

**THE FINANCIAL SERVICES TRIBUNAL**

Case No: FSP37/2024

In the matter between:

**RAKESH JEEWAN**

Applicant

and

**FAIRBAIRN CONSULT (PTY) LTD**

Respondent

**Tribunal Panel:** Pretorius J (Chairperson), Adv SM Maritz and Adv KD Magano

**Date of hearing:** 25 November 2024

**Date of Decision:** 23 December 2024

**Appearances:**

On behalf of the Applicant: In person

On behalf of the Respondent: Mr Janse Van Rensburg

**Summary:** *Application for reconsideration of the decision to debar the Applicant - application for reconsideration served out of time – application for condonation for late filing of the reconsideration application – no good cause shown - in the absence of condonation, the debarment of the applicant remains in effect.*

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## DECISION

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### **INTRODUCTION**

1. The applicant, Mr Rakesh Jeewan applies for the reconsideration of his debarment in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("*FSR Act*"). The respondent, Fairbairn Consult (Pty) Ltd debarred the applicant as a representative in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("*FAIS Act*").
2. The applicant also requests condonation for the late filing of this application, as it was submitted beyond the 60-day period prescribed by section 230(2) of the FSR Act.
3. The Tribunal must address two key issues in this matter. The first is whether to grant condonation for the late filing of the applicant's reconsideration application. If condonation is refused, the application will be dismissed, bringing the matter to a close.
4. If condonation is granted, the Tribunal will proceed to consider the merits of the reconsideration application. This requires evaluating whether the respondent's decision to debar the applicant for failing to meet the fit and proper requirements under section 14(1) of the FAIS Act was justified. In essence, the Tribunal must determine whether the evidence substantiate the respondent's conclusion that the applicant is no longer fit and proper to provide financial services under the FAIS Act.

## **FACTUAL BACKGROUND**

### *Relevant background facts*

5. The applicant was employed as a representative at Fairbairn. Shortly after joining the firm, he hired Ms Gopaul as an administrator under Wealth Integrated Planning.
6. In 2021, a taxi association approached the applicant, expressing their need for long-term insurance coverage. Seizing this opportunity, Ms Gopaul established Kaytes Taxi Group, seemingly to cater specifically to this potential business within the taxi industry. However, despite ostensibly leaving the applicant's employment to pursue this venture, her separation from his influence was far from complete.
7. The applicant facilitated the establishment of Kaytes Taxi Group by paying the Companies and Intellectual Property Commission ("*CIPC*") fees for Ms Gopaul, seemingly because she lacked the capacity to set up the business herself. Critically, Ms Gopaul was not qualified to act as an insurance broker; The applicant was the only one with the necessary qualifications to provide such services.
8. Despite this knowledge, the applicant allowed Ms Gopaul to operate as a *de facto* broker and advisor within the taxi industry. She collected insurance premiums but failed to pay them over to One Insurance Company, leading to the cancellation of Kaytes Taxi Group's contract.
9. This conduct came to light in 2022 when Fairbairn Consult received a client complaint regarding an unhonoured claim and a lack of responsiveness from

Kaytes Taxi Group, One Insurance, or the applicant himself. The respondent's attempts to resolve this complaint revealed the applicant's involvement in Kaytes Taxi Group.

10. The respondent initiated an investigation into allegations of misconduct against the applicant. This led to his suspension on 2 November 2022, and the matter was referred to Old Mutual Group Forensic Services for further investigation.
11. On 5 December 2022, the applicant was interviewed by Mr Paul Smuts from Old Mutual Group Forensic Services in respect of the claims submitted by One Insurance by the Kaytes Group and other Taxi Associations, as well as Ms Priscilla Gopaul.
12. Following its investigation, the respondent issued a notice of intention to debar the applicant on 9 June 2023 and scheduled a debarment hearing for 23 June 2023, to be held at the office of the chairperson, Mr Latham Dixon.
13. The notice formally outlined the allegations against the applicant, which included the following acts of misconduct:
  - 13.1. He acted unethically and misrepresented his relationship with Kaytes Taxi Group, in violation of his mandate agreement with Fairbairn Consult.
  - 13.2. He failed to disclose his conflict of interest arising from his involvement with Kaytes Taxi Group.

