

## THE FINANCIAL SERVICES TRIBUNAL

In the consolidated matters between:

Case No: FSP60/2023

**SINOVUYO THALITHA BHEQEZI**

Applicant

and

**ASSUPOL LIFE LIMITED**

First Respondent

**DAVID SELLO MOITSE**

Second Respondent

---

### DECISION

---

Tribunal: Adv S Mahabeer SC (Chairperson), Adv M Holland and Adv N K Nxumalo

Date of hearing: 18 March 2024

Date of decision: 22 April 2024

Appearances:

For the Applicant : No appearance

For the Respondents : Ms C Sibiya, Legal Specialist: Assupol Life Limited

Summary: Application for reconsideration of the decision of the FSCA to debar the applicant, fit and proper requirement. Unauthorised application for funeral cover, bribing potential clients in order to solicit policies.

## I INTRODUCTION

1 The first respondent is Assupol Life Limited (“*Assupol*”). Assupol carries on various businesses including as a registered life insurer and authorised financial services provider (“*FSP*”) as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (“*FAIS Act*”). Assupol’s product offering includes funeral, life, savings, investments and retirement products.

2 The applicant was employed by Assupol as its “*representative*”, as defined in section 1 of the FAIS Act, and her functions included marketing Assupol’s funeral products to potential clients.

3 In this application, the applicant applies in terms of section 230 of the Financial Sector Regulation Act, 2017 (“*the FSRA*”) for reconsideration of Assupol’s decision to debar her as a representative. Assupol opposes the application.

4 The second respondent is Assupol’s employee, occupying the position of Manager: Intermediary Service Relations, Compliance and Regulatory Affairs. It was under his hand that Assupol issued the applicant with the notification to attend a debarment hearing and the notice of debarment.

5 The Tribunal directed that the matter will be decided on the papers as the applicant in another matter heard on the same day – with the same respondents and covering substantially the same facts and charges – informed the Tribunal that the present applicant requested her to convey a message to the Tribunal that she would not be in attendance as she was “*sick*”. The respondents submitted that the matter ought to proceed on the papers.

## II THE FACTS

6 Prior to her dismissal and debarment, the applicant was employed by Assupol as its “representative” and her functions included marketing Assupol’s funeral products to potential clients.

7 On 5 October 2022, Assupol commissioned an internal forensic investigation following a tip-off it received from a whistle-blower that the applicant and two colleagues had bribed potential clients from PRASA to take out policies with Assupol, .

8 The report compiled by Assupol’s internal investigators on conclusion of the investigation records the following:

*“2.3. As part of the investigation the three representatives were interviewed on 21 November 2022 to afford them an opportunity to respond to the allegations against them where it was stated that they bribed PRASA employees in exchange for writing new business. It should be noted that we did not receive any supporting evidence from the whistle-blower to substantiate the allegations regarding PRASA employees been bribed.*

*2.3.1. During the interview, the three representatives denied bribing PRASA clients, however, the said representatives instead conceded to have bribed potential clients from Pinetown clinic by paying them R 100.00 each in exchange for writing new business.*

*2.4. The said representatives further stated that the reason for them to bribe clients in exchange of (sic) writing new policies was because they were told by the very same clients that they had received gifts from other insurance companies prior to taking new policies, these clients wanted the same treatment from the said representatives...”*

- 9 On 22 February 2023, Assupol referred three application forms for funeral cover for an internal investigation on the basis that they all used the same bank details in respects of different applicants. One of the applications was for a certain Ms D, which was submitted by the applicant and dated 22 March 2022.
- 10 On 10 August 2022, Assupol issued the applicant with a notification to attend a debarment hearing to inquire into whether she was still compliant with the fit and proper requirements.
- 11 The debarment hearing was held on 24 August 2022. The minutes of the debarment hearing reflect that the applicant was called upon to answer the following charges:

***“Charge 1: Dishonesty, lack of integrity and/or good standing***

- a. *It is alleged that you completed and/or submitted application forms for Excellence Family Funeral Plan with policy number AL220000002388605 without authorisation from the policyholder.*
- b. *It is alleged that on the 21st November 2022 you agreed to have bribed potential clients at Pinetown clinic by paying them R100 to take out policies with Assupol Life.”*

