 10 August 2021 and at Pretoria the First Accused and Second Accused were found guilty of unprofessional and improper conduct and contravening the provisions of the Agricultural Produce Agent's Act, No. 12 of 1992 ("the Act") and the Rules promulgated thereunder in that they:

1. caused a trust deficit;
2. the First Accused failed to have its accounting records audited, alternatively failed to cause its auditor to compile, prepare and deliver to APAC a report in the appropriate form;
3. withdrew amounts from the trust account of the First Accused as remuneration and/or in payment of other expenses which was not due alternatively, was not identifiable to be paid from the trust account of the First Accused; and
4. made transfers from the First Accused's trust bank account of amounts not identifiable or due to be transferred.

SANCTION

The Disciplinary Tribunal of APAC imposed the following sanction on the First Accused and Second Accused:

1. the fidelity fund certificates of the First And Second Accused are withdrawn;
2. in terms of the provisions of Section 26(1)(bA) of the Act, the First and Second Accused shall, jointly and severally, the one paying the other to be absolved for payment of a fine in the sum of R50 000.00;
3. withdrawal of the fidelity fund certificates of the First and Second Accused and payment of the sum of R30 000.00 in respect of the fine be suspended for a period of 3 (three) years in terms of Section 26(2) on the following conditions:
 - 3.1. the First and Second Accused are not again found guilty of a breach of the fiduciary duties owed to the producers of agents;
 - 3.2. the outstanding trust deficit will be rectified by making payment into the trust account of the First Accused within 7 (seven) days from 10 August 2021;
 - 3.3. the First and Second Accused fulfil the conditions of paragraphs 3.6 to 3.11;
 - 3.4. the First or Second Accused are to make payment of the balance of the fine payable in the sum of R20 000.00 in monthly instalments over a period of 10 (ten) months into the trust account of Weavind & Weavind Attorneys, Nedbank Account Number 1604067896, the first payment to be made on or before the last day of September 2021 and thereafter on or before the last day of each and every succeeding month thereafter until payment in the sum of R20 000.00 has been paid in full;

- 3.5. the Registrar of APAC, out of his own volition and election, will appoint a mentor to assist with the management of the First Accused for a period of 1 (one) year;
- 3.6. that upon the appointment of the mentor, the First Accused shall file its monthly reconciliation report, under the guidance of the mentor;
- 3.7. the mentor shall have unrestricted access to any bookkeeping software utilised by the First Accused, and the First Accused shall make available to the mentor all banking and financial records, reports, statements and/or related documents as the mentor may request;
- 3.8. the First Accused shall ensure that it engages with the mentor in an efficient and timeous manner so as to ensure that the reports are submitted on time;
- 3.9. the First Accused shall make provision on the reconciliation report for the mentor's signature;
- 3.10. the First Accused shall present the monthly reconciliation report to APAC with the mentor's signature appearing on the report *alternatively*, shall provide a full written explanation of the First Accused's failure in having the mentor sign the report;
- 3.11. the explanation in 3.10 above shall be filed for the consideration by the Registrar of APAC on the same day the reconciling report is delivered.