

**THE FINANCIAL SERVICES TRIBUNAL**

Case No: FSP44/2023

In the matter between:

**SIVUYILE BONGOZA**

Applicant

And

**STANDARD BANK OF SOUTH AFRICA LTD**

Respondent

Tribunal Panel: Judge LTC Harms and KD Magano

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**DECISION**

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**Introduction**

1. The applicant, Mr Sivuyile Bongoza, applies for a reconsideration of his debarment in terms of section 230 of the Financial Services Regulation Act 9 of 2017 (*“the FSR Act”*).
2. The respondent is a Financial Services Provider (*“FSP”*), as defined in section 1 of the Financial Advisory Intermediary Services Act 37 of 2002 (*“the FAIS Act”*). The applicant was appointed as a representative of the respondent from 1 December 2022 until the termination of his contract with the respondent on 18 May 2023.
3. On 27 June 2023, the respondent debarred the applicant in terms of section 14 of the FAIS Act. The debarment is based on the grounds that the applicant lacks honesty, integrity and good standing.

4. The respondent opposes the reconsideration application and has filed heads of argument. The applicant did not file heads of argument.
5. The parties have waived their rights to a formal hearing. Consequently, this application for reconsideration will be decided on the record before the Tribunal.

### **Relevant Facts**

6. The synopsis of the facts is that on 18 April 2022, the applicant copied and pasted a client's signature onto one of the pages in the application forms required to open an investment account. Upon discovery of these facts, the respondent terminated its contract with the applicant on 18 May 2023.
7. On 7 June 2023, the respondent served on the applicant a notice of a potential debarment in terms of section 14 of the FAIS Act. In the said notice, the respondent relied on the following reasons as the basis of the applicant's potential debarment:

- “1. Dishonesty on your part in that on or about 18 April 2023, you fraudulently copied a client's signature onto documentation intended for an investment for the client.*
- 2. You failed to follow the correct procedures in relation to the advisory process and knowingly made changes to the client's documentation without the client's knowledge or consent.*
- 3. Breach of code of ethics in that you did not act truthfully and honestly with the client by not honouring the contractual agreement and not following procedures and policies.*
- 4. Your dishonest conduct, as set out above, is a breach of your obligations towards customers and places your integrity in question.*

5. *The aforesaid actions are serious in that they do not meet the character qualities of honesty, integrity and/or good standing...."*
8. The notice also invited the applicant to make written representations as to why he should not be debarred.
9. On the same date (7 June 2023), the applicant addressed the following email to the respondent:

*"The client was aware of the copy and paste thing. I called the client and said I can proceed with the documents, and when I called, the client said Standard Bank did not call him to inquire about the copy and paste. But I will submit the affidavit that confirms the client gave me the go-ahead."*

10. On 12 June 2023, the applicant made the following representations:

*"In acknowledging receipt of Notification of Potential Debarment emailed to me on 07 June 2023, I wish to respond as follows:*

1. *The FAIS Act compliance documentation namely, the Proposal form, application form as well as the Client Advice Record, were all signed by the client with no alterations afterwards without the client's knowledge.*
2. *The particular document which is "Evolve1Pager", cannot be regarded as having the status of FAIS Act compliance document as it is an organisationally designed document to serve a particular purpose internally in the organisation, not in the Financial Industry as a whole.*
3. *I would also like to mention that, to the extent that it does not have a status of FAIS Act compliance, one may have a proposal submitted and issued without the Evolve 1 Pager form, as that has been the case with one of my clients. No emphasis was placed then on the necessity of the form.*
4. *To the extent that no complaint has been received from the client about any changes or deviations that had occurred from those that were agreed upon during the presentation stages, dishonesty cannot be substantiated at all.*

*In view of the above, while I concede that I may have breached the organisation's internal procedures, hence the organisation terminated my services, compliance in terms of the FAIS Act as regards documents which a client should sign was not breached to warrant debarment."*

11. On 27 June 2023, the respondent debarred the applicant. The reasons for debarment mirror those contained in the notification of his potential debarment.
12. After lodging the reconsideration application, the applicant applied for a suspension of his debarment in terms of section 231 of the FSR Act. Attached to the application for debarment is an affidavit deposed to by the applicant on 19 July 2023, wherein he states:

