

APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

CASE NO: A32/2014

In the matter between:

ALTHEA HAYES

Appellant

and

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS

Respondent

DECISION

A. INTRODUCTION

1. This is an appeal against the decision of the Registrar of Financial Services ("the registrar"), dated 21 November 2012¹ debaring the appellant, for a period of two (2) years, from rendering financial services in accordance with the provisions of section 14A of the Financial Advisory and Intermediary Services Act, 37 of 2002, (FAIS Act).

¹ Record: pages 2-6

2. The registrar's decision was based on the following findings, namely that the appellant:

2.1 no longer meets the requirements contemplated in section 8 of the FAIS Act read with Board Notice 106 of 2008 (as amended) with specific reference to personal character qualities of honesty and integrity; and that

2.2 she contravened and/or failed to comply with the provisions of the FAIS Act in material respects.

3. The appellant did not appear before us to argue the appeal. There being nothing to suggest that she was unaware of the appeal proceedings, we proceeded therewith.

4. The relevant facts are briefly that:

4.1 the appellant resigned from Robson Insurance Brokers CC (Robson) in 2010 where after she was appointed as a representative of another FSP², Duwalcoe Financial Consultants CC (Duwalcoe);

4.2 when the appellant resigned from Robson, she transferred a number of clients to Duwalcoe. The appellant forged the signatures of two of

² Financial Service Provider

her clients on the Duwalcoe FSP's appointment letters. The said clients were Edmundson and Coetzee (the clients);

4.3 the appellant caused the profiles of the clients to be transferred from one FSP to another without their knowledge and consent. In the process the appellant misrepresented to Santam that the transfer was according to the client's instructions.

5. Although the impugned decision is dated 2 November 2012³, the notice of appeal was only lodged on 4 July 2014, more than a year and a half later⁴.
6. In terms of section 26(2) of the Financial Services Board Act 97 of 1990 (FSB Act) an appeal of this sort "*must be lodged within 30 days of the person becoming aware of, or ought to have become aware of, a decision, in the manner and on payment of the fees prescribed by the Minister.*"
7. The issue to be determined is whether it can be said, on the facts, that the appellant became "*aware of, or ought to have become aware of*", the impugned decision earlier than the alleged date of 4 July 2014 and if so, when exactly would that have been. That is the question to which we now turn.
8. On behalf of the respondent it was argued that the appellant knew:

³ Record: page 2

⁴ Record: page 1

8.1 since November 2012 of her debarment (when the notice of debarment was e-mailed to her and published on the FSB's website);

8.2 alternatively, since July 2013 (when Germishuys Konsultante CC were making enquiries with the FSB so as to re-appoint her); and

8.3 further alternatively, since 2013 on her own version when she started with Sellsure Brokers.

9. On respondent's computation, the period of delay is 18 months, 12 months or 9 months. In either case, so goes the argument, the appellant's appeal is time-barred.

10. As stated, the appellant did not appear before us to make oral submissions and neither did she file written submissions in this regard.

B. ANALYSIS

Is the appeal time-barred?

11. On 2 September 2014, the appellant by way of electronic mail informed the Secretariat of this Appeal Board *inter alia* that:

"It was only last year [2013] when I started with Sellsure Brokers that it was brought under my attention that I was debarred. Myself and my Marketing Manager Roets Jacobs immediately went to the office of the FSB where a gentleman confirmed this. At that stage I was unable to pay the R1000 to appeal."⁵

12. The above makes it plain that the appellant, on her own version, became aware of the impugned decision during the 31 December 2013, at best for her. Thus the thirty (30) day period lapsed on 31 January 2014.

13. It follows from the above that when the appellant eventually lodged her appeal on 4 July 2014, it had become time-barred by the operation of section 26(2) of the FSB Act.

Is the condonation competent?

14. The next question to which we turn is whether this Appeal Board, a creature of statute such as it is, has the statutory power of condonation of the late lodgement of the appeal.

⁵ Record, page 8

15. In this regard, we consider the decision of **CM Makola v The Registrar of FSP (18 May 2015)** to be instructive.

16. The Appeal Board in that matter found that it had no such power of condonation of the late lodging of the appeal. The Appeal Board stated as follows:

“Nowhere is the power given to ignore statutory time limits, for whatever reason⁶...

If regard is had to the position in the superior courts, it is not without interest that appeals there, too, have to be noted within certain time limits. However, the statute gives courts the power of condonation explicitly (See the repealed sec 21 (2) of the Supreme Court Act 59 of 1959 and sec 17(2)(b) of the current Superior Courts Act 10 of 2013). These points ineluctably to the fact that not even courts with inherent jurisdiction may ‘ignore’ statutory time limits through the exercise of a discretion⁷...

It follows that on this ground alone there is no valid appeal before us”⁸

⁶ paragraph 24

⁷ Paragraph 26

⁸ Paragraph 27

17. We are in full agreement with the legal proposition postulated above. Accordingly, we conclude that there is similarly no valid appeal before us.

C. CONCLUSION

18. In the result, we find that there is no valid appeal before us.
19. This appeal is accordingly dismissed.
20. The only other question that remains is one of costs.
21. In that regard ,we take into account all the relevant facts and circumstances including that the appellant is 51 years old divorced breadwinner who could hardly afford the R1 000,00 payment required for the lodging of the appeal.
22. We conclude in this regard that an order that is suitable and fair is that each party should pay its own costs.

D. DECISION

23. This appeal is dismissed.

24. Each party is to pay its own costs.

L G NKOSI-THOMAS SC

Z MABHOZA

J DAMONS

14 JULY 2015