THE FINANCIAL SERVICES TRIBUNAL

Case No.: A12/2023

In the matter between:

SATISH KUMAR BHALA Applicant

and

THE FINANCIAL SECTOR CONDUCT AUTHORITY Respondent

For the Applicant: LD Isparta instructed by Alant Gell & Martin Inc
For the Respondent: B Bredenkamp
Date of Decision: 12 December 2023

DECISION

INTRODUCTION

1. This is an application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ('the FSR Act') of the Financial Sector Conduct Authority's ('the FSCA') decision dated 13 December 2022. In terms thereof, the FSCA debarred the applicant from rendering financial services for a period of eight (8) years and imposed an administrative penalty on the applicant in the amount of R100 000.

2. The applicant was approved by the FSCA as Key Individual ('KI') of Stringfellow Financial Services (Pty) Ltd t/a Stringfellow Investment Specialists ('Stringfellow Investments') on 2 February 2016.

3. In order to give context to the Tribunal's decision, it is necessary to provide a relatively detailed discussion of the facts in this matter.

4. Stringfellow Investments was a so-called fund of funds which is in essence an investment vehicle where a fund (such as Stringfellow Investments) invests (on behalf of clients) in a portfolio of other funds. These include funds managed by Sanlam, Allan Gray, Prudential *et cetera*.[1]

5. Thomas Stringfellow ('Stringfellow') was the KI, director and controlling mind of Stringfellow Investments.[2] During 2010, Stringfellow acquired the rights to Lorna Jane in Africa. Lorna Jane is a substantial, international commercial enterprise and an athletic apparel retailer. On Stringfellow's own version, the overall value of the Lorna Jane business, as at 2016, was worth US$500 million.[3]

6. Stringfellow was, in essence, a fund/multi-manager who no doubt ran a successful investment company. This is apparent from the accolades he

[1] Record, Part B, pp 525 to 546.

[2] The reference to Thomas Stringfellow in this decision is based on a reading of the transcripts of interviews conducted (under oath) by the FSCA.

[3] In reference to paras 5 to 7 hereof, see: Record, Part B, pp 56 to 58.

received in relation to Stringfellow Investments. However, Lorna Jane is a substantial enterprise. In acquiring the rights to Lorna Jane and rolling it out across the continent, Stringfellow did not have the required capital. Stringfellow needed to raise capital.

7. In early 2016 Stringfellow contracted with a company called Exigo to raise capital for Lorna Jane. Stringfellow paid a substantial sum to Exigo to raise US50 million for Lorna Jane by the end of 2016. The aim was to acquire funds from institutional investors as opposed to retail investors. However, in about February 2017 Exigo was liquidated. Stringfellow contracted with another entity to raise the required capital. Unfortunately, that venture, for reasons that are not relevant at present, also proved fruitless.

8. When the shoe started to pinch, Stringfellow leveraged his relationships with clients of Stringfellow Investments to invest in Lorna Jane. Clients were told that due to market volatility, an imminent economic crisis and market crash, and other tales told by Stringfellow, Lorna Jane was a better and safer investment that offered a 14% guaranteed return. Many of these clients were advised to disinvest from Allan Gray, Sanlam etc. and to invest their funds in Lorna Jane. Accordingly, Stringfellow successfully induced the gullible and the injudicious to invest large amounts of money in a business which, when properly analysed, never had a reasonable prospect of succeeding.[4]

[4] Record, Part A, pp264 and 265 (See also footnote references to transcripts).

9. The agreements were structured such that clients advanced monies to Lorna Jane in the form of an unsecured loan in return for interest rate payments of 14% per annum for an agreed period of time. At maturity, or at the end of the agreed period, the lender/investor would be entitled to recall the loan amount.

10. Pursuant to receiving complaints from, *inter alia*, investors regarding the non-payment of interest and their inability to recall the loans, the FSCA commenced its investigation in 2019. Notably, the former KI and compliance officer of Stringfellow Investments reported the company to the FSCA based on, *inter alia*, the fact that Stringfellow Investments were conducting unlicensed activities and a scheme akin to a Ponzi scheme.

