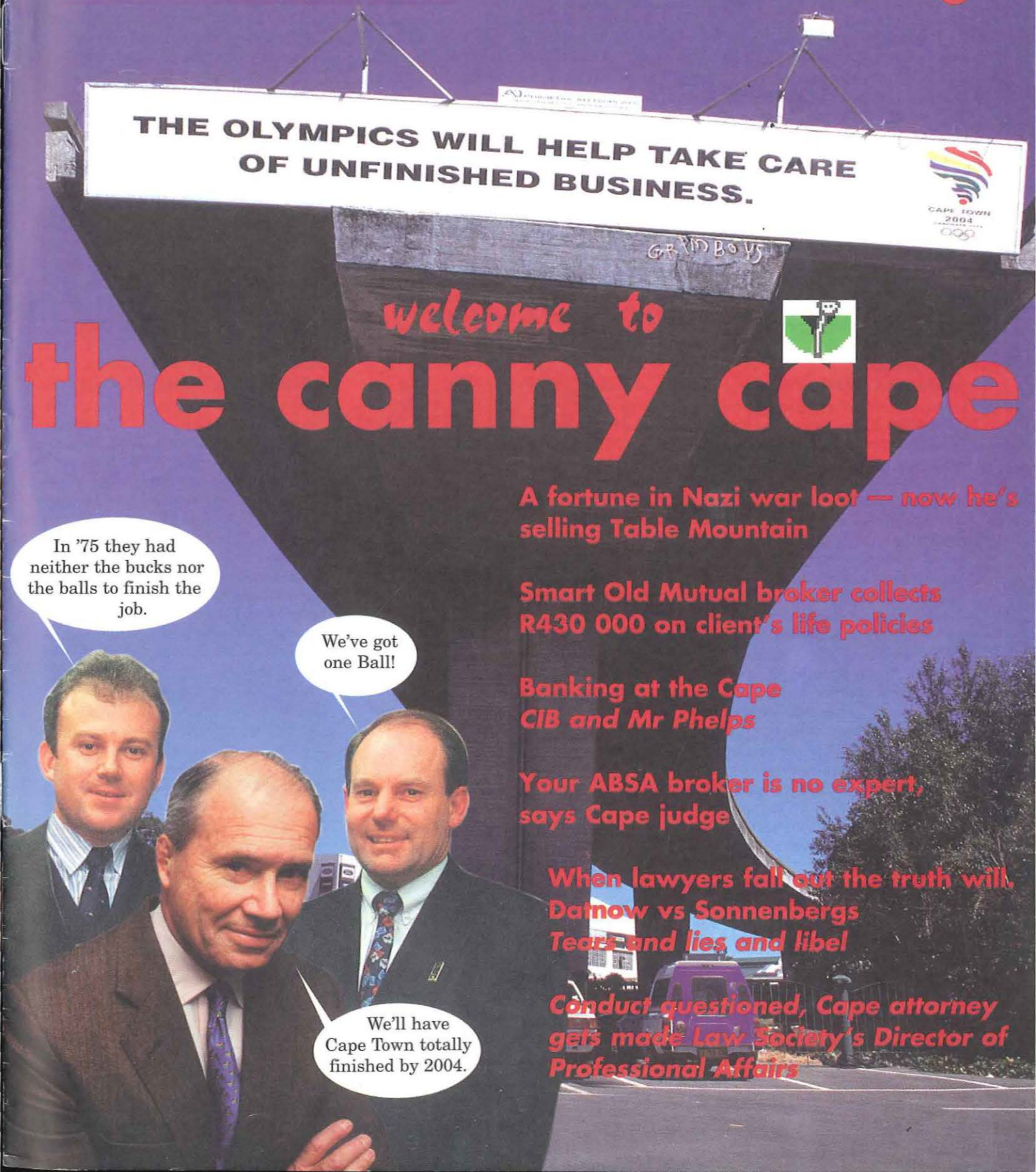
news you're not supposed to know

nose WEEK

R9.80 incl. VAT

HOLIDAY SPECIAL

Issue No 16



welcome to the canny cape

A fortune in Nazi war loot — now he's selling Table Mountain

Smart Old Mutual broker collects R430 000 on client's life policies

Banking at the Cape
CIB and Mr Phelps

Your ABSA broker is no expert, says Cape judge

When lawyers fall out the truth will.
Datnow vs Sonnenbergs
Tears and lies and libel

Conduct questioned, Cape attorney gets made Law Society's Director of Professional Affairs

noseWEEK
PUBLISHED TIMEOUSLY ISSUE No 16

JANUARY / FEBRUARY 1997
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Designed by *Rob Meintjes*

It's easy to see why the Governor of the Reserve Bank, Dr Stals (a Broeder), and the then Minister of Finance (naturally also a Broeder) were keen, in the last years of apartheid rule, to boost the value of Sanlam's shares in ABSA by means of a secret R1,25 billion-plus handout by the Reserve Bank.

Sanlam is regarded as the Broederbond's private war chest. Both Stals and the NP government were committed to nurturing it.

The real question is why the present government is so determined to look the other way and do nothing about it. Just imagine how different it all could have been: Instead of having to be grateful for those strange, if not positively shady, share handouts made by a Sanlam subsidiary to a selected few, newly "empowered" black millionaires (in New Africa Investments Ltd) — selected how, and by whom, one wonders? — an ANC government could have had legitimate control of shares worth R3 billion plus (yes, R3 billion plus at today's values) in ABSA itself.

Blacks would legitimately have had control of Africa's largest banking group, which includes several well-known banks (such as Volkskas!). As major shareholders, they could have had control of the banks' lending policies. Instead of their constant and ineffectual moaning about how insensitive South African banks are to black people's needs in housing and business finance, the (ANC-controlled) government would have been empowered to do something about it themselves.

And to think, all they had to do to achieve this was the straight and honest thing: Do their duty as government elected by the people by calling the Reserve Bank to account and taking control of an asset that belongs to the people of South Africa. Because the people have already paid for it. No expensive loans from the World Bank are required.

But, instead, Minister of Finance Trevor Manuel and his bros in the cabinet have apparently chosen to go along with the devious deals set up by Stals and his Broers at Sanlam and ABSA. Why? Because they're stupid? Because they're too busy swotting up the car catalogues for the latest luxury models on offer to senior public officials to care? Because, secretly, despite everything, they still pathetically rely on the baas to tell them what to do? Or because some deep and dirty deal has gone down between the old Nats and the new ANC which they'd prefer us not to know about (particularly not what it is costing us)? Which might explain all the talk about the Reserve Bank being "independent" of the government — so Manuel and Co can't be called to account for what they have, in fact, sat back and allowed Stals to do. — *The Editor* ■

LETTERS ...to the editor

P.O Box 44538, Claremont, 7735

OLYMPICS GO FOR COVER

Dear Sir

The statements by Olympic Bid Company chief executive, Chris Ball, that billions would pour into the SA economy should Cape Town stage the 2004 Olympic Games have been widely reported.

I wish to sound a note of caution based on a report in that most prestigious automotive publication, Automobile Year (Piccard, Switzerland 1994). In its world-wide survey of the Automotive industry, we read the following about Spain's car manufacturing performance and prospects: "Drained by the expenditure on the Olympic Games and the Universal Exhibition in 1992, Spain became a country of record unemployment and found great difficulties in regaining economic stability. The automotive industry ... was able to do little to assist as it battled with problems with Suzuki - Santana (the first Euro-Japanese company to admit to difficulties) and the even greater woes at SEAT (Spanish Fiat)..."

If Spain, with a far stronger economy and an infinitely more productive and less volatile labour situation than ours, was so devastated by the cost of staging the Olympics, what impact would a successful bid for the 2004 Olympics have on the economy of South Africa in general and Cape Town in particular? The question is particularly relevant in the aftermath of the farcically chaotic Africa Games staged recently in Zimbabwe. Should we not be asking the city fathers of Montreal, still paying off huge debts decades after staging their Olympic Games, how advisable our bid is?

Yours faithfully,
J C Swanneloe
Westville

Postscript:
NOCSA should tell us how the millions contributed by major companies to prepare our sportsmen and women for the Games in Atlanta were spent. I think the companies which donated the money also owe it to their shareholders to provide clarity. Above all, could we please be told what percentage of this money went to Grinaker Sports Management, the sole marketing agent for NOCSA - again an appointment which was not put out to tender.

