**The Financial Services Tribunal** **Case no A27\2024**

**In the matter between**

**Shaheen Khan** **APPLICANT**

**and**

**The Financial Sector Conduct Authority** **RESPONDENT**

**Panel: Michelle le Roux SC (presiding), Zama Nkubungu-Shangisa and Xolisile Khanyile**

**Appearances: Muhammed Valley Attorneys representing the Applicant**

**Barend Bredenkamp representing the Respondent**

**Date of hearing: 12 March 2025**

**Date of decision: 1 April 2025**

**Summary**

Application for reconsideration of the decision of the Financial Sector Conduct Authority ("FSCA") to debar the Applicant for a period of 10 years and to sanction him- No good cause shown by the Applicant to warrant the reconsideration order- The period of debarment is reasonable, effective, dissuasive and proportionate to the seriousness of the contraventions by the Applicant.

**Introduction**

1. The Applicant, Mr S Khan, applies for the reconsideration of the decision of the Respondent ("FSCA") in terms of section 230 of the Financial Sector Regulation Act 9 of 2012 ("the FSRA"). The FSCA found that the Applicant had contravened section 7(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("FAISA') by offering to act or acting as a financial service provider without a licence under section 8 or without having been appointed as a representative of an authorised financial service provider under section 13 of the FAISA. A further contravention occurred regarding the rendering of services in respect of a financial product, being a foreign currency dominated instrument, without being duly authorised, thus contravening section 7(1) of the FAISA. The FSCA imposed an administrative penalty of R4.5 million and debarred the Applicant in terms of section 153 (1)a, 153 (2) and 153 (2)c of the FSRA for a period of 10 years from providing or being involved in the provision of financial services to financial customers, from acting as a key person of any financial institution and from providing any services to a financial institution whether through outsourcing arrangements or other means.

2. The FSCA's main objectives in terms Chapter 4 of the Financial Sector Regulation Act[1], are to enhance and support the efficiency and integrity of financial markets and protect financial customers by promoting their fair treatment by financial institutions as well as providing financial customers with financial education programs, and otherwise

[1] Financial Sector Regulation Act, Act No 9 of 2017

promoting financial literacy and the ability of the financial customers and potential customers to make sound financial decisions. It further assists in maintaining financial stability.

**Undisputed Facts against the Applicant**

3. The Applicant, through Roche Futures SA (Roche SA), operated as a Financial Service Provider without a licence. The business has a business bank account with First National Bank ("FNB"). The Applicant is the sole signatory to the account. According to the information from the Companies and Intellectual Property Commission ("CIPC") Roche SA is registered as a private company with the Applicant as the sole director. Roche UK is a separate entity that was linked to the Applicant and does not have a licence with the FSCA.[2] Roche UK is a stock brokerage company operating from 71-75 Shelton Street, Convent Garden, London, England

4. Investigations by the FSCA revealed that the Applicant had approximately 54 clients who had deposited funds into the FNB business account. The bank account received an income of R7 995 053 from clients, for the period of 1 June 2016 to 31 December 2018[3].

5. During the same period, R4 442 700 which amounts to 56% of the proceeds in the bank account was transferred by the Applicant and deposited into his personal account, only R517 163 which represents 6% of the proceeds in the FNB account was repaid to clients[4].

[2] Annexure 2 CIPC information page 23 and 24 of the Part 2, annexure to the investigation report.
[3] Para 5.3 of the investigation report on page 8 of Part B.
[4] Table 1 of 5.4 of the investigation report on page 8 of Part B.

6. Further analysis of the bank account statements revealed that only 9% of the funds received from clients were used to pay other clients that either requested a withdrawal of the investment or for profits.[5]

7. A total of R3 000 000 of the clients' funds were transferred from the Applicant's personal account and invested in JP Markets SA (Pty) Ltd which is in the Applicant's name and for his sole benefit[6].

8.During the investigation by the FSCA, the Applicant failed to produce client files upon request by the FSCA.

9. During argument, the Applicant conceded that the criminal proceedings against him were a separate and an independent process from the investigation and administrative action taken by the FSCA.