11. The investigation was aimed at establishing whether Stringfellow, Stringfellow Investments and other related entities known as Stringfellow Group's (Best) Opportunities Fund and Stringfellow Private Portfolio contravened financial sector laws. The latter two entities were conducted as Collective Investment Schemes. Not only were they not registered for that purpose, the FSCA found that they were in fact non-existent entities.

12. In the course of its investigation the FSCA interviewed Stringfellow, clients and employees of Stringfellow Investments as well as the applicant.

13. For present purposes we only concern ourselves with what transpired during the applicant's tenure as KI of Stringfellow Investments. The applicant, as

noted, was approved and appointed as KI of Stringfellow Investments in February 2016. He claims to have resigned with effect on 30 April 2018. However, the FSCA investigation shows that the applicant received a salary until October 2018 and was still registered as a KI for Stringfellow Investments until 30 June 2019. However, the FSCA accepts that the applicant can only be liable for the period February 2016 to April 2018.[5] We are less inclined to accept this. At the very least, the applicable period under consideration should be from February 2016 to October 2018. During this period, the applicant received a salary from Stringfellow Investments and was registered as its KI. However, for purposes of this decision, we shall accept that the relevant period is February 2016 to April 2018 – as the parties have done - and we base our decision on the conduct of the applicant over that period.

14. Before this Tribunal, the applicant raised various grounds, including 'augmented grounds', for reconsideration of the FSCA's decision, none of which are a model of clarity. We address these in more detail below but to summarise:

14.1 The applicant's principal complaint is that the investigation by the FSCA was irregular. The investigation and the reports compiled pursuant thereto relate to Stringfellow, Lorna Jane *et al*. and do not implicate the applicant in his role as KI for Stringfellow Investments.

[5] Record, Part A, p24 at para 2.11; p29 at para 40.

14.2 Whilst being afforded an opportunity to make submissions on the FSCA's draft investigation report, the applicant was not afforded an opportunity to comment on the final report.

14.3 There was a lack of '*segregation*' between the investigators and the decision makers of the FSCA.

14.4 The applicant was licensed for Category II financial services, not Category I. The result being, so the applicant contends, that he is not responsible for the Category I activities conducted by Stringfellow in relation to Stringfellow Investments.

14.5 Most of the unlawful dealings by Stringfellow and/or Stringfellow Investments were either '*pre-Bhala*' or '*post-Bhala*' as his counsel terms it.

15. It is common cause that the applicant was the KI for Stringfellow Investments, and it is apparent from the record that the applicant was not himself involved in Lorna Jane nor any of the other entities. The FSCA also does not make this allegation when it sought to debar the applicant and impose the administrative penalty. The FSCA's underlying complaint against the applicant is essentially one of culpable remissness.

16. The crux of the issue for determination is whether the applicant as KI of Stringfellow Investments duly performed his oversight and management role

in relation to the FSP i.e., Stringfellow Investments, as prescribed by the financial sector laws or not – whether the applicant contravened a financial sector law and whether the applicant did so 'in a material way', or not.

17. First, however, the applicant's application for condonation is considered.

CONDONATION

18. The application for reconsideration was filed out of time. The lateness is attributed to the applicant's counsel who purportedly miscalculated the *dies* in a memorandum of advice. The application for condonation was not seriously opposed by the FSCA and there is no prejudice to it. Having considered the matter, we grant the condonation sought.

THE ROLE OF A KI

19. In order to assess the role and responsibilities of a KI in relation to an FSP, one must have regard to the role and responsibilities of the FSP. In this regard an assessment of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003 ('the General Code') is useful.

20. In terms of the General Code, an FSP must have the operational ability, including adequate and appropriate human, technical and technological resources, to effectively function as a particular category of FSP and to render the financial services in relation to the financial product for which it is authorised (section 36). An FSP must have adequate and appropriate key

individuals to effectively manage or oversee the activities of the FSP relating to the rendering of financial services (section 36).