BEATING DOCTOR HALL: A TRIBUTE TO THE TRUTH

Dear Sir,

Congratulations on your tremendous success in the defamation case brought against you by Dr Hall. That his action was dismissed and that he was ordered to pay attorney-and-client costs is a tribute to the accuracy and truth of your writing and the broad mindedness of the judge.

You must have suffered great pecuniary loss by the action and I hope you will be able to resurrect noseWEEK. Wishing to associate myself with this aim in a small way, I enclose a R100 cheque with best wishes.

Sammy Lewis
Oranjezicht
Thank you! - Ed.

QUESTIONABLE BENEFITS

Dear Sir

Why, if South African taxpayers have paid so high a price to help save the ABSA banking group, were they not given a substantial share in that group which would now compensate for their investment and the risk? Why do the then shareholders benefit so handsomely, when it was they who put the bank in so precarious a position?

A C Gillett
Claremont
See editorial — Ed.

Table Mountain for sale

What kind of people are prepared, in the environmentally conscious 1990s, to build on and sell off bits of Table Mountain in return for a quick buck?

IT TRANSPIRES that they are the same sort of people who were either (1) prepared to secretly acquire a fortune in Nazi war loot, or (2) secretly invested in Hustler magazine and, in the past, have also misappropriated trust moneys left in their care by aged widows and distant clients.

In short, we are talking about:

WILHELM THEODORE WIEHAHN: who has a vast fortune in antiques and artworks — Nazi loot taken off Jews who were fleeing Europe during World War II.

The Jewish owner of one of Europe's most famous collections of Renaissance art, worth hundreds of millions today, attempted to flee to England in 1942. He did not survive the attempt. A Nazi agent kept the collection hidden in a Swiss bank vault for 20 years.

When, later, Sothebys in London were approached to sell the collection, they refused to put them on public auction as they were "too hot". Wiehahn had no such scruples. For all the ghastly details see our next issue.

Wiehahn has, in the past, also helped provide Meyer Lansky's Mob in America with the wherewithall to set up an international securities fraud quaintly named International South African NV (registered in the Netherlands Antilles).

The charming and now rather doddering millionaire owns the property on the back slopes of Table Mountain between Camps Bay and Llundudno which he and his new partner, Neill Bernstein (Yes, *Bernstein*!) want to develop to make a few hundred million. They say they know lots of American millionaires who want to buy a piece!

We were pleased to notice at least two Jews amongst the thousands of Cape Muslims who last year marched in protest against the development. We hope there will be a lot more at the next march. And, maybe, some Christians.

Then, on the front of Table Mountain, we have ...

SYFRETS: that famous Cape institution of advertised probity. A Nedbank subsidiary, they have done some most improprietous things, like investing in sleaze master Joe Theron's pornography empire. And, yes, Syfrets has even been known to misappropriate trust moneys.

Now Syfrets have stooped so low as to finance the development of a pristine slope on the *front* of Table Mountain, proudly marketed as "High Cape".

WHEN Dorothy MacLeod of St James died in 1961, like many Cape widows, left part of her fortune to the care of Syfrets, in trust, for the benefit of her grandsons, Ronald, Christopher, Anthony and William Packer.

Trustees are under a duty to observe the utmost good faith and to exercise proper care and diligence in the performance of their duties. Amongst other things they must avoid all risky investments or, to quote the legal authorities, they must avoid investments which, "in the judgment of a prudent and diligent trustee, would be attended with hazard".

A trustee must also have "exclusive regard for the interests of the beneficiaries, and not place himself in a position in which there is a conflict between his duty as trustee, and any other interest which he might have".

IN the early Seventies, readers may recall, Syfrets' parent company, Nedbank, found itself in a spot of bother: it had given huge overdrafts to the Hofman Property Development Company, which was quickly going bust on its development of Cape Town Centre. So Hofmans were encouraged to raise cash by issuing debentures to the public — the cash of course to be used to reduce their Nedbank overdraft. The debenture issue was underwritten by, amongst others, Syfrets. To help matters along, the men at Syfrets did their duty — to parent co., Nedbank — and directed various of the trusts in their control, including Dorothy MacLeod's Trust, to invest in Hofman debentures. So that when Hofman

went bust — which it did in 1978 — it was the trusts and not Nedbank that took the blow. Dorothy MacLeod's Trust, alone, lost R130 000. (The liquidation accounts of Hofmans list many such trusts, including Syfrets Nominees Ltd, which lost R336 000.)

But then, unfortunately for Syfrets, one of Mrs MacLeod's foreign heirs came to visit Cape Town in 1985 and happened to do a bit of checking. Because, also unfortunately for Syfrets, old Mrs MacLeod's grandsons had, in the meantime, grown up to become (1) a solicitor in London, (2) a financial analyst and (3) an Estate Agent in Western Australia. The Packer boys were not pleased with what they found. They decided to do the unthinkable — and sued Syfrets. (Apparently none of the beneficiaries of the other trusts were smart enough to notice the link between their misfortune with Hofmans debentures and Nedbank's good fortune.)

In its defence, Syfrets had the cheek to do the unthinkable for a trust company — it tried to use a legal technicality to rob the Packers of their claim, by alleging that they had come too late — and that their claim had "prescribed". Syfrets persisted in defending the case until 1988, when, just as it was about to go to trial, they withdrew and quietly paid up. No publicity, no trial record, no pack(er) drill.

Which brings another Syfrets story to mind: In 1986 Syfrets accepted the mandate of Mr Lincoln Frank Foster, a businessman then resident at Stone House in Constantia, to look after his investment portfolio. It was a term of the agreement, so Foster thought, that Syfrets would "employ the reasonable skill and diligence ordinarily required of an expert investment manager", and that it would "accept and diligently execute any instructions issued to it by him".

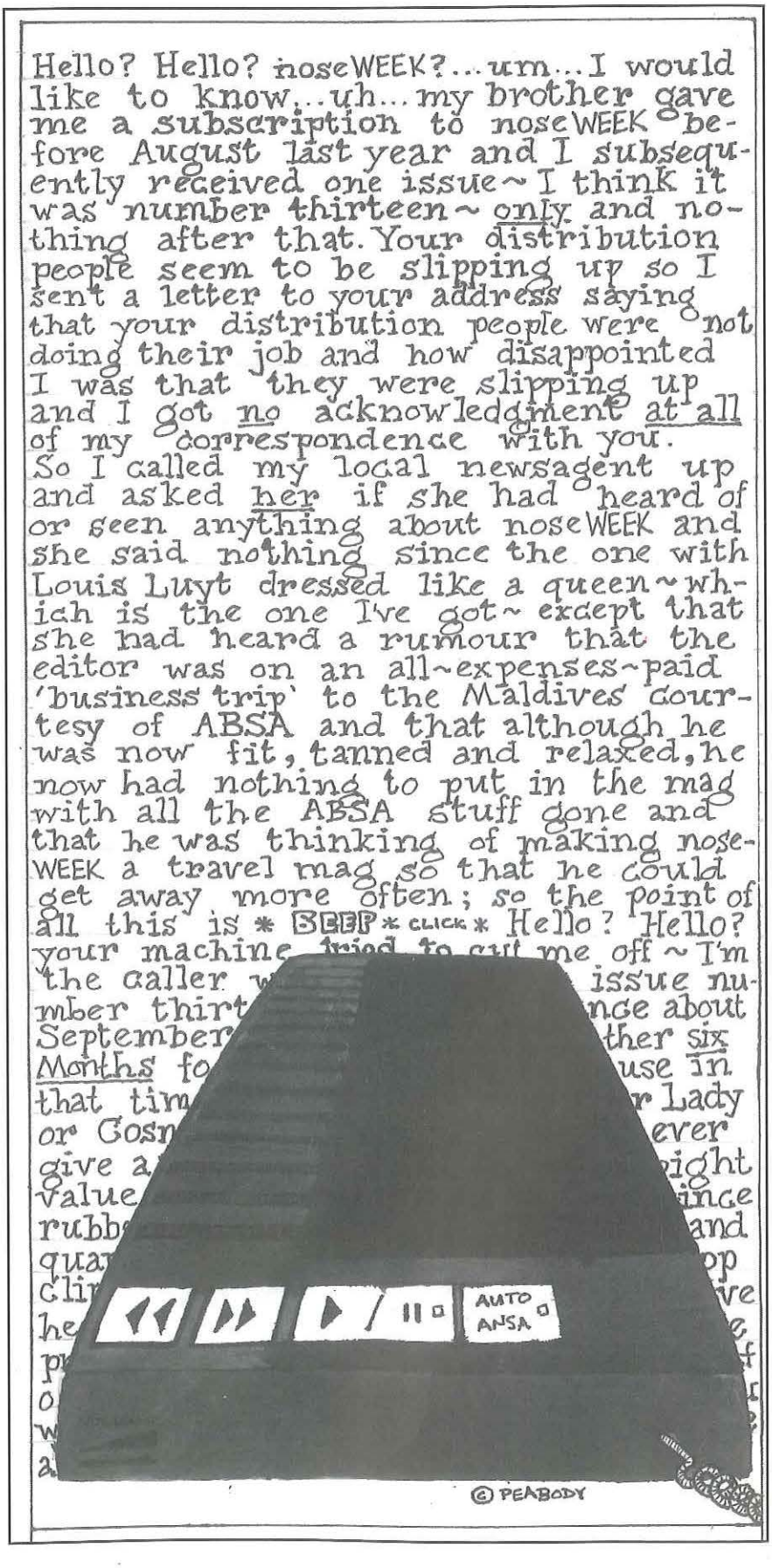
Foster said that in March 1987 he instructed Syfrets to sell all his shares and to transfer the proceeds to an offshore trust — which Syfrets had undertaken to establish for him in Jersey. Interesting. Anyway, in July, and again in August, Foster confirmed his instructions to Syfrets' senior consultant and aspiring Cape aristocrat, Dudley Mitchell Hopkins. (He has since changed his name to Cloete-Hopkins for obvious Alphen reasons.) Dudley agreed to complete the job by the end of September.

