

IN THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP52/2024

In the matter between:

CHRISTO WIESNER

APPLICANT

And

FIRST NATIONAL BANK

a division of FIRSTRAND BANK LIMITED

RESPONDENT

Summary: Reconsideration of Debarment

DECISION

A. INTRODUCTION

1. The Applicant brings this application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").
2. The Applicant was employed by the Respondent's Private Clients Division in 2010 as a Divisional Manager and representative as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act").
3. The Respondent is an authorised Financial Services Provider as contemplated in the FAIS Act.

4. The parties have agreed that this matter can be decided on the papers filed, and this is that decision.

B. THE FACTS

5. On 2 January 2024, the Applicant tendered his resignation. He advised the Respondent that he intended to join a competitor.
6. The Applicant had signed the Respondent's Confidentiality and Non-Solicitation Agreement and further internal policy documentation on 3 August 2023.
7. It is common cause that after his resignation and while serving his notice period, the Applicant sent two emails from his work email account to his private Gmail account.
8. The Respondent maintains that the first email contained confidential information concerning its customers, and the second contained a confidential list of its high net-worth customers.
9. The two emails triggered an internal alert via the Respondent's Information Technology Risk Assessment Team. The first email contained client-specific information in relation to two clients, and the second email contained proposals for two clients. Both emails contained information related to the personal and financial circumstances of the clients, as well as their source of funds and wealth.
10. As a result of the alert, the Applicant was suspended pending an investigation and potential disciplinary action. Pursuant to the Respondent's investigations, the Applicant was warned to appear at an internal disciplinary enquiry on 29

January 2024, which was prior to the expiry of his notice period. In the notice of the disciplinary enquiry, he was advised that he would be required to answer two charges, namely:

Charge 1

Being in breach of the Bank's confidentiality agreements and or divulging such confidential information in terms of paragraph 4.2.10 of the Bank's Disciplinary Code and Procedure in that it was alleged that, on or about 03 January 2024 you forwarded confidential customer information for [REDACTED] to your personal Gmail account without the knowledge and consent of the customers and without a valid business reason.

Your actions are in breach of the Confidentiality and Non-Solicitation Agreement signed on the 03 August 2023.

And/or

Charge 2

Being in breach of the Bank's confidentiality agreements and or divulging such confidential information in terms of paragraph 4.2.10 of the Bank's Disciplinary Code and Procedure in that it was alleged that, on or about 03 January 2024 you forwarded a list of offshore clients' confidential information to your personal Gmail account without the knowledge and consent of the customers and without a valid business reason.

Your actions are in breach of the Confidentiality and Non-Solicitation Agreement signed on the 03 August 2023.

11. The Applicant was found guilty of both charges, and the chairperson recommended his dismissal, debarments, and registration on the REDS system.
12. The Applicant was served with a Notice of Intention to Debar on 2 May 2024, citing the same charges and indicating the grounds and reasons for the intended debarment as follows:

First National Bank (FSP 624) is satisfied on the basis of available facts and information that you:

- (i) Do not meet and/or no longer comply with the requirements of Section 13(2)(a) of the FAIS Act, specifically, the Fit and Proper requirement of Honesty, Integrity and Good standing; as provided for in Board Notice 194 of 2017 (attached hereto) and/or
- (ii) Has contravened or failed to comply with a provision of the FAIS Act in a material manner as provided for in terms of section 2 of the FAIS General Code of Conduct which states the following:
General duty of provider:
A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry

13. The Applicant was invited to make representations, and he did so. In the

submissions before the debarment proceedings, the Applicant maintained that he had "*committed a genuine error for which he immediately and contritely apologised*". The Applicant maintained that the error should have been seen *inter alia* in the light of his otherwise impeccable service record and the several character testimonials he filed. In short, the Applicant denied any intention to breach the confidentiality undertakings previously provided to the Respondent.

