

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP 1/2021

In the matter between:

KYLE KRUGER (formerly KYLE THIBEDI)

Applicant

and

LIBERTY GROUP LIMITED

Respondent

Application for the reconsideration of a debarment in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 (the FAIS Act)

DECISION

1. The applicant operated in the name of Vhaphumi Holdings (Pty) Ltd under a financial adviser agreement with the respondent. The respondent, on 26 October 2020, cancelled the agreement and debarred the applicant in terms of section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 on the ground that he lacks the necessary fit and proper requirements of honesty and integrity.
2. The applicant applies for the reconsideration of the debarment.

3. The application for reconsideration is under section 230 all the Financial Sector Regulation Act 9 of 2017.
4. The parties waived their right to a formal hearing and the matter is to be decided on the papers filed.
5. The allegations against the applicant were the following:
 - a) That during 2019 and 2020 you made misrepresentations to Liberty and/or its staff and/or its clients or potential clients, that resulted in a loss or a potential loss to the value of approximately R150 000 (One hundred and fifty thousand rand), being the commission payable for initiating policies for the clients [A] and [B].
 - b) You initiated the above-mentioned policies by using application documents containing forged and/or altered signatures and/or other forged or altered client information including bank details, addresses and email addresses. You loaded your own banking details instead of the clients banking details. This would ensure that clients would not become aware of these policies initiation. You further also loaded incorrect email and cell phone information which would prevent notification of these policies to reach clients.
 - c) In addition to the above fraudulent and dishonest behaviour, you also loaded your manager Mr Walls information and manipulated his contact details in a fraudulent manner. Your manager Mr Walls had to sign off on your business as you were under supervision and by your actions, you fraudulently circumvented the sign off process in order to get the policies issued and commission paid. You committed multiple fraudulent actions in

order to have these unauthorised fraudulent policies issued in order for yourself to earn commission.

d) You further also accessed policy information from Liberty for client, [A], without his permission. By accessing client' information via Astute without permission this constitutes fraud as the process requires a declaration by yourself that you are duly authorised to access information applied for.

6. The applicant admitted the facts underlying the first two issues but denied that what he had done was done fraudulently. All was due to administrative errors, because others entered the information onto the system, that he in error supplied his own bank particulars, that he had problems during the lockdown with the respondent's internetsystems, that he was not appropriately trained by the respondent, and so forth.

7. The adjudicator rejected his explanation because, as he said, it is plausible that there are processing errors or human errors when documents are meant to be submitted electronically. However, where a process requires three separate pin numbers from three separate cell phone numbers, yet all three pin numbers come from the same cell phone number, the plausibility of this being a simple processing error comes into question. It is also plausible that one makes a mistake by entering one's own bank details on another client's policy. However, this error happened twice, with two different clients. It is implausible that this too was a processing error, at different times, one may add.

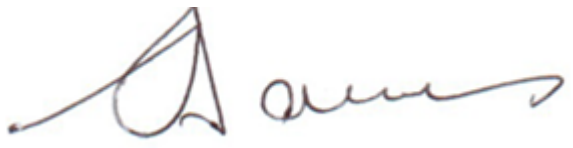
8. The adjudicator rejected the exculpatory evidence and found fraud.

9. In his application for reconsideration the applicant traversed much the same ground but having considered the record as well as the additional evidence filed by the applicant in reply one cannot but conclude that the adjudicator was correct.

10. The main stumbling block for the applicant is that he did not dispute the facts in (c) above. He had a full statement of Mr Walls, which he pointedly ignored in both his answer to the charges and in his reconsideration application. These facts corroborate the conclusion on the first two allegations. The applicant did manipulate the system and acted fraudulently in order to earn commissions during a period when he was financially strained.

11. The application is dismissed.

Signed on behalf of the Tribunal on 13 April 2021.

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

LTC Harms (deputy chair)