Immediately after 30 September the JSE went into a slide. Dudley hadn't sold the shares. Perhaps they took fright, but, whatever the reason, Syfrets decided to hang in — and still did not sell Foster's shares. On the JSE the down slide continued. An angry Foster fired Syfrets in March 1988 and sold the shares himself. From 30 September, when they were supposed to have been sold, until when they were in fact sold six months later, their value had dropped by R279 000.

Inspired by the Packers, Foster, too, did the unthinkable and sued Syfrets.

And Syfrets, as usual, first stalled the matter with a technical point: They demanded security from Foster for legal costs as he was a non-resident. (He had, by then, sold Stone House to Mrs Julian Askin.) Syfrets then denied having received any of the instructions as alleged by Foster, and claimed to have been nothing but diligent investment managers in the conduct of his affairs. Even if that had meant a loss of R279 000 on his investments.

But, on the day the matter was set down for trial in April 1989, Syfrets withdrew — and paid up. [*To be continued.*] ■



Family loses inheritance as

OLD MUTUAL'S SUPER-SALESMAN SCORES!

Report by
MAUREEN BARNES

Once upon a time, there lived a couple called Simon and Miriam Silke. They were cousins, both born in Hermanus — Simon in 1909 and Miriam two years later — and they went to school, grew up and later married in what was then a small seaside village. Simon worked as a bartender and Miriam was a seamstress.

Times were hard and they left their home town and moved to Middelburg in the Karoo, where, through gruelling teamwork, they eventually managed to buy a small hotel.

Simon and Miriam had just one daughter, Karin, who was their pride and joy.

The family eventually moved on to Oudtshoorn where they ran the Criterion, a modest hostelry in the good old South African style.

The Silkes retired in the seventies, but after a lifetime of hard work, found it difficult to sit around and do nothing. When a friend's hotel in Rawsonville needed managing, they had no hesitation in taking up a retirement job.

Eventually, in 1985, they no longer had the strength to work — Simon was 76 and Miriam was 74 — and they moved to Bellville, to be near their daughter and son-in-law, Karin and Brian Zolty. Brian ran a small shoe repair and manufacturing business and Karin worked as a secretary for a local firm of attorneys.

It was a good move for all of them. Karin could see her mother every day, and each day Simon went with Brian to his business, where the old man enjoyed sitting in the front office and chatting to customers.

Having been frugal all their lives, the old couple, though not by any means wealthy, were comfortably off — Miriam was able to give her widowed sister a little money each month; Simon gave to Jewish charities and they both doted on their grandchildren, Kim and Herman.

The Silkes never speculated. Over the years they put their savings — and trust — in what they believed were reliable, conservative institutions: the Post Office, Syfrets, the Allied, Volkskas, Old Mutual.

When their grandchildren were born, they bought annuities for their education.

In most cases their trust was deserved. Except when it came to Old Mutual — but that would only emerge much, much later.

> '... it was agreed it would be to their mutual benefit should Mr Keuler buy the policies at its [sic] full surrender value.

Miriam Silke died in 1991, leaving a modest estate which son-in-law Brian administered. Four years later Simon died, also apparently leaving only a modest estate. But when Brian called at Old Mutual's offices to obtain a certificate for a small policy, a clerk made the mistake of allowing him to look over her shoulder at the computer screen. There he was amazed to see listed a whole clutch of policies on the lives of Miriam and Simon — worth nearly half a million rand. But, incredibly, the beneficiary of these policies was not their family. Oops, said the clerk, you weren't supposed to see that! All the money was to be paid to an Old Mutual salesman the Zoltys had never met or heard of !

Brian's enquiries produced the following extraordinary explanation:

In 1987, not long after retiring to Bellville, the Silkes apparently received a visit from a Mr Gert Keuler, one of Old Mutual's so-called Financial Advisors. Keuler, feted by OM as a top salesman, then somehow persuaded the old couple to cede the six Mutual policies which they had taken out between 1940 and 1960 — to him. He paid them the surrender value of around R36 000. Why they should have agreed to this cession is a mystery; they clearly had no need or better use for the money.

The potential for tacky dealing in such a situation is obvious — so obvious that Keuler's boss, Johan C Brasler, manager of the OM Financial Advisory Service in Bellville, felt called upon to write a reassuring letter for OM head office to keep on file in case anyone should develop nasty suspicions about the transaction. In the letter, which OM duly now produced from their file, Brasler claimed that

(1) Keuler had known the Silke's for ten years and

(2) that they had decided to surrender their policies as they were in "urgent need of money". Just the bald allegation, without any detail or indication of the reason for the "urgent need". In the letter he also claimed that Keuler had:

"discussed the surrendering of the policies with the family (children included) and it was agreed to that it would be to their mutual benefit should Mr Keuler

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Miriam and Simon Silke on their golden wedding day in 1988.

buy the policies at its [sic] full surrender value."

But Brian and Karin say they have never met or heard of either of these gentlemen from Old Mutual. And a cursory check shows that Brasler is either shockingly gullible, very careless — or approves of sharp practice; all traits not acceptable in a senior insurance executive. What criteria qualify a man for a senior appointment at Old Mutual? Subsequent developments tend to confirm one's worst suspicions, and indicate a remarkable tolerance at OM head office for what most people would regard as sharp practice. [*Remember Greg Blank's friend at OM responsible for a multi-million investment rip-off? Wonder why you never heard anything further about him? OM just quietly retired him on full pension to a mansion in Hermanus. — Ed.*]

Brasler's letter contained several obvious ... shall we be kind and call them inaccuracies?

First of all it is unlikely that Keuler had known the Silkes for ten years as they had moved to Bellville only two years earlier.

Secondly, the Zoltys are emphatic: the surrendering of the policies was never discussed with them. In fact, were it not for that incautious moment by a junior Mutual employee, they might never have known about the shady transaction at all.

What argument Keuler used to persuade the old couple to surrender their policies, we can only imagine. They were *not* short of money, as the Zoltys can prove from the Silkes' bank records. In fact, as happens to so many careless old people, Mrs Silke had over R20 000 in her current account during that period!

