THE FINANCIAL SERVICES TRIBUNAL

CASE NO: A22/2025

In a matter between:

HILDAGONDA MULLER **APPLICANT**

And

FINANCIAL SECTOR CONDUCT AUTHORITY **RESPONDENT**

TRIBUNAL PANEL: Legodi J (Chair), and Adv SM Maritz with Adv KD Magano dissenting

Appearance for Applicant	: Adv M De Meyer
Appearance for Respondent	: Adv Barend Bredenkamp
Date of hearing	: 17 November 2025
Date of Decision	: 15 December 2025

Summary: An application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") against a decision of the Respondent to debar the Applicant in terms of section 153(1)(a) of the FSR Act due to non-compliance with the fit and proper requirements, particularly

the character qualities of honesty and integrity under section 6A of the Financial Advisory and Intermediary Services Act 37 of 2002 (“the FAIS Act”) read with section 8(1) of the Board Notice 194 of 2017.

DECISION

A. INTRODUCTION

1. The Applicant applies for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“FSR Act”) of a decision taken by the Financial Sector Conduct Authority (“the Authority”) dated 26 May 2025 to debar her on the basis that she no longer complies with 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 and read with section 8(1) of Board Notice 194 of 2017.

2. The debarment order was made in terms of section 153(1)(a) of the Act which empowers the Authority to debar a natural person who materially contravenes a financial sector law or the fit and proper requirements under the FAIS Act read with Board Notice 194 of 2017.

3. The Applicant was debarred for six years, prohibiting her from providing financial products or services to clients and from acting as a key person of any financial institution.

4. On 24 June 2025, the Applicant applied for suspension of her debarment pending reconsideration. This application was dismissed by the Chairperson of the Financial Services Tribunal ("the FST") on 29 July 2025.

B. BACKGROUND FACTS

5. The Applicant has been employed as a broker with Impact Corporate Brokers ("Impact") since 2 June 2013 and, at all relevant times, she was a representative of Impact.

6. On 23 February 2023, the Authority received a complaint against Momentum Metropolitan Life Limited ("Momentum") from Mr EMK ("the complainant or Mr EMK") in respect of a Life Insurance Policy held under policy number 212... ("the policy"). The main complaint was that the policy was cancelled with effect from 1 August 2022 and reinstated by Momentum without his knowledge and consent.

7. The complainant was the policyholder of the above policy with Momentum until 31 July 2022. Napaj Property Investment and Development ("NAPAJ)" was the beneficiary and premium payer. The monthly premium payable as of 31 July 2022 was above R74,000.00.

8. The complainant submitted that the Applicant, as his broker, assisted him in taking up the policy with Momentum, and that the Applicant was the original seller of the policy with effective date 1 January 2017. The policy also covered dreaded diseases and served as an income protector, over and above being a life insurance policy.

9. On 24 June 2021, the complainant appointed Mr AL ("Mr AL") of HHG Wealth (Pty) Ltd ("HHG Wealth") as his servicing financial adviser/broker. Despite this, as per the assertion of Momentum, the Applicant "*remained the commission earning broker on the policy as the writer thereof on the policy*".

10. On 25 June 2021, Momentum notified the Applicant that she has been removed as a serving financial adviser to the complainant on the said policy.

11. On 25 July 2022 Momentum received a written instruction from Mr AL who at the time was working as a servicing financial adviser for another brokerage entity since May 2022. The letter indicated that, as per the instruction of the complainant, the said policy with Momentum should be cancelled effective from 1 August 2022, and Momentum subsequently informed the Applicant of a claw back of R113 539.36 that was paid to her as commission.

12. Momentum, in its letter of 1 August 2022, regretted the fact that the complainant had decided to discontinue with the policy. Momentum also confirmed to the complainant that the policy had been cancelled effective from 1 August 2022 and that there will be no benefits for him from the date of cancellation. It was further confirmed that Momentum had planned to stop further premium deductions.

13. On 25 August 2022, a series of WhatsApp messages were exchanged between the Applicant and the complainant, who was overseas at that stage, regarding certain insurance products of the complainant. These WhatsApp messages read as follows:

"*Hi*

Ek wil net gou met jou chat oor die goedjies wat by my is. Medies ens. Ek weet jy het Riaan se polisse gestop. Ek wil net gou hoor oor die goedjies was by my in plek is apart van Riaan.....Bly dit soos dit is. Asook the polis vir.....
[WhatsApp message : Applicant]

[Translation: "the Applicant: I just want to chat with you about the things that are with me. Medical etc. I know you stopped Riaan's policies. I just want to hear quickly about the things that are in place with me apart from Riaan [redaction]. Do they remain as is. As well as the policy for [redaction]."

Hi H I'm overseas but Al l to remain as is thank u.
[WhatsApp message: Complainant]

Perfect! Ek hou alles dan in plek by my."
[WhatsApp message: Applicant]

[Translation: Perfect! I'll keep everything in place with me then."]

14. On 25 August 2022, Momentum received a request from the Applicant to be re-appointed as the serving broker on the said policy, to revoke the cancellation and to re-instate it. On the same day, Momentum emailed letters to the Applicant confirming her reappointment as broker on the said policy and notified the complainant of the reappointment of the Applicant as his broker. No objection was received from the complainant in his regard.

