

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: A34/2021

In the matter between:

SHAIDA ALLI

Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY

Respondent

Summary: Application for Reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 (“FSR Act”) to debar a representative in terms of section 153(1)(a) of the FSR Act: Non-compliance with requirements of section 8A of the Financial Advisory and Intermediary Services Act, 37 of 2002 (“the FAIS Act”), read with the Fit and Proper requirements, particularly the character qualities of honesty and integrity determined under section 6A of the FAIS Act read with section 8(1) of Board Notice 194 of 2017.

DECISION

A. INTRODUCTION

1. The Applicant, Ms Shaida Alli (“Ms Alli”), applied for the reconsideration of a decision taken by the Financial Sector Conduct Authority (“the FSCA or the Authority”), dated 8 July 2021, to debar her in terms of section 153(1)(a) of the FSR Act.
2. The Respondent is the Financial Sector Conduct Authority (“the FSCA or the Authority”).
3. The parties waived their rights to a formal hearing.

B. RELEVANT BACKGROUND FACTS AND CHRONOLOGY OF EVENTS

4. Ms Alli was employed by McCarthy (Pty) Ltd (FSP 6852) ("McCarthy"), Kingsmead Branch, Durban, as a representative from 1 March 2017 until 12 July 2019. As part of her employment duties, she was to conclude a proper due diligence process as part of the Financial Intelligence Act 38 of 2001 ("FICA") requirements of McCarthy as well as Toyota Financial Services ("TFS"). The due diligence process included identifying and verifying the ID documents of the clients as well as witnessing the signing of a surety document by all relevant parties in the event of the purchasing of a vehicle.
5. During October 2017 Ms Alli received a car finance application form on behalf of McCarthy, which was submitted in the name of L CC ("the CC") from a Mr ZP, a third party not linked to the CC or McCarthy, via email.
6. The application form together with certain supporting documents were submitted for the purchase of a 2017 Toyota Landcruiser valued at R1,294,491.60.
7. On date of the application, three persons (a husband, Mr L , his wife, Mrs L, and their son, L Jnr) were the only three members of the CC.
8. Mr ZP emailed the CC's signed resolution together with the South African Police Services ("SAPS") certified ID copies of the members of the CC to Ms Alli. In terms of the resolution Mr L was authorised to sign the finance agreement on behalf of the CC.
9. On 19 October 2017 Ms Alli emailed the unsigned surety documents to Mr ZP, in which she in her handwriting filled-in the name, address, and ID number of Mrs L and L Jnr, for signature and requested Mr ZP to take pictures of the CC members' IDs and to forward same to her.
10. On 19 October 2017 Mr ZP emailed Mr Y (salesperson at McCarthy) the signed surety documents of L Junior and Mrs L with no witness signatures along with the Ls' SAPS certified ID copies. These documents were also sent to Ms Alli.
11. It is alleged that on or about October 2017 Ms Alli then emailed the SAPS certified ID copies of the Ls to her daughter, who is a graphic designer, in order for her to remove ("*clean-up*") the SAPS certification stamps to enable Ms Alli to fraudulently put her own certification

- stamps thereon as if she saw both the original documents and the Ls when this was not the case.
12. It is further alleged that Ms Alli signed as a witness on the surety agreement documents without seeing the Ls signed and further completed the surety agreement documents by including "*Signed at Durban on 20/10/2017*" in her own handwriting.
 13. It is alleged that Ms Alli further made it appear in the finance application forms that L Senior was at the dealership at some stage and that he signed the finance agreement documentation together with the surety forms when it was not the case.
 14. All three members of the CC denied that they were in Durban at the time when the surety documents were signed or that they have ever signed same. According to the Ls their signatures were forged.
 15. It is alleged that because of Ms Alli's fraudulent actions, a sale agreement was concluded and Wesbank financed the vehicle.
 16. The vehicle was not delivered to the CC but instead taken outside the borders of the Republic of South Africa and was later traced in the Congo, being used by an army general of a rebel group.
 17. As there are no prospects of recovering this vehicle from the Congo, Wesbank requested a full refund of the transaction (R1,294,491.60) from McCarthy. It is alleged that the loss by McCarthy occurred due to Ms Alli's fraudulent actions as its representative. Wesbank's Fraud division opened a fraud case with the SAPS under case number 731/03/2020 against Ms Alli.
 18. It is alleged by the FSCA that Ms Alli acted intentionally with the aim to defraud Wesbank and McCarthy as Ms Alli purposefully manipulated and falsified documents to mislead Wesbank and McCarthy.
 19. Based on the above facts McCarthy then investigated the matter. It is alleged that during the interview with the investigator Ms Alli admitted that she emailed the SAPS certified IDs of the

Ls to her daughter to remove the stamps and allowing her to certify them as if she saw the original documents.

