



## SOAPBOX

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# Did the criminal justice system fail us?

## Something went terribly wrong with the Fidentia case.

CAPE TOWN - Small people – that is people without access to vast wealth or the corridors of power – would be correct if they were to say that the legal system is not for them. That is, if what serves as justice is [what we saw at the Western Cape High Court on Wednesday](#).

Fidentia boss J Arthur Brown, we were led to believe, was in the process of misappropriating millions and millions of rands belonging to retired mineworkers, their widows and children. This was before a complaint about his heinous deeds was laid with the Financial Services Board (FSB), which flew in to the rescue.

An investigation by the FSB revealed that the management of assets and finances was so bad at Fidentia that it needed to place the company under immediate curatorship. In 2007 formal prosecution of Brown and his cronies began.

Brown was originally arrested on more than 190 charges, including running a pyramid scheme, theft, money laundering and corruption. Figures of around R1.3bn of misappropriated assets were bandied about. He was eventually indicted on nine of these and finally, in April, convicted of two – for fraud. None, it must be noted, of theft.

“I cannot over-emphasise that the two counts of fraud are an extremely diluted version of the charges that were initially laid against the accused,” Judge Anton Veldhuizen said at Brown’s sentencing this week.

That’s putting it politely. Investors and the public will be forgiven if they scratch their heads in amazement. Something went terribly wrong in this case.

The FSB’s investigation into Fidentia found that R406m could not be accounted for. Without trivialising the amount of R406m, it is long way off the R1.3m that was apparently misappropriated.

According to the curators, piecing together the whereabouts of the assets was a massively complex task: Brown would not co-operate; where financial records existed, they existed on random excel spreadsheets; and when assets were listed, they were hopelessly inflated.

They say they have sold off what they can; they have made a distribution to beneficiaries; and they are pursuing the balance.

Brown argues, and the beneficiaries believe him, that he did try to co-operate with the curators and that the money or the assets were all present and accounted for at the time of the curatorship. If any monies are unaccounted for, [it is up to the curators to explain](#).

Between these two versions of the truth are over a million of pages of documentation, including apparently, documents that have been fabricated by both sides.

What we do know is that Brown was wholly unsuited to the task of running a multi-million rand asset management company. He had no qualifications to speak of, and felt nothing about lying in this regard. He disregarded the clearly-articulated and cautious investment mandates of his clients and invested willy nilly in questionable and highly illiquid assets. His staff was overpaid; investment fees (and returns) were above the norm; client assets were disposed of to cover current expenses – all with seeming gay abandon.

To prevent this whole house of cards from tumbling down, he oversaw the creation of monthly statements to clients that were almost wholly fictitious.

Brown's defence made a great deal of his good family background and its Christian ethos. Yet Brown surrounds himself with people of dubious integrity. Key people in the Fidentia hierarchy – Graham Maddock and Steven Goodwin have been found guilty on multiple charges of fraud, theft and money laundering. They were sentenced to an average of eight years each.

With this as a backdrop, is one expected to swallow a story about remorse?

Perhaps he thinks we were born yesterday.

The FSB in particular - but also the curators and prosecution - does not emerge smelling like roses either. The FSB is entrusted with oversight of the entire SA non-banking financial services industry – to protect the public interest.

It would not appear that the public interest, if we can consider the innocent investors 'the public,' has been well served by the FSB, or by the justice system.

One would hope, as an absolute basic, that the integrity and the actions of those entrusted with carrying out its mandate are above reproach.

Some legitimate questions have been asked, and it would appear, few answers given.

If Brown was arrested on over 190 charges, why was he indicted on nine charges and convicted on two? Did the prosecution mess up as Judge Veldhuizen implies?

Why are accusations of impropriety by the curators not immediately and thoroughly addressed? Both Dines Gihwala and (former curator) George Papadakis have had serious accusations levelled at them. These have been dismissed by the FSB as spurious, yet they stick.

[Do you think justice was served in the sentencing of J Arthur Brown?](http://polldaddy.com/poll/7106717/)

The state presented what appeared to be compelling evidence of an R11m theft by Brown. Yet this wasn't in Brown's indictment. Why? It only emerged during arguments in aggravation of sentence – where the details were irrelevant because they did not relate to the crime Brown was convicted of.

And why did the FSB's head of investigations in 2007, and [current CFO Dawood Seedat only testify in aggravation of sentence](#) and not during the trial – when his testimony may have carried more weight?

And how much exactly is missing? Is it R1.3bn or R406m - the number that emerged in court this week?

Facts, it would seem, are in short supply.

Brown is now a convicted felon and his life is not one anyone would envy.

But the bigger losers in this whole sorry mess must be the integrity of the criminal justice system – and those poor beneficiaries.

Topics: Fidentia, Arthur Brown, justice system, FSB, Fidentia curators, Dawood Seedat