

THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP33/2023

In the matter between:

LEBOGANG MOLEMANE

Applicant

and

ASSUPOL LIFE LIMITED

Respondent

Summary: Fairness of Debarment

DECISION

A. INTRODUCTION

1. The Applicant brings this application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act"). The Applicant was the Respondent's sales manager and a key individual as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act").
2. The Respondent is an authorised Financial Services Provider as contemplated in the FAIS Act.
3. The parties have agreed that this matter can be decided on the papers filed, and this is that decision.

B. THE FACTS

4. In November 2022, the Respondent received an anonymous tip-off alleging dishonest conduct by the Applicant. This triggered a forensic investigation.
5. The common cause facts determined by the investigation were that:
 - 5.1 The Applicant wrote at least two policies, namely an Assupol Pension Preservation Fund Policy and an Ultimate Retirement Income 4Life Policy, on behalf of a client;
 - 5.2 After writing the aforementioned policies, the Applicant provided them to a broker for signing and submission to the Respondent;
 - 5.3 The Applicant received an undisclosed sum of money for writing the policies from the broker.
6. The forensic department's findings included that the Applicant:
 - 6.1 had contravened the FAIS Act by failing to perform his duties with care and diligence according to Board Notice 194 of 2017, as well as the general code of conduct for FSPs and the Respondent's code of conduct; and
 - 6.2 had contravened the Respondent's Conflict of Interest Management Policy when he received money from the Brokerage.
7. The forensic department's recommendations were that:
 - 7.1 The Respondent must take the appropriate action against the Applicant in terms of the FAIS Act; and

- 7.2 The Respondent must institute the appropriate disciplinary action.
8. Disciplinary proceedings were indeed instituted, and the Applicant was found guilty of misconduct and dismissed. The dismissal was referred to the CCMA, but those proceedings have no bearing on this matter.
9. On 17 April 2023, the Respondent gave the Applicant notice of a debarment hearing that would be held on 20 April 2023. The charges included:
- 9.1 Dishonesty, lack of integrity and/or good standing;
- 9.2 Misrepresentation;
- 9.3 Collusion;
- 9.4 Dishonourable and unprofessional conduct in rendering financial services;
- 9.5 Breach of fiduciary duty and business conduct.
10. The debarment hearing was held on 20 April 2023, and the Applicant was present.
11. The chairperson of the debarment hearing found the Applicant guilty of the aforementioned charges and recommended that he be debarred. The reasoning behind the chairperson's finding was that:
- 11.1 The Applicant admitted that he was the one who gave the advice to the client and completed the application forms for the policies;
- 11.2 The Applicant admitted to providing the applications to the broker. This was in an attempt to mislead the Respondent into believing the broker prepared the applications and not the Applicant.

11.3 The Applicant admitted to receiving money from the broker for the policies;

11.4 The conduct complained of was a breach of the Applicant's employment contract, the FAIS Act, and the Respondent's conflict of interest policy and amounted to dishonesty and misrepresentation.

11.5 The Applicant does not possess the personal characteristics of honesty and integrity as required by the FAIS Act;

C. LEGAL FRAMEWORK

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

"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." (Emphasis added)*

13. Section 13(2)(a) of the FAIS Act provides that an authorised financial services provider must at all times be satisfied that the provider's representatives, and the key individuals of such representative, are, when rendering a financial service on behalf of the provider, competent to act, and comply with (i) the fit and proper requirements; and (ii) any other requirements contemplated in subsection 1(b)(ii).

14. Section 13(1)(b)(iA) of the FAIS Act provides that a person may not act as a representative of an authorised financial services provider, unless such person meets the fit and proper requirements.
15. In terms of section 6A(2)(a) of the FAIS Act, fit and proper requirements include, *inter alia*, appropriate standards relating to personal character qualities of honesty and integrity.
16. Section 14(3)(a) provides that a financial services provider must, before debarring a person:
 - 16.1 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;
 - 16.2 provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and
 - 16.3 give the person a reasonable opportunity to make a submission in response.
17. Section 14(3)(c) provides that the financial services provider must immediately notify the person in writing of:
 - 17.1 its decision;

- 17.2 the person's rights in terms of Chapter 15 of the FSR Act; and
- 17.3 any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

D. DISCUSSION

18. On the common cause facts, the Applicant breached the requirements mentioned above.
19. It is clear that the Applicant's conduct was aimed at misrepresenting the actual state of affairs to the Respondent. This is dishonest and indicates a lack of integrity.
20. Once the Respondent had established these facts, it was required to debar the Applicant.
21. The Respondent complied with all of the required formalities in respect of the debarment proceedings.
22. In the circumstances, the Tribunal can find no grounds to interfere with the Respondent's decision to debar the Applicant.

ORDER: The application for reconsideration is dismissed.

Signed on 23 October 2023



PJV Veldhuizen
(member)