



THE FINANCIAL SERVICES TRIBUNAL

In matters between:

A13/2025

CAROL-ANN PETERSEN

APPLICANT

And

FINANCIAL SECTOR CONDUCT AUTHORITY

RESPONDENT

AND

A14/2025

SHAUN ANDRE PETERSEN

APPLICANT

And

FINANCIAL SECTOR CONDUCT AUTHORITY

RESPONDENT

TRIBUNAL PANEL: Adv Grace Goedhart SC (Chair), Ms Zama Nkubungu-Shangisa and Adv William Ndinisa.

Appearance for Applicants: Carol-Ann Petersen appeared in person.
Shaun Andre Petersen appeared in person.

Appearance for Respondent: Ziyanda Mshunqane, internal Legal Counsel for FSCA.

Date of hearing: 10 November 2025

Date of Decision: 15 December 2025

Summary: Debarment – Administrative penalty – proportionate balanced and fair – section 167 of the FSR Act - evidence sufficiently cogent to be satisfied that a proper case has been made out by the Authority

DECISION

INTRODUCTION

1. The Applicants are Carol-Ann Petersen (“Mrs Petersen”) and Shaun Andre Petersen (“Mr Petersen”), who are directors of Hernell Funerals (Pty) Ltd (“Hernell”) and are key persons as defined in terms of section 1(1) of the Financial Services Regulation Act, No. 9 of 2017 (“the FSR Act”).
2. The Respondent is the Financial Sector Conduct Authority (“the Authority or FSCA”), entrusted with, amongst other things, functions to regulate and supervise, in accordance with the financial sector laws, the conduct of financial institutions.¹
3. The Applicants lodged these two applications for reconsideration respectively, in terms of section 230 of the FSR Act, challenging the administrative sanctions (“the decisions”) of the Authority recorded in separate letters dated 17 January 2025.
4. In brief, the decisions challenged by the Applicants are the following:
 - 4.1. Mr Petersen is debarred and/or prohibited for a period of five (5) years, specifying the nature of activities prohibited;

¹ FSR Act, s 58(1)(a).

- 4.2. Mrs Petersen is debarred and/or prohibited for a period of ten (10) years and particulars of the prohibitions are stated; and
- 4.3. Further, the Authority imposed an administrative penalty of R4 400 000.00 on Hernell and both Applicants, jointly and severally.
5. The two applications for reconsideration are considered and decided in this decision as the applications emanated from one investigation, have the same factual background and were heard on the same date in one sitting.

RELEVANT FACTUAL BACKGROUND

6. On 12 October 2022, the Authority received a complaint regarding a claim to Hernell which was rejected for reasons not germane to these applications. The complaint appears to have triggered the investigation.
7. According to the records of the Authority, Hernell was not a registered financial services provider (FSP) in terms of section 7(1) of the Financial Advisory and Intermediary Services Act, No. 37 2002 (“the FAIS Act”). Further, Hernell was not licenced in terms of section 5(1) of the Insurance Act, No. 18 of 2017 (“the Insurance Act”).
8. The Authority conducted its investigation which covered the period from 1 March 2021 to 31 October 2023 (“the relevant period”). It was found that Hernell operated a funeral parlour business offering life insurance (funeral cover) and the Applicants were its directors. During the relevant period, Hernell and the Applicants offered advice to approximately 3000 clients in respect of life insurance policies (life cover).
9. Further, it was found that Hernell and the Applicants were not authorised as FSPs or a juristic representative of an authorised FSP. The investigation report states that in terms of section 7(1) of the FAIS Act, no person may act or offer to act as an FSP unless such person has been issued with a licence under section 8 of the FAIS Act. Therefore, during the relevant period, Hernell and the Applicants contravened section 7(1) of the FAIS Act.