10. In the Applicant's interview with the FSCA, the Applicant stated that his problems started when one of his first clients, Khalid Cassim ("Cassim"), started complaining about not receiving his returns every month. He conceded that Cassim' mother, Ms Patel had invested her pension money into the Applicant's investment, and he was aware that

[5] Para 5.5.5 of the investigation report
[6] Para 5.8 to 5.9 of the investigation report.

Cassim's mother was a pensioner. According to the FSCA, the investigation of the Applicant was triggered by Cassim's complaint[7].

11. The Applicant confirmed that he registered Roche SA with the CIPC and opened an FNB account for the business. He further confirmed that he acted as surety for the obligations related to Roche SA[8].

**The Applicant' grounds for reconsideration are summarised as follows and include his contentions that:**

12. The Applicant's grounds for reconsideration are not linked to section 14 (3) (a) (i) to (iii), 3(b) to 3(c) (i) to (iii) of the FAISA. The Applicant does not contend that he was not given adequate notice in writing stating the intention to debar or provided with a copy of written policies and procedures or given reasonable notice to make submissions in response to the debarment. However, the Applicant's contention is that the FSCA failed to take a decision timeously because the investigation against him commenced on 21 January 2019, the FSCA gave notice of intention to impose an administrative sanction on 26 October 2020, and the Applicant filed representations on 15 February 2021. However, from 15 February 2021 there was no action taken by the FSCA until the 2nd of September 2024 when the FSCA imposed a sanction. The applicant contends that there was an unreasonable delay of 3 years 6 months in concluding the matter and the FSCA concedes that the delay from their side was unexplained. The Applicant claims he is entitled to a

[7] Page 48 of the record line 4-5 and 2.1 line 1-4 of the investigation report, Part B.
[8] Page 37 of the Applicant' interview line 8 to 18.

reduced sanction of less than 10 years as a result of the undisputed unexplained delay by FSCA[9].

13. On 25 May 2023, before the Applicant was issued with a notice of a sanction by the FSCA, the Applicant had approached the FSCA for a fit and proper certificate relating to a separate entity named Arc Market (Pty) Ltd. This entity is fully owned and controlled by the Applicant as the director. In this application, the FSCA granted the Applicant a Fit and Proper letter in terms section 8 (3) of the FAISA. The Applicant claims that the FSCA is estopped from overruling its own decision and is functus officio. The Applicant contends that when the FSCA informed him that his application for a fit and proper certificate was successful, that was a final decision recognising him as a licensed financial service provider as he was not informed at that time that the investigation against him by the FSCA was still ongoing[10].

14. In this application, the Applicant avers that he was transparent in the application and that he provided the FSCA with a copy of the charge sheet that revealed that he was acquitted at the end of the State's case, and that he further provided proof that the second criminal case against him was withdrawn by the prosecution. However, in the application for the fit and proper certificate, the Applicant completed Form FSP 4D and incorrectly

[9] Para 10 of the FSCA' heads of argument. Page 26 of the Applicant' interview, line 8 to 10.
[10] Tribunal record para 18 and 19 of page 8 and page 27 of Part A.

indicated that he was not subject to any investigation or disciplinary proceedings by any regulatory authority[11].

15. The Applicant further contends that the FSCA failed to refer its investigation for hearing of oral evidence as there were disputes of fact that were incapable of resolution on the papers. The disputes of facts are mainly on the extent of involvement of Louis Roche in the business. The Applicant contends that the FSCA ought to have concluded that the contraventions of the FAISA were perpetrated by Roche Futures UK and Louis Roche who wholly owned its South African subsidiary company, Roche Futures (Pty) Ltd. The Applicant claims he was appointed as a director of Roche Futures (Pty) Ltd for pragmatic reasons as the company was never factually operational.[12]

16. According to the Applicant's version, no actual loss to any of the clients were proven and claims that he in fact, safeguarded clients' funds by transferring them from the control of Louis Roche.[13]

**The challenges with the Applicant's contentions are as follows:**

**Who owns Roche Futures SA that holds a bank account with FNB?**

[11] Question 19 on page 221 of the tribunal record.
[12] Para 25 of the application for reconsideration, page 10 of Part 1.
[13] Para 30 page 12 of the record.