15. On 30 August 2022, Momentum again in writing notified the complainant of the re-instatement of the policy with effect from 30 August 2022. He was further informed that the monthly premium payment in the amount of R74,539,59 will be due on 1 September 2022 and to be debited against NAPAJ effective from 7 September 2022. Neither the complainant nor NAPAJ objected to this.

16. On 2 October 2022, at 10:06, Momentum emailed a Momentum Interactive Reassessment Application document (questionnaire) directly to the complainant's email address emo@napaj.co.za. The completion and submission of this document would have entitled the complainant to enjoy discount on his life insurance premium regarding the policy under discussion.

17. The completion of the questionnaire document was also intended to assess the complainant's overall well-being in relation to the policy under discussion even though the information in relation thereto, will not affect his discount percentage. The information may also be used to manage his health. It was further emphasised in the questionnaire form that the information will not be used to alter the terms and conditions of his policy.

18. The complainant completed the above document in his own handwriting and physically signed it. It appears that the completed document was sent to his offices for further handling. At 2:52 pm on 4 October 2022, Ms NS of NAPAJ emailed the completed document to Momentum for processing with the following message: "*Please receive the attached completed form as per Mr Emil Keyser".* The email was also copied to the complainant.

19. On 11 January 2023, Momentum received a letter from NAPAJ enquiring as to why the policy was still in-force and requested that premium collections be stopped immediately. Momentum was further informed that due to it debiting their bank account irrespective of the cancellation of the policy with effect from 1 August 2022 the total premiums amounted to R379,316.15. Debit orders went through since the end of August 2022 until end of January 2023. It was demanded that the policy deductions be stopped and that proof of the refund in the amount of R379,316.15 be provided.

20. Subsequent to this letter to Momentum, NAPAJ on behalf of the complaint filed a complaint on 24 February 2023 with the Authority. The complainant was aggrieved that the policy was re-instated despite it having been cancelled, as confirmed by Momentum's letter dated 1 August 2022. Furthermore, that during the revocation of the cancellation of the policy, which happened during August 2022, the complainant was aboard, and that the re-instatement of the policy was done without the complainant's knowledge and authorisation.

21. On 2 March 2023, Momentum sent an email to the complainant together with a document for cancellation of the policy. On 6 March 2023, an employee of the complainant at NAPAJ was instructed to send the completed and signed document to Momentum with the following instruction: "*Make sure we state that this policy was cancelled in August 2022."*

22. Momentum on receipt of this document of 6 March 2023 informed the complainant that the policy had been cancelled and that the stop order would also be cancelled.

Momentum further informed the complainant that the contract under the policy, provides no further benefits from date of cancellation. Furthermore, he was advised that the replacement of an insurance policy involves the duplication of costs, may cause a gap in his risk portfolio, and may also cause him to pay a higher premium in the future, due to a changed risk profile.

23. On 6 March 2023, a round table meeting was held between the complainant accompanying by his legal representative and the Applicant and Impact.

24. On 15 March 2023, an Acknowledgment of Debt was concluded between the complainant and NAPAJ and the Applicant and Impact in terms whereof the Applicant and Impact undertook to pay the amount of R301,676.70 to the complainant and NAPAJ.

25. On or about 18 June 2023, the complainant emailed a letter ("the withdrawal letter") to the Authority the relevant part thereof reads as follows:

"*We wish to advise that the events which gave rise to the complaint have since been thoroughly clarified between the parties. The issues originated from an unfortunate and material misunderstanding, exacerbated by a lack of communication while our client was outside the country for an extended period. As a result, assumptions were made, which led to the reinstatement of the policy and deductions without his express knowledge or consent at the time.*

We can confirm that after constructive engagement between Mr EMK and Ms HM as representatives of Momentum Life, the matter has been resolved amicably. Both parties acknowledge that no misconduct or malfeasance occurred, and that the misunderstanding arose in good faith. Mr Keyser has received the

necessary assurance from Momentum Life regarding the future administration of his policy, and he no longer harbours any grievance requiring further regulatory intervention.

In the circumstances, EMK has resolved not to pursue the complaint further and respectfully requests that the FSCA close its file in respect of the matter". (Own Emphasis)

26. On 14 July 2023, a follow-up email was sent to the Authority to inform it that the matter was resolved.

27. Despite the withdrawal of the complaint, the Authority persisted with its investigation.

28. On 26 February 2025, a Notice of Intention to issue a Debarment Order in terms of section 153 of the FSR Act was issued by the Authority and sent per registered mail to the Applicant.

29. On 26 May 2025, the debarment order was handed down by the Authority in terms whereof the Applicant was debarred for a period of 6 years.

30. On 23 June 2025, the Applicant filed her application for reconsideration. The Tribunal will deal with the relevant grounds for reconsideration as well as with the Respondent's response thereto below.

C. TRIBUNAL'S ANALYSIS AND DECISION

31. The Authority found that the Applicant : (a) misrepresented to Momentum on 25 August 2022 that the complainant had reinstated the policy after he had cancelled

it with effect from 1 August 2022; (b) knowingly and intentionally reinstated the policy without the complainant's consent, thereby failing to render financial services honestly, fairly, and in the interests of clients with integrity. The Authority consequently held that the Applicant had contravened the fit and proper requirements in section 8A of the FAIS Act, read with section 8(1) of Board Notice 194 of 2017.

