Heart stopping investment

Background

Mr and Mrs Bakerson* were searching for a place to invest their retirement savings. They sought an investment with low risk, low costs, medium to high returns and which allowed quick access to their money if it was needed for unforeseen expenses.

They attended a seminar hosted by a nationwide investment firm and, because of what they learned, decided to put their savings into a unit-based investment fund.

Before they signed up for the fund, the firm provided the Bakersons with a prospectus and invited them to obtain independent advice. They declined the offer and said that they did not have time to read the prospectus as they were heading overseas and wanted to complete the transaction before they left.

The following year, Mrs Bakerson suffered a heart attack while overseas and required urgent treatment in hospital. They were not insured, and the cost of her treatment was expensive.

Mr Bakerson contacted the firm and requested that they withdraw their funds to pay the overseas medical costs. He was told that this was possible but that he would have to sell the units on a secondary market operated by the fund. Unfortunately, he was told that there were no current buyers on the secondary market so he would need to wait until there was a buyer for the units and then sell his units at the market price at that time.

Several months later the Bakersons were able to sell their units on the secondary market and had made a modest gain, but they approached FDRS claiming that the fund had misrepresented the nature of the investment they had entered into.

Next steps

It was necessary to investigate exactly how the fund had been represented to the Bakersons – was it described as being suitable for short-term or long-term investing?

On analysing the prospectus which had been handed to the Bakersons, there were 12 separate references to the fund being suitable for long-term investment and none to it being suitable for short-term investment. The fund was also able to produce a copy of the presentation slides used during the seminar the Bakersons had attended, and these referred, on two slides, to the fund as being suitable for long-term investment. There was also a slide which explained the secondary market for the sale of units.

Outcome

Any misrepresentation claim requires proof that a misrepresentation was made and there was no evidence of that in this case, in fact the firm went to significant lengths to specify that the fund was suitable for long-term investment.

There was also evidence that the Bakersons had not taken reasonable steps to protect their own interests such as reading the prospectus and obtaining independent advice.

Finally, there was no evidence of loss – in fact the Bakermans made a small profit when their units were sold on the secondary market.

Lessons learned

Investors are required to take reasonable steps to ensure they fully understand the risks and benefits of any investment they are considering, and this will usually require that they undertake their own independent research and seek advice.

** Names and identifying details have been changed to protect our customers' identities*