

**THE FINANCIAL SERVICES TRIBUNAL**

Case No. FSP33/2024

In the matter between:

**CALUCIA REASON LUKHELE**

**APPLICANT**

And

**iMAS INSURANCE BROKERS**

**RESPONDENT**

KEY WORDS: Application for reconsideration of the decision of the Respondent to debar a representative; honesty and integrity; Condonation; and Awarding Costs.

**DECISION**

**DATE OF DECISION: 19 September 2024**

**INTRODUCTION**

1. The Respondent, iMAS Insurance Brokers, debarred the Applicant as a financial services representative in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act") on the grounds that the Applicant no longer meets the fit and proper person requirements set out in the FAIS Act.
2. The Applicant challenges the debarment and applies to this Tribunal for the reconsideration of his debarment in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").
3. The Applicant also applies for the condonation of the late filing of his application for reconsideration.

## THE PARTIES

4. The Respondent is a registered Financial Services Provider (“FSP”) as defined in section 1 of the FAIS Act and acts as an insurance broker.
5. The Applicant was appointed as a financial services representative of the Respondent in terms of an independent contractor agreement, which agreement was terminated by the Respondent on 11 October 2023.<sup>1</sup>
6. The parties have agreed that this matter can be decided on the papers filed of record, and this is, accordingly, the decision of the Tribunal.

## FACTUAL BACKGROUND

### Chronology of Events

7. The Respondent received information on 3 February 2023 regarding One-Time-Pin (“OTP”) fraud activities by some of its representatives (inclusive of the Applicant).
8. The Respondent further received a complaint in a form of an affidavit dated 24 September 2023 from one of its clients “Mr Moagi” alleging that the Applicant issued him (the Client) a life insurance policy without the Client’s consent and knowledge. The Client also indicated that the Applicant put on a person that he does not know as a beneficiary in the alleged policy.
9. The Respondent relied on the alleged OTP fraud activities and the complaint referred to in paragraph 8 above to terminate the Applicant’s contract as well as to debar him.
10. Neither a disciplinary hearing for the termination of the contract nor debarment hearing was conducted against the Applicant.

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<sup>1</sup> The grounds for terminating the agreement are discussed in paragraphs 7 to 13 below.

11. Also, it does not appear from the Tribunal record that an actual investigation against the Applicant was done by the Respondent for the purposes of debarment. Instead, the Respondent relied on the affidavit of the Client (the complaint) and on the outcome of the investigation process of the alleged OTP fraud activities that were used to terminate the Applicant's contract.
12. The Respondent submits that the termination of the agreement followed the findings that the Applicant fraudulently and out of greed<sup>2</sup> manipulated the OTP process to make it appear that the Client has consented to an insurance policy. The manipulation of the OTP system is referred to as the "OTP Fraud" in the papers before this Tribunal.
13. The Respondent summarised the OTP Fraud as follows:
  - 13.1 Certain representatives (inclusive of the Applicant) have discovered a way to have the OTP sent to a different cell-phone number from the cell-number that is listed on the actual policy when the sale is completed.
  - 13.2 Representatives have managed to do this by 'going back' in the sales process once the OTP has already been sent to cell-phone number which they have provided at the start of the sale.
  - 13.3 In total, it has happened 413 times from April 2022 – January 2023. From the 413, there are 208 policies where the representatives used their own cell-phone numbers to send the OTP and then went back in the sale after obtaining the OTP and entered the client's cell-phone number.<sup>3</sup>

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<sup>2</sup> The Respondent's conclusion that the Applicant acted 'out of greed' relates to the commission that the Applicant earns on the policies when sales are completed with clients.

<sup>3</sup> We note in passing that the Tribunal Records do not show what happened to the 208 policies where the representatives used their own cell-phone number to send the OTPs and whether these other representatives

13.4 The most important criteria and consideration here is to establish and make sure that consent was provided by clients to enter into insurance policies.

13.5 The SMS message containing the OTP is a very important message for the client to receive as it confirms the answers to the medical questions and confirms the premium for the policy among other things including a link to the terms and conditions etc.