32. The Applicant's defence may be summarised under these headings: (a) she was authorised to revoke the cancellation and reinstatement of the policy; (b) on 2 October 2022 the complainant personally completed, in his own handwriting, and signed the Momentum Interactive Reassessment Questionnaire; and (c) the complainant subsequently withdrew his complaint against her, stating: "*Both parties acknowledge that no misconduct or malfeasance occurred, and that the misunderstanding arose in good faith.*"

33. The central issue for determination is whether the Authority on a balance of probabilities has proven that the Applicant contravened the fit and proper requirements in section 8A of the FAIS act read with section 8(1) of Board Notice 194 of 2017.

34. A debarment under section 153 of the FSR Act requires that the Authority gather all relevant evidence, consider potentially exculpatory material, resolve material disputes of fact and evaluate the representative's conduct holistically to determine whether she poses a future risk.

35. The Tribunal has carefully reviewed the documents submitted and the submissions made by both parties. It finds that the WhatsApp messages, in relation to the question of whether the Applicant was duly authorised to revoke the cancellation and reinstate the policy, must be interpreted in the broader context of all evidence before the Tribunal. The Tribunal will address certain contested issues below.

Complainant's Withdrawal Letter

36. The Tribunal will start with the complainant's withdrawal letter quoted in paragraph 25 above. From this letter it is relevant that "*both parties acknowledge that no misconduct or malfeasance occurred*". The complainant's assertion that "*assumptions were made, which led to the reinstatement of the policy and deductions, without his express knowledge or consent at the time*" warrants careful scrutiny.

37. The relevant portion of the complainant's withdrawal letter is quoted in paragraph 25 above, which should be incorporated herein by refence. The letter was addressed to the Authority prior to the Notice of Intention to Debar and the subsequent debarment. The question is whether the Authority properly considered this letter and attached appropriate evidential weight to its contents.

38. In paragraphs 46 to 61 of the Authority's heads of argument it speculates on the "*probable reason*" why the complainant withdrew the complaint, submitting (at para 48) that "*it is not uncommon in these types of cases...that clients change their version after being approached by the broker*". While such a possibility may exist

in some matters, each case must be assessed on its own facts and the particular client involved.

39. There is no evidence that the complainant was vulnerable or capable of being unduly influenced. On the contrary, he is an astute and financially successful businessman who controls an investment company, NAPAJ, that is evidently prosperous. Several independent factors indicate that the reinstatement occurred with his knowledge and/or approval, which will be dealt with below.

40. The withdrawal letter expressly records that "*both parties acknowledge that no misconduct or malfeasance occurred*". The complainant's qualification that "*assumptions were made, which led to the reinstatement...without his express knowledge or consent at the time*" must be scrutinised in context.

41. The complainant appears determined to maintain that the policy was reinstated without his knowledge or consent. This is illustrated in an email he sent to an employee on 6 March 2023. "*Hi S. Make sure we state again that this policy was cancelled in August 2022*."

42. Similarly, when Momentum sought clarification regarding his completion of the Interactive Reassessment Questionnaire, he did not address his participation. Instead, he deposed an affidavit asserting that the reinstatement occurred without his consent or knowledge.

43. His failure to engage with the events of 2 and 4 October 2022 cannot reasonably be attributed to oversight. Yet the Authority did not pursue this further. Instead, in

opposing the Applicant's suspension application, it stated, *inter alia,* as follows: *"...Mr Keyser also did not continue with the policy after it was reinstated, confirming the fact that he no longer wanted the policy.*"

44. As stated above, the complainant consistently maintained (*inter alia* in an email to his employee Ms SL on 6 March 2023 and in an affidavit to Momentum) that the policy had remained cancelled since August 2022. He conspicuously failed to address his own completion and return of the Interactive Reassessment Questionnaire on 2 October 2022, or the fact that he continued paying premiums after the reinstatement. The Authority accepted Momentum's assertion that the complainant "*did not continue with the policy after it was reinstated*", which is factually incorrect and ignores the correspondence of 25 and 30 August 2022 and 2 and 4 October 2022 emails.

45. Neither Momentum nor the Authority confronted the complainant with these facts or required proof that he had not received the reinstatement notifications. Most tellingly, the Authority itself recorded in paragraph 6.3.5 of the debarment order that on 2 October 2022 Momentum emailed the Interactive Reassessment application to the complainant's address (emo@napaj.co.za) and that he completed and returned it on 4 October 2022 for processing. That processing related directly to the reinstated policy and secured premium discounts and other benefits for the complainant. This conduct is wholly inconsistent with ignorance of, or objection to, the reinstatement.

46. When the withdrawal letter together with the correspondence between the parties are viewed in its proper context, as set out above, it constitutes reliable evidence that no wrongdoing occurred, which further constitutes a ground for setting aside the debarment.

Applicant's Alleged Manipulation of the M-Sign System

47. This question is not too remote from what has been dealt with in the preceding paragraphs. In paragraph 34 of the opposing submissions dated 1 July 2025, the Authority moved from the premise that the complainant's admission and manipulation of the processes stand, and that this has not been changed by the withdrawal of the complaint and settlement of the dispute. One can only come to this conclusion if the withdrawal is looked at in isolation.