***Charge 2: Misrepresentation***

- *It is alleged that you misrepresented the signature contained in the application form of policy number AL220000002388605 to Assupol Life with the intention to induce Assupol Life to accept as genuine, the above policy in order to prejudice Assupol Life and the client Ms [D].*

***Charge 3: Dishonourable and unprofessional conduct in rendering of financial services***

- *It is alleged that you failed to render financial services with honesty, integrity, due skills, care and diligence and demonstrated unwillingness to comply with business conduct, regulatory and professional requirements.*

**Charge 4: Fraud**

- *It is alleged that you unlawfully and intentionally made a misrepresentation which caused actual prejudice to another.*

**Charge 5: Forgery**

*It is alleged that you unlawfully and intentionally produced false documents and signatures to the actual prejudice of another.”*

- 12 The minute of the debarment hearing records the applicants’ case in respect of the bribery charge as follows:

*“The respondent Ms Bheqhezi mentioned that she did not bribe the clients. As per Ms Bheqhezi, she concluded business first then she just gave them money to buy lunch afterwards. According to the respondent, this is not bribery but a courtesy to the clients.”*

- 13 In respect of the unauthorised application in the name of Ms D, the minute of the debarment hearing records her case as follows:

*“Ms Bheqhezi was asked to comment about the policy allegedly issued without the client’s consent. In responding to this, Ms Bheqhezi stated that the client was referred to her by her colleague known as Amanda since they worked together.*

*Ms Bheqhezi stated that she gave the advice telephonically to the client, completed the application form in the absence of the client and then gave the form to her friend Amanda to give to the client to sign. As per Ms Bheqhezi, she could not meet with the client because the client stays a bit further from her place, and it was easy for her friend to meet with the client since they are not that far apart.”*

- 14 On 5 September 2023, Assupol issued the applicant with a debarment notice which states that:-

*“This is a result of your debarment hearing which took place on the 24 August 2023, where you found guilty on the following charges:*

*1.1. Dishonesty, Lack of Integrity or Good Standing:*

- It is alleged that you completed and/or submitted application form for Excellence Family Funeral Plan with policy number AI220000002388605 without authorisation from the policyholder.*
- It is alleged that on the 21 November 2022 you agreed to have bribed potential clients at Pinetown clinic by paying R100 to take out policies with Assupol.”*

15 On 20 September 2023, the applicant lodged her application for reconsideration of Assupol’s decision to debar her as a representative. The grounds relied upon for reconsideration are the following:-

***“Procedural fairness***

*There were procedural irregularities in the process followed by Assupol that have prejudiced the case in that:*

- I was not given an opportunity to call witnesses (clients).*
- I could not cross-examine the witnesses Introduced by the Company during the hearing.*
- I was not given an opportunity to present my evidence in order to prove my innocence.*
- I was not given an opportunity to cross-examine the client/s.*

***Substantive fairness***

*The decision Imposed was not Justified In the context of the charge and evidence led.*

*Charge 1(a)*

- The chairperson accepted hearsay evidence from the investigator Mr [Z] that the client/s never signed the application form while In actual fact it is the client’s signature that Is appearing In the application form.*

- *The chairperson did not allow me to submit a voice note from the client [Ms D] confirming that she was threatened by [Mr Z] (the Initiator) to deny that she signed the application form.*

...

*The chairperson ignored my evidence that I have never offered the clients R100 in exchange of take the policy.*

*I presented before the chairperson that after the clients signed the application forms, the clients asked where are the promotional material they usually get after they have signed with us and because we did not have any material available, we offered to buy them lunch and gave them R100 each.”*

16 The procedural grounds for reconsideration are gainsaid by the minute of the debarment hearing, which records that:

*“4.2 The chairperson explained the procedure to be followed during the hearing, and specifically highlighted the following important matters:*

*4.2.1. Evidence will first be led by the complainant, and then by the respondent. The other party always has a right to cross-examine any witnesses or ask clarifying questions.*

*4.2.2 After all evidence has been presented, the chairperson will present his verdict.*