- "1. I was employed by Standard Bank York Road Mthatha as a planner.*
- 2. On 13 April 2022, I served Mr V[...] N[...] ("the Client"), who was opening an investment for 180,000 and 120,000, a total of 300,000.*
- 3. All these monies remain in the investment account opened to date.*
- 4. On or about 18 April 2023, I realised that the client did not sign a certain page, and I telephoned him advising so. I showed him the page which he ought to have signed.*
- 5. He advised me that he was already in Gauteng and I should just copy and paste his signature. I did it.*
- 6. He authorised me to go ahead. I attach the client's affidavit marked "A1". I, at the time, had applied for a post at Old Mutual, and I was successful. I resigned at Standard Bank because of my new appointment.*

*In the result based on the above grounds, I submit that the decision was wrong/ incorrectly arrived at. I pray that the Tribunal may reconsider the decision."*

13. The applicant also attached an affidavit deposed to by the client on 17 July 2023. In the said affidavit, the client states:

*"On or about 13 April 2023, I consulted with Mr Sivuyile Bongoza at Standard Bank York Road Mthatha to open an investment account.*

*I signed all necessary documents, however, on or about 18 April 2023, Mr Bongoza phoned me that I failed to sign a single page which he showed to me by WhatsApp. He explained to me the contents of the said page, and I was happy.*

*I requested Mr Bongoza to paste a copy of my signature as required in the form as I was already in Gauteng at the time. I hereby confirm that I consented to the pasting of my copied signature and I had knowledge of that act. Even with the signature, I directed him to copy from papers I signed on 13 April 2023. I have no complaint against Mr Bongoza."*

14. The respondent opposed the application for suspension of the debarment. In the opposing affidavit, the respondent persists that the applicant's conduct was dishonest and compromised the client, the respondent and the applicant himself. The respondent disputes that the client consented to the applicant copying and pasting his (client's) signature. In its answering affidavit, the respondent, *inter alia*, makes the following averments:

*"7. ... Firstly, the allegation that the client consented is not true at the time of debarring the applicant to date, there is no evidence submitted by the applicant to prove that the client was aware of the applicant's conduct. Secondly, even if it was true that the client was aware of the applicant's conduct, it does not change the fact that the applicant misrepresented himself and falsified documents, and his conduct remains dishonest. The applicant was trying to create an impression that those documents were signed by the client, whilst they were not. If the applicant's conduct was not discovered earlier and a dispute arose at a later stage relating to the authenticity and validity of those documents, the respondent was going to*

*be found wanting."*

15. In his replying affidavit, the applicant responded as follows:

***“AD PARAGRAPH 7***

*Contents of this paragraph are denied, and in amplification thereof, I submit that I never created any impression that the documents were signed by the client instead, I admitted that the signature was pasted by me after having sought consent from the client. The Tribunal is referred to the affidavit deposed to by client and attached in my application and marked annexure "A", which is the subject of this dispute.*

*It is denied that there was any falsification because the signature is exactly that of the client and not false but pasted with consent from the client.”*

16. On 4 August 2023, the Tribunal granted the relief sought by the applicant by suspending his debarment pending the outcome of the reconsideration application.

**Issue for Determination**

17. The issues in dispute have crystallised to whether the applicant’s conduct implicated dishonesty, lack of integrity and good standing on his part.
18. The controversy between the parties concerns the allegation that the applicant copied and pasted the client’s signature onto a document without the client's consent, and he did so fraudulently.

