

THE FINANCIAL SERVICES TRIBUNAL

Case No: **FSP31/2021**

In the matter between:

NEKITA NAIDOO

Applicant

and

ACCREDINET FINANCIAL SOLUTIONS (PTY) LTD

Respondent

DECISION

A INTRODUCTION

1. The applicant, Ms Naidoo has instituted this application in respect of the respondent's decision to debar her. Accredinet was her employer and Discovery was the insurer in respect of Ms Naidoo's clients.

B THE DEBARMENT

2. The Respondent ("Accredinet") debarred Ms Naidoo on the basis of her non-compliance with the provisions of the *FAIS Act* and provisions of the *General Code of Conduct for Authorised Financial Services Providers and Representatives* (Code of Conduct). Furthermore it was alleged that Ms Naidoo compromised her fit and proper requirements in that she was dishonest in her conduct pertaining to various clients.

3. The reasons cited by Accredinet in support of their decision to debar was that:
 - 3.1. Ms Naidoo issued business for clients without their consent;
 - 3.2. She failed to treat customers fairly by failing to first consider their financial circumstances and whether products would be affordable to them;
 - 3.3. She caused significant clawbacks in premiums (outstanding amounts) of over R1 million;
 - 3.4. She wrote policies for clients for the sole purpose of gaining extra commission;
 - 3.5. She forged and/or copied/pasted clients' signatures on policy documents.
4. Ms Naidoo's application to have her debarment suspended, pending her application for reconsideration was dismissed on 25 May 2021.
5. The parties waived their right to a formal hearing.

C DEBARMENT PROCESS

6. Ms Naidoo was informed on 5 March 2021 that her employment contract would be terminated within 30 days. She was also notified of Accredinet's intention to debar her and was referred to previous emails containing the results of the investigations into her conduct as reasons for her debarment. Ms Naidoo was furthermore given the opportunity to state her case before 31 March 2021.
7. It is noted from the correspondence that on 31 March 2021 Ms Naidoo was advised that the debarment process will ensue and she should advise if a date should be set for the disciplinary hearing.

8. Accredinet's policy on debarment is aligned with the provisions of Section 14(3) of the FAIS Act, read with the Guidance Note 2019. It is not required that a debarment hearing be conducted. The fundamental requirement is that the debarment process must be fair – namely that she be given an opportunity to respond and have consideration to the allegations levelled against her together with the relevant information.
9. The debarment policy does however allow the FSP to proceed with the decision to debar in the event that the representative fails to respond. Ms Naidoo in this application contends that she did not receive grounds or proof of a debarment. She further stated that she had provided substantial proof and has not received any such correspondence from the respondent pertaining to her debarment. It is on this basis that she applies for the reconsideration of her decision.
10. She was given a fair opportunity to respond. Instead, she, throughout her correspondence with the respondent, persisted with the issue that she has a right to be furnished with the reasons and evidence pertaining to her debarment. Such reasons and evidence were furnished to her.
11. She has been once again given a further opportunity to deal with the allegations of misconduct levelled against her before this Tribunal.
12. It is noted that she has failed to deal properly with the substantive issues. She persisted with peripheral issues namely grammar issues - "*no inverted commas*", the fact that she has not been referred to as "*Ms*", the document having spelling errors, the document having "*inserts*" from the FAIS Act and the fact that proof was furnished to her when the issue of debarment was raised.

13. From the record it is noted that she had furnished some explanation including an affidavit where she deals with her clients including to Mr X and Ms Z. In such responses she states that Mr X was aware of all the policies with Discovery.
14. It is further noted that Ms Van Niekerk, the key individual of the respondent, advised that the reasons and the findings were in fact communicated to Ms Naidoo between January to March 2021 and that same will be filed in these proceedings.
15. Investigations were initiated on 15 January 2021, and Accredinet continuously furnished Ms Naidoo with evidence against her, requesting her to respond and to respond. She had until 31 March 2021 to do so.
16. While Ms Naidoo continuously stated that she possessed evidence and proof to refute the accusations against her, she failed to respond. As alluded to above instead of responding to the allegations against her, she raised various enquiries to the respondent.
17. On 5 March 2021, however, Ms Naidoo received written notice of termination of her employment contract within 30 days from receipt, as well as Accredinet's debarment policy and a letter of demand for fees owed to Accredinet. In this notice, Ms Naidoo was informed that Accredinet would proceed with her debarment process.
18. Having considered the record, we find that the process was fair.