17. In his version, the Applicant claims he held 30% shareholding whilst Louis Roche held 70%. He further claims that his role was to meet clients, explain products, obtain application forms and Financial Intelligence Centre Act (FICA) documents and then forward the same to Louis Roche. He also claimed that training clients on investment platforms was done by Louis Roche who had told him that they possessed an international licence under the UK business and that that licence could be used internationally. Whilst Louis Roche was interviewed by the FSCA and admitted to receiving funds from three (3) clients, there is no evidence that proves that Roche was a majority shareholder in the SA business. In the interview. Louis Roche stated that he did not have any relations with Roche SA whatsoever as it was registered by the Applicant without his knowledge. It is difficult to believe that Louis Roche had no relations with Roche SA when he himself admitted that he received three (3) payments from Roche SA. The crux of the matter is that Roche SA was registered by the Applicant, and he is the sole director and the sole signatory to the account. As the sole director, the Applicant cannot distance himself from his own company. About 56% of the proceeds of this account went into the Applicant's personal account. This is sufficient evidence to show that the Applicant controlled Roche SA.

18. The analysis of the bank statements, which is not challenged by the Applicant, revealed that from the period 1 June 2016 to 31 December 2018, 54 clients deposited funds and the total income from clients was R7 995 053. A total of R4 442 700 was transferred by the Applicant to his own personal account. He claims that these funds were invested by his family members. A total repayment to clients only amounted to R517 163,

approximately 6% of what the 54 clients deposited. Further, only an amount of R220 773, which represents 3 % of the deposits by the 54 clients, was withdrawn by clients. The funds that went to the Applicant's personal account were used towards personal expenses. This evidence is supported by the evidence of Alan Muziwakhe and Louis Roche. Again, this FNB account was opened by the Applicant, and he was the sole signatory to the account.

19. The Applicant claims that the clients that he dealt with were his relatives and none of them was prejudiced as a result of his conduct. The Applicant failed to corroborate this by producing information, names and deposits that were made by his so-called relatives from the time of the FSCA investigation up to the time that he filed his heads of arguments. It is clear from the record that the Applicant as an accountant was not keeping the required and proper records, no suitability analysis was done when onboarding clients, no questions were asked on the source of the investments, the business had no accounting office and risks of the investments were not fully explained to the victims. When asked if all clients' funds were mixed with his personal funds and whether personal payments were made from the business bank account, the Applicant's response was, *"yes, it is correct"*.[14]

20. The totality of evidence against the Applicant together with his own admissions is overwhelming and did not require a referral to oral evidence. The analyses of the bank statement and how the Applicant mingled the investors funds with his personal account

[14] Page 56 Line 25 to 27 of the record.

funds demonstrates that the findings were correct with respect to his lack of integrity, dishonesty, incompetence and the risk posed by his conduct to the public at large if he were permitted to continue. The applicant also was solely responsible for moving the funds from his business account without being assisted by any third party and his sanction is appropriate and warranted.

**Functus officio\ Estoppel defence:**

21. The Applicant is seeking to benefit from the fit and proper certificate that was issued to him by the FSCA on a separate entity of his named Arc Market, he claims the FSCA is functus officio and is estopped from overruling its own decision.

22. In response, the FSCA conceded during argument that there was an error by its office caused by the Enforcement Office that dealt with the Arc Market application not communicating with the Investigation team that has investigating the Applicant and which had conducted several interviews with witnesses since 21 January 2019. Although the delays in finalising the investigation and the administrative processes by the FSCA were indeed unjustified, the Applicant cannot benefit from the error by the FSCA as the issuing of the Fit and Proper certificate was supported by false information provided by the Applicant who did not disclose to the FSCA that he was under investigation and had been interviewed by them in another matter.

