

THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP39/2024

In the matter between:

ABDUL AZIZ DANIELS

Applicant

and

PRADUE FINANCIAL SERVICES (PTY) LTD

Respondent

Tribunal Panel: MF Legodi J (Deputy Chairperson), Adv SM Maritz and Adv KD
Magano

Date of hearing: 23 October 2024

Date of Decision: 15 November 2024

Appearances:

On behalf of the Applicant: Mr Trevor Brut

On behalf of the Respondent: Mr Gary Engel

Summary: *Financial Sector Regulation Act 9 of 2017 - Application for reconsideration of debarment by FSP- Powers of Tribunal under sec 231 - Failure to comply with section 14(3) of the Financial Advisory and Intermediary Services Act 37 of 2002*

DECISION

INTRODUCTION

1. The applicant, Mr Abdul Aziz Daniels, seeks the reconsideration of a decision taken by Pradue Financial Services (Pty) Ltd to debar him in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”).
2. The respondent, Pradue Financial Services (Pty) Ltd (“the respondent”), a registered Financial Service Provider (“FSP”) as contemplated in the FAIS Act, debarred the applicant on 17 May 2024 as a representative pursuant to section 14(1) of the FAIS Act.

FACTUAL BACKGROUND

3. On 6 August 2023, complaints were raised against the applicant. The Financial Sector Conduct Authority (“FSCA”) informed the respondent of concerns raised against him by four clients working at Helderstroom Prison. These clients alleged that the applicant misrepresented himself and made misrepresentations regarding insurance policies he sold to them. It was alleged that the applicant applied for policies on their behalf without their consent.
4. On 20 October 2023, a disciplinary hearing was held. During the disciplinary hearing, the applicant admitted he misrepresented himself to clients and opened policies on their behalf without their consent. Following the hearing, the respondent issued a final written warning to the applicant.

5. On 25 January 2024, the respondent received a new complaint against the applicant from Old Mutual Forensics, again accusing him of opening policies on behalf of clients without their consent.
6. On 31 January 2024, the applicant resigned.
7. Despite his resignation, further complaints against the applicant surfaced. On 4 April 2024, the FSCA informed the respondent of these new complaints, originating from Old Mutual. The FSCA enquired from the respondent why the applicant is still allowed to continue as a representative, prompting the respondent to exercise its duty to initiate debarment proceedings against the applicant.
8. On 17 May 2024, the respondent notified the applicant of the termination of his employment following a complaint from Old Mutual on 25 January 2024. The complaint alleged that the applicant had engaged in fraudulent business activities by writing policies without the policyholders' knowledge or consent.
9. The respondent also informed the applicant that it had reported the matter to the FSCA and applied for his debarment in accordance with Section 14 of the FAIS Act. Additionally, it notified its compliance officer, Beejal Vallabh of ISS Compliance Services, of the situation.
10. The applicant, being aggrieved with the debarment decision approached the Tribunal seeking reconsideration on several procedural grounds. He claims he was not notified of the intention to debar him, nor was he informed of the specific allegations against him. Furthermore, he argues that the respondent failed to provide reasons for the debarment and did not allow him to make

representations before taking the decision. He specifically argues that the lack of opportunity to make representations before the debarment decision was taken is a violation of the procedural requirements of the FAIS Act and therefore renders the debarment invalid. He does not challenge the substantive reasons for his debarment. His application for reconsideration of the debarment decision focuses solely on the alleged procedural irregularities.

LEGAL FRAMEWORK

11. Section 14 of the FAIS Act outlines the process for debarring representatives from rendering financial services. Specifically, Section 14(1)(a) states that an authorised FSP *must* debar an individual if they are satisfied, based on available facts and information, that the individual no longer meets the 'fit and proper' requirements outlined in Section 13(2)(a), or has materially contravened or failed to comply with any provision of the FAIS Act. This obligation applies to current and former representatives, as well as key individuals of those representatives.
12. To ensure high professional standards and to protect clients, the FAIS Act places strict requirements on authorised FSPs regarding their representatives. Section 13(2)(a) mandates that providers must ensure that all representatives, including key individuals, are competent and meet the "fit and proper" standards when providing financial services. This includes not only possessing the necessary skills and knowledge but also adhering to ethical standards and legal obligations.
13. The FAIS Act outlines a clear and fair process for debarring representatives

when providing financial services. Section 14(3)(a) requires FSPs to follow specific steps to ensure procedural fairness. Firstly, the provider must give the representative written notice of their intention to debar, clearly stating the grounds and reasons for the intended debarment. Secondly, the provider must give the representative a copy of their written debarment policy and procedures, ensuring transparency and understanding. Finally, the representative must be given a reasonable opportunity to respond to the notice, allowing them sufficient time to prepare and present their case.

14. In addition to procedural fairness, there are jurisdictional requirements that must be met for a debarment to be valid. The reason for debarment must have occurred and been discovered while the individual was a representative of the FSP. If the individual is no longer a representative, the debarment proceedings must commence within six months from the date the person ceased to be a representative. These requirements, along with the procedural safeguards outlined in Section 14(3), ensure that the debarment is fair and valid.
15. In terms of Section 14(3)(c) of the FAIS Act, the FSP must, after deciding on whether to debar a representative, promptly inform the representative of its decision in writing. This written notice must also include clear information about the representative's rights to have the decision reconsidered by the Tribunal. This includes an explanation of their rights to request reasons for the debarment and their rights to apply for reconsideration, as outlined in Chapter 15 of the FSR Act. Furthermore, the notice must detail the formal requirements the representative must meet to pursue the reconsideration and

ensure the that representative is fully aware of the steps involved in challenging the decision.