- 13.3. He violated the Protection of Personal Information Act by sharing confidential client and company information with third parties.
- 13.4. He provided Ms Gopaul with unauthorised access to Fairbairn Consult's intellectual property.
14. These allegations formed the basis of the debarment proceedings against the applicant and were central to the subsequent hearings and rulings.
15. The notice also informed the applicant of the hearing scheduled for 23 June 2023, at the office of the chairperson. The period leading up to the debarment hearing was marked by a series of postponements and delays, primarily stemming from ongoing requests for information and clarification between the parties. Initially, the applicant sought and obtained a postponement of the hearing scheduled for 23 June 2023. However, this postponement proved to be the first of several.
16. On 5 July 2023, the applicant's representative notified the chairperson that the respondent had failed to provide full disclosure of relevant documents, notably including interview transcriptions. The applicant, citing an alleged lack of disclosure, demanded the immediate production of the transcripts, prompting the respondent to obtain them through professional transcribers.
17. In an attempt to resolve the impasse caused by the outstanding documents and ensure both parties had access to all necessary information, they mutually agreed on 7 July 2023 to postpone the debarment hearing scheduled for 10 July 2023, *sine die*. This indefinite postponement was aimed to provide ample opportunity for the reciprocal disclosure of all relevant documents.

18. Following this postponement, a meeting was scheduled for 28 August 2023 to establish a clear procedure for the debarment hearing, including agreed-upon dates for the filing of documents.
19. On 4 September 2023, the applicant's attorneys confirmed to the chairperson that they had received all outstanding information and documents. While they sought further clarification on certain aspects, they expressed their satisfaction with the disclosure and their intention to proceed with the hearing based on the information provided.
20. This confirmation effectively cleared the path for the final debarment hearing, which Mr Dixon conducted virtually with the parties on 12 September 2023, in accordance with section 14 of the FAIS Act. During this hearing, the parties confirmed that the procedure was followed correctly and that the applicant received adequate notice of the intended debarment.
21. After the virtual hearing, the chairperson evaluated the evidence and arguments presented by both parties. He ultimately concluded that the applicant had breached his fiduciary duty to the respondent and that his relationship with Ms Gopaul created a conflict of interest. He also found that the applicant admitted to not disclosing this relationship and to granting Ms Gopaul unauthorised access to the respondent's intellectual property, a clear violation of the Protection of Personal Information Act.
22. Based on these findings, the chairperson concluded that the respondent had discharged its burden of proof regarding the allegations against the applicant.

He also determine that the entire debarment process complied with the principles of procedural fairness and the FAIS Act.

23. On 13 October 2023, the chairperson issued a formal recommendation to the respondent to debar the applicant in accordance with the FAIS Act. This recommendation was communicated to both parties on 16 October 2023, with the applicant being notified through his attorneys of record. However, a communication lapse appears to have occurred, as the applicant had to inquire about the outcome of the ruling on 2 December 2023. He received official confirmation of his debarment from the respondent on 3 December 2023.
24. Finally, on 6 May 2024, the applicant filed his application for reconsideration of his debarment, coupled with a request to suspend the debarment pending the resolution of this matter.

*Length of the delay*

25. As noted, section 230(2) of the FSR Act requires an application for reconsideration to be filed within 60 days after the applicant was notified of the decision, or within a longer period as may on good cause be shown.
26. On 16 October 2023, the applicant's attorneys were notified of the chairperson's debarment recommendation, triggering the 60-days period.
27. However, the applicant was only directly notified of his debarment on 3 October 2023, confirming his awareness of the decision.

28. Using 3 December 2023, the 60-days filing deadline would expire on 28 February 2024. Note that the dies non rule, which excludes certain days from time limits, does not apply to reconsideration application.
29. The applicant filed his application on 6 May 2024 resulting in a delay of 44 days in filing the application. This delay necessitates careful consideration of his reasons for the late filing and whether they constitute 'good cause' under section 230(2) of the FSR Act.

*Reasons for delay in filing the reconsideration application*

30. This Tribunal can either grant or deny the condonation.<sup>1</sup> In determining whether to grant condonation, this Tribunal is guided by established legal principles. As the Constitutional Court stated in **Grootboom v National Prosecuting Authority<sup>2</sup>** and **Steenkamp and others v Edcon Limited<sup>3</sup>**:

*“It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it the Court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or the Court's directions. Of great significance, the explanation must be reasonable enough to excuse the default.”*

31. Guided by these principles, the Tribunal must now consider the applicant's reasons for the 44-day delay in filing his application for reconsideration and whether these reasons constitute 'good cause' to warrant condonation.