### **Notice of Intention to Debar**

14. The Respondent on 11 October 2023 sent the Applicant a *letter of termination of contract and recommendation for debarment*. This letter explained to the Applicant the reason for the termination of his employment contract and that the Respondent intended to file for the Applicant's debarment.
15. The Respondent on 15 November 2023 sent the Applicant a notice of his (the Applicant's) potential debarment in terms of section 14(1) of FAIS Act.
16. The Respondent alleged that the Applicant failed to comply "*with the Fit & Proper requirements with specific reference to the personal character qualities of Honesty and Integrity*".
17. The notice also afforded the Applicant an opportunity to make representations as to why he should not be debarred on the basis that he no longer complied with the fit and proper requirements of honesty and integrity.
18. The Notice required the Applicant to submit a response to the Respondent in writing no later than 24 November 2023.

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were also debarred. The Applicant submits that he was the only representative of the Respondent to be debarred in relation to the alleged OTP fraud.

19. The Notice further stated that the Applicant would thereafter be notified of the FSP's decision on whether to proceed with the debarment.
20. The notice of intention to debar also contained a debarment policy advising the Applicant of the debarment process and his right to appeal within thirty (30) days of the decision.
21. The Applicant acknowledged receipt of the debarment notice by sending an email response to the Respondent on 23 November 2023. The Applicant's response was more on why he was the only representative to be debarred while there were others who were also involved on the OTP fraud activities that are not being debarred.
22. The Respondent sent a further letter to the Applicant on 7 December 2023. This letter required the Applicant to provide further written representation no later than 15 December 2023 why he should not be debarred and warned the Applicant that if he does not submit his response before the 15<sup>th</sup> December 2023, the Respondent will proceed to debar him. The Applicant submitted no further representations in this regard.
23. The Respondent proceeded to debar the Applicant on 20 December 2023.
24. The FSCA database records that the reason for the Applicant's debarment is that he *"does not comply with personal character qualities of honesty, and integrity"*.

#### **Application for Reconsideration**

25. The Applicant's application for reconsideration of the decision and that of condonation is dated 13 May 2024.

26. On 17 June 2024, The Chairperson of the Tribunal granted the Applicant's application for suspension of his debarment on the basis that there was no indication in the Tribunal record that the Respondent complied with section 14(3) of the FAIS Act.<sup>4</sup>
27. An interim suspension of the Applicant's debarment is in effect.
28. As stated above, the Applicant also applies for the condonation of the late filing of this application for reconsideration.
29. Before delving into the core issues, the Tribunal will first deal with the application for condonation.

## CONDONATION

30. While the core issues revolve around whether the Applicant's conduct justifies debarment under section 13(2)(a) of the FAIS Act, and whether the Respondent followed the correct procedure in debarring the Applicant, another matter that requires the Tribunal's consideration is whether the Applicant's application for reconsideration adheres to the timeframes established by section 230 of the FSR Act.
31. The question is whether this application for reconsideration is late or not. We turn to answer this question before considering the merits of the condonation application.
32. If the Tribunal finds that the application is late, it must then determine if the Applicant can demonstrate sufficient justification (good cause) for the delay, warranting condonation.

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<sup>4</sup> Section 14(3)(a) of the FAIS Act states, amongst other things, that a financial services provider must – "(a) before debarring a person- (i) 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; (ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and (iii) give the person a reasonable opportunity to make a submission in response;" (own emphasis).

33. Our evaluation of the application for reconsideration hinges on the outcome of the condonation application. If the Tribunal finds that the application for reconsideration was filed within the prescribed time periods or condonation is granted, it will then proceed to assess the merits of the reconsideration application.
34. The Applicant submitted his application for reconsideration on 13 May 2024. The Respondent debarred the Applicant on 20 December 2023.
35. The Applicant submits that he received the Respondent's decision letter dated 15 November 2023 on 6 January 2024.<sup>5</sup> The Tribunal takes note that the decision letter dated 15 November 2023, is the same letter of the notice to debar that the Applicant responded to by an e-mail on 23 November 2024.
36. Based on the Applicant's version that he became aware of his debarment on 6 January 2024, he had until 7 March 2024 to submit his application for reconsideration.<sup>6</sup>
37. On 13 May 2024, the Applicant filed an application for reconsideration of the Respondent's decision to debar him. The application for reconsideration was issued more than four months either after the date of the Applicant's debarment by the FSCA (20 December 2023) or date of awareness (6 January 2024).
38. The Applicant did not request reasons for the decision in terms of section 229 of the FSR Act and therefore his application was required to be brought within 60 days of 20 December 2023 (date of debarment - which would have been 21 February 2024) or of

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<sup>5</sup> Tribunal record, Part A, page 2, paragraph 1.2.