*4.2.3. Thereafter, by mutual consent, the complainant and the respondent may present factors for consideration of aggravation or mitigation of any possible sanction.*

*4.2.4 Then the chairperson will prepare the minutes of the hearing, consider the evidence presented on a balance of probability and make a recommendation of the sanction.”*

17 The applicant’s version in respect of the bribery charge relied upon in support of the substantive grounds must be rejected because it contradicts the applicant’s own affidavit dated 21 November 2022, where she stated:

*“Around October 2022, I was informed by my Manager [N] that there was an investigation against me that I visited PRASA to write client business and I bribed or paid clients R100 so that they can take policies from me.*

*I denied that I visited PRASA and gave clients money.*

*I only remember Pinetown Clinic when I was with [ZH] and [ZM].*

*On that day the clients informed or told me that other insurance companies do give them gifts or money when they take the policies. They requested us to paid [sic] or give them gift [sic] in order for them to take policies.*

*I am not sure how many I wrote but might be between two and three. I gave R100 each either totalling R200 or R300.*

*After giving them the money they took policies from me.”*

- 18 It is evident that the applicant changed her version of events at Pinetown Clinic during the debarment hearing and persisted with her changed version in her grounds for reconsideration.
- 19 The applicant also sought to rely on new evidence in challenging the charge in respect of unauthorised application for a funeral cover. The new evidence is in the form of an affidavit purporting to be Ms D's made on 11 September 2023, after Assupol had issued her with the notice of debarment.
- 20 This new evidence is not admitted. In any event, the bribery charge is serious enough on its own to justify her debarment.



### III THE APPLICABLE LAW AND ITS APPLICATION

21 The provisions of the FAIS Act that govern the licensing and debarment of FSP's, representatives and key individuals were conveniently summarised by the SCA in *Associated Portfolio Solutions and Ano v Basson and Others*,<sup>1</sup> as follows:

*[20] An overview of the relevant sections of the FAIS Act is helpful for an understanding of the context and the relationship between the parties. The purpose of the Act is, according to its long title, to 'regulate the rendering of certain financial advisory and intermediary services to clients'. It does so by means of an administrative system of licensing, controlled by the FSB under the management of its Registrar, and largely thereafter, by a system of self-regulation in which licensed FSPs ensure that their representatives and key individuals are fit and proper persons to be entrusted with providing financial advice to the investing public.*

*[21] In terms of section 7, the FSP may not provide financial services unless it is licensed in terms of section 8. Neither may a representative of an FSP do so unless he or she has been appointed as such by an 'authorised' or licensed FSP in terms of section 13. FSP's are required to keep registers of their representatives and key individuals*

*[22] The Act decrees a close supervisory responsibility by FSPs over their representatives. In terms of section 13(1)(b)(i), no person may act as a representative of an authorised FSP unless, prior to the rendering of a financial service, he or she provides to clients confirmation certified by the FSP, that the FSP accepts responsibility for the activities of the representative performed within the scope of or within the course of implementing a service contract with the FSP. Section 13(iA) prescribes that a representative must meet the 'fit and proper' requirement. In terms of section 13(2)(a) an authorised FSP must, at all times, be satisfied that its representatives and key individuals are competent to act and that they comply with the fit and proper requirement. FSPs are charged with the duty to take reasonable steps to ensure that representatives*

---

<sup>1</sup> [2020] 3 All SA 305 (SCA).

*comply with any applicable code of conduct and applicable laws in the conduct of business.*

*[23] Under section 14 of the FAIS, the FSPs bear the duty to debar representatives, who do not meet the fit and proper requirement. Section 14(1)(a) provides that an FSP must debar its representative and key individual if satisfied that he or she (the representative and key individual) does not meet, or no longer complies with the requirements set in section 13(2)(a), or has contravened any provision of the Act in a material way. ...*

*[24] Once debarment has been effected, the FSP must immediately withdraw any authority that may still exist for the person to act on its behalf, remove the name of the debarred person from the register of representatives, immediately take steps to ensure that the debarment does not prejudice the interests of clients, notify the FSB of the debarment within five days, and provide the authority with the reasons for the disbarment. A (previously) debarred person may only carry on business or render financial services to clients or act as a representative or a key individual of an authorised provider if he or she complies with the requirement set in section 13(1)(b)(ii) of the FAIS Act.”*

22 The FSCA is now responsible for the functions previously performed by the FSB and the Registrar. The FSCA’s power to debar FSP, representatives and key individuals emanates from section 153 of the FSR Act. Previously, the Registrar’s power emanated from the now repealed section 14A of the FAIS Act.