21. In addition, an FSP must have effective and adequate systems of corporate governance, risk management (including conduct risk management) and internal controls that include risk management policies, procedures, and systems, including effective procedures for risk assessment, which identify the risks relating to the FSP's activities, processes and systems, and where appropriate, set the level of risk tolerated by the FSP (section 37 of the General Code read with sections 3[6] and 8 thereof).

22. Section 8 of the General Code applies to instances where providers give advice to clients on specific financial products. Accordingly, the provider must obtain from the client such information regarding the client's needs and objectives, financial situation, risk profile and financial product knowledge and experience as is necessary for the provider to provide the client with appropriate advice. The advice must take into account, *inter alia*, the client's ability to financially bear any costs or risks associated with the financial product being offered.

23. '*A provider must at all times have and effectively employ the resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that clients,*

[6] Section 3 of the General Code relates to representations made and information provided to clients as well as the avoidance and disclosure of conflicts of interest.

product suppliers and other providers or representatives will suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions' (section 11 of the General Code).

24. The FSP must also have effective procedures and systems to ensure compliance by the FSP, its officers, employees, key individuals and representatives with financial sector laws (section 37 of the General Code read with section 13 (2) of the FAIS Act).

25. Importantly, an FSP must have effective procedures and systems to detect any risk of failure by the FSP to comply with applicable legislation, and put in place measures and procedures to minimise such risk and that provide for corrective actions to be taken in respect of non-compliance, weak oversight, failure of controls or lack of sufficient management (section 37 of the General Code)

26. In turn, section 7 of the FAIS Act stipulates that an FSP may not render financial services for which that FSP is not licensed. The same applies to a natural person such as a key individual and representative of a FSP (see section 13(1) of the FAIS Act).

27. In terms of section 42 of the General Code, a key individual must have the operational ability to effectively manage and oversee the financial services related activities of the FSP or juristic representative and the financial

services in relation to the financial product for which the key individual was approved or appointed.

28. A key individual/person is a natural person responsible for managing or overseeing, either alone or together with other so responsible people (i.e., other key individuals if any), the activities of the FSP relating to the rendering of defined financial services (section 1 of the FAIS Act). The words 'manage' and 'oversee' are key.

29. In terms of the General Code, an authorised key individual and FSP must, after being so authorised, continue to comply with the fit and proper requirements (section 8A of the General Code).

30. Accordingly, a key individual is not only responsible to manage and/or oversee the financial services for which he or she is approved or appointed but bears a wider, more onerous responsibility to ensure that the FSP complies with its duties and responsibilities as demonstrated in the General Code and the FAIS Act. (See also: **Renault Otto Kay v The Financial Sector Conduct Authority** (FST, case no: A19/2022 6 February 2023) par [18] – [25]; **Jonker v Registrar of Financial Service Providers** Case 23/2015 (Appeal Board of the FSB) par [165], [177] – [184] *et cetera*) The duties and obligations imposed are onerous.

THE FSCA INVESTIGATION AND THE APPLICANT'S CLAIM OF PROCEDURAL IRREGULARTIES

31. The applicant claims that the investigation conducted by the FSCA was procedurally irregular and raises various purported grounds in support thereof. Before assessing those grounds, a brief discussion on the legislative framework is provided.

32. Investigators are appointed by the FSCA in terms of section 134 of the FSR Act. In terms of subsection (2):

A person appointed as an investigator must:-

(a) not be a disqualified person;

(b) not have any conflict of interest in respect of the subject matter of the investigation; and

(c) have appropriate skills and expertise.

33. The investigation itself was conducted in terms of section 135(1)(a) of the FSR Act which provides as follows:

(1) A financial sector regulator may instruct an investigator appointed by it to conduct an investigation in terms of this Part in respect of any person, if the financial sector regulator:-

(a) reasonably suspects that a person may have contravened, may be contravening or may be about to contravene, a financial sector law for which the financial sector regulator is the responsible authority.

