

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP25/2020

In the matter between:

NDIVHUHO RAVHUHALI APPLICANT

and

NBC HOLDINGS (PTY) LTD RESPONDENT

CASE NO.: FSP24/2020

In the matter between:

RAMATHETJE CELIA MAJA APPLICANT

and

NBC HOLDINGS (PTY) LTD RESPONDENT

CASE NO.: FSP23/2020

In the matter between:

MICHAEL MUKHUBA APPLICANT

and

NBC HOLDINGS (PTY) LTD RESPONDENT

DECISION

[1] There are three applications for the reconsideration in terms of sec 230 of the Financial Sector Regulation Act, 2017, of the debarment under sec 14 of the Financial Advisory and Intermediary Act of the three applicants as financial service representatives by the respondent NBC Holdings (Pty) Ltd, a financial services provider.

[2] The parties have waived their right to a hearing and agreed that the applications may be decided on the papers filed.

[3] The debarment of the applicants was the direct result of the loss by the respondent of its service provider agreement with CINPF. CINPF decided to replace the respondent and when this became known, the respondent sought to find those within its company who may have had a hand in the decision of CINPF and its execution, alleging a conspiracy. The applicants were three of the minor figures of those fingered.

[4] Bitter litigation in the High Court followed between the respondent and its supporters and others who were said to have been implicated in one way or another. The prima facie findings of the learned Judge in the first round, on which the respondent relied when opposing the applicants' application for a suspension of their debarment, were of such a nature that the applications were dismissed by the undersigned.

[5] However, the High Court in the final round found that the allegations were (in my words) unsustainable, and the Court eventually held that the cancellation was valid. See *Moropa and others v Chemical Industry National Provident Fund and others* Case 10068/2020 Gauteng Local Division, Johannesburg. It would appear that the respondent as a result may have lost interest in the debarment of the applicants because it has not filed any answers to their exculpating affidavits.

[6] The allegations against Mr Mukhuba were formulated as follows: (1) Conflict of Interest: In that on 28/11/2019, you drew up a termination template for appointing a new service provider /consultancy to the CINPF Fund and sent it to Sipho Ginya private email address. This letter/template terminating all services with our company, was later served by the [CINPF] Fund to NBC. The company views your conduct as conflict of interest in that you failed to inform /further the interest of the employer; and (2) Breach of Company ICT policy: In that you admitted having left your computer unlocked for a colleague to access your profile, whilst you

were attending a Board Meeting which is in breach of the company ICT Policy as well as the Disciplinary Code.

[7] These allegation (even if they were not disputed) do not establish on a prima facie basis that Mr Mukhuba lacked the necessary qualities of integrity and honesty as required by the FAIS Act.

[8] In the case of Mr Ravhuhali the allegations were that that he was guilty of dishonesty, breach of ITC policy, breach of the respondent's code of ethics and (again) dishonesty, all relating to the same event, namely that earlier on the day of his resignation he had emailed documents "belonging" to the respondent to his private email address. His explanation for doing this was that he had to work from home and since he realised while so working that he is overexerting himself, he decided to resign. All this happened on 2 January. The respondent did not deal with his excupation.

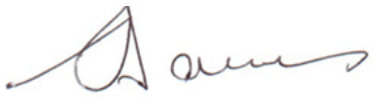
[9] The allegations against Ms Maja were (a) Dishonesty Incident which has or could have negative effect on employment relationship in that she arranged a meeting for special subcommittee meeting for CINPF, without informing the employer regarding the plot to terminate the services of the employer; (b) Non-disclosure of critical/ material information in that she proceeded and arranged meetings for CINPF wherein for Special Subcommittee dated the 27 December 2019, even though the termination letter had been issued to NBC, which was clearly working against the interests of the employer; and (c) Breach of NBC Code of Ethics in that ethically she was expected to act with integrity and report the matter to the executive regarding the termination of services. Although a prima facie case may have been made out, the respondent did not dispute his explanation.

[10] It is apparent form the record of the proceedings that facts that were not put to Ms Cele were taken into account in finding her "guilty" and that the finding was not based on

what she knew but what she should have known or suspected. It follows that the debarment cannot stand.

[11] Consequently, the debarment of the applicants must be set aside. The usual order in this regard is to refer the matter back the FSP for reconsideration but that will not do in this case because the said judgment gives cause to an apprehension of bias by the respondent against its former employees. If the respondent wishes to pursue its debarment, it may do so under sec 153 of the Financial Sector Regulation Act, 2017.

Order: The debarment of the applicants is set aside.

A handwritten signature in blue ink, appearing to read 'LTC Harms', is written over a horizontal line.

Signed at Pretoria on 21 October 2020 on behalf of the Tribunal

LTC Harms (deputy chair)