23. Specifically, on 25 May 2023, the Applicant completed the prescribed form on behalf of Arc Market as a sole director and sole shareholder. The FSP 4D form at question 19 asks whether the applicant has been the subject of any investigation disciplinary proceedings by any regulatory authority (whether in the Republic or elsewhere), exchange, professional body, government body or agency. The Applicant's answer was a cross (x) on NO. By so doing, the Applicant conveyed a message to the Licensing Team that he was not under any investigation by the regulator even though he knew that this was not the case. His answer was untruthful.

24. It is therefore clear that the Fit and Proper assessment that the Applicant claims should be relied upon as the final decision by the FSCA was based on his misrepresentation and false information. This form was completed under oath where the Applicant swore to give evidence that shall be the truth, the whole truth and nothing but the truth. This Tribunal cannot allow the Applicant to benefit from his own misrepresentation and the defence of estoppel and functus officio cannot avail him and is inapplicable in this case.

**Referral for oral evidence**

25. The Applicant claims the matter should have been referred for oral evidence as there was a dispute of fact on the involvement of Louis Roche in the entire operations. The Applicant together with Louis Roche were directors of Roche Futures Ltd UK that was not registered in South Africa. According to Louis Roche, the Applicant asked to be removed

as the director of Roche Futures Ltd UK, and he had no knowledge of any amounts as he had no access to the Roche Future Pty SA' bank account.[15]

26. This averment that Louis Roche was involved does not exonerate the Applicant. Louis Roche was interviewed by the FSCA which took an independent decision to investigate and sanction the Applicant and not Louis Roche. The investigation by the FSCA did find that during the period 1 July 2018 to 31 December 2017 both the Applicant and Louis Roche rendered intermediary services in respect of a financial product without being duly authorised, thus contravening section 7 of the FAISA.[16]

27. Further, based on the undisputed facts before this Tribunal, the Applicant had been involved in the unlawful and criminal actions that were pursued by both the FSCA and the police. Although the Applicant claims that he was trading in forex pairs and paid a commission month by month, the evidence on record shows that the Applicant received investments directly from clients. Whether some of them were his friends and relatives is totally immaterial and irrelevant.

28. The Applicant further claims that he was not allowed to trade any funds because Louis Roche had informed him that he had his own team of traders that were going to manage the funds. In the same interview on page 39 line 8 to 10 of the record Part B, the

[15] Para 1.4.6.8 of page 66 of Part B and para 3.4 of the investigation report, page 6.
[16] Para 1.4 of page 4 of the investigation report.

Applicant admits that he was the only person in South Africa who could effect payments and transfers in the FNB account.

29. The Applicant further admitted in his interview that he opened an FNB bank account at the East Rand Mall with the UK company registration number. The fact that he used the UK company registration does not distance him from the control and ownership of the business and its bank account number. [17] The analysis of the bank account that was conducted during the investigation was with regard to the same FNB account that the Applicant opened in SA under Rocher SA, and he was a sole signatory.[18]

30. When asked how many clients he serviced, he struggled to give a figure, and his response was that they were so many, and he could not keep track. This was at odds with his version that his clients were his relatives.

31. These insurmountable challenges with the Applicant's version demonstrate that he was the key player in defrauding his clients knowing very well that he was not registered in terms of FAISA and was selling empty promises to his vulnerable victims, including a pensioner. When asked if he promised his clients that he was investing their entire investments, the Applicant's response was that he indeed told his clients he was investing the entire funds received from them. The perusal of the bank statements by the FSCA

[17] Page 28 line 3 to 9 of the interview Part 2.
[18] Para 5 of page 8 of the investigation report.

revealed the opposite – that more than half of the investments received directly from clients went to the Applicant's personal bank account. In his interview with the FSCA he stated that he did not think clients needed to know the operations and mechanisms in the back end as no business reveals to its clients that it is importing or exporting. This clearly demonstrates that the Applicant did not comply with his duty of care, transparency, honesty and accountability when dealing with his clients.

