

THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP41/2025
Case No: FSP42/2025
Case No: FSP43/2025

In the consolidated matters between:

**PERRY SWART
ESTELLE MULLER
CECILE HAMILTON**

**APPLICANT
APPLICANT
APPLICANT**

and

MARSH (PTY) LTD

RESPONDENT

Summary: Application for reconsideration of a debarment under the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act") – Section 14(1)(b): The reasons for a debarment in terms of Section 14(1)(a) must have occurred and become known to the financial services provider while the person was a representative of the provider.

CONSOLIDATED DECISION

INTRODUCTION

1. This decision is a consolidated decision in the above three matters. The facts of all three matters are virtually identical, and it is expedient to issue one decision.
2. The Respondent's business model enables it to conclude franchise agreements with companies or persons to assist with servicing its clients in certain outlying or remote areas. The Respondent concluded such agreements with the Applicants during May and June 2018, and the Applicants were to service the Respondent's clients in the Klerksdorp municipal area.

3. The Respondent maintains that the applicants breached the aforementioned franchise agreements and that they have not conducted themselves with honesty and integrity. As such, the Respondent contends that it was under an obligation in terms of section 14(1)(a) of the FAIS Act to debar Applicants, which it did. That said, the Applicant concedes that the conduct related to the debarment only came to their attention after the applicants were no longer their representatives but contends that a purposive interpretation should be given to section 14(1)(b) of the FAIS Act.
4. The Applicants bring this reconsideration application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").
5. The parties have waived their right to a formal hearing, and the matter is decided based on the pleadings and certain portions of the record that have been filed.
6. For the reasons set out below, this matter can be decided on a narrow basis without reference to the contested versions on the pleadings and the voluminous papers filed.
7. The applicants successfully applied to this Tribunal for a suspension of the debarments. The ruling in the suspension hearing indicated that:
 - 7.1 Marsh acted illegally under a misapprehension of the provisions of section 14(1)(b) of the FAIS Act. Its terms are clear and not susceptible for any purposive construction.

7.2 An FSP has a duty to debar under section 14, provided the preconditions apply.

7.3 It was common cause that the precondition did not apply.

7.4 If the FSP becomes aware of facts that might justify a debarment when section 14 no longer applies, it becomes a matter for the FSCA, and the FSCA may debar the person under sec 145 of the FSR Act 9 of 2017 after following due process.

8. The Applicant appears to misunderstand the relationship between the Tribunal and the Financial Sector Conduct Authority ("FSCA"). In a letter addressed to the Tribunal and copied to the FSCA, it requests that, to the extent the Tribunal finds a purposive interpretation of section 14(1)(b) is not applicable, the FSCA exercise its jurisdiction to maintain the debarments.

SECTION 14 OF FAIS AND DISCUSSION

9. Section 14(1)(a) and (b) read as follows:

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;

(b) The reasons for a debarment in terms of [paragraph \(a\)](#) must have occurred and become known to the financial services provider while the person was a representative of the provider.

10. It is common cause that the alleged conduct leading to the debarment only became known to the Respondent after the Applicants had ceased

to be representatives of the Respondent.

11. The contention that section 14(1)(b) should be given a purposive interpretation is unsustainable. The Respondent should not have debarred the Applicants under section 14 of FAIS but, if the facts supported it, instead approached the FSCA in terms of section 145(d). Further support for this remedy rather than the interpretation for which the Respondent contends it to be found in the FSCA's Guidance Note 1 of 2019 in paragraph 3.1.4. which reads, "*The first requirement means if the reason for the debarment occurred or only became known after the representative had ceased to be a representative of the FSP, the FSP may not debar the representative and must refer the matter to the Authority.*"

CONCLUSION

12. In the premises, the Respondent lacked the jurisdiction to debar the Applicants.

ORDER: The applications for reconsideration are granted, and the debarments are set aside.

Signed on 18 June 2025



PJ VELDHUIZEN and obo LTC HARMS