Most damning of all, however, are OM's own records. They reveal that within weeks of the Silkes having ceded their policies to Keuler, he was able to persuade the allegedly cash-strapped Mrs Silke to hand over R51 000 to OM, in cash, for a new investment of a sort generally regarded as totally inappropriate for someone her age! [How much commission did he get on a R51 000 OM investment, one asks?]

Keuler, we now know, was to be well rewarded for his enterprise. For a premium of only R90 a month (they were old policies, remember) he had to wait just four years until, first, Mrs Silke died, when he "inherited" R123 000 from the policies on her life ceded to him. And after a further four years (in which time he paid even smaller premiums), he hit the jackpot again: when

Mr Silke died the policies on his life provided Mr K. with a further R300 000 windfall.

A shocking story, is it not? One to enrage any right-minded person. That's what the Zoltys thought when they found out what had happened. So in August 1995 Brian Zolty went to the Ombudsman for Life Assurance, the Honourable Mr Justice G P C Kotze and explained the matter to his assistant, Mr D McKay. A short while later this gentleman advised the Zoltys that he had:

"attempted to discuss this matter with the senior management of the Old Mutual but thus far without success and consequently I have now written to them asking for their comments."

A month went by, and then, after a correspondence between the Judge and "a senior legal adviser at the Old Mutual" — and without bothering to consider the evidence, including the Silkes' complete bank records — McKay wrote to Brian Zolty:

"...there are no legal grounds for criticising the events which have occurred in connection with your late father-in-law's Old Mutual policy; nevertheless serious ethical issues are involved and this office did raise the question with the Old Mutual whether it was desirable for their financial advisers to become personally involved in the purchase of life contracts. [Indeed!]
I am now enclosing a copy of the letter which Judge Kotze received from Mr de Beer last week. Judge Kotze and I have discussed this matter and we are of the opinion that Mr Keuler is exonerated in that in this particular situation Mr Keuler did not act improperly. This office has therefore indicated to the Old Mutual that in our view the policy monies should be paid to Mr Keuler in his capacity as legal owner of the contract."

The letter that OM's Senior Legal Adviser, Mr E G de Beer, wrote to the Ombudsman makes depressing reading. The three-page, single-spaced document is scattered with unctuous phrases such as *"a policyholder has the right to deal with the policy and we cannot interfere with that right"* and *"we have no record of any complaint about these cessions from Mr or Mrs Silke"* and *"there can be no doubt that Mr Keulder (sic) gained by this transaction but this does not mean that Mr and Mrs Silke were disadvantaged"*.

Having given his opinion that his company is guiltless, De Beer got the reply he anticipated from Judge Kotze to conclude this little farce. Ethics and conflict of interest are such uncomfortable things, best shrugged off quickly by the likes of Old Mutual and, apparently, even some judges!

Meanwhile, Karin keeps on working, in the same way as her parents did, so that her children can go to university.

Isn't it lucky for Mr Keuler's children that there used to be hard-working country people who provided for the future — and that their father is so smart at deals with old people! Old Mutual, too, is proud of him. ■

Broker rated tops by Old Mutual scores nearly R10m off Seeff

Cape-based property broker, Seeff, had hardly got itself listed on the JSE late in 1995, when it was confronted with an unexpected R10 million-plus loss from its small insurance broking division, Barcol.

noseWEEK has now established that the crisis related to nearly four thousand 26-year endowment policies (the shortest period for the maximum broker's commission) issued by Deon Barnard, the broker Seeff appointed two years ago to head Barcol. Seeff have called in the Office for Serious Economic Offences to investigate.

In 1995 Barnard was lauded by Old Mutual at a special function given for its top selling brokers. We asked Old Mutual for comment and received the following message from Marissa Nusca, Regional Admin Manager in Cape Town: "This is a very sensitive matter and we regard it as finalised." Pressed to explain what this meant, Ms Nusca's secretary said: "The media and brokerage departments don't want to give you any information, so they passed the buck to me."

Watch this space. ■

FROM ANOTHER WORLD

Q. I have just subscribed to your magazine and think you guys are doing a very good job. I have a few questions about my Siamese tiger fish (Datnioides microlepsis).

I bought the fish about two months ago, but all it does is hide under the driftwood. I feed the fish once a day with frozen bloodworms or brine shrimp. The fish comes out to eat, but darts right back under the wood. How can I get my tiger fish to swim around the tank confidently? Should I remove the plants and driftwood?

In addition I also have two bumblebee catfish (Microglanis poecilus) and a Synodontis ocellifer in the same 20-gallon tank. I realise the tank is much too small for these fish, but I live in an apartment and that's the best I can do.

I understand that these catfish are nocturnal, but is there a way to make them swim around a little? Also, how large can I expect these fish to get?

I hope that some time in the future you'll do an article on the Siamese tiger fish. Thanks for your time.

John Takamori
via the Internet

"It's empty now. The piranha ate the toxic blowfish."

THE EMPEROR'S NEW FISH

"One is hiding from the other in ambush!"

A. You are caught between a rock and a hard place. Your Datnioides is going to grow into a very large predator that will eat anything that will fit into its cavernous mouth.

As a youngster it is an ambush predator, which means that it hides behind or under an object, makes a short, quick dash and engulfs its prey. When it grows up, it will do a little better, sitting out in the front of the tank, confident that none of its brethren will be lurking in the bushes trying to engulf it.

If you remove the plants and driftwood you will stress the fish, possibly causing it to refuse to eat, and then die. Best leave well alone.

Your tank will be fine for your bumblebee cats (which should not get more than 4 inches in length) and your Synodontis (which grows to about 8 inches) for about a year or two. Your Datnioides, however, will be ready for a new aquarium in about three or four months. I have raised Datnioides to about 17 inches in length in two-years.

Your choice of inhabitants for your aquarium is interesting, but can provide for a rather boring display. You have one fish that likes to hide, while the others, as you have noticed, do not come out very often, if at all, during the daylight hours.

You cannot do much to change their behaviour, but you can trick them into coming out by using "trick" lighting. During normal daylight hours use red lighting which is almost invisible to the catfish's eyes, and during the evening and night time turn off the red light and turn on normal daylight bulbs.

The fish will assume that the bright period is the time to sleep, and they will be out and foraging during the red light period, when you can see them. It helps to keep the room lights dim and the curtains closed when you use this technique.

It should be noted that this technique also seems to work if you use a dim blue light, which the catfish probably accept as moonlight.

From Al Castro's Freshwater Q&A in Aquarium Fish Magazine. ■

Your broker: a skilled advisor

What of the Financial Advisor

If a person chooses to indulge in an activity requiring an expertise which he, in fact, does not have, his lack of skill may be regarded as negligence. That was understood by the Romans already more than a thousand years ago.

In 1924 the South African Appeal Court ruled that 'reasonable skill and care' is not genius skill: just the level of skill and diligence ordinarily possessed by the members of a particular profession. 'Skill' does, however, involve aptitude, special training and experience.

Which all sounds very grand. Now, what about Investment Brokers and Financial Advisors? What skills may they be expected to have?

Is there such a thing as a qualified financial broker, an idea promoted by the South African Institute of Life and Pension Advisors (ILPA)?

Established 13 years ago as a professional body for advisors in the field of life assurance, employee benefits and personal financial planning, ILPA members have to pass a stringent entry examination. They are required to "maintain a high level of professional knowledge and skill in order to advise clients in accordance with all relevant laws, as well as appropriate technical and professional practice and standards".

Membership of ILPA is entirely voluntary. On average only a third of the candidates who sit its admission examinations pass. Because of this, they tend to be from the "cream" of the life and pensions industry, and there are currently fewer than two thousand ILPA members, of whom only half work as brokers.

In contrast, it has been said that insurers, for instance, have a vested interest in allowing "incompetent brokers, posing as experts, to give negligent advice with impunity."

May members of the public expect someone who sells his services as a financial advisor — a major bank which offers financial advice, for instance — to have the level of skill set by ILPA, and hold him to it?

No, not in the Cape, according to Judge Deon van Zyl of the Cape Supreme Court. Judge Van Zyl has held that South African law entitles us to expect only the general standard of skill (or lack of it) offered by the other 26 000 South Africans who choose to describe themselves as "financial advisors" or "brokers", without any qualification at all — the kind who sold us Supreme and Masterbond.

