REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-219635

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

14/04/2026 [redacted]

DATE SIGNATURE

In the matter between:

THE RASPBERRY ACADEMY (PROPRIETARY) LIMITED Plaintiff

and

OAKSURE FINANCIAL SERVICES (PROPRIETARY) LIMITED Defendant

JUDGMENT

DJ Smit, AJ

Introduction

[1] Is a person who is paid commission by a short-term insurance insurer as a percentage of leads referred to them which result in the conclusion of an

insurance policy, required to be authorised as a financial services provider or to be a representative[1] of such insurer?

[2] The Raspberry Academy (Pty) Ltd instituted action on 17 November 2025 against Oaksure Financial Services (Pty) Ltd. The Raspberry Academy claims payment of R1,214,698.62 (plus interest) for arrear commissions as well as ancillary relief to obtain documents and an accounting and a statement and debatement of account. The claim seeks to enforce what is termed a "Lead Referral Agreement" dated 31 May 2019 (Agreement) between the parties.

[3] Oaksure did not defend the action. Thus, the Raspberry Academy applied for default judgment in terms of Rule 31(5)(a).[2]

[4] The application for default judgment came before me on 11 March 2026. I alerted counsel for The Raspberry Academy to my concerns regarding the legality and enforceability of the Agreement and requested heads of argument on the issue, which counsel submitted. In what follows, I explain why the Agreement is illegal and unenforceable and that default judgment should therefore be refused.

The Agreement

[5] The Agreement commenced on 1 May 2019. Its essence is that The Raspberry Academy would refer persons (called "Leads"[3] in the Agreement) to Oaksure, and would market Oaksure's short-term insurance products, including passenger liability insurance, to them. Oaksure would pay The Raspberry Academy a referral fee based on a percentage of Oaksure's revenue derived from any Lead who signs up for Oaksure's insurance products after The Raspberry Academy's referral. This referral fee – which is on its face a commission – is payable for as

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[1] As that term is used in the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS Act).

[2] Which provides: "(5)(a) Whenever a defendant is in default of delivery of notice of intention to defend or of a plea, the plaintiff, who wishes to obtain judgment by default, shall where each of the claims is for a debt or liquidated demand, file with the registrar a written application for judgment against such defendant: Provided that when a defendant is in default of delivery of a plea, the plaintiff shall give such defendant not less than five days' notice of the intention to apply for default judgment."

[3] "Lead" is defined as "any natural or juristic person, other than an Existing Client or Engaged Client, who is Referred to Oaksure by [The Raspberry Academy] during the Contract period and shall specifically include the TRA Named Clients."

long as the client maintains their policy and pays the premium, regardless of whether the Agreement subsists when the premium is paid.

[6] According to the particulars of claim, it became apparent through an audit in July 2023 that Oaksure had underpaid referral fees to The Raspberry Academy. Until July 2024, Oaksure paid off certain amounts it had previously underpaid, leaving the balance claimed by The Raspberry Academy. According to the heads of argument, The Raspberry Academy was paid almost R6 million over the life of the Agreement, excluding the outstanding referral fees.

[7] Neither the Agreement nor the particulars of claim expressly state whether The Raspberry Academy or Oaksure are registered financial services providers or what their status is within the labyrinth of legislation governing the provision of financial services – in particular insurance products – in South Africa. There are, however, pointers in the Agreement which justify inferences in that regard.

[8] The Agreement states that Oaksure "*is in the business of providing short term insurance products*". It also defines "*Existing Client*" as a person who "*is an insured under any insurance policy held by Oaksure*". "*Policy*" is defined as "*a valid short-term insurance policy concluded between a Lead and Oaksure, and specifically includes passenger liability insurance policies*".

