

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP63/2023

In the matter between:

PENELOPE TINYIKO SITHOLE

APPLICANT

and

LIQUID CAPITAL (PTY) LTD

RESPONDENT

Summary: Application for reconsideration of debarment in terms of sec 14 of the FAIS Act. Where applicant acted dishonestly by forging receipts for trips that did not take place- Employer entitled to debar applicant.

DECISION

- 1 The applicant is Ms PT Sithole who applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”) for the reconsideration of the decision by the respondent, Liquid Capital (Pty) Limited (Liquid Capital), to debar her as a financial services representative in terms of section 14 of the Financial Advisory and Intermediary Services Act 37 of 2000 (“the FAIS Act”). The respondent is a financial service provider.
- 2 The parties have waived their right to a formal hearing. The matter is consequently considered on the papers filed by the parties, and this is the decision of the Tribunal.

- 3 The Applicant was employed by Liquid Capital as a “Telesales Agent”. She had been employed with Liquid Capital since the 10th of October 2016 and was at all relevant times a representative of Liquid Capital as defined by the FAIS Act.
- 4 On 15 February 2022, the applicant was dismissed from her employment with Liquid Capital following a disciplinary process. To the extent necessary, the relevant facts concerning the disciplinary process, dismissal and the subsequent debarment of the applicant are set out in what follows.
- 5 The applicant was furnished with a notice of intention to debar her on 17 February 2022. The notice stated, among other things, that the applicant did not meet and/ or no longer complied with the requirements of the FAIS Act, specifically, the Fit and Proper requirements of Honesty, Integrity, and Good-standing. The factual allegations underlying the notice were the following:
- In a nutshell, the applicant’s employer found her guilty of fraud. On 3 February 2022 the applicant assisted a colleague of hers to commit fraud by presenting a falsified Uber (the so-called E-hailing service transport) receipt to the head of sales for supposed Uber trips that were booked from the applicant’s Uber account but were subsequently cancelled. The applicant then submitted the falsified Uber receipts to her employer in support of an expenses claim.
 - On 27 January 2022 the applicant arranged an Uber trip for her colleague from her own cellphone and later cancelled the trip. When the employer requested proof of the claim after a claim was paid to her colleague, the applicant submitted the cancelled Uber trip knowing that the trip did not take place. It later transpired in a meeting between the applicant, her colleague, and her employer that the applicant had lied and forged a fake receipt. It later transpired that the applicant fraudulently created the forged receipt with the assistance of the Uber driver who was present at an internet café when that false receipt was created.

- After the disciplinary hearing, it was established that the applicant breached her company policy in that she failed to abide by the company policy when she falsely presented falsified receipts to her employer.

6 Given her dishonesty described above, Liquid Capital debarred the applicant on 4 March 2022, on the ground that she was no longer a person fit and proper to be an FSR due to her demonstrable lack of honesty and integrity.

7 On or about 6 October 2023, the applicant applied to this Tribunal, in terms of section 230(2) of the Financial Services Regulation Act 9 of 2017 ('FSR Act'), for a reconsideration of the decision by the Respondent to debar her. Her application also included an affidavit where she applies for the suspension of her debarment which this Tribunal granted in an order dated 17 October 2023.

8 A decision to debar an FSR must comply with the provisions of sec 14 of the FAIS Act, meaning that it must have been procedurally and substantively fair as set out in the section. The applicant does not and has not disputed the findings of dishonesty made against her. She has not furnished this Tribunal with any countervailing facts that challenge the findings that she had falsified the receipts that she later furnished to her employer. In other words, despite seeking the reconsideration of her debarment, the applicant has not set out any grounds in her application which dispute the facts on which her debarment was subsequently based. To recap, the applicant's employer found that she had colluded with her friend and an Uber taxi driver when she dishonestly forged the receipts that she gave to her employer as proof of the trips that did not take place. In sum, from the reading of the record, the applicant does not make submissions to this Tribunal challenging the procedure followed by her employer nor is she disputing the facts on which her debarment was based.

9 On the proper consideration of all the facts, this is clearly a simple case of a dishonest FSR and no case has been made in support of this application for reconsideration. The applicant's dishonesty remains undisputed and justified her debarment since she no longer

meets the requirements of fit and proper as contemplated in section 14 of the Act. In my view, there is no merit in the application for reconsideration.

10 The following Order is made:

ORDER: The reconsideration application is dismissed.

Signed on behalf of the Tribunal on 19 December 2023.

A handwritten signature in black ink, appearing to be 'Zama Nkubungu-Shangisa', is centered within a light gray rectangular box. The signature is fluid and cursive, with a large initial 'Z'.

Zama Nkubungu-Shangisa (with Judge Harms)