Even if, according to evidence in the case, the standard of expertise of these "brokers" and "financial advisors" is so low that they cannot be expected to be able to read a company prospectus or balance sheet.

The fact that a company has sent such a "broker" a glossy pamphlet could be sufficiently good reason for the broker to recommend its shares to his clients, the judge held in defence of an ABSA "broker" who recommended Supreme shares to his clients.

Is the judge right — or has he made the mistake of regarding the vast hoard of frequently disreputable touts and freelance salesmen employed by the insurance industry, as a "skilled profession"? No doubt the banks and insurers are delighted — but are incompetents to be allowed to cause harm with impunity simply because many others are equally incompetent?

In general English courts are said to judge n
involves the use of some special skill or com
As early as 1833, though, Cape Chief Justice
nine brokers of experience out to ten would
of skill to the performance of his duty, woul

Mrs Durr versus ABSA

Between May 1990 and November 1992, Mrs Valerie Elsie Durr purchased preference shares and secured debentures in Supreme Holdings Ltd and Supreme Investment Holdings (Pty) Ltd on the advice of Mr Myles Stuart, regional manager of the UBS (now ABSA) brokerage division in Cape Town. In November 1992 both Supreme companies went into liquidation under notorious circumstances. Durr was amongst the many investors who suffered heavy losses: She and her family lost the R595 000 they had invested.

Durr then sued ABSA and Stuart for the capital, plus approximately R175 000 in lost interest. She claimed that, in advising her to make the investments, they had failed to exercise the degree of skill and care which is required of a "reasonably competent and careful" investment advisor.

Stuart had persuaded her that Supreme was a safe investment by telling her that his own mother had invested in it. Had he told her that there were risks involved, Durr said, she would not have agreed to the investments.

Mr P R Nieuwoudt, the vice-president of ILPA and chairman of its professional standards committee, testified in support of her claim. A broker, he said, should be cautious about

— or just another salesman?

at United Bank, for example?

egligence by the conduct of "the man on the top of a Clapham omnibus". He is the ordinary man. But in a situation which petence, then the test for negligence is not the test of the ordinary man, but of the man professing to have that special skill. e Tindall, when called upon to consider whether or not an insurance advisor (`policy broker') had been negligent, declared: "If l have done the same as the defendant under the same circumstances ... he who only stipulates to bring a reasonable degree ld be entitled to a verdict in his favour."

investments which offer excessive commissions or investment returns. Before recommending a company's shares to an investor, a broker should check its prospectus and audited financial statements, and satisfy himself that the institution is financially secure.

Nieuwoudt conceded that he had not seen any criticism of Supreme in the press before its collapse. He could also not deny that some 820 individual brokers and 21 institutions had procured investments in Supreme for clients.

Nieuwoudt conceded that the vast majority of people who practice as "brokers" would probably not know the legal requirements of a company prospectus or understand audited financial statements.

Mr PO Goldhawk, a specialist investigating accountant of Coopers and Lybrand, Johannesburg, testified that he had been appointed by the Master of the Supreme Court to assist in investigating the failure of Supreme.

In Goldhawk's view, a 'broker' should have a reasonable level of knowledge of investment matters. He should know that sales materials are often one-sided and incomplete, and should not be satisfied that an investment is sound without reliable independent verification.

A reasonably competent broker, he told the court, would have realised that Supreme was not a 'suitable' investment. But most brokers who marketed Supreme Investments "probably looked no further than the high commissions and impressive brochures". In this way they failed to exercise the skill of a competent broker.

The fact that Supreme's financial statements and prospectus were not available should have placed any broker on his guard. The glossy brochure and adverts relating to Supreme did not constitute sufficient justification for recommending investments in Supreme, he said.

In his defence, Stuart said he had been giving Durr investment advice since 1985. On his recommendation she had made a number of successful investments, for example in Old Mutual unit trusts and United 'paid up permanent shares'. When, in 1989, he heard about Supreme from colleagues, he decided to make his own enquiries into "its viability as an investment opportunity". He telephoned Des Mannheim, a director of Supreme and head of its Cape operations.

Mannheim told him about Supreme's participation bonds and secured debentures, the returns on which were generally higher than similar investments on the market. Mannheim explained to him that Supreme was able to offer higher interest rates because they marketed their investments directly with brokers or accountants and did not advertise. Stuart found this explanation reasonable. When Mannheim subsequently sent Stuart a brochure entitled 'Supreme Bond Investments', it impressed him as an investment which he could offer to investors with confidence. Mannheim, Stuart said, was a "credible, plausible person who exuded confidence".

So Stuart recommended Supreme to approximately fifteen of his clients, including his own mother and father-in-law.

He retained contact with Mannheim on an on-going basis. Right up to the date of Supreme's provisional liquidation he had heard or read nothing negative about it. [*Not surprising, if one takes into account the Appeal Court's hostile attitude to the press publishing negative reports about companies' "private affairs". - Ed.*]

For this reason he did not believe it appropriate or necessary to ask for Supreme's prospectus or audited financial statements. The commissions he received from Supreme were high — "but not the highest". He was satisfied that he had applied his full skill and knowledge and had done the best he could with the information available.

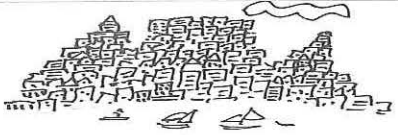
Noting that there are some 27 000 practising "financial brokers" in the country, Mr JHW Wessels, the executive director of the Life Offices Association of South Africa told the court: "When I talk about the typical broker, I mean most of these 27 000, excepting only the exceptional ones, either at the top, who have exceptionally high qualifications, or those at the bottom — for instance people who may only sell funeral insurance."

Wessels was sure that the "typical broker", when considering a company like Supreme, would not have called for a prospectus or financial statements.

The typical broker was not qualified to read and understand financial state-

To page 10

In the court's view, Stuart in fact far exceeded the standard of care and skill which might reasonably be expected of the ordinary broker.



When lawyers fall out ...

In June 1992 Sonnenbergs' managing partner Piet Faber and chairman David Nurek were concerned that their firm was not running debt collection matters "in accordance with the standards that we apply to other types of matters" and that their service to clients in this area was being "adversely affected". So Cape Town's largest firm of attorneys closed their debt collections department and concluded an agreement with an independant collections attorney, Beverley Datnow, to take over all their collections matters.

Two years later, however, they decided that they wished, once more, to operate their own collections department, "the emphasis being on avoiding mistakes that we had made previously". So, on 22 April 1994, David invited Beverley to lunch. She assumed the purpose of the lunch was to discuss ongoing business and was staggered when he told her that Sonnenbergs intended terminating their agreement because of alleged "client dissatisfaction" with her services. She burst into tears.

Nurek apparently hoped she would be consoled by Sonnenbergs' undertaking to keep the dissolution of their agreement confidential. But she dried her tears - and refused to go quietly.

Datnow hired Lawrence Whittaker, pedal-power partner of attorneys Herold Gie & Broadhead, to represent her in the dispute. In the letter Whittaker wrote to Sonnenbergs informing them of his appointment to represent Datnow, he quoted the old adage: "An attorney who acts for himself is instructed by a fool." Sonnenbergs failed to take the hint. Representing themselves, they launched an "urgent" application to the Cape Supreme Court against Datnow.

At the outset, Sonnenbergs claimed that the "primary" reason for wanting to restart their own debt collection department was that "certain" of their clients were dissatisfied with Datnow's service, while other clients, they said, were reluctant to hand their collections work over to her at all.

Not so, said Datnow in her replying papers: "They wish to run a 'boutique' collections practice — a specialised and superior or 'blue chip' client collection department."

"Blue chip" or not, she also noted that, whereas Sonnenbergs had recently moved into posh new premises in "Norwich on St George's", they had taken cheaper premises in the rather less prestigious Exchange Building higher up the road to accommodate their new collections practice — "presumably ... in order to keep debtors away from the public areas of their new, prestigious Adderley Street offices".

She said when Nurek telephoned her directly, despite the fact that he knew she was being represented by

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***Lawyers* from page 9**

ments and would not have the critical ability to distinguish between real and misleading information, he told the court. Nevertheless, said Wessels, he was satisfied that the typical broker was qualified to give "expert" financial planning and investment advice.