[9] The Agreement makes it clear that The Raspberry Academy would only be compensated if, and to the extent – after its referral of a Lead to Oaksure – a Lead pays premium on insurance policies initiated after the referral:

a. Clause 7 of the Agreement deals with "*Consideration Payable*". It states, among other matters, that:

i. "the Referral Fee will be calculated as a percentage of the value of the Net Premium in respect of active and paid up Net Policies, as follows: Referral Fee = Net Premium x Percentage";

ii. "the Referral Fee shall only be due to [The Raspberry Academy] once corresponding payments have been received by Oaksure from the relevant policy holders"; and

iii. "[The Raspberry Academy] shall be entitled to receipt of the Referral Fee as set out herein in respect of all Net Policies acquired by Leads from or through Oaksure, both during and after the Contract Period, for as long as such Net Policies are in force and effect, notwithstanding termination of the Agreement for any reason whatsoever."

b. "Policy" is defined in the Agreement as "a valid short-term insurance policy concluded between a Lead and Oaksure, and specifically includes passenger liability insurance policies".

c. "Net Policy" is defined as "a Policy concluded between a Lead and Oaksure and in respect of which the 1st (first) debit has been paid in full".

d. "Premium" means "the total amount charged to the Lead in respect of a Net policy, inclusive of all fees, commissions, Value Added Tax, SARIA and any other fee agreed to with the Lead".

e. "Net Premium" means "with reference to a Policy, the premium payable from time to time by the insured to the insurer in respect of such Policy, but excluding any payments collected by the insurer on behalf of a third party in respect of third party products which not [sic] form part of the Policy".

[10] Annexure C to the Agreement, which is the "*Percentage Schedule*" determining the referral fees, provides that The Raspberry Academy would receive 10% of the Net Premium Oaksure receives on passenger liability insurance. The Raspberry Academy would also receive 50% of the statutory commissions Oaksure receives for "*all other lines of business insurance*".

[11] Thus, it appears that Oaksure acts as a short-term insurer (which receives premiums) in respect of passenger liability insurance and as a broker (which receives statutory commissions) in respect of other lines of business insurance.[4]

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[4] Counsel for The Raspberry Academy confirmed that Oaksure is a registered financial services provider under registration number FSP27343 which he states is verifiable on the website of the Financial Sector Conduct Authority.

[12] Clause 9.5 of the Agreement also states that The Raspberry Academy would not perform any functions of, or represent itself as being, an insurance intermediary or hold out that it is mandated by Oaksure to act as such, "*the intention being that [The Raspberry Academy] shall act as marketing agent and lead referrer only, for the purposes of effecting an introduction between a Lead and Oaksure only*". I deal further with this clause below in the context of a discussion whether The Raspberry Academy in fact provides intermediary services under the Agreement, despite this wording to the contrary.

[13] From clause 9.5 – as well as from the conspicuous silence in the particulars of claim – one can infer that The Raspberry Academy is neither registered as a financial services provider nor is it a representative of Oaksure.[5] (A representative, as defined in the FAIS Act, is a person who provides financial services for or on behalf of a financial services provider and under its auspices).

The law

[14] Section 7 of the FAIS Act provides that a person may only act as a financial services provider if such person has been authorised so to act by the Financial Sector Conduct Authority (FSCA). This is commonly referred to as being a "*registered*" or "*authorised*" FSP. Further, a person may only act as a representative if such person has been appointed as a representative of an authorised financial services provider under section 13 of the FAIS Act.[6]

[15] The FAIS Act defines "*financial services provider*" as someone (other than a representative) who provides "*advice*" (as defined) or renders an "*intermediary service*" or both and "*financial services*" is defined as either of these activities.[7] "*Representative*" in turn is defined as someone –

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[5] Again, counsel confirmed this in his heads of argument.

[6] "7(1) With effect from a date determined by the Minister by notice in the Gazette, a person may not act or offer to act as a –

(a) financial services provider, unless such person has been issued with a licence under section 8; or

(b) a representative, unless such person has been appointed as a representative of an authorised financial services provider under section 13."

[7] "financial services provider" means any person, other than a representative, who as a regular feature of the business of such person –

(a) furnishes advice; or

(b) furnishes advice and renders any intermediary service; or *"who renders a financial service to a client for or on behalf of a financial services provider, in terms of conditions of employment or any other mandate, but excludes a person rendering clerical, technical, administrative, legal, accounting or other service in a subsidiary or subordinate capacity, which service –*

(a) does not require judgment on the part of the latter person; or

(b) *does not lead a client to any specific transaction in respect of a financial product in response to general enquiries;"*

[16] In the case of the Agreement, the question under the FAIS Act is whether the lead referral and marketing services The Raspberry Academy provides to Oaksure amount to rendering an intermediary service, as it does not appear to constitute "*advice*".