14. On 18 July 2024, the Applicant was served with a Notice of Debarment. The Respondent indicated that the reasons for the debarment were as follows:

1. On 9 January 2024, it was established that on 3 January 2024 you sent an email from your FNB email address to your personal email address, which contained client's personal information;
2. On 3 January 2024 you sent yourself an email from your FNB email address to your personal email address with examples of client's proposal(s) that were intended for other clients;
3. You intentionally breached FNB's confidentiality agreement as the emails contained client information, to which you were not entitled nor had a valid business reason to.
4. There are no circumstances that would justify you sending yourself the emails. The fact that you sent two separate emails suggest that it was not an oversight but intentional. The nature of the information contained in the emails would have been useful in assisting you in engaging the clients in your new role.
5. You indicated that it was your intention to forward to your personal email address certain personal information (personal insurance policy, CPD certificates, certificate of service and the like) in light of your imminent departure from FNB. In so doing, you accidentally forwarded emails also containing certain confidential information to your personal email address. It was

established that the email was not forwarded as you say but was a new email in respect of the client information that you sent yourself. The new email contained the attachments which was not part a previous email but a created one.

6. Your submission that this was a genuine error was considered. This version is rejected as this statement is found to be inconsistent with the evidence discovered during the investigation of this matter by FNB.
 7. Your conduct constitutes a breach of the Bank's confidentiality agreement and indicates an intention to misuse confidential information for personal gain, thus violating the ethical standards required by the FAIS Act.
15. The Applicant filed an application with this Tribunal seeking a reconsideration of the decision to debar him on 30 August 2024.
16. Prior to this Application for Reconsideration being heard, the Applicant brought an application for the suspension of the debarment, which was heard and dismissed by Judge Harms. In particular, the Ruling by Judge Harms indicated that the Applicant's attack on the procedural fairness of the debarment was without merit and that only the substantive issues remained to be considered.

C. LEGAL FRAMEWORK

17. Section 14(1)(a) of the FAIS Act provides the following:

"14. Debarment of representatives – (1)(a) *An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be –*

- (i) *a representative of the financial services provider; or*
- (ii) *a key individual of such representative,*

if the financial services provider is satisfied on the basis of available facts and information that the person –

- (iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or
- (iv) *has contravened or failed to comply with any provision of this Act in a material manner."* (Emphasis added)

18. Section 13(2)(a) of the FAIS Act provides that an authorised financial services provider must at all times be satisfied that the provider's representatives, and the key individuals of such representative, are, when rendering a financial service on behalf of the provider, competent to act, and comply with (i) the fit and proper requirements; and (ii) any other requirements contemplated in subsection 1(b)(ii).

19. Section 13(1)(b)(iA) of the FAIS Act provides that a person may not act as a representative of an authorised financial services provider, unless such person meets the fit and proper requirements.

20. In terms of section 6A(2)(a) of the FAIS Act, fit and proper requirements include, *inter alia*, appropriate standards relating to personal character qualities of honesty and integrity.

21. Section 14(3)(a) provides that a financial services provider must, before debarring a person:

21.1 give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;

- 21.2 provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and
- 21.3 give the person a reasonable opportunity to make a submission in response.
- 22. Section 14(3)(c) provides that the financial services provider must immediately notify the person in writing of:
 - 22.1 its decision;
 - 22.2 the person's rights in terms of Chapter 15 of the FSR Act; and
 - 22.3 any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

D. DISCUSSION

- 23. For the reasons indicated above, the Tribunal shall not revisit the procedural complaints by the Applicant, as these have already been rejected in the Suspension Application.
- 24. On the common cause facts set out in 7 above, the Applicant breached the requirements mentioned above. The purposes for which he sent the confidential information to his private email address are irrelevant. This conduct is inexcusable for the reasons the Applicant suggests or any other reason.
- 25. The argument that it was sent in error is similarly unhelpful to the Applicant's

case. Even on the most charitable interpretation of the facts, the Tribunal agrees with the Respondent that the so-called "error" impugns the Applicant's fitness to act as a FAIS representative.

26. It is clear that the Applicant's conduct contravened the FAIS Legislation and the undertakings that he provided to the Respondent. This conduct indicates a lack of integrity.
27. Once the Respondent had established these facts, it was required to debar the Applicant.
28. The Respondent complied with all of the required formalities in respect of the debarment proceedings.

E. CONCLUSION

29. In the circumstances, the Tribunal can find no grounds to interfere with the Respondent's decision to debar the Applicant.

ORDER: The application for reconsideration is dismissed.

Signed on 18 February 2025



**PJV Veldhuizen and on behalf of Judge MF Legodi
(members)**