

THE FINANCIAL SERVICES TRIBUNAL

CASE No: FSP69/2023

In the matter between:

SHARLENE PALAD-KANA

Applicant

and

OUTSURANCE INSURANCE COMPANY LIMITED

Respondent

Tribunal Members: MG Mashaba SC (Chair), N K Nxumalo and P Moloto-Stofile.

Appearance for Appellant: In person.

Appearance for Respondent: M Herbst.

Date of Hearing: 7 June 2024.

Date of Decision: 25 June 2024.

Summary: Application for reconsideration of the decision of the respondent to debar representative. Fit and proper requirements of honesty and integrity. Representative fraudulently providing the insured with her own bank account, instead of the insurer's, to be used for payment of premiums.

DECISION

[1] The applicant brought an application for consideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("*FSR Act*") against the decision to debar her with effect from 2 October 2024. The respondent, Outsurance Insurance Company Limited, carries on businesses including as a short-term insurer and authorised financial services provider ("*FSP*") as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 ("*FAIS Act*"). She was employed by the respondent as its "*representative*", as defined in section 1 of the FAIS Act.

- [2] The applicant was employed by the respondent as a Commercial Insurance Agent with effect from 1 March 2019.¹ Her remuneration was determined as follows:²

“Your remuneration will be primarily based on your securing clients and providing on-going service and support to ensure they stay loyal OUTsurance clients.

Your initial retainer amount will be R 29,019.58 per month and is guaranteed for the first four months of employment. Thereafter the retainer will reduce monthly over a period of approximately 36 months depending on the achievement of targets and leave adjustments. Your performance and, as a result thereof, your retainer will also be subject to reviews every six months whereby your actual performance will be reviewed against the set targets. Where your cashed premium generated is less than your target for your review period, your retainer will be adjusted downwards accordingly.”

- [3] The annual compliance audit conducted by the respondent in September 2023 revealed that the applicant had submitted fictitious policy applications to prove to her Head of Department that she had sold sufficient policies to justify a higher retainer.³

- [4] Whilst the respondent’s internal investigators were in the process of compiling evidence in order to charge her and refer the matter to internal disciplinary inquiry, they received an e-mail from a client querying the insurance payment. Upon investigation, they discovered that the applicant defrauded the client for an amount of approximately R270 000 by falsifying an OUTsurance document replacing the respondent’s bank account with her own bank account so that the client pays the premiums to her.⁴

¹ Bundle B, p 42

² Bundle B, p 42

³ Bundle B, p 99.

⁴ Bundle B, p 100

[5] After she had been issued with a notice of suspension and disciplinary inquiry, on 27 September 2023 the applicant resigned from her employment with immediate effect.

[6] On the same day, she was issued with a termination of employment agreement (*“termination agreement”*).⁵ In terms of the termination agreement, the applicant was invited to make representations as to why she should not be debarred on the basis that she no longer complied with fit and proper requirements of honesty and integrity.

[7] On 4 October 2023, she submitted her representations where she admitted that what she had done was *“very serious nature and that I did at some stage pose a risk to the company and the clients”*. She explained her conduct as follows:

“this was due to several factors which had snowballed and led me to do what I have done. I had been struggling severely with a combination of mental health issues, other physical health issues, personal issues, as well as financial issues.”

[8] On 6 October 2023, the applicant was debarred after being found guilty of (a) dishonesty after it was found that she created fictitious policies without any client consent to manipulate the remuneration system by inflating her performance and (b) failure to follow standard operating procedure in that the applicant when setting these fictitious policies did not book an appointment with the prospective client, obtain their consent for a quote, gather the

⁵ Bundle A, pp 18 – 22.

necessary information, capture the quote on the system, outline a presentation and then activate the sale as per standard operating procedure.⁶

[9] The applicant submits that she was on 2 October 2023 notified that the respondent had decided to debar her, without allowing her to represent herself in a hearing, nor did the respondent receive any written submissions from her, with her reasoning as to why she should not be debarred. In its reply the respondent submitted that it is correct that the applicant was on 2 October 2023 notified that the respondent had decided to debar her, but this notification was sent in error. According to the respondent the decision to debar the applicant was not taken on 2 October 2023 but instead on 6 October 2023.

