

**THE FINANCIAL SERVICES TRIBUNAL**

Case No: FSP32/2022

In the matter between:

**MANDY RONEL BURNS**

**APPLICANT**

and

**OUTSURANCE INSURANCE COMPANY LIMITED**

**RESPONDENT**

*Summary: Fairness of debarment proceedings*

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**DECISION**

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**INTRODUCTION**

1. The Applicant brings this application in terms of Section 230(1) of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act"). The parties waived their right to a formal hearing.
2. The Respondent is a registered Financial Services Provider as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act")
3. The Respondent employed the Applicant as an insurance broker performing financial advisory services.
4. On 17 May 2022, the Respondent suspended the Applicant pending a disciplinary process. The suspension notice issued to the Applicant indicated that the Respondent was considering her debarment, and a copy of the Respondent's debarment policy was simultaneously supplied

to the Applicant.

5. Shortly after the Respondent suspended the Applicant, she resigned. Upon her resignation, she signed an agreement (“the Agreement”) confirming *inter alia* that:

- 5.1 She had been charged with the activation of a policy/facility without the client’s permission; and

- 5.2 She had been charged with an act of fraud and/or dishonesty; and

- 5.3 She elected to resign to avoid a disciplinary hearing with the Respondent; and

- 5.4 She acknowledged that she was properly and fully informed of her rights, the process to be followed in the disciplinary proceedings and the possible outcomes of such a hearing; and

- 5.5 She acknowledged that she resigned voluntarily and with immediate effect and after having been informed that she would receive a fair hearing; and

- 5.6 The Respondent had a duty in terms of section 14(1) of the FAIS Act to debar a representative that no longer complies with the fit and proper requirements as set out in the FAIS Act or had breached any material provisions of the aforesaid Act; and

- 5.7 Despite her resignation, the Respondent will continue to seek the Applicant's debarment on the following grounds (“the Allegations”):

5.7.1 Fraud – “In that, you allegedly forged a client’s signature (Mr K) on the Letter of Authority and the Record of Advice”.

5.7.2 Activating a facility/risk without the clients (sic) consent – “In that, you allegedly activated a policy using Ms M’s banking details without consent”.

5.8 She acknowledged that she had been informed of the possibility of debarment by the employer and that she had been informed of her opportunity to make representations in terms of a possible debarment; and

5.9 In the event that she was debarred that the Respondent would notify the Financial Sector Conduct Authority (“FSCA”) of the debarment in terms of section 14 of the FAIS Act.

6. The Respondent debarred the Applicant on 25 May 2022 because she no longer met the requirements of Section 8(1) of the FAIS, in that she materially contravened the FAIS Act and was no longer a fit and proper person.

7. On the 27<sup>th</sup> of May 2022, the Respondent notified the FSCA of the debarment of the Applicant.

## **THE FACTS**

8. A prospective client, Mr K, complained to the Respondent that the Applicant had activated a policy without his consent and that she had taken premium income from his girlfriend, Ms M’s banking account, for

this policy, without Ms M's consent.

9. The Applicant signed both the Letter of Authority and the Record of Advice in the client's name, despite knowing and having been trained that this conduct was unlawful and amounted to fraud.
10. The Applicant maintained that the client authorised her to activate the policy as she had.
11. The Applicant admitted the Allegations and signed the Agreement but maintains that her conduct in relation to the Allegations was actuated out of pressure to perform rather than dishonesty.
12. The Applicant has recently sought employment in the financial services industry, and when her prospective employer established that she had been disbarred, they put her possible employment on hold. According to the Applicant, the prospective employer has indicated that if she can have her debarment uplifted, they will consider her for a position at the company. The aforementioned appears to have been the reason this application has been brought, albeit, out of time. The Applicant has requested condonation for this late filing but has failed to set out satisfactory grounds for the condonation application to be granted, and the reconsideration application should fail on this ground alone.

## **LEGAL FRAMEWORK AND ANALYSIS**

13. In determining whether the debarment was conducted substantively and procedurally fairly, the jurisdictional factors in terms of the FAIS Act must

be present. Section 14(3)(a)(i)-(iii) of the FAIS Act reads as follows:

*"(3) A financial services provider must-*

*before debarring a person*

- (i) 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;*
- (ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and*
- (iii) give the person a reasonable opportunity to make a submission in response;"*

14. The process to be followed for effecting a debarment to ensure that the requirements prescribed by section 14(3) of the FAIS Act are complied with is summarised in Guidance Notice 1 of 2019 (The Guidance Notice).

15. Further, the FAIS Act states in section 14(2) that the Financial Service Provider must ensure that the debarment process is lawful, reasonable, and procedurally fair before effecting the debarment.

16. On the papers, nothing was established to gainsay the Respondent's version that the debarment procedure was procedurally fair and substantively fair. In fact, to the contrary, the Applicant:

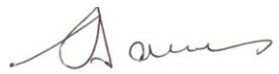
16.1 was fully informed of the process; and

16.2 offered an opportunity to provide representations and failed to do so; and

- 16.3 admitted the allegations and signed the Agreement.
17. Notwithstanding the failure to make out a proper case for condonation the Tribunal also considered the merits of this application.
18. In the light of the common cause facts and the Agreement signed by the parties, this application must fail.
19. 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 31 October 2022



for \_\_\_\_\_

**LTC Harms (deputy chair) and  
PJV Veldhuizen (member)**