[17] The FAIS Act defines "*intermediary service*" in relevant part as follows:

"'intermediary service' means … any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier –

(a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; …."

[18] In *Tristar* the Supreme Court of Appeal noted that, in ordinary language an "*intermediary*" is one who "*acts between others; a go-between*" and the word has a corresponding meaning when used as an adjective. The FAIS Act assigns its own meaning to the term that retains that characteristic. The definition contemplates a person who is interposed between a "*client*" (or a group of clients), on the one hand, and a "*product supplier*" on the other hand.[8]

[19] The defining feature of the definition is that the act constituting an intermediary service must have resulted in entering into, or offering to enter into, or potentially

(c) renders an intermediary service;"

[8] *Tristar Investments (Pty) Ltd v Chemical Industries National Provident Fund* [2013] ZASCA 59 (SCA) (16 May 2013) para 7.

entering into ("*may*") a transaction with a financial product supplier. Thus, it requires a causal link between the act said to be an intermediary service and the (potential) transaction.

[20] Oaksure is a "*product supplier*"[9] insofar as it issues short-term insurance policies in respect of passenger liability insurance – which appears to be the case from the Agreement.

[21] In addition to the FAIS Act, the Short-Term Insurance Act, 53 of 1998 may also apply to the relationship between The Raspberry Academy and Oaksure.

[22] Section 8 of the Short-Term Insurance Act prohibits persons from rendering "*services as intermediary in relation to a short-term policy*" unless (subject to an irrelevant exclusion) such person does so with the approval of the FSCA. The Short-Term Insurance Act defines "*services as intermediary*" as bearing the meaning as prescribed in the regulations under that Act. The regulations[10] in turn defines "*services as intermediary*" in relevant part as *"any act performed by a person … the result of which is that another person will or does or offers to enter into, vary or renew a policy*".

[23] Thus, the definition of "*intermediary services*" under the Short-Term Insurance Act also requires the same causal element, except that the causation is more emphatic: the act must result in an offer, not only a potential offer. Given that the definition under the FAIS Act is more capacious, I focus on the FAIS Act.

Discussion

[24] The definition of intermediary services under the FAIS Act raises the question whether the lead referral and marketing services The Raspberry Academy provides to Oaksure amount to "*any act the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of*" a short-term insurance policy.

[9] The FAIS Act defines "*product supplier*" as any person who issues a "*financial product*" which is in turn defined to include a long-term or a short-term insurance contract or policy.

[10] Regulations under the Short-term Insurance Act, 1998 published under GN R1493 in GG 19495 of 27 November 1998 as amended.

[25] The clearest indication that the services The Raspberry Academy provides to Oaksure meet the definition of intermediary services is that The Raspberry Academy is <u>only</u> remunerated in circumstances where a Lead actually enters into a transaction in respect of a short-term insurance policy. Put differently, the services for which The Raspberry Academy are remunerated are only those which have the causal effect intended by the definition of intermediary services in its most restrictive sense.

[26] If The Raspberry Academy merely supplied contact details to Oaksure, as its counsel contends, there could have been a factual debate about how exactly these contact details were obtained, and in what context, with what disclosure to the client and for what purpose. Depending on the factual answers to these questions, the answer may have been that mere lead referral activities did not necessarily have the result intended by the definition of "*intermediary services*" even in its loosest sense, because merely passing on contact details – even if it leads to an approach by the Lead to Oaksure or vice versa – does not necessarily rise to a situation where the Lead "*may enter*" into a transaction.

[27] Thus, the most telling feature of the Agreement is the basis on which The Raspberry Academy is remunerated. It is not remunerated on the basis of a flat fee for each Lead referred, which may have suggested a mechanical recording of details and passing them on to Oaksure. Instead, The Raspberry Academy is remunerated based on a percentage fee of <u>successful</u> referrals: and then The Raspberry Academy has a right to that fee, on a monthly basis, for the life of the relevant policy.