48. The allegation of manipulation arose initially from the investigation that was launched and concluded by Momentum. In its debarment order, the Authority refers extensively and, in some respects, word by word to the investigation conducted by Momentum Group Forensic Services and explained in the letter of 30 January 2024 referred to in hereinunder. From Paragraph 6.5 of the order read with paragraph 6.5.3, it is clear that the Authority, in coming to its conclusion, relied heavily on what it says was established by Momentum Forensic Services Investigation.

49. In paragraph 6.4 of the order, the Authority concluded that the Applicant had manipulated several processes to create the impression that the complainant had instructed her to revoke the policy cancellation. In paragraph 6.5, the Authority

further relied on information from Momentum Forensic Services, indicating that the Applicant had been interviewed on multiple occasions and had allegedly *"admitted to having manipulated the M-Sign process in order to have the policy reinstated".*

50. This alleged admission appears to have been a decisive factor that informed the Authority's conclusions, and the ultimate order made. The so-called admission stemmed from a telephonic interview conducted by Mr DeB of Momentum Forensic Services, who recorded the conversation without informing the Applicant. At the time, the Applicant was driving to Bloemfontein to fetch her children and, at one point, even missed a turn.

51. At the outset, it must be noted that Momentum is a conflicted party. The initial complaint was lodged with the Authority against Momentum, while the complainant was simultaneously demanding a refund from Momentum. In these circumstances, any finding by the Authority that relied on Momentum's assertion that the Applicant admitted to manipulating the M-sign process ought to have been approached with caution. The Authority should have recognised that the investigation and its outcomes emanated from a party that was not independent or impartial and should therefore have applied an appropriate cautionary rule to the information presented.

52. Furthermore, the investigation method employed – namely the secret recording of a conversation without the knowledge of the person under investigation – falls short of acceptable investigative standards. The issue is not necessarily the legality of the recording, but rather whether it reflects professionalism,

transparency and fair administrative conduct. Such covert methods carry a significant risk of undermining Momentum's credibility and reputation. A "catch-by-surprise" investigation is unlikely to align with Momentum's own code of conduct, and it is equally unexpected that the Authority would, without further corroboration, rely on information obtained in this manner.

53. In paragraph 11 of the Applicant's heads of argument, she addresses what she describes as the "*facts in disputes*". In paragraph 11.3, she asserts that "*it is disputed that the Applicant admitted to having manipulated the M-sign process*".

54. In paragraph 13 of her heads of argument, the Applicant advances the contention further by stating that it is impossible to manipulate the M-sign system, which Momentum continues to use. It is, however, not Momentum's version that the M-sign system is capable of being manipulated. Momentum is, in any event, expected to implement adequate measures to mitigate risks to its clients and to protect its reputation.

55. It is, furthermore, not Momentum's version that the M-sign system is no longer in use or that it is unsafe. In its letter dated 30 January 2024, addressed to the Authority, Momentum acknowledges that the M-sign system remains an acceptable mode of transacting. In that letter, Momentum explains, amongst other things, as follows:

"*On August 2022 Momentum received a request to re-appoint Mrs Muller as the servicing broker, and at the same time also a request to revoke the cancellation and restart the policy.*

The documents were signed using a Momentum two-factor authenticated electronic signature application. The application was developed after the start of the Covid-19 pandemic in 2020. Momentum accepts both hand transcribed signatures and electronic signatures. It is not considered suspicious if previous documents were signed by hand and we then receive documents electronically signed*".* (Own Emphasis)

56. Having made the statements quoted above, Momentum proceeded to attribute blame to the Applicant by alleging that its forensic investigator – apparently Mr DeB – interviewed the Applicant and held meetings with the brokerage (Impact) as well as the complainant's attorney. The circumstances under which the Applicant was interviewed ought to have raised concern for both the Authority and Momentum. The Applicant was *enroute* to fetch her children in the Free State and was contacted while driving. Mr DeB was alerted to this fact. At one point during the conversation, the Applicant missed or lost her direction, and Mr DeB was again made aware. Despite this, he failed to pause the interview until the Applicant had reached her destination or until it was otherwise convenient for her to proceed. The Authority's reliance on an interview conducted under such circumstances is, in itself, concerning.

57. Following what is stated above, Momentum further asserted in its letter dated 30 January 2024 addressed to the Authority:

"*Mrs Muller admitted to having manipulated the M-sign process in order to have the policy reinstated. Mrs Muller however attempted to justify her actions by referring that she has over the past 20 years accepted instructions from Ms Keyser,*

on behalf Mr Keyser, and with full knowledge of Mr Keyser. Mrs Muller could however not provide Momentum with an acceptable explanation in respect of why she accepted third party instructions without a formal /written mandate from Mr Keyser to do so". (Own Emphasis).

58. It is necessary to deal first with the Applicant's version concerning the above quotation before considering the Authority's reliance on the letter dated 30 January 2024. Put differently, the allegation of "*manipulation*" must be addressed before turning to the purported admission discussed below. The Applicant states that the policy formed part of Momentum's online activation process known as the M-sign system, in terms of which a client-specific portal is created for the policyholder for purposes of taking steps relating to the activation or reinstatement of a policy.