34. In terms of section 136(1)(a) of the FSR Act, an investigator may by way of written notice require any person whom it reasonably believes may be able to provide information relevant to the investigation to appear before the investigator, at a time and place specified in the notice, to be questioned by an investigator.

35. Section 153 of the FSR Act lists the specific instances in which the FSCA may debar a natural person which includes where such person has "*contravened a financial sector law in a material way*" (s153(1)(a)). In turn, section 154 of the FSR Act provides as follows:

(1) Before making a debarment order in respect of a natural person, the responsible authority must:-

(a) give a draft of the debarment order to the person and to the other financial sector regulator, along with reasons for and other relevant information about the proposed debarment; and

(b) invite the person to make submissions on the matter, and give the person a reasonable period to do so.

(2) The period contemplated in terms of subsection (1) (b) must be at least one month.

(3) In deciding whether or not to make a debarment order in respect of a natural person, the responsible authority must take into account at least:-

(a) any submission made by, or on behalf of, the person; and

(b) *any advice from the other financial sector regulator*.

36. As noted, subsequent to filing the application for reconsideration, the applicant augmented his grounds for reconsideration. The augmented grounds can be summarized as follows:

36.1 It is improper for the '*investigations cadre*' to issue the decisions in respect of the administrative penalties imposed on the applicant. There is thus a lack of '*segregation of duties*'.

36.2 The applicant is unaware of other persons (i.e., other than Gerhard Van Deventer who conveyed the decision, including the sanctions, to the applicant on behalf of the FSCA) involved in the decision-making process. In the result, the applicant was not afforded an opportunity to make representations '*on an even playing field*'.

36.3 The investigation report constitutes '*a combination of findings against various role players*'. This has the effect that the findings against the applicant are materially biased and/or incorrect.

36.4 The investigators were biased against the applicant. The applicant provided the investigators '*with certain facts or submissions*' which were discounted.

36.5 The 'underlying evidence' does not support the findings made in the investigation report.

36.6 The facts presented (presumably in the investigation report) are unrelated or inapplicable to the applicant.

36.7 The applicant was not afforded an opportunity to make submissions in respect of the final investigation report which differ from the initial investigation report.

37. After receiving complaints from members of the public concerning investments made by Stringfellow, the 14% return guarantee and not being able to withdraw their funds, the FSCA commenced its investigation into Stringfellow Investments, associated companies, directors, key individuals *et cetera*.

38. From the transcription record it appears that the FSCA commenced with interviews for purposes of its investigation in or about July 2019. The FSCA interviewed various individuals including Stringfellow and his wife Leigh Stringfellow. The applicant was interviewed on 11 July 2019 and again on 8 August 2019. Pursuant to their investigation, the FSCA's appointed investigators compiled a draft report of their findings. The draft report is dated 23 September 2021.

39. On 6 October 2021, the FSCA, per Gerhard Van Deventer, gave the applicant written notice of the intended administrative action against him ('the notice'). The notice stipulated, *inter alia*, the findings uncovered in the investigation, the financial sector laws which the applicant is alleged to have

contravened and the intended regulatory actions including the intended period of debarment (10 years) and the sum of the administrative penalty (R100 000.00). The notice details the investigation insofar as it relates to the applicant and the reasons for the intended debarment and administrative penalty. To the notice is annexed the draft investigation report, a draft administrative penalty and draft debarment order.

40. In the notice, the applicant was invited to make submissions in response to the intended regulatory action and the allegations made against him. He was required to do so by 9 November 2021. On 26 January 2022, the applicant's attorneys wrote to the FSCA seeking clarity on certain aspects of the notice. They also took issue with the fact that the notice indicates that the investigation is complete, yet the report is in draft form. Accordingly, on 26 April 2022, one of the FSCA's investigators, Junior Mathye, provided a detailed response to the queries raised by the applicant's attorneys. The applicant was invited to comment on the draft investigation report as well as the notice.