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<sup>1</sup> **Steenkamp and others v Edcon Limited** [2019] ZACC 17

<sup>2</sup> [2013] ZACC 37; 2014 (2) SA 68 (CC) at paragraph 23; see also in **Steenkamp and others v Edcon Limited** [2019] ZACC 17

<sup>3</sup> [2019] JOL 41806 CC at para 36



32. The applicant attributes the delay in filing his reconsideration application to numerous consultations with his legal team. However, he does not specify when these consultations took place, their purpose, or how they prevented him from filing the application timeously. It is important to note that the applicant had access to legal advice throughout the process, which should have facilitated a timely application.
33. The applicant further attributes the delay in filing his reconsideration application to his request for certain documents on 3 May 2024. These documents included the full record of the disciplinary process, the recording or transcript of the hearing held on 10 July 2023, and all correspondence between Fairbairn and the FSCA related to the debarment recommendation.
34. While the applicant alleges that the respondent was uncooperative in providing these documents, it is crucial to note that he requested them on a Friday, effectively giving the respondent less than one business day to respond before the deadline for filing his reconsideration application on the following Monday. Expecting a response within such an extremely short timeframe is unreasonable, especially considering that the applicant knew of his debarment as early as 3 December 2023. He had four months to request these documents prior to the deadline for filing his reconsideration application.
35. Furthermore, the applicant's claim that he could not confirm the status of his debarment lacks merit. He received clear notification of the debarment decision on 3 December 2023 and had ample time to confirm his status. Moreover, there is no clear correlation between the requested documents and the late filing of the application. The applicant does not explain the relevance

of these documents or how they impacted his ability to file the application on time.

36. It is important to emphasise that the applicant had an opportunity to challenge any procedural defects before 28 February 2024, the deadline for filing his reconsideration application. His failure to do so within the prescribed timeframe weakens his argument for condonation.
37. The applicant also contends that the length of the delay is eight (8) days, which is not excessive. However, even if the period of delay was significantly shorter, the applicant still bears the onus of providing a reasonable explanation for any delay in filing the application within the prescribed timeframe. The explanation must account for the entire period of the delay, not merely a portion of it.
38. In this case, the applicant's explanations fall short of this standard. Even accepting the applicant's assertion that the delay is only 8 days, he fails to provide a satisfactory explanation for this period. The applicant's reliance on the late document request and his alleged inability to confirm his debarment status do not justify the delay, particularly given his prior knowledge of the debarment decision and the ample time he had to request the documents and file the application within the prescribed 60-day period.
39. Ordinarily, the applicant's failure to provide a full and satisfactory explanation for the 44-day delay would be sufficient grounds to deny its condonation application. While the absence of adequate reasons typically renders the prospects of success on the merits immaterial, this Tribunal recognises the importance of exercising its discretion judicially. Therefore, despite the

weaknesses in the explanation for the delay, we will proceed to consider the prospects of success in the reconsideration application. This approach ensures that the Tribunal considers all relevant factors before reaching a final determination.

*Prospects of success in the reconsideration application*

40. The jurisprudence on condonation consistently highlights the importance of prospects of success. As the Constitutional Court held in *eThekweni Municipality v Ingonyama Trust*,<sup>4</sup> both the explanation for the delay and the prospects of success are critical factors in determining whether condonation should be granted. This principle is echoed in several other cases. In *South African Post Office Ltd v Commission for Conciliation, Mediation and Arbitration*,<sup>5</sup> the court stressed that if a party has no prospects of succeeding in its principal claim, there is no purpose in granting condonation, regardless of the degree of delay or the explanation provided.
41. Similarly, in *NUM v Council for Mineral Technology*<sup>6</sup>, the court held that without prospects of success, even a good explanation for the delay cannot save a condonation application. The Constitutional Court in *Grootboom v National Prosecuting Authority*<sup>7</sup> further underscored the importance of prospects of success as a weighty factor in condonation decisions.
42. These precedents establish a clear link between condonation and the merits

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<sup>4</sup> (CCT 80/12) [2013] ZACC 7; 2013 (5) BCLR 497 (CC); 2014 (3) SA 240 (CC) (28 March 2013)

<sup>5</sup> (JA 56/06) [2011] ZALAC 16; [2012] 1 BLLR 30 (LAC); (2011) 32 ILJ 2442 (LAC) (3 August 2011)

<sup>6</sup> 1999] 3 BLLR 209 (LAC)

<sup>7</sup> *Supra*

of the case. Therefore, while this Tribunal will exercise its discretion and consider the prospects of success in the applicant's reconsideration application, it is mindful that weak prospects of success may independently justify denying condonation, even if a satisfactory explanation for the delay was provided.