<sup>6</sup> In terms of section 1(h) (Definitions) of the Tribunal's Rules a "day for purposes of the Act and these rules does not refer to court or business days but (in accordance with the Interpretation Act) to ordinary days and shall be reckoned exclusively of the first and inclusively of the last day, unless the last day happens to fall on a Sunday or on any public holiday, in which case the time shall be reckoned exclusively of the first day and exclusively also of every such Sunday or public holiday".

6 January 2024 (date of awareness - which would have been 7 March 2024)), unless he can show good cause for filing the reconsideration later than that date.

39. The application is clearly out of time given the provisions of the FSR Act to the effect that any application should be brought within 30 days or 60 days from the date of the debarment decision or of the Applicant being aware of the decision.<sup>7</sup>

40. Therefore, an application for condonation of this late filing must first be determined by the Tribunal. It is for this reason that the Applicant seeks an order condoning its non-compliance with the legislative provision.

### **Legal Principles in respect of Condonation**

41. It is not the intention of this Tribunal herein to enunciate in detail the legal principles in respect of condonation applications as this has been done in many other Tribunal's decisions and court judgments. It is sufficient for our purpose to state that an application for reconsideration must be made in terms of section 230(2) of the FSR Act.

42. For an Applicant to succeed in an application for condonation in terms of section 230(2) of the FSR Act, a good cause must be shown. That is, reasons for the delay and good chance of success on merits must be explained or shown.

43. The Respondent has not made any submission on the Applicant's application for condonation in respect of the magnitude of the delay period, the reasons for delay, and the prejudice to be suffered by any party. The condonation is not specifically opposed by the Respondent except its opposition of the whole application for reconsideration.

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<sup>7</sup> In terms of section 230(2) of the FSR Act, an application for reconsideration must be made- *“(a) (b) if the applicant requested reasons in terms of section 229, within 30 days after the statement of reasons was given to the person; or in all other cases, within 60 days after the applicant was notified of the decision, or such longer period as may on good cause be allowed.”* [Emphasis added].



44. It is noted that the Tribunal record does not contain any explanation from the Applicant for the late submission of the application for reconsideration from the time he became aware of his debarment on 6 January 2024.

45. Where a wholly inadequate explanation for a delay is provided, as in this case, the Tribunal should still consider the prospects of success. If the prospects of success outweigh the inadequate explanation for the delay, the application for condonation should succeed. To address the issue of prospects of success, the Tribunal should first examine the Applicant's application for reconsideration and documents filed by both parties to ascertain the merits of the reconsideration application and the Applicant's prospects of success.

#### **APPLICANT'S GROUNDS FOR RECONSIDERATION**

46. The Applicant's grounds for reconsideration by and large centre on the process that the Respondent followed in terminating the Applicant's independent contract and his debarment which he deemed both unfair. The termination of the Applicant's employment contract pertains to employment related disputes governed by the Labour Relations Act 66 of 1995, whereas debarments are regulated by, *inter alia*, the FAIS Act. We therefore only deal with the grounds raised by the Applicant in relation to his debarment.

47. The first relates to the debarment procedure of whether the Applicant was given a proper hearing before a decision to debar him was taken and the second question is whether the Respondent as an FSP established a case for debarment (merits of the case).

48. We deal with each of these grounds in turn.

#### **The Issue of the Debarment Procedure**

49. Section 14 of the FAIS Act provides a legislative framework for a debarment process. These provisions have been discussed in detail in many Tribunal decisions and need not be repeated in this matter.

50. Section 14(2) and (3) of the FAIS Act provides guidance. Relevant provisions for purposes of this matter are contained in section 14(3).

51. In respect of debarment processes, section 14(2) (a) of the FAIS Act requires that before effecting a debarment, the provider must ensure that the debarment process is lawful, reasonable and procedurally fair.