41. On 8 June 2022, the applicant provided his response to the notice as well as the draft investigation report. On 12 July 2022, the FSCA finalised its investigation report. On 13 December 2022, the FSCA informed the applicant in writing that it has imposed an administrative penalty of R100 000.00, and that the applicant is debarred for a period of 8 years. In the same correspondence, the FSCA duly responds to every submission

made by the applicant. Moreover, the FSCA records, in reference to the draft report dated 23 September 2021, as follows:

'*… The investigation report recorded the investigators' prima facie findings at that point in time without Bhala's submissions. Having received Bhala's submissions, we attach hereto the final report dated 12 July 2022. Bhala's attention is drawn to the fact that no material differences exist between the draft and final reports. It is therefore, the Authority's view that nothing turns on the fact that the initial report provided to him was marked draft*.'

42. The rules of this Tribunal require that an '*application for reconsideration must contain the full particulars of the grounds (stated succinctly) on which the application is based*…' The applicant was duly represented by an attorney and counsel in these proceedings and despite this, the grounds relied on by the applicant to impugn the process followed by the FSCA in the course of its investigation lack particularity. The heads of argument also offer little assistance.

43. Accordingly, the nature and extent of the 'bias' is not explained. The specific findings against the applicant and the reasons as to why they are incorrect are not demonstrated. The particulars of the facts or submissions made by the applicant that were discounted are lacking, including the facts in the report unrelated to the applicant and the effect thereof. The materiality and extent to which the initial report differs from the final report and the resultant prejudice to the applicant, if any, is also not explained.

44. On the issue of 'segregation' or lack thereof, the investigation report clearly records the names of the investigators. They are also identified in the transcripts. They were not the decision-makers. In its response to the application for reconsideration the FSCA explains that the decision was made by the Commissioner in consultation with the FSCA's Executive Committee: Supervision and Enforcement in a meeting held on 2 December 2022. Accordingly, Gerhard Van Deventer in his capacity as Divisional Executive: Enforcement duly conveyed the decision to the applicant.

45. In addition, it is not in dispute that the investigation was not solely aimed at the applicant. In the executive summary of both the draft and final reports, the investigators record that the investigation sought to uncover breaches of financial sector laws by Stringfellow Investments and the related entities. In so doing, the investigators interviewed clients of Stringfellow Investments, Stringfellow, key individuals, compliance officers *et cetera*. The applicant, as key individual of Stringfellow Investments, was also interviewed. The applicant was not debarred immediately following his interview, he was given notice of the intended regulatory action, the grounds relied on by the FSCA, and afforded an opportunity to make submissions, including on the draft report. Accordingly, the allegation, without more, that because the investigation concerned '*various role players*', the findings against the applicant are '*materially biased, and or skewed, and or incorrect'* is without merit.

46. The facts do not demonstrate bias at all. No case is made out in the aforesaid regard. (*cf.* **Trustco Group Holdings Limited v JSE Limited** (JSE1/2022) [2022] ZAFST 130 (18 November 2022) par [68])

47. The applicant has not been able to point to a single procedural irregularity in the process followed by the FSCA. The applicant was afforded ample time to make submissions. The FSCA initially sought a response from the applicant by 9 November 2021. Before providing his response, the applicant sought clarity on a number of aspects contained in the notice as well as the report. These were provided by the FSCA. Thereafter, the applicant provided his response on 8 June 2022. The FSCA makes clear in its decision that it duly considered the applicant's submissions and sought to address each aspect thereof *ad seriatim*. Moreover, the applicant was afforded an opportunity to respond to the draft report. His response was considered. He was informed that his response does not materially affect the draft report. Being in possession of both reports, the applicant has sought, in a table format, to demonstrate the differences between the reports but has failed to establish the materiality or relevance thereof, and any prejudice.