Adv. Chris Edeling argued on behalf of Durr that both ABSA and Stuart had acted negligently and were liable for the losses she had suffered. He suggested that ABSA was liable in that it had referred members of the public, who required expert financial advice, to Stuart and had thereby held out that he was authorised and properly qualified to give such advice.

For the defendants Mr Andre Blignault SC argued that Stuart was "a member of the broking profession" and that his conduct should be evaluated on the basis of the general level of care, skill and diligence which might reasonably be expected of a "typical, ordinary or average South African broker".

Judge Deon van Zyl agreed with Advocate Blignault. Members of ILPA cannot be regarded as typical or ordinary brokers; to expect the average broker to have studied the prospectus and financial statements of a company he is recommending, would be taking things too far, the judge said.

In the court's view, Stuart in fact far exceeded the standard of care and skill which might reasonably be expected of the ordinary broker.

"Despite his having received only positive reports of Supreme from his colleagues, and there having been no obvious high risk indicators, he nevertheless took the trouble to communicate directly with one of Supreme's directors," the judge said. "[Supreme Director] Mannheim provided him with more than sufficient information to justify the positive reports. As if this were not enough, further information, which was sent to him in the form of a glossy brochure, confirmed what Mannheim had told him."

The court dismissed Durr's claim and ordered her to pay costs.

● In Natal the case is different. In November last year Judge Thirion of the Natal Supreme Court held, in the matter of Nathan v ABSA Bank Ltd., that a financial advisor and her employer, a bank, were negligent in recommending to the plaintiffs that they should invest in Supreme secured debentures (which were, in fact, not secured) or that they should renew their investments. In that case the defendants did not testify at all.

● Valerie Durr is to appeal against the Cape judgment. Granting her leave to do so, Judge Van Zyl said: "I am given to understand that there are many cases of a similar nature which are waiting to be adjudicated upon in various courts throughout the country. It may be in everybody's interest if this matter should go on appeal to the Appellate Division so that the principles applying in cases of this nature may be set forth with the clarity which one would expect of the Appellate Division."

● Myles Stuart is now a Regional Manager, Insurance, at United Bank. Readers wishing to seek his advice may call (021) 683 6403.

● Glossy pamphlets may be sent to Judge Van Zyl, c/o Supreme Court, Cape Town. ■

Whittaker, she felt he was endeavouring to bully her into submission. His threatening attitude, she said, was best summed up in his words: "You will come off second best in any conflict which you get into with Sonnenbergs."

Sonnenbergs wanted the court to enforce the terms of their contract, including a clause which entitled them, on termination of the deal, to (in Managing Director Faber's amazing words) "restrict Datnow from directly or indirectly soliciting or attempting to solicit the custom or business of, or to transact or attempt to transact any business with any client of Sonnenbergs, including but not limited to all of the clients referred by them to Datnow in terms of the aforesaid contract, for a period of 24 months from 1 Nov 1994 (that is, until 31 Oct 1996)".

As Datnow proceeded to point out, the relevant clause sought to protect Sonnenbergs (with 20 directors, 2 senior consultants and 5 associates), their entire past, present and future clientele of thousands upon thousands built up since 1936, from the envisaged predations of a single-woman debt collection business started in 1990. If a person, who had at any time since 1936 been a client of Sonnenbergs, wished to sell Datnow a motor car, petrol, clothing, or have her attend to a divorce, such a transaction would be prohibited in terms of the wording of the clause. That was assuming it was capable of being enforced — which was doubtful.

Whatever the rights and the wrongs of the agreement, Datnow had actually signed it. But what, readers may ask, of the ordinary members of the public who had the misfortune of having been Sonnenbergs clients and did not even know of the existence of such a nefarious deal? What if they wanted to stay with Datnow?

According to Faber, Datnow's clients had no "legitimate" say in the matter. The only choice they were to be presented with — out of the blue — was: move to Sonnenbergs, or move somewhere else. But move from Datnows they must.

Faber said he had "furnished instructions" to his co-director, Charles Smith, to draft the agreement — from which one gathers that it was Smith's draftsmanship which produced the dissolution and restraint clauses that they were later so desperate to apply.

Datnow argued that it was unenforceable in law. "The files are all the property of the clients," she rightly pointed out. "Without the consent of the clients concerned, I ... am not entitled to simply hand their files to [Sonnenbergs]." But then she added, perhaps not quite so worthily — but always the bottom line for a lawyer — "I exercise a lien over the said files in respect of unpaid fees ... In the absence of payment of my fees I am not obliged to part with any of the files."

Her colleagues at Sonnenbergs then proceeded to accuse her of being "disingenuous", of making "transparent attempts at evading the terms of a binding agreement", of "raising ethics merely as a negotiating tactic", of making statements "fraught with half-truths" and, even, of being "blatantly untruthful" — in an affidavit!

One lawyer to another.

The association agreement concluded by Sonnenbergs with Datnow has other interesting clauses. One, headed "Special Provisions", reads:

"Sonnenbergs ... and Datnow will cooperate with each other for the purposes of ... allowing insolvency specialists at Sonnenbergs to have reasonable access to Datnow's files and records for the purposes of providing to clients the services normally associated with an insolvency practice." [What is this? Sneaking the predatory beasts that masquerade as insolvency "practitioners" into the coop to make easy pickings of the best victims — debtors with large assets and a cash-flow problem? Is this a "service" that Sonnenbergs normally provide for their clients in the liquidation business?]

Another tasty titbit: From a letter in the court papers it emerges that clients referred to Datnow commonly experienced a problem: When debtors instructed attorneys to defend actions instituted by her, they were frequently able to succeed — by taking the point that she had issued summons out of the wrong court.

Normally court rules require summons to be issued out of the court for the district in which the debtor resides, but Datnow was issuing *all* summonses for debt out of the Cape Town court — to suit her own convenience and to cut her costs — while presumably causing out-of-town debtors greater inconvenience and cost. And on the supposition, no doubt, that most debtors were too ignorant to know that the procedure was unlawful.

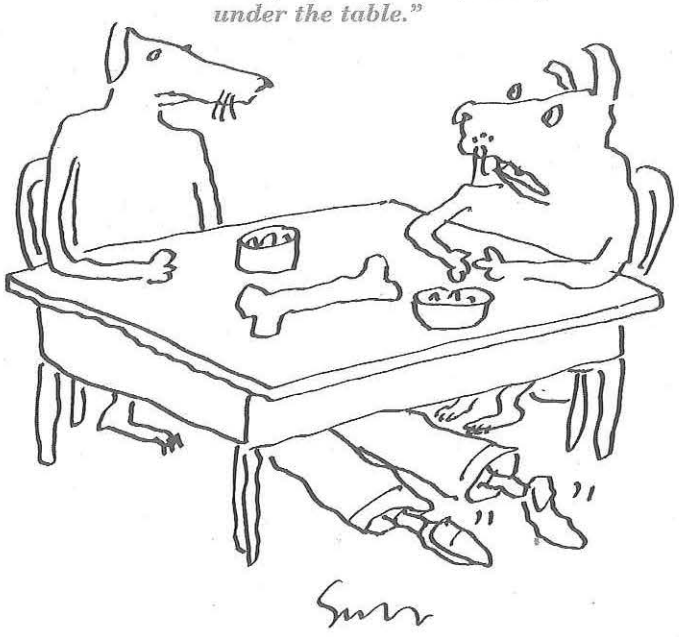
In matters instituted by Datnow on behalf of Spectravest and Finanzhaus, 75% of the summonses were issued out of the incorrect court. Could it, you ask, have been an unfortunate procedural error? Definitely not: Datnow places on record in a letter to friends Piet and David at Sonnenbergs dated 25th April 1994: "A decision was taken by Datnows in consultation with your Mr G Liebenberg that summons would be issued out of the Cape Town Court in the hope that the action would not be defended. Due to the large volume of summonses to be issued, it was agreed that it would be in the financial interests of the [client] that costs be saved where possible. This fact was known to all parties ...". And, she notes, it was agreed that, in those cases that were then defended, instructions would be issued to withdraw — after which summons could be reissued out of the correct court.