16. It is clear from the facts of this case that the respondent intended to debar the applicant, however, it had failed to follow the procedural requirement set out in section 14(3)(a).

ANALYSIS AND FINDINGS

17. The Tribunal is faced with a procedurally flawed debarment decision. The crux of the matter lies not in the respondent's decision to debar the applicant, but rather in the flawed process followed in reaching that decision. The problem relates to the steps taken, or not taken, by the respondent after the notice of intention to debar was issued. Specifically, the applicant was not afforded the procedural fairness guaranteed by Section 14(3)(a) of the FAIS Act. This necessitates a careful consideration of the appropriate order, specifically considering the six-month time limit for initiating debarment proceedings.
18. We considered that the respondent's decision to debar the applicant may be justified considering the serious allegations of misrepresentation and unauthorised policy issuance, which could potentially erode public trust and cause significant harm to clients, but we also have to consider the failure by the respondent to comply with the procedural requirements under Section 14(3)(a) of the FAIS Act. This necessitates a careful balancing of competing interests: upholding the applicant's procedural rights, protecting the public, and ensuring the integrity of the debarment process.
19. It is also important to acknowledge the serious nature of the allegations

against the applicant. The complaints received include allegations of misrepresentation and unauthorised policy issuance, which raise significant concerns as to whether the applicant is fit and proper to provide financial services.

20. The Tribunal recognises its responsibility to safeguard the public from individuals unfit to provide financial services. While procedural fairness is paramount, it cannot overshadow the need to address substantive concerns about the conduct of FSPs. Individuals entrusted with providing financial advice and services must adhere to the highest ethical and professional standards.
21. The Applicant's alleged conduct raises serious concerns about his suitability to operate in this sector. Those entrusted with providing financial advice and services must adhere to the highest ethical and professional standards. Notwithstanding this, the debarment process must be fair and lawful in accordance with the provisions of the FAIS Act.
22. In determining the appropriate order for a procedurally flawed debarment, this Tribunal has considered its powers under Section 234(1) of the FSC Act as well as the principles established in **Thomas v AGM Mapsure Risk Management**¹, where it was held:

“While the Act provides for remitting the matter or substituting our own decision, simply setting aside the flawed decision without further action might seem appropriate. However, as clarified in Thomas, this approach would unduly restrict the ability to refer matters back for proper consideration, which cannot be the intention of the legislation.”

¹ Case no FSP 5/2018

The referral back allows the FSP to correct the procedural errors and then decide, with all the necessary information and procedural fairness, whether to debar the representative. This approach upholds the procedural rights enshrined in Section 14(3)(a) of the FAIS Act, ensuring that these rights are not negated by procedural missteps. The Tribunal can only substitute its own decision when the jurisdictional formalities have been met, allowing for a proper assessment of the merits of the case. While efficiency is important, it cannot override the need for a fair and lawful process.”

23. Dismissing this application outright or substituting the decision with the Tribunal's own decision would not address the underlying procedural deficiencies and could create a dangerous precedent where procedural errors are overlooked in the face of the seemingly compelling evidence.
24. Therefore, the most appropriate course of action is to remit the matter back to the respondent with clear directions to follow the correct procedures as outlined in Section 14(3)(a). It is important to emphasise that the remittal of the matter is focussed on the rectification of the irregularities in the debarment process and not in respect of the debarment. The main purpose is to afford the parties the opportunity to follow a fair and lawful debarment process.
25. This approach allows the respondent to reconsider its decision to debar the applicant and to follow a fair and lawful debarment process as set out in section 14(3) of the FAIS Act, which includes issuing the applicant with a written notice of intention to debar in which the grounds and reasons for the debarment are stated as well as the respondent's intention to debar the applicant is mentioned. Furthermore, to provide the applicant with a copy of the respondent's debarment policy and procedures, and afford him a reasonable opportunity to respond to the allegations against him. This will ensure that the final determination is based on both substantive evidence and

procedural fairness.

26. While acknowledging the importance of adhering to the statutory six-month timeframe for initiating debarment proceedings, the Tribunal finds that the unique circumstances of this case justify a departure from its strict application. Remitting the matter back to the respondent is not equivalent to starting a new process; it simply provides an opportunity to rectify the procedural defects in the existing process, ensuring it is completed fairly and lawfully. This approach aligns with the principles of natural justice and ensures that the applicant's rights are upheld.
27. The approach is required to protect the public and to adhere to the procedural requirements for debarment, ensuring a just and equitable outcome for all parties involved. It also upholds the integrity of the debarment process and reinforces the importance of compliance with the FAIS Act, thereby promoting public trust and confidence in the financial services industry.
28. Furthermore, remitting the matter does not compel the respondent to reconsider its initial debarment decision. The respondent is merely required to follow the correct procedures outlined in Section 14(3)(a) before making a final determination. As stated above, this includes providing the applicant with a written notice of intention to debar, a copy of the debarment policy and procedures, and a reasonable opportunity to respond to the allegations against him.
29. Therefore, to ensure a just and equitable outcome, the Tribunal hereby remits the matter back to the respondent with clear directions to follow the correct procedures as outlined in the FAIS Act. This approach balances the need for

procedural fairness with the respondent's authority to take a final debarment decision, while also safeguarding the interests of the public and upholding the integrity of the financial services industry.

ORDER

30. The respondent's decision to debar the applicant is set aside and the matter is remitted for reconsideration.

Signed on behalf of the Tribunal



KD MAGANO