

**THE FINANCIAL SERVICES TRIBUNAL**

Case No: FSP52/2023

In the matter between:

**CHADWIN ALEXANDER**

**APPLICANT**

and

**DISCOVERY CONNECT DISTRIBUTION**

**SERVICES (PTY) LTD**

**RESPONDENT**

Re: Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 ("FSR Act") to debar a representative in terms of section 14(1)(a) of the Financial Advisory and Intermediary Services Act 37 of 2022 (the "FAIS Act") regarding compliance with the fit and proper requirements, particularly with regard to the character qualities of honesty, integrity, competency and acting in the best interests of clients and the respondent.

**DECISION**

The applicant approaches the Tribunal in terms of section 230 (1) of the FSR Act for reconsideration of the decision taken by the decision maker on 21 July 2023 during a FAIS debarment enquiry of Discovery Holdings Ltd ("Discovery").

The applicant received the decision on 19 August 2023. The applicant was debarred in terms of section 14 (1)(a) of the FAIS Act.

The parties waived their right to a formal hearing, and this is consequently the decision of the Tribunal under section 234(1) of the Act.

**LEGAL FRAMEWORK:**

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

*"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."*

Section 62(2)(a) of the FAIS Act defines "fit and proper" as:

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

- (a) Personal character qualities of honesty and integrity."*

Section 7(1) of Board Notice 194 of 2017 provides that fit and proper requirements relating to honesty, integrity and good standing apply to all Financial Service Providers, like the applicant who was a representative of Discovery, a registered FSP, at the time.

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.

## **BACKGROUND:**

The applicant was employed as a sales representative by Discovery from 1 June 2017 until his termination on 30 August 2023. At the time the applicant had been working in financial services for 10 years.

Discovery discovered in 2022 a trend that representatives had informed Discovery of inconsistencies on several clients' premium and risk profiles. A communication was sent to all representatives, including the applicant that they should identify and report any discrepancies while rendering financial services to clients to the respondent.

The applicant failed to do so.

This resulted in the matter being referred to Discovery Insure Product House for investigation. An actuarial investigation took place to determine the reason for new business quotes having lower premiums because of the moderation discount applied.

It was found that agents could force a moderation discount in two ways. The first was by changing the voluntary excess on specific benefits and the second was by changing the license details for the primary driver of a vehicle. By doing so the agents firstly lowered the premiums by changing the voluntary excess amounts/driving license details on specific benefits in a manner to save the lower premium without changing the details on the quoting database.

They would then manually exit the screen with the quote, re-enter and re-open the quote. The result was that there would be a calculation by the system which would result in a build-up of a moderation discount on the quote pushing the premium lower and lower to accommodate the client. This would ensure that an agent would achieve his target and receive commission on more policies. The process was repeated on multiple occasions within a single quote and across multiple different quotes by these agents. It can thus not be regarded as a once off occurrence and this behaviour shows continuous intent to change premiums. Furthermore, the excess/license details would be changed by these agents without any request from the client to do so.

This resulted in lower premiums and higher sales volumes for agents. This behaviour was not detected in all the agents' operations but was used by only a "*handful of agents*".

The conclusion therefor was that, as it was not a common mistake, it was an intentional action taken by some agents to boost their income.

The conclusion reached after an investigation into the applicant's actions showed that the applicant had manipulated 17 quotations and policies where the year of the client's obtaining their driver's license and type of driver's licence and excess were manipulated to reduce the clients' premiums by the applicant for the period May 2022 to October 2022.

The applicant failed to inform the management of these discrepancies between the previous quotes created by other agents to the ones generated by the applicant.

This was, in some instances, in contravention of the sales script where it is practice where a client requests an excess of more of 20% it should be referred to Underwriting for review - the applicant failed to do so.

Clients had therefore had their policies activated with a premium not based or aligned with the risk information provided by the client during the quote and the sale of the policy.

A notice of intention to debar was served on the applicant on 10 July 2023. The applicant chose to defend the intention to debar and opted to have a verbal, in person FAIS hearing. This took place on 21 July 2023.

The independent chairperson at the hearing was Mr T Moodley. The applicant was found guilty on 2 of the 17 charges.

#### **THE APPLICATION FOR RECONSIDERATION:**

The applicant raises several issues/disputes in his application for reconsideration:

The Chairperson was biased as the Chairperson had been aware of the circumstances of the applicant's case, prior to the hearing. This could have caused him to make assumptions and predetermining the case as his verdict was based on predelictions and preconceived notions.

The applicant did not get the opportunity to provide all his evidence before the Chairperson as the Chairperson had cut the evidence short due to time running out.

Although 69 agents were found to be guilty of manipulating the system, only 12 agents were charged.

According to the applicant, communications was only sent out in October and November 2022 informing agents that investigations were taking place. This, in spite of there being no formal communication during the year pertaining to the system issues and information.

The applicant had notified the team leader, Clint Groenewald, of the system fault and he had noted it. It must be noted that the applicant had not called Clint Groenewald as a witness.

The applicant complained that he had been charged with 17 cases, but was found guilty of only 2 cases as the respondent had only adduced evidence on 2 cases.

The charges on manipulating the excesses were invalid as the excesses he had quoted was in line with the information supplied by the clients.