[10] The applicant has brought this application for reconsideration on the ground of procedural fairness only.⁷ During the hearing of this application the applicant also confirmed that she was not disputing the guilty finding by the respondent. In a nutshell the applicant's case is based on the following arguments as quoted in her reconsideration application:

- "a. I resigned on the 26/09/2023, I was asked to sign a termination letter, which I still refuse to sign, as I do not agree with it, and I was made aware that the company reserved the right to possibly debar me, no notice was given of the intention to debar me,*
- b. On the 02/10/2023, I was notified that OUTsurance had decided to debar me, without allowing me to represent myself in a hearing, nor did they receive any written submissions from me, with my reasoning as to why I should not be debarred.*

⁶ Page 11 of Part A and page 62 of Part B of the Tribunal Record.

⁷ Page 2 and 53 of Part A of the Tribunal Record.

- c. *On the 04/10/2023, I had provided a written submission as to why I should not be debarred, however, on the 06/10/2023, I was informed that the decision was to debar me.*
- d. *I was debarred effective 02/10/2023.*
- e. *I have found an FSP which is willing to employ me, however, with me being debarred, I am unable to accept the position.*
- f. *I am a single mother of two children, aged 11 and 3 and I am solely responsible for them financially, I cannot provide for them if I am unemployed and with the employment rate being so high it will prove extremely difficult to find employment in a completely new industry. I have spent 14 years studying and gaining experience and knowledge in the financial services Industry, this is all I know.*
- g. *This is my first transgression of such a nature and I feel that the implications are harsh.”*

[11] On 13 November 2023 the applicant applied for the suspension and upliftment of her debarment. She argued that she was only given five days instead of 30 days to respond to the allegations levelled against her.⁸ In her affidavit dated 11 November 2023 she mentioned that she was truly remorseful and genuinely apologetic. She further said: *“I am requesting this debarment to be suspended for the reason that we are all human and all make mistakes and learn from them.”*⁹ In another affidavit in support of her suspension application she said the following:

*“I am truly remorseful and genuinely apologetic for what has transpired and my actions and I can assure you that nothing of this nature would ever occur again. I am pleading for a chance to start off on a clean slate at an alternative FSP and would appreciate the opportunity to do so.”*¹⁰

⁸ Page 53 of Part A of the Tribunal Record.

⁹ Page 86 of Part A of the Tribunal Record.

¹⁰ Page 80 of Part A of the Tribunal Record.

[12] In its opposing affidavit against the applicant's application for reconsideration and suspension of her debarment, the respondent adduced evidence and referred to other transgressions which the applicant committed whilst still in its employ. The alleged transgressions range from fraud to allegations by one of the applicant's subordinates that the applicant got the broker involved with loan-shark business.¹¹ The respondent adduced a transcribed record of a telephone conversation between the applicant and one MN to prove this allegation of fraud.¹²

[13] In their conversation the applicant confesses to having defrauded one of the respondent's customers an amount of approximately R270 000. The applicant does not deny that she committed fraud instead she avers that *"I have shown genuine remorse and I have apologized showing that I do understand what I have done and the extent to which it has caused damage to the reputation of the business."*¹³

[14] At the hearing, the applicant was asked whether she denied the findings that she had committed the transgressions she had been debarred for. She confirmed that she did not deny the findings but that she was pleading for clemency relying on her personal circumstances that she is a single mother and that this is the only career she knows and had.

[15] Her conduct in providing the insured with her own bank account details to be used in depositing the premiums was fraudulent and dishonest. For these

¹¹ Page 15- 19 of Part B of the Tribunal Record.

¹² Page 23- 41 of Part B of the Tribunal Record.

¹³ Page 126 of Part B of the Tribunal Record.

reasons, the applicant no longer complies with the fit and proper requirements of honesty and integrity.

[16] For all the above reasons, the application for reconsideration must be dismissed. We therefore make the following order:

“The application for reconsideration is dismissed”.

SIGNED at PRETORIA on 25 June 2024 on behalf of the Panel.

A handwritten signature in black ink, appearing to read 'MG Mashaba', is written over a horizontal line.

MG Mashaba SC (Chair)
With the Panel consisting of:
N K Nxumalo and
P Moloto-Stofile.