

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: FSP54/2023

In the matter between:

RESHIKA RAMDAS

Applicant

and

DISCOVERY CONNECT DISTRIBUTION SERVICES (DCDS) LTD

Respondent

Tribunal Members: G-M Goedhart SC (Chairperson),
KE Moloto-Stofile, SM Maritz

Appearance for the applicant: In person

Appearance for the respondent: Mr B Bleazard

Date of hearing: 27 March 2024

Date of decision: 22 April 2024

Summary: application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 ("FSR Act") of decision to debar a representative in terms of section 14(1)(a) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("FAIS") regarding compliance with the fit and proper requirements, specifically the character qualities of honesty and integrity.

DECISION

Introduction

1. The applicant was employed as a telesales representative by the respondent, Discovery Connect Distribution Services Ltd (“the respondent”/“Discovery”) from 1 September 2010 until her termination on 30 August 2023.
2. The applicant received a notice of suspension on 4 July 2023. She was charged with the manipulation of 10 quotes on policies activated during the period April 2022 to October 2022, thereby causing financial loss to the respondent.
3. The charges against the applicant were made following an internal actuarial investigation into premium manipulations. The investigation identified two methods by which the implicated agents¹ were able to force the Discovery quoting system to calculate a moderation discount,² resulting in lower premiums. The first was through a change in the voluntary excess on specific benefits and the second was through a change in the licence details for the primary driver of a vehicle.
4. In regard to the first methodology (lowering the premiums by changing the voluntary excess), the way in which details were changed allowed agents to

¹ 12 of the 69 agents were charged.

² A moderation discount is a discount that is calculated within the Discovery premium calculation system typically without any user intervention (Part B, CN3 at p13).

save the lower premium without having to change the details on the quoting database.

5. The process involved manually exiting the screen with the quote, re-entering and re-opening the quote. This would be done a number of times and resulted in lower premiums and higher sales volumes for agents.
6. The process was repeated multiple times within a single quote as well as across multiple different quotes. The respondent averred that the repeat behaviour demonstrated an intent to change premiums, and that it was not a once off incident. The conclusion drawn was that it was not a common mistake, but rather an intentional action taken by the implicated agents, including the applicant, because the behaviour was not present across all agents.
7. A disciplinary inquiry was held on 21 July 2023 to determine if the applicant was guilty of misconduct and if she possessed the requisite characteristics of honesty, integrity, conduct and good standing as a financial adviser and as a Discovery employee.
8. Mr Moodley, the chairperson, recommended a debarment of the applicant pursuant to the inquiry.

9. The applicant received the recommendation for her debarment on 19 August 2023.
10. The application for a reconsideration of the debarment was brought on 18 September 2023.
11. The applicant submitted a request to adduce further evidence under oath as contemplated by section 232(5) of the FSR Act on 22 February 2024 and the respondent responded thereto on 7 March 2024. The further evidence was accepted by the Tribunal.

Basis for reconsideration

12. The applicant avers that the disciplinary proceedings were both substantially and procedurally unfair in that:
 - 12.1. evidence was ignored;
 - 12.2. she was not automatically afforded the opportunity to present her evidence and the chairperson moved into closing statements soon after the data analyst presented their evidence; and
 - 12.3. the chairperson was biased.

13. The applicant's defense to the first complaint is that the "manipulation" arose because of a systems fault.
14. In answer to the second complaint of capturing incorrect drivers' licence type and codes, her explanation is that where clients had two licences they were given the benefit of recording the earlier licence obtained on the system "so as not to adversely affect their premium".
15. According to the applicant, she would go into the system to save the correct (earlier) year that the client had obtained their licence. The system would keep reverting back to the incorrect license date year, resulting in her having to go back into the system repeatedly in an attempt to correct it. She made electronic notes "on most of the policies" to indicate the discrepancies. However, these notes were not accepted at the hearing.
16. The applicant avers that the complaint of manipulation of excesses, is blatantly incorrect as the excesses were adjusted based on client's requests. The Discovery policies have a flexible excess.
17. According to the applicant, the activated premiums reflected in column 9 of annexure E to the charge sheet were all incorrect and this was apparently dealt with in the hearing.

18. The applicant avers that whilst she is charged with manipulation of ten quotes on policies, she was the main activator of only five of the ten policies, and that she would not have prejudiced a 14-year career for five policies.
19. It is common cause between the parties that there was indeed a systems fault, and that the systems fault had been brought to the respondent's management's attention in April 2022.
20. According to the applicant, when she became aware of systems issue, she had immediately reported this to her team leader, Mr Clint Groenewald. The applicant was told to work around the system's fault. Despite knowledge of the system's fault since April 2022, the "systems fix" - a manual management override - was only implemented in November 2022.

Legal framework

21. Section 13(2)(a) of the FAIS Act provides in as follows:

“(2) 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).”

22. Section 14(1)(a) of the FAIS Act provides:

“14. Debarment of representatives. —

(1)

(a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be —

(i) a representative of the financial services provider; or

(ii) a key individual of such representative,

if the financial services provider is satisfied on the basis of available facts and information that the person —

(iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or

(iv) has contravened or failed to comply with any provision of this Act in a material manner.”

23. Section 6A(2)(a) of the FAIS Act provides that:

“(2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to —

(a) personal character qualities of honesty and integrity.”

24. Section 7(1) of Board Notice 194 of 2017 provides that fit and proper requirements relating to honesty, integrity and good standing apply to all

financial services providers like the applicant who was a representative of Discovery, a registered financial services provider.