20. On 11 June 2020 Ms JR, a Director, at Associated Compliance Motors (Pty) Ltd requested the FSCA to consider debarring the Applicant in terms of section 153 of the FSR Act.
21. On 18 March 2021 Ms Alli was informed of the FSCA's intention to issue a debarment order against her for an alleged contravention of the FAIS Act and its subordinate legislation in a material manner.
22. On 18 March 2021 Ms Alli requested all documents (evidence) pertaining to this matter for her to make a meaningful representation.
23. On 18 March 2021 all relevant documents (evidence) were sent to Mr Alli.
24. Ms Alli was afforded an opportunity to provide the FSCA with reasons why she should not be debarred by no later than 18 April 2021, which date was a Sunday. Subsequently the FSCA granted an extension to Ms Alli to reply until 19 April 2021.
25. On 12 April 2021 Ms Alli's attorneys of record requested further information from the FSCA in terms of section 32(1)(b) of the Constitution pertaining to this matter and further requested that the matter be adjourned *sine die* pending finalization of the police investigation. It was submitted by Ms Alli's attorneys that the FSCA's investigation was premature.
26. On 13 April 2021 the FSCA informed Ms Alli's attorneys that all relevant documents in its possession were provided to Ms Alli on 18 March 2021 and that FSCA as an autonomous and independent financial regulator is empowered in terms of legislation to supervise and monitor compliance with the financial laws under its supervision and thus the SAPS investigation cannot suspend the functions of the FSCA. The FSCA further denied that the investigation was premature. It was further pointed out to Ms Alli's attorneys that their request for CCTC footage, invoice and delivery note are not relevant to the investigation and can be obtained from the dealership, the police docket can be obtained from the SAPS and documents pertaining to the finance application and insurance can be obtained from McCarthy.

27. Ms Alli's attorneys of record replied thereto on 19 April 2021.
28. On 8 July 2021 the FSCA delivered its decision to debar the Ms Alli for a period of 5 (five) years.
29. On 27 August 2021 Ms Alli filed her Application for Reconsideration.

C. FINANCIAL SECTOR CONDUCT AUTHORITY'S DECISION

We do not intend to repeat the full decision therein, but only the relevant part thereof:

30. It is contended by the Respondent that the Applicant no longer complies with the requirements of section 8A of the FAIS Act read together with the Fit and Proper requirements, particularly the character qualities of honesty and integrity, determined under section 6A of the FAIS Act read with section 8(1) of the Board Notice 194 of 2017.
31. The Respondent's decision is based on the fact that on or about October 2017 Ms Alli misrepresented to Wesbank and McCarthy that surety documents were properly executed and signed by the Ls in her presence whilst that was not the case and that she knowingly and intentionally "*cleaned*" the SAPS certification stamps on the ID copies of the Ls to give the impression that she confirmed compliance with FICA in the presence of the Ls when this was not the case, which resulted in Wesbank approving the deal. Furthermore, that Ms Alli failed to render financial services honestly and in the interest of her clients and the integrity of the Financial Services Industry.
32. Based on the above the FSCA found that Ms Alli's conduct amounted to dishonesty, and she lacked integrity and that she contravened the FAIS Act in a material manner.
33. The FSCA then imposed a debarment order in terms of which Ms Alli is prohibited for a period of 5 (five) years to furnish any financial advice or rendering financial services to customers subject to specific conditions.