59. The Applicant further states that the complainant had numerous dealings with Momentum through her, during which he nominated the cell number 082 549...and the email address **emo@napal.co.za** as the authorised means of communication. These served as the approved channels between the Applicant (as the broker's representative), the complainant, and Momentum for all policy-related activities.

60. The cell phone number referred to above was used to generate the OTP for reinstating the policy. This number was selected by the complainant as an alternative contact number for communication and transactions with Momentum through the Applicant. It belongs to Ms WK ("Ms WK"), an employee – and apparently also a cousin – of the complainant. This number is expressly indicated

as an "*alternative number*" in the Interactive Assessment Questionnaire completed and signed by the complainant, as noted above.

61. The suggestion that the Applicant "*could however not provide Momentum with an acceptable explanation"* for accepting third-party instructions without a formal or written mandate from the complainant, as quoted in paragraph 57 above could be misleading if other facts forming the context, are ignored. The reference to "third-party" refers to Ms WK.

62. The allegation that the Applicant manipulated the M-sign process must also be assessed in its proper context. As the Authority itself remarked "*context is everything*". That context required consideration of all relevant factors, not merely the alleged manipulation or any purported admission. The facts set out in above are among those that ought to have been considered.

63. Ms WK's reluctance to confirm that she provided the Applicant with the OTP must equally be viewed in context. Had she confirmed providing the OTP, it would have corroborated that the reinstatement occurred with the complainant's knowledge or approval. However, the complainant did not want any of his employees to confirm his knowledge and/or approval of the reinstatement. In light of the foregoing, the finding of manipulation cannot be sustained.

Applicant's Alleged Admission

64. The Authority, in its written heads, deals with what it refers to as "*ADMISSION TO MOMENTUM*"**.** For the alleged admission, the Authority relied on the quotation in

paragraph 30 of its written heads. The contention in paragraph 30 is preceded by the assertion in paragraph 16.2 of the written heads, wherein the Applicant is accused of failing to deal with the totality of the objective evidence constituting an alleged admission in the acknowledgement of debt document, including an alleged admission made to the Momentum during its interview over the phone. This is further preceded by another accusation in paragraph 16 of the written heads, wherein the Applicant is said to be "*selective and reactive*".

65. The facts upon which the alleged admission of the manipulation of M-sign system are based, are quoted in full in paragraph 30 of the Authority's written heads as follows:

> "*MR DE BEER: …is not how the system works. So, you are also going to – you are also going to have a problem, and I am being very straightforward with you, but you are also going to have a* ***problem explaining why the OTP of the M-sign went to Wilma****, as you claim, and why you changed it, and* ***where is the client's instruction, approval or mandate regarding that OTP to an alternative person****.*
>
> *MRS MULLER: Okay.*
>
> *MR DE BEER: So, take me quickly through it. How did it happen, and how did you do it? Let me… I know how it happened, but I obviously want to hear from your side, for you to explain to me how you went about it.*
>
> *MRS MULLER: Okay. So, I spoke with Emile, and then he said via WhatsApp that everything must remain in force. Then I spoke with Wilma and told her here is a screenshot from Emile that says everything must be in place with me. So, Emile cannot receive SMSs in Romania, so the only alternative person who*

can receive an SMS is Wilma.

So, the email went to Emile, so that he would be informed about the M-sign. And Wilma received the OTP.

*MR DE BEER: Okay. But I want to understand quickly, because when I look at the audit log, the **IP addresses** for the email and the receipt of the email, and the execution of the signature are the **same IP address, which is yours**. So now I want to understand quickly, so you – you sent the document to Emile's address. You changed the phone number …[intervenes]*

MRS MULLER: Yes.

MR DE BEER: …and the OTP then went to Wilma. Okay.

MRS MULLER: Correct.

*MR DE BEER: But now you need that OTP to obviously be able to process the document. So, did you talk to Wilma about her giving you the **OTP, so you can enter it on your computer?***

*MRS MULLER: **Correct.***

MR DE BEER: Okay. Now at that point, where is your instruction from Emile that you may do this?

MRS MULLER: I do not have an instruction from Emile that I can do this through Wilma, but it was… We have always …[intervenes]

MR DE BEER: So, you know you have a problem there.

*MRS MULLER: **Yes, I know it will be a problem**. Yes, because that is not a physical instruction …[intervenes]*

MR DE BEER: Correct.

MRS MULLER: …outside of not restoring the policy. Yes.

MR DE BEER: Yes. So, there is a problem. And I can also share with you that Wilma denies that she received the OTPs.

MRS MULLER: That is very strange, because I …[intervenes]

MR DE BEER: Now …[intervenes]

MRS MULLER: …because that number is her number.MR DE BEER: No, no, I know this is her number. But remember, the burden of proof lies with you, because your problem here is, as I said, you are not sitting with an instruction to do what you have done, or a mandate to do what you have done. You are also not sitting with a mandate that says you can alternatively, if you do not get hold of him, that Wilma has the authority to approve business transactions on his behalf. So there …[intervenes]"

66. The bolding used by the Authority is apparently intended for emphasis. It is therefore, necessary to address its significance – or lack thereof. According to the Authority, the quotation is meant to show that the Applicant admitted to Momentum's investigator that there was no mandate to use Ms WK as a "third party" or go-between, and that this constituted a problem. To reach such a conclusion, however, one must disregard what is set out in the above paragraphs.