52. An FSP is required, before debarring its representative, to give adequate notice in writing to the person stating its intention to debar the person, the grounds and the reasons for the debarment.

53. An FSP is further required in terms of in section 14(3) of the FAIS Act, after debarring its representative *“(c) to immediately notify the person in writing of – (i) the financial services provider’s decision; (ii) the persons’ rights in terms of Chapter 15 of the Financial Sector Regulation Act; (iii) and any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.”* (Own Emphasis).

54. The Applicant’s complaint regarding the debarment procedure is as follows:

- He was never notified of his debarment by the Respondent.
- He was not given a proper hearing as contemplated in section 14 of the FAIS Act.
- He was never notified of the outcome of his debarment, and that
- His debarment was unfair and has ruined his career.

55. The Applicant submits that he sent a letter to the Respondent that the Respondent never responded to. The Tribunal notes that the only letter from the Applicant that is in the Tribunal record is that of 23 November 2023 where the Applicant was replying to the Respondent's letter of 15 November 2023. The Respondent replied to the Applicant's letter of 23 November 2023 on 7 December 2023 requesting the Applicant to provide specific details in responding to the notice of intention to debar him.

56. The Applicant submits that he was unaware of his debarment of 20 December 2023 and only found out about it from a prospective employer when he applied for a new job.

57. The Respondent opposes the application for reconsideration based on the following grounds among others: first, that the procedural aspects raised by the Applicant have no merits; second, it is contended that the Applicant does not comply with requirements of a fit and proper person,<sup>8</sup> and lastly that there are no merits for the Tribunal to set aside the decision for debarment.

58. It is apparent in the Tribunal record that two notices of debarment were sent to the Applicant dated 15 November 2023, and 7 December 2023 respectively.<sup>9</sup> The Respondent's debarment policy was also sent with the letter of 15 November 2023 to the Applicant. The Applicant was then requested to provide the Respondent with further written representations as to why the Respondent should not debar him in terms of section 14 of the FAIS Act.

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<sup>8</sup> See Tribunal Record Part A at page 12 where the Respondent stated its reasons for opposing the application for reconsideration.

<sup>9</sup> This should not be confused with the debarment decision referred in paragraph 56, above.

59. The debarment policy amongst other things, advises the Applicant of the debarment process, his rights, and any requirements in respect of proceedings for a reconsideration of the decision by this Tribunal.
60. The policy stated that the Applicant will be informed of the decision to debar when it is made.
61. The Applicant's submissions were received on 23 November 2023.
62. The Applicant submits that he was not accorded a hearing on the debarment decision. It is noted that section 14 of the FAIS Act does not require that an oral hearing be held.
63. The Applicant conceded that the first time he came to know that he had been debarred was on 6 January 2024. He had from 6 January 2024 until the date of the lodging of this matter, being 13 May 2024, to make his submissions in response to or in rebuttal of the evidence adduced by the Respondent.
64. The facts of this matter indicate that the Applicant was afforded ample opportunity to present his submissions which he did respond once.
65. It is worth noting that the Applicant brought an application to suspend the operation of the Respondent's debarment decision in terms of section 231 of the FSR Act and same was granted by the Chairperson of the Tribunal on 27 June 2024 on the ground that there was no evidence that the Respondent complied with section 14(3) of the FAIS Act.
66. Even though the Applicant submits that he did not receive the debarment decision of 20 December 2023, it is trite law that procedural irregularities may, depending on circumstances, be cured by a procedurally fair appeal.<sup>10</sup>

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<sup>10</sup> *Amanda Dolores v Laetitia Niemec & Others v Constantia Insurance Co Ltd and Others* PA01/2021; *ZD Mqadi v The Financial Sector Authority Regulator* A40/2020.

67. That being the case we are of the view that there were no procedural irregularities leading to the debarment of the Applicant. Even if there were any, then those purported irregularities would have been cured by the procedurally fair reconsideration application. In the premises we reject the Applicant's submissions that there were procedural irregularities and that he was not afforded an adequate opportunity to be heard.