D. APPLICANT'S GROUNDS FOR RECONSIDERATION

34. The grounds relied on by the Applicant in her Application for Reconsideration are as follow:

- 34.1 The Applicant contended that the *onus* is upon the FSCA to prove that the debarment was lawful, reasonable, and procedurally fair.
- 34.2 The benchmark for determining that the Applicant no longer complies with the “*fit and proper requirement*” should have been on a “*balance of probabilities*” and not “*satisfactory proof*”.
- 34.3 At the outset when the Applicant was interrogated, she was advised that she does not need legal representation as the interrogators put it “*we are just talking*”. She was not advised that whatever she says, “*may be used as evidence against her*”. This information ought to have been excluded from deciding on debarment.
- 34.4 The statement by McCarthy was accepted verbatim by the FSCA without any documentary proof or supporting documents.
- 34.5 There was no hearing to uphold the allegations of McCarthy neither was there any disciplinary enquiry, oral evidence heard, nor any cross-examination done. The issue regarding the deed of suretyship should have been referred to oral evidence.
- 34.6 Procedurally the investigation lacked fairness in that a request by the Applicant for further particulars was not fully furnished e.g., uncompleted statements of the Ls and Mr ZP were sent to Ms Alli.
- 34.7 The deeds of suretyship were handed to the Applicant by the salesperson, Y, and they were already signed. She *bona fide* accepted them. FSCA ignored the role of the FIN Assistant and Y in bringing the transaction to fruition.
- 34.8 The Applicant denied that she mailed the unsigned suretyship documents to Mr ZP.
- 34.9 The employer knew that the suretyships were not properly executed yet did nothing about it until it was realised that the vehicle was in the Republic of Congo and not recoverable. The employer relied on evidence which came to light *ex post facto*.
- 34.10 The Applicant contended that the protocol for delivery of the vehicle is important. If McCarthy followed the correct protocol, it would not have suffered any loss. It was contended that the release of the vehicle had taken place negligently.
- 34.11 The Applicant denied that she admitted that she failed to adhere to protocol in handling the documents. She contended that she referred to ‘*the high pressure*’ at work but denied that she ‘*cut corners*’.

- 34.12 The Applicant submitted that there must not be a conflation between a breach of employment contract and the grant of an order for debarment. According to the Applicant alternative routes are available e.g., termination of an agreement of employment without debarment.
- 34.13 The Applicant denied that she was reckless.
- 34.14 It is contended that the charge against the Applicant is based on hearsay evidence.
- 34.15 There is no conduct on the part of the Applicant which points to premeditation and therefore it cannot be concluded that the Applicant acted intentionally to defraud Wesbank.
- 34.16 There was no gain (monetary or otherwise) to the Applicant.
- 34.17 Although L Senior stated in his affidavit that he was in Durban and that he signed the necessary documents except the suretyship documents it is the case of the Applicant that L Senior signed the deed of suretyship at the dealership in Durban. The Applicant submitted that this is a dispute of fact and ought to have been determined by referring the issue to oral evidence.
- 34.18 The FSCA prejudged the outcome of the reconsideration application. The contention is because on or about 9 July 2021 the Applicant's current dealer principal telephonically made certain enquiries at the FSCA pertaining to the Applicant's employment pending the outcome of this reconsideration application. It is submitted that the dealer principal was advised that an application for reconsideration is "a waste of time and that it would not succeed". This demonstrates that the FSCA is biased and not fair.
- 34.19 It was submitted that the debarment process was not lawful, reasonable, and procedurally fair. The Applicant was not provided with a copy of the Financial Services Providers Written Policy and Procedure which governed the process.
- 34.20 The Applicant denied that the documents were "cleaned up". It was submitted that it is common practice for banks to request photos of identity documents from cell phones if the resolution of the picture was unclear. She was only complying with the bank's instructions to get clear copies of the identity documents.
- 34.21 The Applicant relied on the judgments in *Fahdia Osman v First National Bank*, *AJ Davis v AC & E Engineering Underwriting Managers (Pty) Ltd* and *Hamilton Smith and Company v The Registrar of Financial Markets* in respect of a "fit and proper" person as required by the FAIS Act.

- 34.22 The Applicant denied that she acted dishonestly or in any way misled or manipulated the bank or McCarthy. She always acted in the interest of McCarthy and without any ill-founded motives. She denied that she intentionally defrauded Wesbank or McCarthy.
- 34.23 It was alleged that during an investigation done by one JS no wrongdoing was found over a prolonged period (one year).
- 34.24 The explanations tendered by the Applicant are not bare denials or far-fetched.
- 34.25 The FSCA preferred McCarthy's version over that of the Applicant.
- 34.26 The Applicant submitted that there are material and irresolvable disputes of fact and that can only be resolved with the hearing of oral evidence.

E. TRIBUNAL'S DECISION

35. Against this background, before us is Ms Alli's application for the reconsideration of the decision of the Respondent, dated 8 July 2021, to debar her in terms of section 153 of the FSR Act.
36. Section 6A(2)(a) of the FAIS Act gives a definition, by way of a list, of what "*fit and proper*" includes:
- "(2) Fit and proper requirements may include, but are not limited to, appropriate standards relating to –*
- (a) personal character qualities of honesty and integrity.*
37. In terms of section 7(1) of Board Notice 194 of 2017 ("the Board Notice") the fit and proper requirements relating to honesty, integrity and good standing apply to all FSPs, key individuals and representatives. At all relevant times Ms Alli was a representative of McCarthy, a registered FSP.
38. Section 8(1)(a) of the Board Notice states that a person referred to in section 7(1) must be a person who is –
- (a) honest and has integrity.
39. The Applicant was debarred on the grounds of dishonesty and lack of integrity because she fraudulently manipulated and falsified documents of the Ls to mislead Wesbank and

McCarthy. Based on Ms Alli's fraudulent actions a sale agreement was concluded between the L CC and Wesbank, who financed the vehicle.