43. Having considered the legal principles governing condonation and the applicant's explanations for the delay, the Tribunal will now delve into the merits of the reconsideration application to assess the likelihood of the applicant succeeding in overturning the debarment decision.
44. The FAIS Act provides a comprehensive framework for ensuring that representatives in the financial services industry meet certain standards of competence and integrity. Section 14 of the Act outlines the debarment process, empowering a financial service provider ("*FSP*") to debar a representative who no longer complies with the "fit and proper" requirements or has contravened the Act in a material manner.
45. This obligation on the FSP is reinforced by Section 13(2)(a), which requires an authorised FSP to be satisfied at all times that its representatives are competent and comply with the "fit and proper" requirements when rendering financial services. Furthermore, Section 13(1)(b)(iA) explicitly states that a person may not act as a representative unless they meet these requirements.
46. Section 6A(2)(a) of the FAIS Act clarifies the 'fit and proper' standard, emphasising that representatives must possess honesty and integrity. This requirement is rooted in the recognition that financial services professionals are entrusted with significant responsibilities and must act ethically and in the

best interests of their clients. Honesty and integrity are essential qualities for maintaining trust and confidence in the financial services industry.

47. The emphasis on character is further elaborated in Section 8 of the FAIS Act, which outlines three key categories for assessing whether a representative is deemed 'fit and proper.' The first category focuses on personal character qualities of honesty and integrity, ensuring that individuals possess the ethical and moral standards necessary to be trustworthy and act with integrity in all their dealings. The second category examines competence, including experience, qualifications, and knowledge, assessing an individual's ability to perform their duties effectively and professionally, ensuring they have the necessary skills and expertise to provide sound financial advice. Lastly, the third category looks at financial soundness, which examines an individual's financial stability and their ability to manage their own finances responsibly, as this can indicate their capacity to handle client finances with care and prudence.
48. The criteria mentioned above provides a comprehensive framework for evaluating the suitability of individuals to act as representatives in the financial services industry, ensuring that they meet high standards of ethics, competence, and financial responsibility.
49. Applying these principles to the present case, the Tribunal notes that the respondent's decision to debar the applicant stemmed from concerns about his conduct in relation to Ms Gopaul and Kaytes Taxi Group. These actions, admitted by the applicant himself, demonstrate a concerning lack of honesty and integrity, raising serious questions about his competence and suitability

as a financial services representative.

50. By facilitating Ms Gopaul's operation as an unqualified insurance broker, the applicant potentially exposed clients to financial harm and undermined the integrity of the industry. His failure to disclose his conflict of interest with Kaytes Taxi Group further demonstrates a lack of transparency and ethical conduct. Moreover, his sharing of confidential information and provision of unauthorised access to intellectual property violated the Protection of Personal Information Act, adding another layer of concern about his professional judgment.
51. While during the hearing of this matter, the applicant expressed regret for his actions, this does not diminish the seriousness of the breaches and their potential impact on the financial services industry. The Tribunal finds that the respondent's decision to debar the applicant was fully justified based on the evidence and the FAIS Act framework.
52. These actions, taken together, paint a clear picture of an individual who has fallen short of the "fit and proper" standard required by the FAIS Act. The Tribunal finds that the respondent's decision to debar the applicant was justified and necessary to protect the public and maintain the integrity of the financial services industry. Therefore, the applicant's prospects of success in overturning this debarment are weak.

## **CONCLUSION**

53. Having determined that condonation for the late filing of the reconsideration application should be denied, the Tribunal finds it unnecessary to delve into a

separate analysis of whether the respondent's decision to debar the applicant was justified. The Tribunal has already thoroughly assessed the merits of the debarment in the context of evaluating the applicant's prospects of success, concluding that the respondent's decision was supported by the evidence and the applicable legal framework. Therefore, further analysis of this issue would be redundant.

54. Accordingly, this brings the matter to a close. As the applicant failed to demonstrate "good cause" for the delay, and the Tribunal has found his prospects of success in the reconsideration application to be weak, there is no basis to proceed further. In the absence of condonation, the debarment of the applicant stands.

### **ORDER**

55. The following order is made:

55.1. The application for condonation is dismissed.

55.2. The applicant's debarment is upheld.

Signed on behalf of the Tribunal.

A handwritten signature in black ink, appearing to be 'KD Magano', written over a horizontal line.

**KD MAGANO**