67. As a starting point, Momentum's investigator appears to have adopted a judgmental approach to the Applicant's version. When asking the Applicant "*how did it happen*" and then immediately stating "*I know how it happened*", the investigator seems to have pre-judged any explanation the Applicant might provide. It is incorrect to suggest that the Applicant failed to give an explanation

during the telephone interview initiated by Momentum's investigator. The transcription of the interview shows that she did provide an explanation. It is therefore inaccurate to claim that she "*admitted to Momentum's investigator that there was no mandate to use Wilma Keyser and that this was a problem*." (Emphasis as per the Authority)

68. The alleged admission, according to the emphasis appears to have been based on the words 'this was a problem'. The explanation offered by the Applicant, as per the transcription of the interview can be summed up as follows: She spoke to Emile, referring to the complainant. The complainant via WhatsApp said that everything must remain in force. The Applicant then spoke with Ms WK, the complainant's employee who is also said to be a cousin to the complainant and sent her a WhatsApp screenshot from the complainant. This was at the time when the complainant was out of the country. An email was then sent to the complainant so that he could be informed about the M-sign. This also illustrates that at all relevant times the Applicant was transparent in her dealings.

69. The WhatsApp message from the complainant who was in Romania at the time, reads as follows: "*HI H I'M overseas, but AL I to remain as is, thank you".* This was a response to a WhatsApp message in Afrikaans which was earlier sent by the Applicant to the complainant. In that message, the Applicant indicated that she quickly wanted to chat with him about a few things that were still with her, medical issues, and so forth. She indicated that she was aware that some policies with another broker by the name of Mr AL had been stopped and that she just wanted to know about some other things that were still with her apart from those with

"Riaan" ("Mr AL").

70. It is this message from the complainant that became the subject of contention. Perhaps it should have been seen in the context of the communications, as set out above. The suggestion that the Applicant changed the phone number as indicated in the transcription, was prompted by Mr DeB and in so doing, failed considering the context. The cell phone number used was that of Ms WK and was used as an alternative number for communication as provided by the complainant. It was used because the complainant was not reachable on his primary number, except on WhatsApp.

71. It appears to have been common cause during the interview that the OTP number went to Ms Keyser and that this was needed to process the reinstatement documents. Therefore, the emphasis as per the bolding reflected in the quotation under paragraph 65, cannot be the basis to constitute an admission of wrongdoing simply because the Applicant indicated that she knew that there was a problem. As the Authority puts it, context is everything and we do not think that the Authority properly considered context before the decision to debar the Applicant was taken.

Alleged Admission of Wrongdoing in the Acknowledgement of Debt

72. In its written heads of argument, the Authority alleges dishonesty on the part of the Applicant, relying on the Acknowledgement of Debt concluded on 15 March 2023. The Authority's position can be summarised as follows: it maintains that the Acknowledgment of Debt constitutes an admission by the Applicant, and, apart from a bare denial, the Applicant does not address the basis for her denial in her

written heads.

73. The Applicant was not obliged to do so. If the Authority wished to assert that the Acknowledgment of Debt constituted an admission of dishonesty, such a conclusion cannot be drawn from the mere existence of the Acknowledgment of Debt. The Authority provides no supporting facts for this assertion. Instead, it appears to rely on the following contention: "*The AOD specifically states that Ms Muller and the FSP's indebtedness stems from losses suffered by NAPAJ as a result of a 'delictual claim' against the FSP and Ms Muller*."

74. In paragraph 35 of the Authority's heads of argument, it further contends that the Applicant's conduct arose from financial services rendered when she caused the reinstatement of the policy. The Applicant's indebtedness is characterised as "*much more than just a misunderstanding, as she had been trying to hold out.*" In making this assertion, the Authority does not address the withdrawal letter and its contents as stated above, nor the other matters set out above.

75. Were there indeed no misunderstanding, as the Authority contends, the complainant owed the Authority an explanation as to why he completed and signed the Momentum Interactive Assessment document and returned it on 4 October 2022 – after being advised, in letters dated 25 and 30 August 2022, of both the reinstatement of the policy and the appointment of the Applicant as his serving financial adviser in respect of the policy. Accordingly, the Authority's reliance on the Acknowledgment of Debt is not based on proven facts, and the reliance thereon is misplaced.

Failure to deal with Contradictory Statements of Complainant & Completion and Signature of Momentum's Interactive Reassessment Questionnaire

76. The Authority's investigative shortcomings are evident from its failure to verify whether the complainant received the reinstatement notification letters dated 25 August and 30 August 2022, or to obtain proof of delivery from Momentum. No evidence shows that the Authority sought a direct explanation from the complainant as to why he personally completed, signed and returned the Momentum Interactive Reassessment Questionnaire in October 2022, despite alleging that he was unaware of the reinstatement until January 2023. This included the unexplored issue of how this conduct aligns with his receipt of premium discounts and benefits under the reinstated policy. The Authority also failed to investigate the inconsistency between the complainant's continued premium payments after reinstatement and his later assertion that he "*did not continue with the policy*". Without this information, the Authority lacked any factual basis to conclude that the Applicant acted without authority or without the complainant's knowledge and consent. Similarly, there is no indication that Ms WK (employee of complainant) was requested to provide a statement regarding her role in the reinstatement process.