40. It is common cause that on or about October 2017 Ms Alli, as a representative of McCarthy (FSP 6852), received a car finance application form together with the CC's signed resolution and certified copies of the IDs of the members of the CC from Mr ZP (a third party not linked to the CC or to McCarthy) via email for the purchasing of a Toyota Landcruiser on behalf of the CC. The signed resolution allowed L Senior to sign the finance agreement on behalf of the CC.
41. On 19 October 2017 Ms Alli emailed the unsigned surety documents of L Junior and Mrs L to Mr ZP¹ and instructed him to take pictures of the Ls' IDs and forward same to her.² On both unsigned surety documents sent to Mr ZP the full names, ID numbers and addresses of the sureties were filled-in by Ms Alli.
42. On 19 October 2017 Mr ZP emailed the SAPS certified ID copies of the Ls to Ms Alli³.
43. On 20 October 2017 Ms Alli emailed the ID of L Junior to her daughter, who is a graphic designer.⁴ On 21 October 2017 Ms Alli's daughter emailed the '*clean up.pdf*' ID document of L Junior back to Ms Alli.⁵ There is no explanation by Ms Alli and/or her daughter as to what was meant by the words '*clean up.pdf*'.
44. On 23 October 2017 Ms Alli emailed the SAPS certified ID copies of L Senior, L Junior and Mrs L to her daughter⁶ for her (the daughter) to remove the original SAPS certification stamps. Ms Alli admitted during an interrogation that she had sent the SAPS certified IDs of the Ls to her daughter for her to remove the SAPS certification stamps ('to clean-up the IDs). In the Applicant's heads of argument, it is contended that this admission ought to have been excluded as she was not advised that whatever she says, "*may be used as evidence against her*". In our view Ms Alli admitted that she sent the SAPS certified IDs of the L to her daughter to have it "*cleaned-up*. Even if we disregard Ms Alli's admission during the interrogation, we

¹ Unsigned surety documents, Record, Part B, pp 29 to 35

² Instruction to take pictures of the Ls ID's, Record, Part B, p 36

³ SAPS Certified copies of Ls' IDs, Record, Part B, pp 37 to 42

⁴ ID of L Junior, Record, Part B, pp 8 to 10

⁵ Cleaned-up ID of L Junior, Record, Part B, pp 11 to 12

⁶ SAPS Certified copies of Ls' IDs, Record, Part B, pp 13 to 17

cannot disregard the fact that she has sent the Ls IDs to her daughter as it is confirmed by the above email. Furthermore, there is no allegation that the admission was not made voluntarily, freely and without any undue influence. The only explanation given by Ms Alli as to the 'cleaning up' of ID documents was that it was done to send clear copies, where the resolution of the picture was unclear, of the ID documents to Wesbank. This explanation was only raised in the Applicant's heads of argument as an afterthought. It was not raised by the Applicant in her statement or in her response to the Notice of Intention to Issue a Debarment Order. Even if we accept that the Ls' IDs were not sent to her daughter to remove the SAPS certification stamps then we must accept that it was sent to fraudulently modify and/or falsify the Ls IDs without seeing the original ID documents. The fact that she now detracts from her admission where there is clear evidence that she had sent the Ls IDs to her daughter amounts to dishonesty.

45. As stated above, Ms Alli then affixed her own certification stamp on the ID copies, as if she saw the original ID documents whereas this was not the case.⁷ Ms Alli made a statement in which she, *inter alia*, confirmed that she certified the ID copies without seeing the originals. In this regard, she stated that "*I FICAED the Identity Documents of the other sureties from the police certified copy supplied by the Salesperson.*". This statement confirms that she (Ms Alli) certified the ID copies without seeing the originals. We agree with the submissions of the FSCA that Ms Alli knowingly and intentionally cleaned-up the original certification stamps on the SAPS ID copies of the Ls, *thereby* fraudulently manipulated these ID copies to give the impression that she confirmed compliance with FICA in the presence of the Ls and certified the ID document as if she has seen the original ID documents when this was not the case. This is dishonest. Thus, the debarment order should stand.
46. In addition to the above, Wesbank's policy stipulates that Ms Alli needs to verify the identity of the client by seeing both the client in person and the original ID documents to comply with its policy. Ms Alli did not adhere thereto.
47. Furthermore, on 20 October 2017 Mr ZP emailed the signed surety documents of L Junior and Mrs L with no witness signatures to Mr Y (a salesperson at McCarthy).⁸ It is common cause that the above surety documents were then sent to Ms Alli.