He often dealt with clients who had two licences issued, that were valid nationally and internationally with different dates, where he applied the date of the older license as to give the client the benefit.

He had also reported inconsistencies in the system to management and would make comprehensive notes on these policies.

The respondent had not proved that the applicant had made amendments to the policies.

He had stopped with the manipulating practice as soon as he had been made aware of the problem.

In the further augmented grounds, dated 30 October 2023, the applicant submitted :

The applicant stated that once a client had been contacted and a quote provided, it will reflect on the system under the agent's name to prevent any other agent contacting the client. The client is contacted at his preferred time and the captured information is confirmed or rectified before the policy is issued. According to the applicant this is standard procedure on the sales floor.

The applicant was not the originator of all quotes. He was the activator of the initial quote captured by a previous agent. The activator would not be able to ascertain whether incorrect information was captured by the previous agent. No manipulations by the original agent can be picked up on the system by the activator.

When working on another agent's quote it is not possible to see incorrect information captured by the previous agent. The manner in which such an issue had to be dealt with and corrected would be by the team leader.

The applicant stated that he did not acknowledge any unfair practice when management informed him of the impact of his actions. No new cases of discrepancies were picked up after November 2022 as the system had been updated.

#### **THE FAIS HEARING: 21 JULY 2023:**

The applicant pleaded not guilty to all charges. The Chairperson, Mr Moodley, explained the applicant's rights, which he acknowledged. The applicant indicated that he had no witnesses to call.

Ms Verster of the Actuarial Team and Mr Sithole, head of Risk and Compliance at Discovery presented the evidence against the applicant.

Ms Verster provided the two examples. She explained that the agents could change the excesses and the issue dates of the driver's licenses. The agents were able to change these two items without it showing on the system as the information was not saved to the system. This resulted in the client getting the lower premium but not the increased excesses or altered licence details. This mismatch resulted in the system creating a moderate discount that lowers the client's premiums without the changed detail being captured on the database.

The first example submitted by Ms Verster showed that the applicant had been both the creator and the activator of the quote and the person who was responsible for changing the excesses. When queried by the applicant, during the hearing, Ms Verster replied that she was dealing with the changes the applicant had made at 8h35 and again at 8h53 on the excess which resulted in a 38% reduction on the premium.

The applicant admitted that in relation to the license issue he had first submitted an input that the client's license was issued in 2015 and then that it was issued in 2001, changing it again to 2015 and back to 2001. The date was changed three times by the applicant in a matter of 2 minutes, which caused the premium to drop.

The applicant further admitted that an agent is not permitted to copy a valid quote to avoid the duplication of quotes. Should an agent work on a valid quote he is obliged to confirm the information with the client and he is responsible for the information when activating a quote. The applicant had a duty and responsibility to ensure that everything that may have an impact on the premium is correct.

At the question by the Chairperson as to why this manipulation had stopped in November/December 2022 the reply by the applicant was elusive. He did not reply when the question was asked whether it was a system error or done without the knowledge of the applicant. This question was asked three times by the Chairperson without the applicant replying at all.

Ms Verster did not have the full record of the other 15 charges at hand and these charges were not dealt with during the hearing.

It is clear from the record that the applicant had concluded his submissions during the hearing. I cannot find that the Chairperson did not grant the applicant enough time to make his submissions. The applicant was afforded the opportunity to make submissions in mitigation, which he did.

It was found by the Chairperson that the applicant's misconduct was of such a serious nature that his honesty and integrity could not be relied on.

This is the case although the applicant was convicted of only 2 counts of misconduct.

This Tribunal has carefully considered the record as well as the complaints of the applicant and can find no reason to deviate from the Chairperson's decision.

It is clear that the applicant admitted that he had manipulated at least the two examples provided by Ms Verster during the hearing.

He had no explanation for doing so. There can be no doubt that he had manipulated the date of the issue of the client's license three times in a period of 2 minutes. He could give no explanation for doing so.

The record of the FAIS hearing has no indication at all that the Chairperson was biased. He did not at any stage deny the applicant the opportunity to place all the relevant facts before him. There is no indication that he at any stage did not grant the applicant the right to make submissions.

The applicant has failed to provide any evidence of bias.

The manipulation of the system to provide clients with lower premiums resulted in more clients taking advantage of the low premium to enable the applicant to earn commission on more policies and to help him to achieve his sales targets. This would be to the detriment of the respondent who would not be able to honour manipulated policies.

The tribunal has carefully perused and considered the applicant's application to reconsider the findings of the FAIS hearing on the grounds and augmented grounds provided.

The result would have been the same if the applicant had been found guilty of only one count. The number of counts of conviction does not determine the outcome.

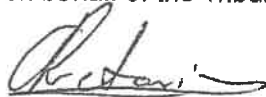
The respondent had proved that the applicant is guilty of two counts. The fact is that the applicant can not be regarded as complying with the provisions of the legislation dealing with a "*fit and proper person*". He has been dishonest and did not show integrity when manipulating the system for personal gain.

For all the reasons set out above the application for reconsideration should be dismissed.

**ORDER:**

The applicant's application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 19 December 2023.



**JUDGE CYNTHIA PRETORIUS.**