77. The Authority failed to obtain clarification from the complainant regarding his contradictory statements, addressing the issue only through speculation. This omission undermines its allegation that the Applicant acted without authority and thereby contravened the fit and proper requirements of the FAIS Act. Moreover,

there is no evidence that the Authority considered the Applicant's transparency during the policy reinstatement with Momentum, the correspondence sent to the complainant regarding the reinstatement, or whether the complainant actually received such correspondence.

Authority's Reliance on Letter dated 25 June 2021

78. During oral argument, the Authority focussed on the Applicant's alleged misconduct in communicating with the complainant after Mr AL was appointed as serving financial service adviser in Momentum's letter dated 25 June 2021. This contention appears to have been prompted by comments in a ruling dismissing an application to suspend the debarment pending reconsideration. The 25 June 2021 letter advised the Applicant that she had been removed as serving financial adviser under the policy.

79. The Authority's May 2025 Notice of Debarment and debarment order did not rely on the 25 June 2021 letter, correctly so. Momentum, in its letter of 30 January 2024 to the Authority, confirmed that the Applicant had been notified on the policy cancellation and the commission claw-back, as she remained the commission-earning broker. The suggestion that the Applicant had no basis to communicate with the complainant after this notification is unsupported.

80. In March 2023, Momentum informed the complainant that his policy had been re-cancelled and apprised him of the associated risks. As previously stated, the contract/policy ceased to provide benefits from the date of cancellation, and replacement could result in duplicated costs, gaps in coverage, or higher premiums

due to a changed risk profile.

81. The Applicant's conduct in August 2022, upon notification of the cancellation, mirrored Momentum's approach. She had a longstanding business relationship with the complainant and was aware of his health issues, which could not be disclosed, as reflected in redacted WhatsApp messages exchanged while he was aboard. There is no evidence that the Applicant reinstated the policy without the complainant's knowledge or authority, nor that she acted to avoid a commission claw-back. Such assertions ignore what is stated above. The Authority never engaged the Applicant regarding the 25 June 2021 letter, which was not relied upon in the debarment. Any reference to the suspension ruling is irrelevant, as it did not constitute a final determination on the merits of the reconsideration application.

82. Based on the evidence before the Tribunal, the Authority has not established, on a balance of probabilities, that the Applicant contravened the FAIS Act in a material manner or that she acted dishonestly. The investigation was improper, incomplete, procedurally unfair, and failed to meaningfully engage with critical evidence. The Authority relied selectively on incomplete extracts, ignored relevant context, and failed to assess the evidence holistically. In these circumstances, the Authority failed to discharge its onus to show that the Applicant no longer met the honesty and integrity requirements in section 8A of the FAIS Act. Accordingly, the reconsideration succeeds.

D. ORDER

83. Therefore, an order is made as follows:

83.1. The debarment order is hereby set aside.

83.2. The matter is remitted to the Authority for reconsideration.

Signed on behalf of the concurring member of the panel on this 15th day of December 2025.

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MF Legodi J

DISSENTING RULING

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84. I have carefully reviewed the comprehensive judgment penned by my esteemed colleagues, Legodi J and Adv Maritz (“the majority decision”), which concludes that the applicant’s debarment must be set aside and the matter remitted to the Financial Sector Conduct Authority (“FSCA”). This order is founded on the finding that the FSCA **"***has not established, on a balance of probabilities, that the applicant contravened the FAIS Act in a material manner or that she acted dishonestly," because "the investigation was improper, incomplete, procedurally unfair, and failed to meaningfully engage with critical evidence."*

85. The main decision suggests that there is an unresolved factual dispute, which makes it difficult for this Tribunal to evaluate the Applicant’s conduct holistically. I

respectfully find that no material disputes of facts exist on this record that necessitate remittal. I say this because the following facts are common cause between the parties, and the Tribunal is in full agreement about the objective sequence of events:

85.1. On 25 June 2021, the Applicant was formally removed as the Servicing Broker in respect of Mr EMK's Policy Number 212...("the policy"), and Mr AL was appointed as the replacement broker.[1]

85.2. Despite her removal, the Applicant remained the commission-earning broker for the policy and continued to service Mr EMK for his other financial products, such as medical aid and investments.[2]

85.3. The policy was formally cancelled, with the cancellation becoming effective on 1 August 2022.[3]

85.4. Following the cancellation, Momentum notified the Applicant of a pending commission clawback of R113,539.36.[4]

85.5. On 25 August 2022, the Applicant initiated the WhatsApp communication with Mr EMK, which contained the reply that became the alleged mandate.[5]

85.6. The Applicant executed the M-Sign process on 25 August 2022,

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1 Main Decision, para. 10.

