

**THE FINANCIAL SERVICES TRIBUNAL**

Case No: FSP40/2022

In the matter between:

**SINEGUGU NOKUZOLA MASUKU**

**APPLICANT**

and

**TELESURE INVESTMENT HOLDINGS (PTY) LTD  
(o.b.o. 1LIFE INSURANCE LIMITED)**

**RESPONDENT**

*Summary: Fairness of debarment proceedings*

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**DECISION**

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**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 consultant on 1 April 2021.
4. The Applicant resigned on 19 February 2022.
5. The Respondent debarred the Applicant on 10 August 2022 because she no longer met the requirements of Section 8(1) of the FAIS, in that she materially contravened the FAIS Act and was no longer a fit and proper

person. The Respondent alleged that the Applicant was grossly dishonest and lacked integrity and that the Applicant had shown the intent to falsify information repeatedly, which would ultimately be to the Applicant's benefit and had the potential to prejudice customers significantly.

6. The Applicant challenged the Respondent's decision to debar her. The Applicant complains that she was not provided training regarding the procedures to be adopted regarding Covid-19 Vaccination discounts to be afforded to Respondent's clients.

## **THE FACTS**

7. As part of the Respondent's insurance underwriting processes, the Respondent afforded all clients who have been vaccinated against COVID-19 reduced premiums when buying life insurance products. The Respondent implemented this policy due to the lower risk posed and on the condition that during the sale of such products, the client confirmed with a "Yes" answer to the question of whether they were vaccinated against COVID-19 or not and provided their vaccination identification number for validation.
8. The Applicant received at least two group emails outlining the process and that disciplinary action would follow any non-compliance. The Respondent highlighted the latter action in bold red font in the group emails.
9. Notwithstanding the communications mentioned above, the Applicant captured false information ("the transgressions"), presumably to secure

discounted premiums for clients who were not vaccinated. In her submission to the Financial Services Tribunal (“the Tribunal”), the Applicant has admitted these transgressions but suggests these were simply errors. The sheer number of these transgressions indicates more than mere carelessness or a series of mistakes.

10. The internal investigation uncovered that while underwriting policies for clients, on nine occasions when it came to the COVID-19 vaccination questions, the Applicant would input an untrue entry of “Yes” and a fictitious vaccination identification number. The Applicant alleged that she received no training in this regard, which is demonstrably untrue.
11. When notified by her manager on the 17<sup>th</sup> of February 2022 that the Respondent had become aware of the transgressions, the Applicant resigned immediately.
12. On 21 June 2022, the Respondent sent the Applicant a Notice of Intention to Debar and the Respondent's Debarment Policy.
13. On 3 July 2022, the Applicant responded to the Respondent with her reasons and motivation as to why the Respondent should not proceed with her debarment. In this response, the Applicant admits the transgressions.
14. The Respondent considered the Applicant's response, and a majority of the debarment committee voted to debar the Applicant. The Respondent notified the Applicant of the decision to debar her on 10 August 2022. The

Respondent notified the Financial Sector Conduct Authority of the Applicant's debarment the following day.

## **LEGAL FRAMEWORK AND ANALYSIS**

15. 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 uncompleted 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;"*

16. 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).

17. Further, the FAIS Act states in section 14(2) that the Financial Service Provider must ensure that the debarment process is lawful, reasonable, and procedurally fair before effecting the debarment.

18. The parties waived the right to a formal hearing and agreed that the Tribunal could decide this matter 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.

19. In the circumstances, 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 26 October 2022



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**LTC Harms (deputy chair)**

**For self and PJ Veldhuizen (member)**