⁷ Record, Part B, pp 18 to 20

⁸ Signed sureties' documents with no witness signatures, Record, Part B, pp 43 to 49

48. Ms Alli further witnessed the surety agreement documents of L Junior and Mrs L without seeing the clients signed. Copies of these surety documents are enclosed in the bundle from which the aforesaid is evident. L Senior confirmed under oath that he signed the necessary documents except the suretyship documents. He further confirmed that Mrs L and L Jnr were not in Durban to sign documents. Mrs L confirmed under oath that she signed the resolution, and that Mr ZP emailed her the surety documents on which her name and identity number were filled in. She confirmed that she did not sign the surety document because she knew that they could not afford to buy any vehicle at Toyota. She denied that the signature on the surety documents is her signature and alleged fraud. Further L Junior confirmed under oath that he did not sign the surety documents. He further confirmed that on the date of signature of the surety document, being 20 October 2017, he was not in Durban and did not sign same.
49. From the above it is clear that Ms Alli certified the ID documents of the Ls by fraudulently falsified/modified and/or manipulated these documents without seeing the original ID documents, she further witnessed the surety documents of the Ls in their absence and without seeing them signed. Her conduct was not only dishonest but amounted to fraud. We agree with the FSCA that Ms Alli failed to render financial services honestly and in the interest of her clients and the integrity of the financial services industry. Thus, the application should be dismissed.
50. It is contended by the Applicant that the FSCA committed a litany of procedural irregularities which amongst others include the right to oral evidence, due process was not followed, etc. See paragraphs 34.1 to 34.26 above where reference is made to the Applicant's contentions in this regard.
51. Section 154 of the FSR Act lays out the consultation process that needs to be adhered to by the FSCA before it decides to debar. The Respondent adhered to the provisions of section 154 of the FSR Act by providing the Applicant with reasons for every decision taken and by inviting the Applicant to make submissions within a reasonable period. In this regard see paragraphs above 19 to 29 above. Thus, the Applicant's contentions that due process was not followed is without merit.

52. In addition to the above, Ms Alli's submission that the investigation lacked fairness in that a request by the Applicant for further particulars was not fully furnished e.g., that uncompleted statements of the Ls and Mr ZP were sent to Ms Alli and that she was not provide with a copy of the Financial Services Providers Written Policy and Procedure which governed the process (something required under the FAIS Act, which does not apply) is unsubstantiated. All documents relevant to the enquiry and investigation in the possession of the FSCA were sent to Ms Alli on 18 March 2021, which included, *inter alia*, all documents, statements, suretyships, email correspondence, altered ID copies, reports, etc.
53. Furthermore, the Applicant did not show how the absence of some documents negatively impacted on her ability to state her case. It follows that she did not do so because she knew what the case was that she had to meet.
54. Therefore, all issues raised by the Applicant in respect of procedural irregularities and lack of documents are dismissed as unsubstantiated.
55. Ms Alli's contention that there are material and irresolvable disputes of fact that can only be resolved with the hearing of oral evidence is without merit as no real dispute of fact exists except for a bare denial and a shifting of the blame to someone else who allegedly caused or contributed to the mishap.
56. Furthermore, there is no warrant under the existing statutory framework to impose the requirement of an oral hearing for FAIS debarment proceedings and the Plascon Evans Rule does not apply to the proceedings. (See: *Zietsman, Gavin Lyonel v Director of Market Abuse and FSB, Case 71285/16, High Court of South Africa, Gauteng Division, Pretoria & Van der Walt v Appeal Board of the Financial Services*).
57. On a balance of probabilities, the FSCA's submissions that Ms Alli has contravened and/or failed to comply with the provisions of the FAIS Act and the General Code of Conduct for Authorised FSP's and Representatives, and in particularly the character qualities of honesty and integrity should be upheld.
58. For reasons stated above the application is dismissed.

F. ORDER

1. The Applicant's application for reconsideration is dismissed.

SIGNED on behalf of the Tribunal on this 28th day of JULY 2022.

A handwritten signature in black ink, appearing to read "Adv. Salmé Maritz". The signature is written in a cursive, flowing style.

ADV SALMÉ MARITZ

For self and on behalf of LTC Harms (Chair)