D **GROUNDINGS FOR RECONSIDERATION APPLICATION**

19. The grounds on which her debarment should be reconsidered include the following¹:

15.1 Accredinet's IT Department failed to trace the origin of the proof of payments she had sent through;

15.2 In a transcription of the call between Ms Naidoo's supervisor and one of the clients, the client confirmed that he would attest to an Affidavit, but he had not done that to date;

15.3 Accredinet failed to provide concrete responses to her questions regarding their investigations into her conduct;

15.4 Accredinet failed to contact Discovery to find proof (as per correspondence between client and Ms Naidoo) that client was aware of all the policies in her name;

15.5 Accredinet falsely accuses Ms Naidoo on Accredinet's letterhead, while stating that the results from the investigations were obtained by Discovery; and

15.6 Accredinet chose to ignore Ms Naidoo's responses to the allegations against her, or failed to request her to respond.

E **THE EVIDENCE**

20. It is noted that most of Ms Naidoo's clients held policies with Discovery. The alleged acts of misconduct were in respect of the following clients, Mr X, Mr Y and Ms Z. For one such client, Mr X, Discovery had noticed that premiums were not being paid on various life policies. Accredinet requested that Ms Naidoo obtain proof of payment for

¹ Pages 9 and 10 of the Record, Part A

the policies from the client. Ms Naidoo sent through the proof of payments, but both Discovery and Standard Bank confirmed in writing that same were fraudulent. He furthermore confirmed in writing that he had not made the payments reflected in the proof of payment. He stated that he had never consented to the policies, seeing that he did not have "*that kind of money*" in his bank account. Some of those policies showed that the client owned a business, but it was confirmed that he only worked in a warehouse and could clearly not afford the policies. Consequently, Accredinet informed Ms Naidoo that her commission could not be paid.

21. In a meeting on 29 January 2021 between Accredinet and Ms Naidoo, she was requested to furnish all the correspondence of the client in question, as well as a financial analysis and an Affidavit to state her case.
22. Accredinet claims that they never received the documents requested, but only her "*Affidavit*" on 22 February 2021. Such affidavit fails to address the issues which elicited her response.
23. The records of Discovery's forensics department showed that Ms Naidoo's books reflected an abnormal ratio of policies that were cancelled within two months of their inception dates. Of the 67 policies on her books, of which most were still active, 13 of these were cancelled shortly after their inception dates.
24. Ms Z had complained to Discovery that she was not aware of various policies taken out in her name and neither did she sign for those policies. The premiums were exorbitant on every policy. Amounts of R20,000 to R30,000 were to be deducted. Ms Gihrao specifically requested that she be removed from Ms Naidoo's portfolio as a client.

25. Mr Y complained that he did not approve the R2 million life cover and that his account should not have been debited. Furthermore, he never signed such policy application.
26. Regarding Ms A, Discovery could not find any documentation indicating that Ms Naidoo was her broker. Ms Naidoo further wrote a life policy with a premium of R12,450.09, without her consent. It was established that the signature on the policy was not that of Ms A. It was established that her signature was copied and pasted on the policy.
27. For yet another client, Discovery's forensic hand-writing analyst compiled a report, wherein it is clearly indicated that, for different policies, the clients' signatures were copied and pasted.

F BASIS FOR DEBARMENT

28. In order for a representative to be debarred, there must be:
 - 28.1 non-compliance by a representative or a key individual of such representative with "*fit and proper*" requirements as postulated by section 13(2)(a) of the FAIS Act; or
 - 28.2 a contravention or failure to comply by a representative or a key individual of such representative with the provision of the FAIS Act in a material manner.
29. The relevant provisions of the FAIS Act requires of a financial services provider to be competent, and to act as such; particularly that such provider must be fit and proper; Section 13(2)(a) stipulates that an authorised financial services provider must:

“At all relevant 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, be competent to act and comply with:

- (i) The fit and proper requirements; and*
- (ii) Any other requirements contemplated in sub-section 1(b)(ii).”*

30. Section 8 of the FAIS Act provides for the fit and proper requirements to be measured against the following categories namely:

- “(i) personal character qualities or honesty and integrity;*
- (iii) Competence including experience, qualification and knowledge;*
- (iv) The applicant’s financial soundness.”*

31. The General Code of Conduct for Authorized Financial Services Providers and Representatives Code (*“the Code”*) – specifically requires a financial services provider at all times to render financial services honestly, fairly, with due skill care and diligence and in the interests of clients and integrity in the financial services industry. Section 3 of the Code further places specific standards that must be met when a financial provider renders a financial service.