10. Further, it was found that Hernell and the Applicants issued insurance policies to approximately 3000 clients, and in return, clients paid premiums in the amount of approximately R7 730 930. In the event of death of the life insured, so the report states, Hernell and the Applicants, undertook to discharge their insurance obligations, being to settle claims. It is stated that approximately 171 claims to the amount of R1 701 500.00, were settled during the relevant period.
11. The report records that the business of Hernell and the Applicants constituted an insurance business as defined in section 1 of the Insurance Act. Further, that in terms of section 5(1) of the Insurance Act, a person may not conduct insurance business in the Republic of South Africa unless such a person is a licenced insurer with the Authority. The Applicants and Hernell were not licenced during the relevant period.
12. The Authority caused a Notice of Intended Administrative Action against Hernell and the Applicants to be issued and they were afforded 30 working days to make submissions on the alleged contraventions and intended administrative action (“the Notice”). The Notice together with the investigation report were made available to the Applicants and Hernell.
13. The Applicants submitted, amongst other things, that during the relevant period they added new 500 members to their books and advice was given to such members without being authorised. It was disputed that 3000 insurances policies were issued during the relevant period. Further, the Applicants submitted that they had received R4.4 million in premiums during the relevant period.
14. Furthermore, the Applicants submitted that before the relevant period an agreement between its then administrator was cancelled for reasons not at the heart of this matter. The Applicants submitted that attempts were made to engage an underwriter and another administrator to no avail.
15. The Applicants provided an account of the steps taken to secure an administrator and an underwriter, though in a terse manner, after the Authority visited their offices on 30 March 2023. The steps taken appear to cover a period before November 2023 to February 2024. According to the Applicants, these steps resulted in clients

or its members being underwritten.² Further, a brief explanation on money received and payments made were narrated.

16. After having received and considered the submissions from the Applicants and Hernell, the Authority issued the decisions against Hernell and the Applicants. The decisions are the subject matter of reconsideration in these applications. Hernell is not party to the applications before us.
17. The Applicants challenge the debarment order on the basis that they did not submit a detailed response to the Authority's Notice dated 2 May 2024. Further submissions were made by the Applicants on or about 13 June 2025. The June 2025 submissions are, in essence, explaining the Applicants' efforts to obtain administrator(s) and underwriter(s). Mitigation factors were also submitted where it was noted, amongst other things, that this is their first offence, and they understand the seriousness of the offences.

STATUTORY CONTEXT REGARDING ADMINISTRATIVE PENALTIES

18. The FSR Act provides a legal framework for administrative penalties. Section 167(1) states, amongst other things, that the responsible authority for a financial sector law may, by order served on a person, impose an appropriate administrative penalty, if such a person has contravened a financial sector law or has contravened an enforceable undertaking accepted by the responsible authority.
19. Further, section 167(2)(a) of the FSR Act provides a framework of factors that the responsible authority must have regard in determining an appropriate administrative penalty for particular conduct. These provisions require a responsible authority to have regard to (i) the need to deter such conduct; (ii) the degree of co-operation with the responsible authority; and (iii) any submissions by or on behalf of that person, including mitigating factors referred to in the submissions.

²² Record, Part B page 146.

20. Section 167(2(b) refers to matters that the responsible authority may have regard in dealing with an appropriate penalty. The list of those matters to be considered are the following:

- “(i) the nature, duration, seriousness and extent of the contravention;*
- (ii) any loss or damage suffered by any person as a result of the conduct;*
- (iii) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct;*
- (iv) whether the person has previously contravened a financial sector law;*
- (v) the effect of the conduct on the financial system and financial stability;*
- (vi) the effect of the proposed penalty on financial stability;*
- (vii) the extent to which the conduct was deliberate or reckless.”*

21. We note, as it was previously stated by this Tribunal³, that the aforementioned is rather a mixed bag of provisions because it does not take account of how penalties, which require the exercise of a value judgment, are logically determined and that it is not a mechanical exercise.

RELEVANT LEGAL PRINCIPLES REGARDING DEBARMENT ORDER

22. The Applicants made reference to the Authority’s debarment order in their grounds of reconsideration. It is for this reason that the statutory provisions below are considered.

23. The FSR Act in section 153 empowers a responsible authority to make a debarment order. More specifically, section 153(1) states the following: -

³ Marcus Jooste v Financial Sector Conduct Authority: Case no. A3/2023 (“Jooste case no. (“A3/2023”), par 40.

