

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP30/2020

In the matter between:

ABDOOL SATAR CASSIM

APPLICANT

and

**FIRST NATIONAL BANK a division of
FIRSTSTRAND BANK LIMITED**

RESPONDENT

The applicant, Mr AB Cassim was debarred as financial services representative by the respondent, the Bank, in terms of sec 6A of the Financial Advisory and Intermediary Act 37 of 2002. He seeks reconsideration of the decision in terms of sec 230 of the Financial Sector Regulation Act 2017.

The parties have waived their right to a formal hearing and agreed that the matter may be decided on the papers as filed. The bank submitted heads of argument, but the applicant did not.

The Applicant was employed as a private banker and authorised representative from 2013 to the date of his resignation, 10 October 2019. His responsibility was to provide a high touch banking service to a portfolio of the Bank's high net worth clients.

The reasons for his debarment were stated in these terms by the Bank:

Section 6A of the Financial Advisory and Intermediary Services Act 37 of 2002 (hereinafter referred to as the "FAIS Act") sets out the fit and proper requirements that a representative must comply with in order to be satisfactorily authorized as a representative. One of the appropriate standards of the fit and proper requirements is the personal character qualities of honesty and integrity.

Section 9(1) of Chapter 2 of Board Notice 194 of 2017, issued in terms of the FAIS Act, sets out a list of incidents that indicate when a person is not honest, or lacks integrity or good standing. The incidents listed therein serves as prima facie evidence that a person does not comply with the requirement of honesty and integrity, and includes, inter alia the breach of your fiduciary duty:

- You borrowed funds from Private Wealth clients in your portfolio for your personal use, which is against business practice and the FirstRand Code of Ethics. When your line manager received a complaint from a client regarding monies advanced to you, you were suspended pending investigation. Such behavior is unethical as it is an abuse of your fiduciary position as an employee of the Bank and brings the Bank into disrepute, opening it up to sanctions from its Regulatory oversight bodies as well as from its clients
- Furthermore, when questioned on the loans that you took from the Bank's clients, you deliberately understated the amounts that you had borrowed. Your actions in misrepresenting the quantum of funds you borrowed, amounts to unethical and dishonest behavior.

An assessment of your behavior in terms of FAIS read together with Section 5.1.2 (a), (b) and (c) of the FirstRand Debarment Policy, shows that you failed to comply with the fit and proper requirements by manipulating your trust relationship with clients in your portfolio, which was gained as a result of being a Bank employee, for the sole purpose of personal benefit. Your conduct materially impairs the quality of your work and your ability to provide suitable financial advice the clients of the Bank and further impairs the capability of the Bank to manage risk and to meet its legal and regulatory requirements.

The applicant does not dispute these facts. He, instead, relies on procedural issues. The first is that the FAIS Act does not contain a section 6A. He is simply incorrect and shows a serious lack of knowledge of his duties as FSR. The section is since Act 45 of 2013 in the FAIS Act.

The second is that in the suspension notice given prior to the termination of his employment the Bank referred to a provision in Board Notice 194 of 2017, which deals with a person who has been found guilty of some or other crime involving dishonesty. Since he resigned, the notice became inoperative, and on 18 November 2019 he was served with a new notice informing him of the bank's intention to debar him. In the new notice, having set out the facts

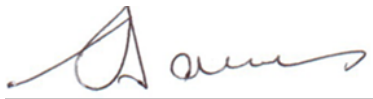
on which it relied, the Bank referred to sec 9(1) of the Board Notice in general terms. His complaint is that he was not notified of the change. That is untrue. He admits having received the 18 November notice.

His last ground is that he had not been found guilty by a court of a crime involving dishonesty. This ground is related to his complaint about the incorrect citation referred to and has, accordingly, no merit.

There is an old rule which in Latin reads *falsa demonstratio non nocet*, which means that a wrong description does not nullify an act.

The application is dismissed.

Signed at Pretoria on 16 September 2020

A handwritten signature in dark ink, appearing to read 'LTC Harms', enclosed within a thin black rectangular border.

LTC Harms (deputy chair)