32. In addition, Board Notice 194 of 2017 titled *“Determination of Fit and Proper Requirements for Financial Services Providers, 2017”* sets out the criteria for fit and proper requirements of financial service providers (Board Notice). Clause 9 of the Board Notice provides instances where a person is considered not to be fit and proper. One such instance (clause 9(1)(a)(ii) stipulates when there is *“theft, fraud, uttering a forged document, perjury or an offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct...”*

33. Clause 9(3) requires that in assessing whether a person meets the requirements of

section 8(1)(a), due regard must be given to various factors namely:

“(a) *The seriousness of the persons’ conduct, whether by commission or omission, or behaviour and summarising circumstances to that conduct or behaviour that could have a negative impact on a person’s compliance with section 8(1).*

(b) *The relevance of such conduct or behaviour that has or could potentially have a negative impact on the person’s compliance with section 8(1), to the duties that are or are to be performed and the responsibilities that are or are to be assumed by that person...*”

34. In respect to the “*honesty and integrity*” requirement, the enquiry would be whether the applicant’s misconduct was material and serious enough to taint these character traits?

35. This Tribunal has issued many decisions on this aspect. Guidance can be found in **Hamilton Smith & Company v The Registrar of Financial Markets**²(at p.5) where the Appeal Board expressed itself in the following terms:

“To determine where a person is ‘of good character and integrity’ involves a moral judgment. In arriving at that judgment it is necessary to have regard to the matter in which the person concerned has conducted himself not only in his private life but also in his dealings with those with whom he has come into contact professionally or in the course of his business. A distinction is sometimes drawn in this context between ‘character’ and ‘reputation’.”

36. This judgment at length laid down the precedent for defining the concept “*honesty and integrity*” – in summary:

² Appeal Board decision dated 1 September 2003

- The dictionary meaning of integrity is “*soundness of moral principle; the character of uncorrupted virtue, especially in relation to truth and fair dealing; uprightness, honesty, sincerity.*”
- A person’s “*character*” is what she in fact is, whereas his/her “*reputation*” is what other people think he is.
- The determination of whether a person is of sound character involves a moral judgment. In arriving at that judgment it is necessary to consider the person’s manner of conduct, not only in respect of his/her private life but also their business dealings. For purposes of the FAIS Act the emphasis will be on the latter.
- The quality of a person must be judged by the person’s acts and motives, meaning behaviour and the mental and emotional situations accompanying the behaviour.
- Character cannot always be estimated by one act or one class of act. As much about a person as is known will form the evidence from which the inference of good or bad character is drawn.

37. The said expressions of the law suggest that in determining “*honesty and integrity*”, it is necessary to know as much as possible about the person.³

³ See also AJ Davis v AC & E Engineering Underwriting Managers (Pty) Ltd, Case no: FSP4/2018 dated 24 October 2018.

38. Ms Naidoo has placed nothing concrete before this Tribunal to demonstrate that the findings and conclusions against her were not justified. The evidence from the forensic investigation remains unchallenged. The confirmation from clients that the policies were issued without their consent has not been contested with concrete facts. This includes the evidence of forgery identified by a hand-writing expert.
39. Standard Bank submitted that the proof of payments was fraudulent in respect of Mr X.⁴ Moreover it is noted that Ms Z and Mr Y communicated with Discovery on the issues pertaining to the unauthorized policies. Furthermore, from the transcript of the conversation between Ms Van Niekerk and Mr X, he denied that he ever sent proof of payment to Ms Naidoo. Moreover, he could never afford the Discovery premiums on the policies. He confirmed that he was aware of only one policy with a premium of R850.00⁵ that he had with Discovery.
40. Reference is also made to the transcript between Ms Z and Ms Van Niekerk where she denied that she requested any Discovery policies or even placed her signatures thereon.⁶
41. The evidence reflects that Ms Naidoo compromised her honesty and integrity. She was dishonest in her dealings with the respondent as well as her clients. She committed forgery, fraud and was dishonest. Her conduct is unbecoming of a financial service provider in this industry.
42. In the premises therefore the following order is made:

⁴ Page 37 of the Record, Part A

⁵ Pages 2 and 3 of the Record, Part B

⁶ Page10 of the Record, Part B

The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 1 September 2021.



LTC Harms

Deputy chair for self and Adv H Kooverjie SC