

THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP62/2024

In the matter between:

PRINCE SELLO MOAGI

APPLICANT

and

CLIENTELE LIFE ASSURANCE COMPANY LTD

RESPONDENT

Summary: Fairness of debarment proceedings

DECISION

INTRODUCTION

1. The Applicant brings this application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").
2. The Respondent is a registered Financial Services Provider as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act")
3. The Respondent employed the Applicant as a sales agent during September 2022.
4. As part of his onboarding process, the Applicant attended induction training aimed at ensuring that all of the Respondent's employees are *"equipped with the required product knowledge and system knowledge to enable them to carry out their duties as expected by the Company."* The Applicant achieved above benchmark results in all of the assessments

during the induction training, particularly in the compliance section. Having completed the induction training, a readiness assessment was performed, and only once this assessment was passed was the Applicant deployed to the sales floor. The Applicant completed his readiness assessment in September 2022 and was consequently fully apprised of the sales methodology, the Respondent's ethos, and Section 2 of the FAIS General Code of Conduct ("the Code"), which requires that *"A provider must at all times render financial services honestly, fairly, with due skill, care, and diligence and in the interest of clients and the integrity of the financial services industry."* Furthermore, the Code requires representatives to provide financial services that are:

4.1 Factually correct.

4.2 In plain language.

4.3 Not confusing or misleading, and

4.4 Must allow the client the time to make an informed decision.

THE FACTS

5. On 14 August 2024, the Applicant spoke with a client who required assistance with the Clientele App. The Applicant took it upon himself to enquire what had happened to an investment she had held with the Respondent since 2022. During this discussion and by false pretences, the Applicant lured the client into agreeing to activate a new Clientele Wealth Plan. This activation was against the background of the client

advising the Applicant that she had no money and no employment. It would appear that the Applicant used the pretence that the client would receive payment of funds she had previously saved with the Respondent, whereas, in fact, she was taking out a new product which would cost her money in terms of additional premium.

6. The client cancelled the new product on the same day whereafter the Respondent performed an investigation.
7. The Applicant was suspended with immediate effect on 13 September 2024. On the same day, the Applicant was served with a Notice of a Disciplinary Hearing incorporating a Debarment Hearing.
8. A debarment hearing was held on 18 September 2024, and the Applicant admitted all of the facts alleged by the Respondent. After hearing evidence, the Chairperson of the debarment hearing found the Applicant guilty of dishonest conduct and found that he no longer met the fit and proper requirement of honesty and integrity required by the FAIS Act.
9. The Applicant did not seriously challenge the Respondent's intention to debar him during the debarment hearing nor the decision reached by the Chairperson to, in fact, debar him in this application. The high-water mark of the Applicant's challenge is that he did not believe that the sales technique he was using would result in a claim of misconduct and that he *"really did not mean what has happened."*

LEGAL FRAMEWORK AND ANALYSIS

10. In determining whether the debarment was conducted substantively and procedurally fairly, the jurisdictional factors in terms of the FAIS Act must be present. Section 14(3)(a)(i)-(iii) of the FAIS Act reads as follows:

*"(3) A financial services provider must-
before debarring a person*

- (i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;*
- (ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and*
- (iii) give the person a reasonable opportunity to make a submission in response;"*

11. The process to be followed for effecting a debarment to ensure that the requirements prescribed by section 14(3) of the FAIS Act are complied with is summarised in Guidance Notice 1 of 2019 (The Guidance Notice).
12. Further, the FAIS Act states in section 14(2) that the Financial Service Provider must ensure the debarment process is lawful, reasonable, and procedurally fair before effecting the debarment.
13. The parties waived the right to a formal hearing and agreed that the Tribunal could decide on this matter based on the papers filed. On the papers, nothing was established to gainsay the Respondent's version that the debarment procedure was procedurally fair and substantively fair. To the contrary, the Applicant was afforded all the necessary notice,

attended the debarment hearing, and admitted the facts as alleged by the Respondent.

14. The Tribunal can find no grounds to interfere with the Respondent's decision to debar the Applicant.

ORDER: The application for reconsideration is dismissed.

Signed on 21 November 2024



PJ Veldhuizen & LTC Harms