48. The facts and *prima facie* views of the FSCA were put to the applicant in various '*audi*' letters, the content was explained to the applicant when his legal representative raised queries, and the applicant was invited and given a reasonable opportunity to respond. (**Heatherdale Farms (Pty) Ltd v Deputy Minister of Agriculture** 1980 (3) SA 476 (T)) The applicant did in

fact provide his responses. In our view there was no procedural irregularity in the manner in which the FSCA conducted the process.

49. We further point out that procedural irregularities at first instance may, depending on the circumstances, be cured by a procedurally fair appeal. (**Amanda Dolores Laetitia Niemec and Others v Constantia Insurance Co Ltd and Others** (Case No PA1/2021) par 40). We have considered the submissions of the applicant relevant to the Decision of FSCA afresh in the current proceedings.

50. With respect, the approach adopted by the applicant concerning purported procedural irregularities is akin to 'throw everything against the wall and see what sticks'. Unfortunately for the applicant nothing sticks, and we do not find anything irregular in the manner in which the FSCA conducted its investigation including the procedure in relation to the debarment and the imposition of the administrative penalty. The procedure was fair and in accordance with the FSR Act.

THE APPLICANT AS KI OF STRINGFELLOW INVESTMENTS

51. The findings made by the FSCA were that during the period 22 February 2016 and 30 June 2019, the applicant *caused* the contravention (by Stringfellow and Stringfellow Investments) of, *inter alia*:

51.1 section 7(1)(a), 13(1)(b), 13(2)(b) and 13(3) of the FAIS Act; and

51.2 section 2, 3(1)(a), 8(1)(a) to (d) and 11 of the General Code of Conduct for Authorised Financial Services Providers and Representatives, 2003.

52. Regarding the findings made by the FSCA in relation to the applicant as KI of Stringfellow Investments, the applicant contends, *inter alia*, that the investigation reports do not support the findings made against him. Moreover, the applicant claims, *inter alia*, that:

52.1 he was licensed for Category II activities and therefore was not responsible to oversee the Category I (advice) activities of Stringfellow;

52.2 there were no deposits paid into Stringfellow Investments' bank account and therefore it was impossible for the applicant to have been alerted to Stringfellow's conduct;

52.3 he should not be held responsible for the R200 million loss to clients of Stringfellow Investments in that a large portion of the loss ensued prior to his appointment as KI of Stringfellow Investments.

53. As stated, clients of Stringfellow Investments were advised to invest in Lorna Jane. These investments were by way of loans deposited into a Lorna Jane bank account. There was some debate between the parties about the nature

of the loans and whether they are debentures. In our assessment, they were debentures. In short, a debenture is a type of unsecured debt instrument whereby an investor offers to lend the funds required by a company, to the company in return for interest rate payments at a specified interest rate and for a certain amount of time. The debenture is unsecured in that it is backed only by the company's creditworthiness and/or reputation and not by physical assets or collateral. The applicant, save to state that the monies advanced by investors were loans, was not able to gainsay that they are in fact debentures. This is alarming in circumstances where the applicant is licensed for discretionary debentures. The relevance of the nature of the loans is two-fold:

53.1 First, it relates to the argument advanced by the applicant that he was licensed for Category II financial services i.e., discretionary services of which debentures is one, however, not Category I financial services (including debentures) which relate to advice and intermediary services. The applicant concedes that the advice given by Stringfellow to clients of Stringfellow Investments was '*unsound financial advice*'. However, the applicant contends that the advice concerns Category I activities for which he (the applicant) is not licensed.

53.2 The argument is irrelevant. A key individual is not only responsible to oversee the categories of financial services for which he is licensed, but he bears an oversight role in relation to the FSP generally.

53.3 Second, the nature of the loans is relevant to the question whether the FSP i.e., Stringfellow Investments was licensed to give advice and/or discretionary financial services in relation to debentures. Concerning the former, Stringfellow Investments was licensed to give advice concerning debentures from 22 February 2016. In respect of the latter, the FSCA's investigation shows that Stringfellow and his wife had full access to Lorna Jane's account which they managed at their sole discretion, and they are alleged to have misappropriated a large sum for personal use. The conduct is discretionary in nature.

