

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP23/2021

In the matter between:

CHARMAINE SHAMLA MOODLEY

APPLICANT

and

LIBERTY GROUP LIMITED

RESPONDENT

Application for reconsideration of debarment.

DECISION

1. The applicant applies for the reconsideration of her debarment as financial service representative in terms of sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 by the respondent, her former employer and an FSP.
2. The present application is under sec 230 of the Financial Sector Regulation Act 9 of 2017
The parties waived their right to a full hearing.
3. The applicant was subjected to a disciplinary hearing for having contravened several policies, rules, and regulations of her employer. Debarment proceedings were held simultaneously. The Adjudicator found her guilty of two of the transgressions and she was, as a result, dismissed from the employment of the respondent.

4. The ground for her debarment was that she was, allegedly, grossly dishonest. This finding was related to the finding that she had breached policies, something she had admitted, while denying dishonesty.
5. The decision against her was summed up in these words:

Charge 1 (a) and (b) relating to gross negligence and gross dishonesty Ms Moodley's failed to exercise the necessary care and skill expected of someone in your position in discharging your duties in terms of your employment contract, Supervision Agreement and as a Key Individual to properly execute your duties, in that she was non-compliant in that she failed to attend joint calls with Mr Dwayne Naicker, Financial Advisor; and other activities deemed appropriate by Liberty that enables the Supervisor to scrutinize the advice process, as prescribed by the FSCA and published in FAIS Notice 86 of 2018. Mr. Naicker led undisputed evidence that Ms Moodley did not attend joint calls with him. The evidence presented indicates that Mr. Naicker was under discretionary supervision even though he was an experienced advisor. Ms Moodley testified that she repeatedly chased Mr. Naicker to submit files for sign off. As a branch manager, the adjudicator found that Ms Moodley neglected her duties by not disciplining Mr. Naicker to ensure that he performed his duties.

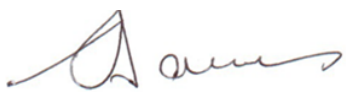
Charge 2 relating to gross dishonesty, Ms Moodley's as a Branch Manager was dishonest in that she informed Ms Priya Naicker, Compliance Specialist that Ms Naledi Lerumo in the Admin Hub was capturing all new business cases for Mr Dwayne Naicker. It is probable that Ms Moodley told Ms Naicker that the cases were loaded by the admin hub as she did not confirm this with either Ms Lerumo or Ms Govender.

6. The evidence on the second charge was that of Ms Naicker only. The applicant, in her evidence, disputed that. The chairperson did not say why the applicant's evidence was rejected. The corroboration relied on by the chairperson, namely that it 'is probable that Ms Moodley told Ms Naicker that the cases were loaded by the admin hub as she did not confirm this with either Ms Lerumo or Ms Govender' does not even prima facie establish dishonesty. It may show that she was wrong in her assertion but that is a far cry from gross dishonesty.

7. This is not an appropriate case for referral back to the respondent. The FAIS Act deals with honesty and integrity, not saintliness and over-fastidiousness.

Order: The application succeeds, and the debarment is set aside.

Signed on behalf of the Tribunal on 19 May 2021.

A handwritten signature in dark ink, appearing to read 'LTC Harms', is written on a white background.

LTC Harms (deputy chair)