32. The Applicant claims that the money that he transferred into his own personal account was his family funds at the time that he had resigned from Roche UK. His contention is that he transferred the money into his personal account to shield it away from Roche. This is not comprehensible as the funds were in the FNB account where he was a sole signatory to the account. The funds did not end there, they were transferred to his personal account and subsequently invested into his company JP Markets SA. Again, he failed to provide names and details of these so-called family members, their bank account numbers and any reconciliation demonstrating that there were family funds involved. He claims that everything was done on calls, and written communication on his business' operations is on his e-mail which he does not have access to. This is not a professional way of dealing with clients' funds, nor compliant with required record-keeping obligations and is rather in line with the actions of a person that was defrauding his victims.

**No loss suffered by any of the clients was proved by the FSCA**

33. Several victims and a few accomplices were interviewed by the FSCA and stated the following:

33.1 Louis Roche: He did not have any relations whatsoever with Roche SA as it was registered by the Applicant without his knowledge. Louis Roche admitted to receiving funds from 3 clients and traded on behalf of those clients as a senior trader. He further admitted to not having a licence with the FSCA.

33.2 Mogasho Meshack: He was introduced to the business by Louis Roche who later introduced him to the Applicant as the contact person. In his discussion with the Applicant, the latter indicated that he wanted a licence to trade in South Africa as they have a German licence. Mogasho knew that the South African business was not licenced. He stated that that he did everything with the Applicant relating to the management of his account. He invested an amount of R200 000 in tranches into the Applicant's FNB account. He, at not stage, was asked to complete documents or disclose the source of his investment. He received returns or payments for 3 months only and when he made enquiries about unpaid payments, he was informed by Louis Roche that the Applicant had kept some of the money for himself. He decided to stop trading with the Applicant and Louis Roche and contracted a firm of private investigators named IRS Investigators to intervene and try to recoup his funds as he could see that it was a scam. He stopped communicating with the Applicant and Louis Roche and when he tried to access his account, he realised that it was blocked and inaccessible. All his payments were paid from the FNB account. Mogasho Meshack had referred his friend and sister to the Applicant. He stated that he took some of the equity from his house,

which was paid off and invested it into the business of Louis Roche and the Applicant and stated that he now carries this debt on his house. [19]

33.3 Modubu Ikanyeng: He deposited an amount of R10 000 into the FNB account and never got any return on his investment. The R10 000 was paid through Alan Muziwakhe who worked with the Applicant as a broker or assistant.[20]

33.4 Alan Muziwakhe: He was employed by Louis Roche and the Applicant as an intermediary that was responsible for introducing clients to the business, helped with FICA documents and training and was remunerated for his contribution. He was aggrieved at some stage for not getting what was due to him. Investments were spent on excursions and big lunches and some investors could not successfully claim either a portion or the entire investment. He mentioned that there were always issues and losses and that looked bad on him as a person that was referring clients to the business. At some stage, he and Louis Roche threatened the Applicant via email that they would report the Applicant to the FSCA, and the Applicant's response was that he will assist them in filing a report with the FSCA. He admits to referring more than 10 clients even though he was not registered with the FSCA himself to operate as an intermediary. He claims he resigned from the business after raising his unhappiness with the manner in which things were done. He too, could not produce any records on clients that were referred to the business by him. According to him, he worked for both Louis Roche and the Applicant.[21]

[19] Page 118 to 130 Part B.
[20] Page 113 line 59 to 60 of Part B.
[21] Page 93 to 111 of Part B.

34. Apart from the interviews conducted by the FSCA, the judgment in the Palmridge Magistrate's Court case against the Applicant states that Ms Patel, the complainant in the criminal case had testified that she does not know the Applicant, the Applicant had dealings with her son in law, Khalid Cassim, who was the second complainant in the criminal case, and Ms Patel invested R350 000.00 into the business account of the Applicant. The account number was given to her by the Applicant via WhatsApp messages. When the rest of the money did not come forth, she initiated a meeting with the Applicant through her legal representative. According to Ms Patel that was her first encounter with the Applicant and the Applicant made promises that he was going to pay back the money. [22]