25. Section 8(1)(a) of the Board Notice states that a person referred to Section 7(1) must be a person who is honest and has integrity.
26. The consequences of a debarment are far reaching. In *Barthram*,³ the Supreme Court of Appeal set out the consequences of a failure to meet the requirements of honesty and integrity as follows:

“... a representative who does not need those requirements lack the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public and it must therefore follow that any representative debarred in terms of Section 14(1), must per force be debarred on an industry wide basis from rendering financial services to the investing public.”⁴

27. The respondent bears the onus to prove the facts it relied upon to debar the applicant on a balance of probabilities.

The respondent’s reply

28. The transcript of the disciplinary proceedings of 21 July 2023 did not form part of the respondent’s record. Notwithstanding that the respondent adduced further evidence in terms of section 232(5) of the FSR Act, the transcript of

³ *Financial Service Board v Barthram and Another* [2015] ZASCA 96; 2018 (1) SA 139 (SCA).

⁴ *Ibid* at para 16.

the proceedings of 21 July 2023 was not provided.⁵ Thus, no evidence was placed before the Tribunal to counter the applicant's complaints of bias and that relevant evidence was disregarded in the disciplinary proceedings.

29. The respondent states that whilst the applicant "may have" reported the systems fault to management, she had omitted to follow standard operating procedures. The applicant was however not charged with failure to follow standard operating procedures, but was charged with the deliberate manipulation of quotes on policies.
30. Annexure CN1⁶ comprises three emails. The email dated 9 November 2022⁷ attached as part of CN1 does not support the contention that the sales agents were advised that they should identify any discrepancies with regard to clients' risk profiles and inform the respondent immediately, which the respondent alleges the applicant had failed to do.
31. The e-mail of 9 November 2022 refers to several investigations that are ongoing. It is a caution that everyone is to ensure that they "keep their house clean". The emails of 27 February 2023⁸ and 31 October 2022⁹ are in similar

⁵ The transcript of the proceedings of 18 August 2023 (the second internal hearing), was also not provided.

⁶ Part B, page 8.

⁷ Ibid.

⁸ Part B, page 9.

⁹ Part B, page 10.

vein and make reference to adhering to the rules, whilst the latter warns of debarment with issues such as manipulation of driver's license and failing to follow underwriting process of claims amongst the identified issues.

32. The document which is attached as annexure CN2¹⁰ records that it is possible that the applicant's "mis-capture" was a mistake as the client had revealed possessing two licences. Further, that the applicant had made too many adjustments and that the year 2019 was not mentioned during the call which "seemed suspicious". The document is therefore equivocal. Moreover, the transcript of the conversation relating to the quote on the policy in question which was provided by the respondent (CN8) was patently inaccurate in parts.¹¹
33. The highwater mark of the respondent's answer to the systems issues response raised by the applicant is that the manipulation behaviour was not present across all Discovery agents but "only in a select handful of agents".¹²
34. At the hearing before this Tribunal, the respondent initially indicated that it wished to lead further *viva voce* evidence. There was no affidavit in support of the request to lead further evidence as contemplated by Rule 22 of the

¹⁰ Part B, page 11.

¹¹ Annexure CN8, p 82, with specific reference to *inter alia* p 83 where, in answer to the question on how long the caller had uninterrupted comprehensive insurance for, the answer recorded was "*It hasn't my mother's name for*" and "*My parents name for lunch, so basically it's.*"

¹² Part B, page 14.

Financial Services Tribunal Rules, and the respondent did not persist with the request to lead *viva voce* evidence.


35. The respondent provided its debarment policy. The debarment policy must be read in conjunction with section 14 (2)(a) of the FAIS Act. Section 14(2)(a) of the Act requires that an FSP, before effecting a debarment in terms of subsection 1, must ensure that the debarment process is lawful, reasonable and procedurally fair. Guidance Note 1 of 2019 records that a debarment decision by an FSP constitutes the exercise of administrative action and it is required of FSP's in exercising their debarment powers to act reasonably, rationally and fair.¹³
36. What is fair in the circumstances will depend on the context of each case. The requirements of *audi* are contextual and relative.¹⁴ In this case, it is common cause that the applicant was given timeous notice and was heard during the 21 July 2023 proceedings. Her complaints relate to what had transpired in the proceedings and in respect of which the respondent did not provide the transcript.

¹³ Guidance Note 1 of 2019, para 2.3; *Associated Portfolio Solutions (Pty) Ltd v Basson and others* 2020 3 All SA 305 (SCA) at para 25.

¹⁴ *Chairman, Board on Tariffs and Trade v Brenco Inc.* 2001 (4) SA 511 (SCA) at para 19.

37. The document on which both parties rely to support their case (annexure CN2) is not dispositive of either the applicant or the respondent's version. This presents a greater difficulty to the respondent as it bears the onus.
38. At best for the respondent, it has demonstrated that the applicant failed to follow standard operating procedures. Not only was she not charged with a failure to follow standard operating procedures, but a failure to follow standard operating procedures does not equate to being dishonest and lacking integrity.
39. The respondent has failed to make out a case on a balance of probabilities that the applicant had deliberately manipulated the 10 quotes on policies that she was charged with, such that it should result in her debarment.
40. In the circumstances, we make the following order:
- 40.1. The debarment is set aside, and the debarment decision is referred back to the respondent for further consideration.

Signed on behalf of the Tribunal on 22 April 2024.



G.M. Goedhart SC
(Tribunal Chairperson)