68. Moreover, the complaint is further negated by the fact that in terms of the Tribunal rules the Applicant may, within 10 days of the date of receipt of the Respondent's underlying documents and further reasons, by notice amend or augment the grounds on which the application is based, if necessary. The Respondent provided as part of the Tribunal record an indexed and paginated bundle of Heads of Arguments and the relevant underlying documents on which the decision was based together with its reasons for debarring the Applicant. The Applicant had an opportunity to duly augment his grounds for reconsideration.

69. The Applicant is therefore, for purposes of his reconsideration application, fully aware of the Respondent's reasons for debarring him.

70. Finally, the purpose of informing a representative after the debarment is registered by the FSCA is, *inter alia*, to inform a representative of his/her right to apply to the Tribunal for a reconsideration of the FSP's decision to debar. The Applicant has now applied to this Tribunal for reconsideration of his debarment on 13 May 2024.

### **The Merits of Debarment**

71. The second aspect for discussion and analysis is to the merits of the debarment.

72. About the merits of the debarment itself, the Tribunal has the power to conduct a complete re-hearing, reconsideration and fresh determination of the entire matter that served before the FSCA, with or without new evidence or information.<sup>11</sup>
73. The Applicant has the opportunity to fully address the merits of the complaint against him before this Tribunal.
74. Central to this aspect is the critical inquiry of whether the Applicant's conduct justifies debarment under section 13(2)(a) of the FAIS Act.<sup>12</sup> The Tribunal must determine if the debarment action aligns genuinely with the purpose of the debarment provisions in the FAIS Act or if the decision to debar the Applicant pursues an ulterior motive. The determination of this core issues lies in interpreting the Applicant's actions.
75. The primary issue for determination is whether the Applicant's conduct breaches the fit and proper requirements stipulated in the FAIS Act.
76. More specifically, the Tribunal must determine whether the Applicant's actions, including but not limited to the alleged bypassing of the OTP verification process and the opening of a life policy for a client without the client's consent and knowledge, demonstrate a lack of honesty, integrity, and good standing as required by the FAIS Act.
77. The Tribunal finds that on the undisputed facts, the Applicant had:

77.1 Opened a life policy on behalf of the Respondent's client without the client's consent and knowledge.

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<sup>11</sup> *Amanda Dolores Laetitia Niemec and Others v Constantia Insurance Co. Ltd and Others* (Case Nr: PA1/2021) para 33 citing *Nichol and Another v Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA) para 22.

<sup>12</sup> Section 13(2)(a) stipulates that an authorised financial services provider must: "At all relevant times, be satisfied that the provider's representatives and the key individuals of such representatives are, when rendering a financial service on behalf of the provider, competent to act and comply with:(i) The fit and proper requirements ....".

77.2 Bypassed the OTP process – Failed to follow the Respondent’s processes for verification of a client’s consent to the policy.

77.3 Included incorrect information on the life policy application form of the Client, including adding the details of a beneficiary that is not known by the Client.

## The Law

78. The FAIS Act mandates that the FSPs should debar representatives who do not meet the fit and proper person requirements.<sup>13</sup> While the Act does not explicitly define “fit and proper person”, the accompanying regulations and industry guidelines provide essential context.

79. In terms of section 14(1) of the FAIS Act, an FSP is statutorily obliged to debar a person from rendering financial services if the FSP is satisfied based on available facts and information that the person does not meet the fit and proper requirements referred to section 13(2)(a) of the FAIS Act.<sup>14</sup>

80. Section 6A(2)(a) of the FAIS Act provides that:

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<sup>13</sup> As previously established by the SCA in the matter of the *Financial Services Board v Barthram and Another* (20207/2014) [2015] ZASCA 96; [2015] 3 All SA 665 (SCA); 2018 (1) SA 139 (SCA) (1 June 2015), the rationale for debarring representatives and key individuals who no longer satisfy fit and proper requirements is as follows: [16] ... A representative who does not meet those requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public, and it must therefore follow that any representative debarred in terms of section 14(1) must perforce be debarred on an industrywide basis from rendering financial services to the investing public.”

<sup>14</sup> Section 14(1)(a) of the FAIS Act reads as follows: "An authorised financial services provider must debar a person from rendering financial services which 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.”

