

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: AB/2022

TARRYN PILLAY

APPLICANT

and

FINANCIAL SECTOR CONDUCT AUTHORITY

FIRST RESPONDENT

SANLAM LIFE INSURANCE LIMITED

SECOND RESPONDENT

Re: Setting aside a debarment as FSR by the FSCA

DECISION

1. The applicant was employed by the second respondent, Sanlam, during September 2018, and resigned during the middle of 2019. She was a registered financial service representative of Sanlam, working on a commission basis. After her resignation, Sanlam noted that she had earned nearly R200 000.00 commission on lapsed policies. They had lapsed because the first premium was not paid.
2. Sanlam sought to contact the nine persons involved but could only locate three during a forensic investigation. The investigation concluded as follows:
  - a. By own admission Ms. Pillay made fraudulent misrepresentations to Sanlam when she submitted unauthorised policy applications without the clients' knowledge and consent due to the pressure to meet targets.

- b. Written confirmation was received from 1 client that policies were submitted without his knowledge or consent.
- c. Telephonic confirmation was received from 2 clients that policies were submitted without their knowledge.
- d. Invalid or closed bank account numbers were completed on 8 of the unauthorised policy applications.
- e. The Forensic Document Examiner confirmed that clients Mr. L Pillay and Ms. S Reddy had not signed the policy applications submitted by Ms. Pillay.

3. As to the “admission”, it stated that

“I unreservedly apologise for my conduct in respect to the policies which are discussed in your report. Without describing in any detail, and with use of your report and guide, I accept your findings.

On joining Sanlam I was pressurised to produce the goods and meet targets.

I did not want to fail.

I ought to have written up the policies more correctly. I ask the company to apply leniency and to arrange for me to settle any amount due on appropriate terms.”

- 4. Sanlam could not institute debarment proceedings against the applicant because of the time limits set in sec 14 of the FAIS Act 37 of 2002. It, accordingly, submitted the report with underlying documents to the FSCA, the first respondent. After following the prescribed procedure, the FSCA debarred the applicant for a period of five years in terms of section 153(1)(a) of the FSR Act 9 of 2017.
- 5. The applicant applies for a reconsideration of the decision in terms of sec 230(1) of the FSR Act. Sanlam and the FSCA oppose it. The parties waived their right to a formal hearing, and this is accordingly the decision of the Tribunal.
- 6. The applicant raised some procedural and substantive issues but did not attack the terms of the debarment.

7. The first procedural issue raised by her concerns the time frames set by sec 14 of the FAIS Act for debarring an FSR by an FSP. Section 14 is of no moment because the applicant was not debarred under that section. Similar constraints do not exist in sec 153(1)(a).
8. The second is that the FSCA did not supply her with the underlying documents received from Sanlam. That may be so, but she was told by the FSCA of the documents and their content, and she did not ask for copies for a good reason: they had already been provided to her by Sanlam.
9. The third is that Sanlam conducted no debarment hearing. It could not. As mentioned, this application is directed against the debarment by the FSCA, and a proper paper hearing was conducted. The applicant was told what the case against her was and she was given the opportunity to respond. Her response was duly considered, and the final debarment issued.
10. In relation to her response, the FSCA stated as follows:

In your response of 5 May 2021, the first 9 paragraphs contain your personal circumstance and the effect that a debarment will have on your livelihood and bare denials of the alleged contraventions. You then proceeded to attempt to provide explanations to your email to Sanlam Life [as quoted above]. You sought to clarify that your email should not be viewed as admission of wrongdoing.

You further provided the Authority with a letter purporting to be from Mr L Pillay in which he allegedly confirms having taken the policy with you and that he had given you his Nedbank account details for the policy. The letter further stated that the Nedbank account had to be closed due to the fact that he was experiencing financial problems. This does not explain why a person who is experiencing financial problems will make an application for a policy where he will be paying a monthly premium of R 2000.00 and R 4000.00 respectively.

You further alleged in your response, that you had contacted all the clients mentioned in the Notice of Intention to Debar and they all confirmed having applied for the disputed policies. You stated that they were not willing to put their confirmation in writing.

11. The present application follows the same pattern. There is first of all an innocent explanation of the admission. The conduct that she apologised for, she says, was that Sanlam had failed to check these cases before they were accepted by Sanlam. The findings that she accepted related to Sanlam's lapses and "irregularities (which are not identified or explained) in cases". And the statement that she should have written up policies more correctly meant that she should have met clients at their homes or with the assistance of Sanlam and that she did not do background checks because she assumed that Sanlam would have done so.
12. Finally, there is an analysis of the evidence in the report, argument, a blank denial of any wrongdoing, and random accusations against Sanlam.
13. I agree that the applicant's attempt to qualify and to distance herself from the clear words of her admission in the context of the allegations then made against is contrived and cannot succeed and I find the Authority was justified to find that the applicant contravened Section 8A of the FAIS Act read with section 8(1) of Board Notice 194 of 2017 and that a debarment for five years was therefore justified.
14. ORDER: The application is dismissed.

Signed on behalf of the Tribunal on 13 May 2022.



LTC HARMS (DEPUTY CHAIR)