For their Supreme Court action against Datnow, Sonnenbergs were represented by probably the most expensive counsel at the Cape Town Bar, Mr Peter Hodes SC. Datnow was represented by advocate Hoffman (now SC). The court, in the form of Judge Wilfred Cooper, was apparently neither impressed, nor overawed by Mr Hodes's submission that the matter was of the *utmost urgency*. He postponed the hearing to 15 Feb 1995. And, by the time 15 February came around, Sonnenbergs had removed the case from the court roll, "the matter having been settled".

● We have sent a copy of this report to the Cape Law Society for their comment — which we look forward to receiving in time for publication in our next issue. Thrilling stuff! ■

[*Also see noseNOTES on page 14*]

"I hope you are not feeding him under the table."



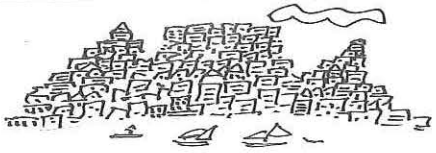
Damn right, we're mad

How would you feel about being chopped up for Sainsbury's Special of the week?

It's bad enough having chunks of our bodies advertised for sale in gaudy flyers. Bad enough being clipped, stamped and shipped as if we weren't alive. But the last straw came when they began to feed us sheep. That made us *really* mad. Imagine us, vegetarians par excellence, being forced to dine on fellow animals. Disgusting.
So as members of the British Bovine Alliance, we decided to take action. We would use a technique employed successfully by creatures like the monarch butterfly. We would make ourselves inedible.

It's working. We're happier because you're eating fewer of us. And you're happier because we're causing fewer health problems. We can pursue our important cud chewing work and you can go back to doing whatever it is you do. And neither of us has to kill each other. Deal?

British Bovine Alliance
We may be mad but we're not crazy.



BANKING IN THE CAPE

(with Stephen Phelps)

When former ABSA director Bob Aldworth appears in court for his allegedly improper involvement in deals that resulted in losses to the banking group, he can take solace that he was not the only bank director who was involved in such deals at the time.

Well-known former director of Cape Investment Bank (CIB), Mr Leonard Stephen Phelps, did some unfortunate deals with that bank while on its board. They involved some disastrous million-rand loans granted by CIB under strange and extraordinary circumstances.

As it happens Aldworth served on Cape Investment Bank's loans committee for a short time in 1990. In an interview with noseWEEK in 1994 [nose8] he recalled how CIB directors Jan Pickard Jnr and Phelps had, on occasion, negotiated loans from the bank without them being referred to the loans committee. "I was most uncomfortable with what I saw," Aldworth told noseWEEK.

As a result Aldworth did not take up an offer to join the CIB board -and joined ABSA's board instead.

In contrast with Aldworth, who has had to face a hostile press, public condemnation by ABSA, the withholding of his pension by the Reserve Bank and, now, criminal charges, Phelps continues as a respected member of the Cape business community. But then CIB has been the subject of another of those secret enquiries so kindly arranged by curators appointed by the Reserve Bank. [See noses 3 & 14]

At CIB no-one has suggested calling in the fraud squad. Joint auditors Coopers and Deloittes were happy to sign off the annual accounts.

But look what was said at Phelps' interrogation before the secret enquiry into the collapse of the Cape bank! Phelps was represented and advised throughout by our old friend, attorney Raymond Mallach of Herbsteins.

CIB had a short, unhappy life, lasting only three years. Banks are required, as an extra control, to have non-executive directors on their boards. Phelps was appointed a non-executive director of CIB in September 1989. As a well-known Cape businessman, chartered accountant, and director of various companies, Phelps regarded himself a logical choice. He was also a long-time friend and business associate of CIB's controlling shareholders, the Pickards.

Asked by Sam Aaron SC at the secret enquiry about the reasons for CIB's collapse, Phelps said he thought it had "grown too fast" and had "over traded" on its limited capital. [If you see how Phelps bought his shares in CIB, it can hardly have had any capital with which to trade at all. Because, dear reader, ignoring some fancy footwork in the legal fiction department — Raymond? — you will see Phelps bought his CIB shares ... with money borrowed from CIB! - Ed.]

As non-executive director, Phelps served on the bank's credit committee. In addition — in 1990 — he became a member of the bank's Audit Committee, a requirement of the new Deposit Taking Institutions Act. So, from a public interest point of view, Phelps was supposed to play a crucial role in keeping the bank on the straight and narrow. "But I don't think it (the Audit Committee) ever held a meeting from the time I was appointed," he told the secret enquiry. (Phelps remained a CIB director for three years.)

And CIB's credit committee, which was supposed to vet loans, did not actually hold meetings either: members were consulted by telephone — an arrangement which, Phelps agreed, was "a bit haphazard".

Asked at the enquiry to describe CIB, he said it was "a boutique sort of bank", which specialised in trading and capital market speculation, "a highly speculative business". This was particularly so since CIB was not trading on behalf of clients, but on its own behalf [using money belonging to depositors who never dreamt that depositing money in a bank was a "highly speculative business"].

CIB promptly made some very, very serious losses on its speculative trading. Which was going to look very, very bad on its balance sheet. Which in turn, CIB's directors and auditors feared, would cause serious upset on the JSE and amongst depositors and creditors. It might even irritate the men at the Reserve Bank a little.

So CIB's directors persuaded their auditors, Horton Griffiths at Coopers, and Frans Wessels at Deloittes, that it was "banking practice" to reflect speculative assets in a bank's annual accounts at the price paid for them, rather than at what they were really worth on the market (which generally ended up being a lot less).

Phelps also did his bit to help the bank dress up its figures to hide the disaster. In a desperate bid to realise "profits" for the bank (to cover the serious losses on its speculative purchase of gilts), he did two deals with the bank:

First he arranged for family trusts controlled by himself and his business associate, Iain Hirschson, to buy the bank's 20% share in a property company, Damill Finance, for R1 million. Damill stood to make a "substantial" profit on a property sale already arranged with a Municipal pension fund, so the R1m was really just a way of advancing the payoff date for one of Damill's shareholders, CIB, he said.

Next Phelps arranged for Aquanaut Consulting, a company in which, he admitted, he had a "significant" shareholding, to buy the bank's 15% shareholding in another property company,

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Phelps "paid off" his loan debt by giving the trust some more of his own worthless CIB shares.

From page 13

Goldquest, for a handy R900 000. Aquanaut, he said, bought "job lots in all sorts of things". [It also shared offices and directors with Hirschson's better known company, Equikor.] Now the problem was that Aquanaut did not have R900 000 with which to pay CIB for the Goldquest shares. No problem. CIB would lend Aquanaut the money!

Justifying the action, Phelps said his co-shareholders in Aquanaut had, in any case, not been sure they wanted to buy CIB's shares in Goldquest. What, after all, if the shares lost money?

So, he said, it had been agreed that if, later on, Aquanaut's directors were not happy with their buy, CIB would take the shares back — but only after the year-end, once the deal had served its purpose in making the bank's balance sheet look better.

At the secret enquiry the question was: did Aquanaut keep the Goldquest shares bought from CIB? Or did it sell them back to the bank? Neither. "There was a dispute and we never got them [to start with]," Phelps explained. But on the bank's books the deal was done and only cancelled or "reversed" nearly two years later.

"I do recall that both transactions ... were debated with the company's auditors as to what could or couldn't be done, and how it was to be handled. Whichever way they advised, I am sure is the way it was handled," said Phelps.

Then there was the question of the CIB directors' loan accounts.

In October 1990 the auditors expressed concern about the loans the bank had made in 1989 to its directors to finance their purchase of shares in CIB Holdings. "It is roughly at the time that Mr Mallach was consulted," Aaron naughtily reminded Phelps, " ... as to whether it was a contravention of the Banks Act for the bank to advance money to its directors for the purchase of shares in its holding company ..."