*“(2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to –*

*(a) personal character qualities of honesty and integrity.”*

81. Section 7(1) of Board Notice 194 of 2017 (“the Board Notice”) provides that fit and proper requirements relating to honesty, integrity and good standing apply to all FSPs like the Applicant who was a representative of the Respondent, a registered FSP.

82. Section 8(1)(a) of the Board Notice states that a person referred to in section 7(1) must be a person who is honest and has integrity.

83. In keeping with its statutory obligations, the Respondent instituted the debarment proceedings within six months contemplated by section 14(5) of the FAIS Act.

84. The Board Notice outlines specific criteria for assessing an individual’s fitness and propriety, emphasizing honesty, integrity, and good standing as fundamental attributes. These qualities are essential for maintaining public trust in the financial services industry.

#### **Application of the Law – FAIS Act**

85. In the present matter, the Respondent alleges that the Applicant’s actions, specifically the OTP fraud and the opening of life policy for client without the client consent and knowledge, constitute a serious breach of the fit and proper requirements.

86. The real issue is whether the Applicant acted dishonestly by providing misleading and untruthful information relating to when he opened a policy for the Client. Forging documents is undeniable dishonest and reflects a blatant disregard for the principles of integrity and good standing expected of a financial services representative.



87. Such conduct undermines the public's confidence in the financial services industry and creates a significant risk of harm to clients. The Respondent's decision to debar the Applicant was, therefore, based on sound legal and regulatory principles.
88. The protection of the public is a paramount consideration in debarment proceedings. Financial services representatives occupy a position of trust, and their conduct must be beyond reproach. The allegations against the Applicant demonstrate a fundamental failure to meet this standard.
89. Allowing an individual with such a questionable ethical record to continue in the financial services industry would pose a significant risk to consumers. The Applicant's debarment is essential to safeguard the public interest and maintain the integrity of the industry.
90. The Applicant's grounds for reconsideration fail to address the fundamental issue of his dishonest conduct, which constitutes a clear breach of the fit and proper requirements.
91. The Applicant does not dispute that the client's policy was opened by him without following the prescribed process, including the acceptance of the policy by the Client through the prescribed OTP process.
92. The Tribunal finds that disregarding the OTP prescribed process to circumvent proper vetting of new policy applications are serious acts of dishonesty, and the applicant's explanations were unconvincing.
93. The Respondent acted in accordance with its duties under FAIS Act and brought the complaints to the FSCA's attention.
94. Paragraph 8(2) of the Board Notice provides that in determining whether a person complies with the fit and proper requirements relating to honesty, integrity and good standing (which applies to the Applicant), the Respondent may refer to "any

information” in possession of the Respondent or brought to the attention of the Respondent.<sup>15</sup>

95. The Applicant’s grounds for reconsideration do not deal with the merits of the debarment decision of 20 December 2023.<sup>16</sup>

96. From the foregoing it is evident that the Applicant in his grounds for reconsideration failed to address the allegations that are levelled against him.

97. The pertinent issue is that the Client, Mr Moagi, deposed to the following affidavit dated 24 October 2023 alleging that the Applicant opened a life policy without his consent and knowledge:

*“iEMAS Employee opened life policy without my knowledge and fraudulently put in beneficiary which I don’t know as well moneys has been debited from work. I want the policy to be cancelled and repayment of the debited amount”.*

98. The affidavit by the Client supports the allegations of the Applicant’s dishonesty made by the Respondent.

99. The Applicant conceded the following *“I acknowledge my actions regarding the OTP Fraud on that one case for Themba Moagi (Client) as I stated to the e-mail to my manager and take full responsibility for my mistakes. I understand the severity of the incident and assure the Tribunal that I have learned from this experience”.*<sup>17</sup>

100. It is a concession of serious misconduct on the part of the Applicant that he opened a client’s life policy without the client’s knowledge and consent.

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<sup>15</sup> Section 8(1) of BN194 stipulates that: “A person referred to in Section 7(1) must be a person who is (a) honest and has integrity; (b) is of good standing.”

<sup>16</sup> Rule 67 of the FSCA Rules provides that argument in an application for reconsideration is limited to the grounds upon which the application for reconsideration is based.