53.4 However, the applicant contends that funds were deposited by investors into Lorna Jane's account not Stringfellow Investments' account. Therefore, the discretionary services in relation to the debentures concerned Lorna Jane, not Stringfellow Investments.

53.5 There is however a causal nexus. Stringfellow leveraged the reputation of Stringfellow Investments, an award-winning company, and his relationships with the clients of Stringfellow Investments, cultivated over many years, to induce those clients to disinvest from reputable fund managers and invest in Lorna Jane. This the applicant's counsel concedes.[7] Many of those clients were over the age of 60 and invested their pensions, they were vulnerable. Stringfellow wore two hats, and one cannot divorce Stringfellow

[7] Applicant's heads of argument p3 at para 1.2.1.5.

Investments from the scheme simply because the deposits were paid into an account held by Lorna Jane.

54. We agree with the FSCA's finding that when clients were advised to disinvest from legitimate investments, Stringfellow, a representative of Stringfellow Investments and under the supervision of the applicant, advised and rendered financial services.[8] The applicant as a KI was responsible to oversee (approve, sign-off and monitor) the 'investments' made by Stringfellow and/or through Stringfellow Investments. The applicant failed to do so. The applicant contravened a financial sector law and did so 'in a material way'. The jurisdictional facts relevant to both the administrative penalty and the debarment are present. (**Renault Otto Kay v The Financial Sector Conduct Authority** (FST, case no: A19/2022 6 February 2023) par [4])

55. As noted, the FSCA claims that the loss suffered by members of the public is in excess of R200 million. The FSCA's investigation covered the period between May 2013 and November 2018. Accordingly, the applicant argues that the loss suffered cannot be attributed to him since he was appointed

[8] See *inter alia* the definition of 'financial service' in the FSR Act read together with the definition of 'advice' in the FAIS Act. 'Advice' means any recommendation, guidance or proposal of a financial nature furnished, by any means or medium, to any client or group of clients, including a recommendation, guidance or proposal of a financial nature "*on the variation of any term or condition applying to a financial product, on the replacement of any such product, or on the termination of any purchase of or investment in any such product*". See further **Atwealth (Pty) Ltd and Others v Kernick and Others** 2019 (4) SA 420 (SCA) re the meaning of 'financial advice'.

only in February 2016. However, the investigation shows that in December 2016, the same year the applicant was appointed as KI of Stringfellow Investments, the latter had approximately R400 million assets under management. By July 2018, the assets under management had almost halved (to approximately R210 million)[9] because the funds were disinvested for purposes of investing in Lorna Jane. The FSCA was mindful of the fact that during the tenure of the applicant, the reduction in assets under management amounted to approximately R140 million.[10]

56. The FSCA also found that the applicant failed in his role as KI to meet the fit and proper requirements.[11] There is no indication that the applicant fully appreciates his responsibilities and duties as a KI nor the seriousness of his remissness and the consequences thereof. Had the applicant fulfilled his management and oversight role as a KI, which the common cause facts demonstrate he failed to do, he would have had insight into the business of Stringfellow Investments and would have been made aware that clients were withdrawing their funds and disinvesting from sound investments on the advice of Stringfellow. He would have, acting in the interest of the FSP, sought to establish why those clients were withdrawing their funds. Nothing prevented the applicant from making enquiries and had he done so he could have prevented the losses suffered by those clients.

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[9] Record, Part A, p265.

[10] Record, Part A, p30 at par 2.41 - 2.42.

[11] See BN 194 of 2017; Record, Part A, p31 at par 3.4.

57. The applicant had no risk policies in place nor any internal controls that include risk management procedures, and systems, including effective procedures for risk assessment. The applicant has not sought to develop systems and procedures to ensure that the FSP complies with the financial sector laws. The applicant failed to employ resources and procedures that can reasonably be expected to eliminate, as far as reasonably possible, the risk of financial loss that clients may suffer through professional misconduct or culpable omissions.

