

THE FINANCIAL SERVICES TRIBUNAL

Case №: **A25/2020**

In the matter between:

MAKGALE GWANGWA (PTY) LTD

Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY

Respondent

Tribunal: H Kooverjie (chair), Mr L Makhubela, Mr G Madlanga

Summary: Failure to pay levies timeously justifies the withdrawal of license of financial services when there is an extensive delay.

DECISION

1. The applicant challenges the Financial Sector Conduct Authority's ("FSCA") decision (the respondent), to withdraw his license to act as a financial services provider, due to the fact that he failed to pay the prescribed levy as required of him in terms of section 15A of the Financial Services Board, Act No. 91 of 1990 (*"the FSB Act"*).
2. The grounds upon which the applicant launched this application are the following namely that:
 - 2.1 due to him having issues with his email, he did not receive the notices sent to him by FSCA (referred to below);

- 2.2 he requested an extension from FSCA to rectify the non-compliance;
 - 2.3 the notice to suspend his authorisation coincided with the lockdown period in March of 2020;
 - 2.4 FSCA did not furnish him with an opportunity to propose a reasonable extension for him to pay his levies.
3. In response:
 - 3.1 FSCA maintained that the notices were sent to the designated email address provided by the applicant.
 - 3.2 It was never the applicant's case that his email address was incorrect.
 - 3.3 The respondent could not give a blanket extension with no time frames, and this was pointed out to the applicant;
 - 3.4 The applicant failed to respond and suggest reasonable time frames when given the opportunity to do so.
 - 3.5 The COVID-19 pandemic could not be a valid excuse since the levies were long overdue.
 - 3.6 Consequently, the applicant's license was withdrawn on 8 July 2020.
4. It was not disputed that the levies were due and payable before the end of 2019. The levies were due to be paid before 31 October 2020. FSP's were well aware of this fact and particularly that their updated contact details were furnished at all times in order for the Regulator to collect the levies timeously. Such levies are prescribed in terms of section 15A of the Financial Services Board Act ("*FSB Act*"). The levy due and payable by the applicant was R9,877.59.
5. Section 120(1)(g) of the FSR Act reads:

“The responsible authority that issued a license may, by notice to the licensee, suspend the license, for the period specified in the notice, if-

(g) fees in respect of the license, a levy or an administrative penalty by the licensee, including any interest, are unpaid and have been unpaid for at least 30 days.”

6. The Regulator by virtue of section 9(1)(c) and (d) read with section 9(2) of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (“the FAIS Act”) is empowered to withdraw licenses of FSP’s if levies are not paid.
7. The below timeline assists in illustrating the facts in this matter more clearly:

31 December 2019	FSCA informs the applicant that levy is due
15 January 2020	FSCA reminds application that the levy is payable
10 February 2020	FSCA sends a reminder of outstanding levy once again
20 February 2020	FSCA issues a notice to suspend license
17 March 2020	FSCA issues a notice to suspend and the intention to withdraw the license
15 June 2020	The first and only response from the applicant where he <i>inter alia</i> requests an extension
17 June 2020	FSCA responds to the email and informs that a blanket extension cannot be granted
	No response received
8 July 2020	FSCA issues notice to withdraw authorisation

8. The applicant submitted that he attended the offices of the FSCA to request the change of the contact email address shortly before the letter dated 15 June 2020

addressed to FSCA. Prior to this he was not aware of any of the notices or reminders sent to his email address. He only became aware of the notice of suspension when he visited the office of the FSCA. In such notice of suspension, the applicant was granted an indulgence of 2 months within which he was required to pay the levies. This meant that the levies had to be paid by June 2020.

9. However from the contents of the applicant's letter, we find that the applicant was aware of the suspension before he visited the office of the FSCA in June 2019. In such correspondence the applicant stated that all his clients and product providers were aware of the suspension and that he had not embarked on any new business.
10. With regard to his email issue, he had difficulty in communicating with the FSCA through the designated portal. Moreso, the lockdown made it difficult to physically attend the offices of the Regulator.
11. At the hearing the applicant further took issue with the fact that FSCA should have imposed a time period within which he was to have paid the levies, particularly after his request.
12. From the timeline above, we note that the levies were due in October 2019 already. This was at least 5 months prior to the lockdown period.
13. We also note that prior to the notice of withdrawal was issued, several correspondences requesting the payment of levies were issued. Moreover, all FSP's including the applicant had an obligation at all times to inform the FSCA

if there was a change in his contact address or difficulty in communication. The time period from the first reminder (December 2019) to him visiting the office of the FSCA (June 2019) is extensive. It was certainly unreasonable to have not been able to communicate with the Regulator for over 7 months.

14. The applicant was well aware that the levies had to be paid before the end of October 2019. The COVID lockdown period only commenced at the end of March 2020.
15. The notice of intention to withdraw the license was served 5 months after the fees were due and payable (16 March 2020). Thereafter the applicant was given a further 3 months to rectify his non-compliance. The applicant has not addressed the Tribunal as to why he did not pay the levies in 2019 or at least when the reminders were sent to him.
16. The Tribunal is of the view that the applicant was afforded a favourable and reasonable indulgence to comply with his obligations. Furthermore, the applicant had failed to respond to the Regulator when being requested to commit to a time frame. The Regulator upon receiving no response, was justified in withdrawing the license on 5 July 2020.
17. Having considered the facts in this matter, we therefore do not find grounds to interfere with the decision of the FSCA.
18. In the premises, we make the following order:
 - (1) the application for reconsideration is dismissed.

SIGNED at **PRETORIA** on this **23rd** day of **FEBRUARY 2021** on behalf of the Panel.



ADV H KOOVERJIE SC

With the Panel consisting also of:

L Makhubela

G Madlanga