

THE FINANCIAL SERVICES TRIBUNAL

Case No.: FSP20/2020

In the matter between:

NATHANUAL WAHNAY PHILLIPS

Applicant

and

THE ENGINE ROOM

Respondent

In re Application for reconsideration of a debarment under the FAIS Act - debarment set aside

DECISION

The Applicant seeks to have the Respondent's decision to debar him under sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 (the "FAIS Act") as a representative reconsidered in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").

The parties have waived their right to a hearing and this is the decision of the Tribunal. The respondent filed useful heads and that will be used as basis of this decision.

The real issue in the matter is whether the applicant "does not meet, or no longer complies with, the requirements referred to in section 13(2)(a) of the FAIS Act", which states that "an authorised financial services provider must - (a) at all times be satisfied that the provider's representatives, and the key individuals of such representatives, 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). The question in this case concerns the fit and proper requirement of “personal character qualities of honesty and integrity” (sec 6A(2)(a)).

It is not the case that the respondent followed an incorrect procedure and it is accordingly unnecessary to deal with procedural issues. This does not mean, as the respondent submits, that the issue before this Tribunal is whether the Respondent’s reasons for debarment were “fair”. This Tribunal reconsiders whether the applicant, in the light of the established facts, no longer possesses the personal character qualities of honesty and integrity.

The undisputed facts fall within a narrow compass. The Applicant was employed as a call centre agent from 2 May 2019 to 10 December 2019 by the Respondent. He acted as a representative in terms of the FAIS Act for the Respondent.

On 18 November 2019, while on a call with a client, the applicant providing an incorrect name instead of his own to the client. This was in response to a query from the client as to the applicant’s name, when the applicant had contacted the client and was attempting to sell an insurance product to the client, and the client became irritated and appeared to lay a complaint against the applicant.

After a complaint was lodged by the client, the respondent’s management looked into the matter and the applicant’s dishonesty on the call was picked up.

The applicant was suspended but resigned prior to the disciplinary hearing. He attended a REDS hearing and debarment followed on the ground that his action of lying to a customer was a serious offence and that could tarnish the name of the respondent in a serious manner.

The respondent’s argument does not deal with the finding that the applicant had also been found guilty by the respondent of a contravention of sec 9(1)(e) of the FAIS Act. This finding is not understood. The further submissions that the applicant’s actions amounted to a breach of paragraph 4.2.1 of the Respondent’s Disciplinary Code and Procedure in that the Applicant acted in a dishonest

manner, and a breach of principle 5.1 of the respondent's Code of Ethics as the applicant had acted without integrity by being dishonest are not what the record reveals. In any event, this is all duplication, as it the finding that the applicant contravened or failed to comply with any provision of the FAIS Act in a material manner by giving a false name to an irate client.

The decision whether a person lacks the personal character qualities of honesty and integrity can, but not always does, depend on a single act, committed during what can be described as an anxiety attack and, in a sense, in self-defence. It is a matter of degree. One has to consider the nature of the lie and its possible consequences. We do not know whether the client's irritation was justified and caused by the applicant. All this requires a balanced value judgment.

Having reconsidered the matter, we are left with an uneasy feel that the respondent overreacted in the circumstances of the case and that debarment was not justified.

The debarment is set aside.

Signed at Pretoria on 27 July 2020

A handwritten signature in black ink, appearing to read 'LTC Harms', with a stylized, cursive script.

LTC Harms (Deputy chair)