<sup>17</sup> See Tribunal Record (Applicant’s response to Arguments at page 1) where the Applicant made this concession.

101. The Applicant has not proffered any reasonable explanation regarding the evidence produced in support of his dishonesty and has not demonstrated that he appreciates the seriousness of the allegations against him in the context of his role and duties as a representative.

102. We are satisfied that the evidence adduced proves that the Applicant no longer complies with the requirements of section 8A of the FAIS Act,<sup>18</sup> read with the fit and proper requirements, particularly the character qualities of honesty and integrity.

103. The Applicant contravened Part 2 of the General Code of Conduct for Authorised Financial Services Providers and Representatives of the FAIS Act by failing to render financial services honestly, fairly, with due skill, care and diligence, and in the interest of client and that of the integrity of the financial service industry when he submitted unauthorised policy applications.<sup>19</sup>

104. As to the allegation of lack of honesty, it is not in dispute that the Applicant opened a life policy for the Respondent's client without the client's consent and knowledge. The Applicant submitted that the commission was clawed back by the Respondent. We are of the view that whether the Client suffered any loss is beside the point.

105. This is serious dishonest conduct, which demonstrates a lack of honesty and integrity required of a financial services provider. This shows that the Applicant has a dishonest character and lacks the honesty and integrity required of a financial service provider.

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<sup>18</sup> Section 8A of the FAIS Act provides: "An authorised financial services provider, key individual, representative of the provider and key individual of the representative must – (a) continue to comply with the fit and proper requirements; and (b) comply with the fit and proper requirements relating to continuous professional development."

<sup>19</sup> Section 2 provides: "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." Section 3(1)(d) stipulates: "The service must be rendered in accordance with their contractual and reasonable request or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interest of the client which must be accorded appropriate priority over any interests of the provider."

Such conduct demonstrates that the Applicant cannot be trusted, especially when dealing with members of the public in rendering financial services.

106. The Applicant's approach to the serious charges levelled against him demonstrates that he neither has any appreciation nor remorse for the seriousness of his conduct.

107. Accordingly, the facts support the Respondent's finding that the Applicant lacked honesty and integrity.

### **COSTS ORDER**

108. We note that the Respondent sought a cost order against the Applicant. This Tribunal is aware that it may, in exceptional circumstances, make an order that a party to the proceedings on an application for reconsideration pay some or all of the costs reasonably and properly incurred by the other party.<sup>20</sup>

109. This Tribunal does not find exceptional circumstances existing in this matter to warrant a cost order. It is our view that in situations where parties are not legally trained, conduct their own debarment processes as the Applicant did and as a result falling short of complying with the relevant laws, is not out of the ordinary or exceptional.

### **CONCLUSION**

110. The Tribunal finds that the Applicant has failed to demonstrate that the debarment was unjustified or that the decision-making process was flawed.

111. It is the view of the Tribunal that there is no question about the Applicant's dishonesty, and on the merits the debarment was warranted and justified.

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<sup>20</sup> Section 234(2) of the FSR Act allows the Tribunal "... to make an order that a party to proceedings on an application for reconsideration of a decision pay some or all of the costs reasonable and properly incurred by the other party in connection with the proceedings," but only in exceptional circumstances.

112. The Applicant's conduct is incompatible with the high standards of integrity and trust required of financial services representatives.

113. The Applicant's claim of not receiving a hearing before the debarment, is without merit as a hearing is not a requirement under the FAIS Act.

114. The complaint against the Applicant is of a very serious nature and was not capable of being explained away by the Applicant.

115. The Tribunal finds no grounds to interfere with the Respondent's decision to debar the Applicant.

116. Accordingly, and for the reasons set out above, it would not be in the interests of justice to grant condonation for the late filing of the reconsideration application, which therefore finally determines the outcome of the reconsideration application.

## ORDER

- (a) The application for condonation is not granted.
- (b) The application for reconsideration as contemplated in section 230 of the FSR Act on both procedural issues and on merits is hereby dismissed.
- (c) An interim suspension of the Applicant's debarment is lifted.
- (d) No costs order.

Signed on behalf of the Tribunal on 19 September 2024.



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**Prof/Dr M Sigwadi (Member) and Judge LTC Harms (Chair)**