58. Instead, the investigation reveals that the applicant was not involved at all with the activities of Stringfellow Investments. He hardly ever went to the office[12] and knew nothing about the dealings of Stringfellow who he was required to supervise.[13] When asked to produce the record of his supervision of Stringfellow, the applicant could not produce a single document.

59. The applicant's attitude towards his role as a KI is nonchalant. Moreover, the applicant was aware that the previous KI left because of the 'Lorna Jane issue'. Yet, he did not bother to interrogate it[14] and the only inference to be drawn is that the applicant was simply not interested and considered the appointment '*an easy gig*', as he put it.[15] The applicant failed to comply with his significant responsibilities and duties as KI thereby causing the breaches

[12] Record, Part B, pp502 and 503.

[13] Record, Part B, p496.

[14] Record, Part B, p451.

[15] Record, Part B, p490.

alleged.[16] The FSCA decision to impose the administrative penalty and to debar the applicant cannot be faulted. (*cf.* **Renault Otto Kay v The Financial Sector Conduct Authority** (FST, case no: A19/2022 6 February 2023) par [48] – [49]; **Jonker v Registrar of Financial Service Providers** Case 23/2015 (Appeal Board of the FSB))

60. Regarding the extent of the administrative penalty imposed and the duration of the debarment, apart from an allegation by the applicant that the FSCA erred in determining "*the proper/appropriate/just sanctions*", the applicant provides no proper grounds for reconsideration. We are not at liberty or entitled to interfere with the exercise by the FSCA of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle. (**Renault Otto Kay v The Financial Sector Conduct Authority** (FST, case no: A19/2022 6 February 2023) par [47]; **MET Collective Investments (RF) (Pty) Ltd v FSCA and another**, A23/2019, 29 July 2020 par [67]; **Mwale and Another v The Prudential Authority and Another**, PA1/2019, 12 Jun 2019 p. 16) No case whatsoever is made out in this regard by the applicant. The FSCA provided extensive reasoning of the grounds for the 'regulatory actions' and the debarment. No case has been made out for us to interfere.

[16] Record, Part A, p25 at par 2.14, p 26 at par 2.19 – 2.20, p 27 at par 2.22 – 2.23, p 36 at par 4.22 – 4.23 *et cetera*.

61. In the aforesaid regard further, the FSCA submitted at the hearing of the matter with reference to **Massyn v Financial Sector Conduct Authority** (A45/2022) [2023] ZAFST 103 (22 August 2023) par [21][17] that the applicant has an alternative remedy at his disposal namely to apply to the FSCA in terms of section 153(6) of the FSR Act.[18] Should the applicant decide to follow this route, he will no doubt refer to the mitigating factors that the FSCA considered and further, no doubt, point out that in the matters of **Kay** and **Jonker** involving potentially more serious misconduct a debarment period of about half of his debarment period was imposed. These are not matters that have been raised before us, and no case has been made out for reconsideration in this regard. They need not detain us further.

ORDER

1. The following order is made:

   a) The late filing of the application for reconsideration is condoned.

   b) The application for reconsideration is dismissed.

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[17] "*21. On the debarment, as a creature of the statute, the Tribunal does not have powers to do what the Applicant has asked it to do, which is to reduce the period to 10 years. The Applicant's recourse lies elsewhere. He may, if so advised lodge such an application with the Authority under section 153(6) of the FSR Act. The Tribunal's powers under section 234(1) of the FSR Act are circumscribed as far as a debarment decision by the Respondent is concerned.*"

[18] The subsection provides:

"*(6) The responsible authority that made a debarment order may, by order and on application by the debarred natural person-*

(a) reduce the period of the debarment order; or

(b) revoke the debarment order."

Signed on behalf of the Tribunal on **12 December 2023** at **Sandton**.

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PR Long

With the Tribunal also consisting of: **C Woodrow SC** (Chairperson)

K Magano