Phelps' family trust, Darthy Trust, had borrowed R1 962 000 from CIB with which to buy shares in CIB Holdings. Aquanaut Entertainment, a company owned 50% by Phelps and his friends Lionel Willmore and Gary Pretorius, borrowed R4,3 million for the same purpose. No trace was to be found in the Credit Committee's minutes of the committee ever having discussed these loans. Phelps and Jan Pickard Jnr had discussed setting up an elaborate scheme, but, in the end, the bank was to get only the shares in its own holding company as security for the loans. [When the bank's liquidators looked for the shares, the bank's file was empty - not that, by that time, they were worth anything anyway.]

Aaron: "You have loans totalling R4,5 million and there is not even correct documentation in place to show who the debtor is, what the terms of the loan are. And you happen to be on both sides of the transaction. I would be very embarrassed about that."

Phelps: "It wasn't my responsibility to put the documentation in place."

Aaron: "You are saying the bank must go whistling for its money after a shell of a company?"

Phelps: "The deal was struck on that basis, Mr Aaron."

Aaron: "Is that fulfilling your fiduciary duties as a director of the bank?"

Phelps: "Mr Aaron, that was the deal that was struck."

Aaron: "Do you consider that to be an adequate basis on which a director can borrow money from a bank?"

Phelps: "Yes. Mr Aaron, I think it is not an unusual practice for banks to finance shares on that basis. I've done three other transactions with other banks, two with Senbank and one with Finansbank on almost an identical basis ... for shares in Rusfurn, shares in Unidev and shares in a company called ABS Management. Bankers do take these chances, yes." Yes, indeed.

In 1992 Phelps claimed that his family trust was only liable to repay the loan "in a while", and the interest "in the meantime".

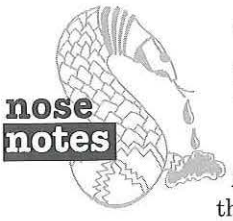
It did neither. Instead he allowed the trust to be declared bankrupt.

The Darthy Trust did have one real asset until quite shortly before it was declared bankrupt: a claim against Phelps personally for R457 000 he had borrowed from the trust. But at the last minute, just before CIB was put into liquidation (and when he had to know that its shares were near worthless), Phelps "paid off" his loan debt to the trust - by giving the trust some more of his own worthless CIB shares. The result: when the liquidators arrived to claim repayment of the R1,5m Darthy Trust borrowed from the bank plus R700 000 interest, the Trust had nothing to give except worthless paper.

Accountancy was my life until I changed to Smirnoff ...

❇ Horton Griffiths is no longer in accountancy, but has moved on to become an "insolvency practitioner", where there is a lot more scope for a man of his talents.

❇ Frans Wessels is also no longer in accountancy at Deloittes. Surprise, surprise - he now heads BOE 's brokerage division in Johannesburg. ■



WHEN THE ACCUSED BECOMES THE JUDGE

ACCORDING to the, by now notorious, secret minutes of the Cape Law Society's committee meeting held in April 1995, one Susan Aird, a partner at Kritzinger & Co, attorneys of Cape Town, was called upon to answer a charge of unprofessional conduct made by Attorney Rob Macleod.

Macleod alleged that, when Aird, acting for First National Bank, took judgment in the magistrate's court against a certain Mrs Messinger for R1796,39, Aird had failed to tell the court that Messinger had, in fact, already paid R1487,10 of the amount. This, said Macleod, amounted to unprofessional conduct by an attorney.

In her reply, Aird admitted that it had been "a mistake" for her to have taken judgment for the full amount. She agreed she should have drawn the court's attention to the fact that payments had been made to her firm substantially reducing the debt. To ameliorate the unfortunate position, Aird said she had persuaded her clients, FNB,to accept the payments already made by Messinger in full settlement of the debt, in effect granting Messinger a R200 discount.

But the offer was conditional. Aird was only willing to do this if Mrs Messinger, in turn, waived her claim against FNB for all costs she had incurred in having the incorrect judgment set aside. [Which is sure to have been a lot more than R200. Clever lawyer is our Ms Aird: as she planned it, everyone ended up paying except the attorney who caused the mess. — Ed.]

In support of his charge, Macleod reminded the Law Society that in a recent issue of *The Cape Attorney*, it was reported that the Law Society had fined another, unnamed, attorney R1000 for taking judgment under similar circumstances. But, it appears, Macleod miscalculated on the Law Society's true sentiments. Our guess is the Law Society appreciates attorneys of class — the ones who represent clients like FNB, not ones who represent crabby old ladies who battle to pay

their debts and then pester the Law Society with petty complaints.

Why do we guess so? Well, Aird was summoned to appear before the Law Society Committee to explain her conduct ... and the next we knew, it was announced that she had been appointed the Law Society's new Director of Professional Affairs! She succeeds Ingrid Hoffmann, who has retired. Readers may recall that Hoffmann once asked the Supreme Court to strike Macleod and his erstwhile partner, David Sapeika, from the roll of attorneys.

At the time most of Macleod and Sapeika's clients were unsophisticated black people, many of them indigent. In 1989 Groote Schuur Hospital had occasion to complain to the Law Society that representatives of Macleod and Sapeika were calling on ignorant and unsophisticated accident victims in the hospital's orthopaedic wards at night, on occasion getting the patients' thumb prints applied to blank forms which were only later filled in. While the forms authorised the firm to launch Motor Vehicle Accident claims on their behalf, several patients later said they had no knowledge of having given the firm such instructions.

Sapeika, explaining why a client had on one occasion appended his thumb print to a document, while on others he had been able to sign his signature, said his client was "extensively injured and it may well be that, on a particular occasion, he found it more comfortable to sign by appending his thumb print".

But the hawk-eyed Ms Hoffmann, acting for the Law Society, solemnly swore to the court that, while the victim might have been leg-less, "the MV3 claim form indicated no injuries to the upper limbs". Sapeika was struck off. Macleod escaped with a suspended sentence, after explaining to the court that he really had "little or nothing in common" with his partner. He told the court that, while Sapeika worked furiously at his accident claims from morning till night, without even a break for lunch, he, Macleod, was a commercial lawyer who generally came in to the office late — and often went out to lunch. And since Sapeika had been earning most of their fees, Macleod had naturally been happy to leave him to it.

PS: Since then, Sapeika has been known to lay a charge (with Sergeant Lind of the Wynberg police) against "a person or persons unknown" for sending him a condom anonymously in the post. What could this mean? ■

A connoisseur's confidence

(to a favourite restaurateur)

The special menu for a small party rambler

" ... thought that I'd just come in and talk to you — won't you sit on this side of me, that's my deaf ear — about the menu to save that awful wait after we arrive as we'll all be having drinks at my house before we come to save a bit on the bill, now I'll be giving them some little salmony bits with their long and tinklies, perhaps we'd better steer clear of something fishy for starters and have something lighter and not too pricey, not salad because that's what they all would have had for lunch and the men won't want it anyway so I think we'll have the soup, it's your cheapest one and then perhaps we should follow it with game or meat, well duck really is a game isn't it? not really poultry like chicken and then perhaps the fillet not too big and you can put the peppercorn sauce on the side a bit as most people don't really like too much pepper and then a simple, very simple dessert not too large and you needn't give us so much veg, that'll cut down a bit don't you think we all eat far too much and we'd better have coffee here I don't want them coming back home with me and let's have some of that lovely house wine of yours for the white it's only R13.00 and the very good Cincaut for the red, well that's it then and I'll slip you a table plan when I come in so you know who's having what, now how about a special price for all this then?"

Smalls advertisements to be received by 1st day of month of publication. Charge: R10 for up to 15 words, thereafter 75c per word.

PERSONAL

ANTHONY CALDON: Best wishes from "CDS"

E — Enjoy your magazines; no prizes for guessing what I'd like in return. Love P. [3102]

MONA & DAVID: to ensure you never miss an edition. Bob. [3117]

PETER: Happy Birthday 2nd April, love from Mona & Norman (Who nose when you'll get this?) [3148]

GOD SAVE Cape Town from hosting the Olympic Games, ever! [3096]

THE GALWAY BAY FLYER keep riding high forever more. [1060]

MARSHALL: Happy birthday for the 19th. Love Anne and the boys. [1089]

BEAR AND RABBIT are just around the corner — watch out for further info. [1125]

HAPPY BIRTHDAY, Ouboet, from Carling Comox. [1157]

DENISE you Beaut, thanks for the present. [1114]

BUSINESS AND LEISURE

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