“(1) The responsible authority for a financial sector law may make a debarment order in respect of a natural person if the person has—

(a) contravened a financial sector law in a material way;

(b) contravened in a material way an enforceable undertaking that was accepted by the responsible authority in terms of section 151(1);

(c) attempted, or conspired with, aided, abetted, induced, incited or procured another person to contravene a financial sector law in a material way; or

(d) contravened in a material way a law of a foreign country that corresponds to a financial sector law. (own emphasis)

24. Section 153(6) states that a responsible authority that made a debarment order may, by order and application by the debarred natural person, reduce the period of the debarment order or revoke the order.
25. It is against this legal framework that this matter is assessed and considered on whether the Authority was justified in arriving at the sanctions.

DISCUSSION

26. Our task is to decide whether the evidence before us is sufficiently cogent for us to be satisfied that a proper case has been made out by the Authority.⁴

Administrative Penalty

27. The Applicants, in their submissions before the Tribunal, conceded that the requirements of section 167(1) are met. In other words, the Applicants admit that during the relevant period, they contravened section 7(1) of the FAIS Act and section 5(1) of the Insurance Act.
28. The Applicants were indeed not authorised as financial services providers (FSPs) when they provided advice to the about 500 new clients to take life insurance policies (funeral cover). Further, it is established that the Applicants offered life

⁴ Marcus Johan Jooste v Financial Sector Conduct Authority: Case no. A64/2020 and OCSAN Investment Enterprises (Pty) Ltd: Case no. A65/2020, par 57.

insurance policies to approximately 3000 clients and in return the clients paid premiums to the amount of approximately R4 400 000.00. The Respondent noted that the Applicants and Hernell settled approximately 171 claims amounting to R1 701 500. The business of the Applicants and Hernell constituted an insurance business. These facts confirm the jurisdictional fact of contravention of the financial sector laws. However, the enquiry does not end at this point.

29. The next enquiry is whether the Authority has imposed an appropriate administrative penalty in light of the evidence before us. The Authority submitted that in arriving at the administrative penalty, it considered the following matters: the funds received from clients and the penalty previously imposed on persons who contravened these financial sector laws.
30. Under the heading of deterrence, the following factors were considered: *(i)* non-compliance with, and potential future contraventions of, the financial sector laws in question; *(ii)* seriousness of the contravention (causing harm) to financial customers; and *(iii)* the quantum of the penalty must deter others (general deterrence) and deter the Applicants (specific deterrence). We find no fault in the Authority's application of deterrence to this matter. However, we reiterate the remarks of this Tribunal in stating that deterrence is not overriding and what is overriding is the appropriateness of the penalty, which means that it must be balanced, proportionate and fair.⁵
31. The Authority submitted that the Applicants have not shown cognitive appreciation for their failure to comply or for their involvement in respect of contraventions of the financial laws.
32. On perusal of the transcript of the meeting between the officials of the Authority and the Applicants on 30 March 2023, the Applicants provided contextual background of their legal challenges with a specific mentioned administrator and the difficulties of securing an underwriter. This, in our view does not take the case of the Applicants further, for the reasons the Authority had considered the factual matrix at play in this matter and thereafter came to its decisions.

⁵ Jooste Case No. A3/2023, par 44.

33. This Tribunal is guided by the ordinary appeal rule, namely that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless (i) it failed to bring an unbiased judgment to bear on the issue; (ii) did not act for substantial reasons; (iii) exercise its discretion capriciously; or (iv) exercise its discretion upon a wrong principle.⁶
34. The ground of reconsideration that the Applicants did not submit a detailed response to the “*Intended Administrative Action*”, the further written submissions made in June 2025, and oral submissions during the hearing of the matter, do not demonstrate a sound basis for this panel to interfere with the Authority’s decisions.

CONCLUSION

35. After having considered the records and the submissions of the parties in these matters, it is not disputed that the Applicants contravened the relevant financial sector laws in a material way.
36. We found no sound basis to interfere with the Authority’s decision in this matter.
37. In the circumstances, the Tribunal makes the following order:

ORDER:

The applications for reconsideration are dismissed.

Signed on 15 December 2025

___Sgd Adv W Ndinisa_____

W NDINISA

(Signed for and on behalf of the panel)

⁶ Jooste Case No. A3/2023, par 15.