**Legal Framework and Analysis**

19. Section 13(2)(a) of the FAIS Act provides that an FSP must:

*“at all times, be satisfied that the provider’s representatives, and*

*the key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act and comply with:*

*(i) the fit and proper requirements; and*

*(ii) any other requirements contemplated in subsection (1) (b) (ii)."*

20. Section 2 of the General Code of Conduct published in terms of FAIS requires a financial services provider at all times to render financial services honestly, fairly and with due skill, care and diligence in the interests of clients and the integrity of the Financial Services Industry.
21. Section 8(1) read with section 7(1) in Chapter 2 of the Determination of Fit and Proper Regulations ("*Regulations*"), provides that a representative meets the requirements of fit and proper if that representative is honest, has integrity and is of good standing.
22. Section 9 lists a number of incidents that serve as *prima facie* proof that a person is dishonest or lacks integrity. One such instance, clause 9(1)(a)(ii), stipulates when there is "*theft, fraud, uttering a forged document, perjury or an offence involving dishonesty, breach of fiduciary duty, dishonourable or unprofessional conduct...*"
23. In respect to the "*honesty and integrity*" requirement, the enquiry would be whether the applicant's misconduct was material and serious enough to taint these character traits. This Tribunal has issued many decisions on this aspect. Guidance can be found in *Hamilton Smith & Company v The Registrar of Financial Markets*,<sup>1</sup> where the Appeal Board expressed

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<sup>1</sup> Appeal Board decision dated 1 September 2003 (at p.5)

itself in the following terms:

*“To determine where a person is ‘of good character and integrity’ involves a moral judgment. In arriving at that judgment, it is necessary to have regard to the matter in which the person concerned has conducted himself not only in his private life but also in his dealings with those with whom he has come into contact professionally or in the course of his business. A distinction is sometimes drawn in this context between ‘character’ and ‘reputation’.”*

24. It is clear from the record that the respondent debarred the applicant because he lacks dishonest, integrity and good standing because he, *inter alia*:

24.1. Fraudulently copied a client's signature onto compliance documentation without the client's knowledge and consent;

24.2. Failed to follow the correct procedures in relation to the advisory process and knowingly made changes on the client's documentation without the client's knowledge or consent; and

24.3. Breached of code of ethics in that the applicant did not act truthfully and honestly with the client by not honouring the contractual agreement and not following procedures and policies.

25. We now turn to determine whether the applicant's conduct warrants a debarment.

26. It is common cause that the applicant copied and pasted the client's signature. The dispute is whether the client was aware and consented to the applicant copying and pasting his signature. The applicant's version



has always been that he acted with the client's consent. It is clear from the client's affidavit that he authorised the applicant to copy and paste his signature. This consent appears to be real and informed. There is nothing in the client's affidavit to suggest that his consent was obtained through deception or misrepresentation which could affect its validity.

27. The respondent had sight of the client's affidavit, and notwithstanding the contents of that affidavit, it persists that the applicant acted without the client's knowledge and approval. However, it does not produce any evidence to contradict the applicant's version and neither does it dispute the authenticity of the client's affidavit. It is so that this affidavit was not produced earlier, however, that does not detract from the fact that the client was aware and consented to the applicant copying and pasting his (client's) signature. We also note that the respondent does not challenge the validity of the client's consent.

28. Therefore, the uncontested evidence before the Tribunal is that the applicant acted with the knowledge and consent of the client. Thus, on overall conspectus of the relevant facts, the respondent's grounds of debarment, i.e., the applicant acted without the knowledge and consent of the client, cannot be sustained because the client confirms in his affidavit that he directed the applicant to copy and paste his signature.

29. There is no evidence that the applicant copied and pasted client's signature with ulterior motives. A reading of both affidavits indicates that the motive behind copying and pasting the client's signature was to

expedite the execution of the client's application of an investment account. There was no intention to defraud or otherwise harm the client or cause him loss. The fact that he called the client and copied and pasted the client's signature pursuant to the client's consent indicates that his motives were *bona fide*.

30. With the benefit of hindsight, the applicant correctly admits that his conduct may have breached the respondent's policies. However, the fact that the conduct was wrong does not mean that he acted fraudulently, forged or falsified the client's signature. The undisputed facts before us are that the applicant acted with the knowledge, consent and instructions from the client.

### **Conclusion**

31. In the premises, the debarment was not justified and thus cannot be sustained.

### **Order**

32. The following order is made:
  - 32.1. the application for reconsideration succeeds; and
  - 32.2. the debarment is set aside.

**SIGNED AT PRETORIA ON THIS 20TH DAY OF NOVEMBER 2023.**



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**KD Magano**  
(on behalf of the panel)