

Monday Contemplation No 38

Can I still get my commission if the PPRA hasn't issued my FFC?

In the last two weeks, we have discussed the case of Taljaard v Botha Properties. This case dealt with an estate agent who took a mandate from a client to market and sell their property, but at the time of taking the mandate, the estate agent did not hold a valid Fidelity Fund Certificate (FFC). The agent sold the property and was paid their commission. The seller was of the opinion that the mandate was invalid, as the agent did not have a valid FFC, and the seller claimed return of the commission that had been paid to the Property Practitioner (PP).

Read the my previous posts to learn more about the judgement.

In this week's post, we answer the question, **what happens to a PP's commission when the PP has applied for their FFC but the FFC has not been issued timeously by the PPRA?**

I hear every day from PPs that they have applied for their FFC and have not been able to get it from the PPRA. The obvious problem is that **your FFC is your licence to practice** and hence, if you do not have a valid FFC, then you may be acting illegally.

It is important for PPs to be aware of **Section 49** of the Property Practitioners Act, which says as follows:

Mandatory time periods for issuing certificates

49. (1) The Authority must, within 30 working days, consider any application submitted to it in terms of this Act, which fully meets the prescribed requirements, unless the Authority, on good grounds in writing, informs the applicant of the reasons why that period is to be extended, provided that such extension may not exceed 20 working days.

(2) The period of 30 working days contemplated in subsection (1) commences afresh if the Authority requests the applicant to submit additional information or to correct the said application.

(3) If the Authority has failed to comply with subsection (1), the application is deemed to have been approved and the Authority must, upon written request by the applicant within 10 working days, issue the applicant with the relevant certificate.

Hence:

1. **S49(1)** – the PPRA MUST consider your application for your FFC within 30 working days. This means that if you apply for your FFC, the PPRA needs to issue your FFC within 30 working days. If your application for your FFC does not meet the requirements for the application (let us say that you are missing a document), then the PPRA can inform you, in writing, that the time period for issue of your FFC needs to be extended (presumably to give you time to submit any missing document). The period of extension will be an additional 20 working days.

2. **S49(2)** – if the PPRA requests additional information, then the PPRA has an additional period of 30 days for the issue of the FFC.

3. **S49(3)** – if you make application for your FFC and everything is in order with your application and the PPRA does not issue your FFC within 30 working days, in terms of S49(1), **then your application is deemed to have been approved.** Importantly, in my opinion, this means, that if you apply for your FFC and the PPRA does not issue it within 30 working days, then you can continue to work as a PP, quite legally, as if your FFC had

been issued. I would strongly advise you to keep copies of all your communications with the PPRA relating to your application for your FFC and also you still need to follow up with the PPRA to get your FFC issued, which the PPRA is required to do (in terms of S49(3), within 10 working days). In other words, do not just leave it because you have applied for you FFC and not had a response from the PPRA.

Again, in my opinion, if you have complied with Section 49 and the PPRA has not issued your FFC timeously, **then you may legally continue working and earning commission.**