35. From the interviews of the abovementioned witnesses, whose evidence was largely uncontested, it is abundantly clear that the Applicant's averments that no loss was proved by the FSCA is unfounded and false. In fact, clients such as Mogasho, Modubu, Cassim and Ms Patel lost monies that were paid into the FNB bank account of the Applicant, and he made promises to pay back the money when he was confronted by these clients. In his own interview with the FSCA, the Applicant stated that he wanted to sort out the clients that he brought on board including Cassim. He indicated that he had reached an agreement to pay back Cassim in the presence of Cassim's attorney. [23]

**Unreasonable delay justifying a shorter period of debarment**

[22] Para 1 to 7 of page 240 of the record Part B.
[23] Page 31 of the interview line 22 to 25 on page 55 of the record Part B.

36. The Applicant claims he is entitled to a reduced period of debarment based on the conceded delays by the FSCA to finalise the disciplinary action against him. In reply, the FSCA indicates that it had initially in its proposed sanction imposed a debarment of a period of 15 years but, as a result of the delays from their side, they reduced to the period of debarment from 15 years to 10 years. The debarment order issued by the FSCA on 26 October 2020 that accompanied the proposed regulatory and administrative action against Roche Futures (Pty) Ltd and the Applicant, is on record and does refer to a debarment period of 15 years. The tribunal is of the view that the debarment of 10 years is appropriate, dissuasive and effective considering the seriousness of the contraventions against the Applicant. The FSCA did disclose to the Applicant on 26 October 2020 that in imposing the penalty it took into account amongst other relevant considerations, the duration of the contravention, the loss suffered by clients, the extent of the Applicant's benefit, the fact that he cooperated with the investigators and several admissions that he made during the investigation.[24]

37. On the conceded delays occasioned by the FSCA, it bears stating that it must ensure that there is better coordination between its departments to avoid errors like the one here regarding the fit and proper certificate application and the inordinate delay in finalising this matter. Enforcement actions need to deal with and finalise within a reasonable time. A period of 5 years for finalising the investigation and imposing a sanction is unreasonable. Taking a period of 3 years 7 months after communicating a notice to take administration action before finally taking the administrative action is

[24] Para 38 and 39 on page 22 of the record, Part A and paras 33 of the record page 20 to 21 of Part A.

equally unreasonable. Persons that are subject to administrative and or enforcement actions at the hands of regulators are entitled to fair processes that include speedily finalising their matters and bringing finality to matters. In this matter, as conceded by the FSCA, the Applicant benefitted from the FSCA' unjustified delay as his period of debarment was reduced from 15 years to 10 years. A further reduction of the period of debarment is not warranted. Expedition also is needed to protect the investing public from individuals who do not meet the exacting standards expected of them.

38. Based on the totality of the evidence before the Tribunal, this Tribunal is satisfied that the debarment was lawful, reasonable and fair.

**Prevalence of Investment Fraud and how it impacts the most vulnerable**

39. I would pause and refer to the recent INTERPOL Financial Fraud assessment: A global threat boosted by Technology[25] where INTERPOL revealed that investment fraud is one of the prevalent global types of fraud. The Secretary General Jürgen Stock said:

> *"We are facing an epidemic in the growth of financial fraud, leading to individuals, often vulnerable people, and companies being defrauded on a massive and global scale.*

[25] 11 March 2024

*"Changes in technology and the rapid increase in the scale and volume of organized crime has driven the creation of a range of new ways to defraud innocent people, business and even governments. With the development of AI and Cryptocurrencies, the situation is only going to get worse without urgent action.*

*"It is important that there are no safe havens for financial fraudsters to operate. We must close existing gaps and ensure information sharing between sectors and across borders is the norm, not the exception.*

*"We also need to encourage greater reporting of financial crime as well as invest in capacity building and training for law enforcement to develop a more effective and truly global response."*

**Order:**

40. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 1 April 2025.

Xolisile Khanyile (Member) with the panel also consisting of

Michelle le Roux SC (presiding), and Zama Nkubungu-Shangisa