23 In *Financial Services Board v Barthram and Ano*,<sup>2</sup> the SCA described the rationale for debarring representatives and key individuals who no longer satisfy fit and proper requirements as follows:-

---

<sup>2</sup> *Financial Services Board v Barthram and another* [2015] 3 All SA 665 (SCA)

*“[16] ... A representative who does not meet those requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. Such a person ought not to be unleashed on an unsuspecting public and it must therefore follow that any representative debarred in terms of section 14(1), must perforce be debarred on an industrywide basis from rendering financial services to the investing public.”*

24 Section 15 and 16 of the FAIS Act provide for the publication of the Codes of Conduct for different stakeholders regulated by the FAIS Act. Of relevance to the present matter is the General Code of Conduct for Authorised Financial Service Providers and Representatives (*“the General Code”*). In terms of section 6A, the Determination of Fit and Proper Requirements for Financial Service Providers (*“Determination of Fit and Proper Regulations”*) was also published.

25 Section 4(1)(a) of the Determination of Fit and Proper Regulations provides that:

*“The fit and proper requirements for each of the categories of FSPs, key individuals and representatives are—*

*(a) personal character qualities of honesty and integrity, as set out in Chapter 2.”*

26 Chapter 2 of the Determination of Fit and Proper Regulations consists of sections 7 to 10. Section 9 lists a number of incidents that serve as a *prima facie* proof that a person is dishonest or lacks integrity.

27 In *Y Rampersadh v First National Bank*,<sup>3</sup> this Tribunal said:-

*“33 On this authority, we accept that for purposes of determining the fit and proper requirement for FSP’s and representatives, “honest and integrity” means purity of character, soundness of moral principle and uncorrupted virtue. Conversely, “dishonesty and lack of integrity” means the opposite: i.e. defect of character, unsoundness of moral principle and corrupted virtue.”*

28 The finding in the internal investigation report that the applicant amongst others conceded to having bribed potential clients from Pinetown Clinic is consistent with the applicant’s own affidavit. This admitted conduct reflects a lack of integrity on the part of the applicant in that it shows defects of character, unsoundness of moral principle and corrupted virtue on her part.

29 For this reason, we are satisfied that Assupol was correct in its decision that the applicant no longer complies with the fit and proper requirements of honesty and integrity. Therefore, the correctness of its decision to debar the applicant cannot be doubted on the merits.

30 As stated above, the procedural grounds for reconsideration are gainsaid by the minutes of the debarment hearing, which show that at the commencement of the hearing the chairperson explained the procedure to be followed during the hearing as including that:-

30.1 Each party will be afforded an opportunity to lead her own evidence, starting with the complainant, and then by the respondent.

---

<sup>3</sup> *Yatheen Rampersadh v First National Bank, a Division of FirstRand Bank Limited Case No: FSP50/2021, dated 13 June 2022.*

30.2 Each party will have a right to cross-examine any witnesses.

31 The fact that the applicant was afforded an opportunity to give her evidence is supported by the summary of her evidence on the bribe charge which is consistent with her version in the application for consideration. Although the truthfulness of that version is rejected as subsequent contrivance because it contradicts her previous affidavit, it does show that she was allowed to testify in the debarment inquiry and that her version there was the same as her version in her application for reconsideration before us.

#### **IV CONCLUSION AND ORDER**

32 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 on behalf of the panel at Pretoria on 22 April 2024.

A handwritten signature in black ink, appearing to read 'Nxumalo', with a large, stylized initial 'N' and 'K' circled together.

**Adv N K Nxumalo**

With the Panel consisting also of:

**Adv Sandhya Mahabeer SC** (Chair) and

**Adv Mustaque Holland**