THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP47/2020

In the matter between:

NOELLE LOUISE HARRIS APPLICANT

and

INDWE RISK SERVICES RESPONDENT

Application for reconsideration of debarment as FSR

DECISION

[1] The applicant, Mrs Harris, applies for the reconsideration of her debarment as financial service representative in terms of sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 (the FAIS Act) by the respondent, Indwe Risk Services, a financial services provider.

[2] The present application is under sec 230 of the Financial Sector Regulation Act, 2017.

[3] The parties have waived their right to a formal hearing and agreed that the matter may be decided on the record.

[4] The applicant sought, before the respondent was able to file its documents, an order for the suspension of her debarment, which was granted. The reason given for the

decision was that “the applicant was accused and found ‘guilty’ of gross disrespect, impudence and insolence. These acts or attitudes do not, prima facie, relate to a lack of honesty, integrity or good standing in the context of the FAIS Act.”

[5] The full record of the proceedings has since been filed and the prima facie conclusion stands to be reconsidered.

[6] It may be mentioned that the application for reconsideration is based on procedural grounds but they are so bad that they can be summarily be rejected.

[7] The reasons for the debarment have been set out succinctly by the respondent in these terms:

> The Applicant was found guilty of serious misconduct being gross and seriously disrespectful, including impudence and insolence. The most serious charge being the racist slur that the Applicant used, is extremely serious and disrespectful and is a criminal offence in itself.
>
> The Applicant repeatedly undermined her line manager, and other members of management, speaking to her manager in a derogatory manner. And then discussing internal matters with the client. This is evidence that the client could definitely be prejudiced in this way, as the client shouldn't be put in the position to discuss the internal matters of the FSP, but should be comfortable that the insurance portfolio is managed professionally and in safe hands. This shows that the Applicant might very well repeat same in future, when facing difficulty at the office, then badmouthing her employer to the client.

> We are of the opinion that the above in itself, should show evidence that a Representative in the financial services industry cannot be seen as an honest person with integrity, if this is the manner in which a Representative carries or presents him/herself.
>
> Our industry should not allow persons such as the Applicant to deal within the industry nor with clients/customers.

[8] The evidence against the applicant is contained in recoded telephone calls. The applicant accused the respondent of setting a trap for her, alleging that "they had been recording my calls for weeks in an attempt to find a way to get rid of me" but as the respondent rightly points out, as an FSP, it is obliged to record all telephone calls for record-keeping purposes, and all employees acknowledge this fact as part of company policy.

[9] The applicant also alleged that the transcription of the calls would not accurately reflect the tone of the conversations. I have read the transcript and I fear that there is no way one can down-tone or down-tune the words and sentences. That the applicant has personal or personality issues cannot be doubted. Her telephone calls are unprofessional, uncouth, and derogatory. One cannot find fault with the submission by the respondent that she was grossly and seriously disrespectful, impudent, and insolent and that the respondent had good reason to take disciplinary steps against her and to terminate her employment. But as so often happens, once cornered, the accused fails to face the music and resigns with immediate effect.

[10] The applicant admitted that

> "their arguments support me being fired, which I accept. . . . I made a mistake, on a private call from my cell phone to the office, using a racial slur, which is not the usual way I conduct myself, and for which I am SO ashamed (which is why I did not attend the hearing- too embarrassed). I did not say it in the office to anyone, nor to my client. If anything, I had a fallout with my management for them hindering me in servicing the client.

[11] One has, however, to remind oneself that debarment is not a labour issue and that the test under sec 14 of FAIS is whether the FSR no longer complies with the fit and proper requirements, which are to be found in the Notice promulgated under sec 6A, namely Board Notice 194 of 2017. It requires that a FSR must be honest, have integrity, and be of good standing. A list of non-exclusive factors is then provided, none of which applies to the applicant.

[12] This requires a value judgment and reasonable people can disagree. What the applicant said does not establish dishonestly and although it reflects on her integrity and good standing, those vituperate calls made in anger are not, in my judgment, sufficient to justify a debarment. Had this been appeal and not a reconsideration the result might have been different. What this means is that the decision of the respondent was not necessarily wrong, but it is not one that I would have made.

[13] The debarment is set aside.

Signed at Pretoria on 10 November 2020


LTC Harms (deputy chair)