[28] In addition to the basis for compensation, the following provisions of the Agreement show that The Raspberry Academy engages in acts "*the result of which is that*" the Lead "*may enter into, offers to enter into or enters into any transaction in respect of a financial product*":

a. The definition of "*Referral*" in the Agreement makes it clear that there must be a direct causal link between the referral and the initial contact with Oaksure: "*Referral*" is defined to mean "*any action on the part of, or under the control, instruction, request or direction of [The Raspberry Academy], a*

Lead or any of [The Raspberry Academy's] referred clients, which directly results in any person contacting Oaksure for the specific purpose of obtaining a quotation or sale in respect of any Policy with a view to concluding a Policy". This contemplates acts on the part of The Raspberry Academy which result in Leads contacting Oaksure to obtain a policy.

b. Clause 4 of the Agreement provides that Oaksure appoints The Raspberry Academy "*to market Oaksure's short-term insurance products, including passenger liability insurance, to the Leads*".

c. Pursuant to clause 6, The Raspberry Academy undertook to "*generate Leads of potential clients for the benefit of Oaksure*". It would also "*arrange for the potential customer's consent for the referral of his information to Oaksure*" and "*inform the potential customer that Oaksure will contact them … and discuss appropriate cover*".

d. For these purposes, Oaksure would "*provide [The Raspberry Academy] with marketing assistance reasonably required*", according to clause 6.7.1.

[29] In addition, the lead referral was clearly not the kind of mechanical activity excluded from the definition of "*representative*" in the FAIS Act:

a. Under the Agreement, The Raspberry Academy retains a degree of control over the way in which Oaksure deals with the Leads. Under clause 6.5, if The Raspberry Academy should "*specifically request in writing that a specific product not be offered to the potential client, Oaksure will comply with this request to the best of its ability*".

b. Also, under clause 6.7.5 Oaksure would "*notify [The Raspberry Academy] as soon as possible of any issues, concerns or disputes*" flowing from the referral.

[30] It is true that The Raspberry Academy tried to contract out of being an intermediary by stating that it is not. Clause 9.5 states that "*the intention [is] that [The Raspberry Academy] shall act as marketing agent and lead referrer only, for the purposes of effecting an introduction between a Lead and Oaksure only*".

The problem is that the stated intention is contradicted by at least the basis on which The Raspberry Academy is remunerated: not for referring leads, but for effecting introductions and marketing that directly result in transactions.

[31] For these reasons, I conclude that The Raspberry Academy is rendering a financial service in the form of an intermediary service to Oaksure pursuant to the Agreement. This is illegal since The Raspberry Academy is neither an authorised financial services provider nor a representative of Oaksure.

[32] In the context of the regulation of intermediary services, courts have invariably found that agreements that contravene the relevant statute are unenforceable due to their illegality.[11]

[33] Thus, the Agreement is unenforceable, and default judgment cannot be granted.

[34] There is, incidentally, another reason why default judgment cannot be granted in the form prayed for. In addition to a monetary judgment, The Raspberry Academy claims an array of ancillary relief to demand documents and an accounting and a statement and debatement of account. Rule 31(5)(a) only permits the grant of default judgment on "*a debt or liquidated amount*". The ancillary relief is not a claim for a debt or a liquidated amount.

Order

[35] In the result, I make the following order:

a. The application for default judgment is dismissed.

b. There is no order as to costs.

[redacted]

DJ SMIT
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

[11] E.g. *Absa Insurance Brokers (Pty) Ltd v Luttig* 1997 (4) SA 229 (SCA); *Afrisure CC v Watson NO* 2009 (2) SA 127 (SCA); *KGA Life Ltd v Multisure Corporation (Pty) Ltd* 2024 (3) SA 51 (SCA).

Date of hearing: 11 March 2026

Date of judgment: 14 April 2026

For the Plaintiff:	J Hartman instructed by Pagel Schulenberg
For the Defendant:	No appearance