2 Main Decision, Para 9.

3 Main Decision, Para 12.

4 Main Decision, Para 11.

5 Main Decision, Para 13.

simultaneously revoking the cancellation and re-appointing herself as the Servicing Broker.[6]

85.7. Momentum issued formal letters on 25 and 30 August 2022, notifying Mr EMK of the Applicant's re-appointment and the resumption of the monthly premium debit.[7]

85.8. In October 2022, Mr EMK completed and returned the Interactive Reassessment Form.[8]

85.9. The client initiated a chain of formal objections, including affidavits, criminal charges, and complaints lodged with the FSCA and the Ombudsman.[9]

85.10. Following negotiations, the Applicant signed an Acknowledgement of Debt (AOD) on 15 March 2023, admitting a delictual claim and undertaking to repay a portion of the premiums debited.[10]

85.11. The policy was ultimately cancelled on 6 March 2023,[11] and Mr EMK subsequently withdrew his complaint with the FSCA and the criminal charges.[12]

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6 Para 14.

7 Para 14 & 15.

8 Para 16 & 18.

9 Para 20 & 42.

10 Para 24.

11 Para 21.

12 Para 25.

86. While the chronological facts leading up to the debarment are largely undisputed, the parties and the Tribunal differ significantly on the interpretation and inferences drawn from these events. These conflicts form the basis of the present reconsideration:

86.1. There is a dispute regarding whether the WhatsApp communication was ambiguous or can be interpreted to constitute a sufficient legal instruction or mandate for the applicant to reverse a policy cancellation, reinstate the cancelled policy and reinstate herself as a broker for this policy.

86.2. The Tribunal disagrees on the legal consequences of Mr EMK's secondary conduct, specifically whether his failure to immediately object to the reinstatement letters and his subsequent administrative completion of the interactive reassessment form constitute acquiescence, condonation, or tacit ratification of the Applicant's prior unauthorised actions.

86.3. A procedural dispute exists regarding whether a FSCA, despite Mr EMK's subsequent withdrawal of the complaint, possessed sufficient and independently reliable evidence of the Applicant's lack of honesty and integrity to discharge its statutory onus under the FAIS Act.

86.4. The Applicant disputes the admissibility and ethical validity of the recording used by Momentum's forensic investigator to obtain admissions.

87. Given that the core facts constituting the integrity breach are settled, I respectfully disagree with the conclusion that the application for reconsideration should

succeed and that the matter warrants remittal. The record before us already contains sufficient and conclusive evidence of professional misconduct, together with an apparent failure to meet the fit and proper requirements. The objective facts demonstrate that the integrity requirement has been breached.

88. On this basis, the essential legal determination necessary to justify debarment is already present in the papers. There is no need for further investigation or referral. The correct order is therefore to dismiss the application for reconsideration.

Main issue in dispute

89. The factual issue giving rise to this application is the Applicant's lack of authority and mandate to revoke and reinstate Mr EMK's policy and to reinstate herself as a broker for that policy. At the heart of this dispute lies the interpretation of the WhatsApp message, which the Applicant contends gave her the mandate to revoke Mr EMK's decision to cancel the policy and to reinstate both the policy and her role as broker.

90. The main decision correctly observes that "*the WhatsApp messages must be interpreted in a broader context of all evidence before the Tribunal*." In my view, this broader context begins on 25 June 2021, when Momentum formally advised the Applicant in writing:

"We received a request from the policyholder to change the servicing financial adviser on this policy. We have therefore removed you as the servicing financial adviser."

91. On a proper interpretation of the notification dated 25 June 2021, the following is immediately apparent and establishes the Applicant's lack of authority:

91.1. The notification confirmed that the Applicant no longer had the mandate to act on behalf of Mr EMK regarding Policy 212... more than a year before her intervention. She was officially a stranger to the servicing contract from that date forward.

91.2. Her fiduciary duty (the legal right to give advice or act) was transferred to the new broker, Mr AL.

91.3. The Applicant's subsequent actions on 25 August 2022 were a direct attempt to reverse the client's original instructions and violate the terms of this termination letter.

92. Although the Applicant remained the commission-earning broker for the Policy, Mr EMK terminated her servicing mandate on 25 June 2021. This distinction is critical. The termination stripped her of any legal capacity to advise, service, or transact on the client’s behalf in relation to this policy.

93. Accordingly, when she initiated the WhatsApp communication and later executed the M-Sign documents, she did so to protect her own financial interests, not from a position of lawful authority. This fact fundamentally undermines her claim that the transaction was undertaken in Mr EMK’s best interests.

Interpretation of the WhatsApp Communication

94. The Applicant's subsequent conduct, driven by the WhatsApp exchange, must be interpreted against the requirements that any broker purporting to act on behalf of a client must have the mandate to do so and must, at all times, act with the client's explicit consent. It is essential to recall that the purpose of imposing high standards for client authorisation is to protect the public interest, which serves a threefold objective:

94.1. Protecting clients from unauthorised interference, incorrect advice, or financial loss.

94.2. Safeguarding the integrity of the Financial Services Profession against dishonest practitioners.

94.3. Protecting compliant brokers by establishing clear, high standards for obtaining instructions, thereby offering them procedural protection against unfounded claims or retrospective disputes by clients.

95. The Applicant's failure to adhere to the explicit requirement for a "new written instruction" therefore represents a simultaneous subversion of market integrity and a failure to avail herself of the very protection that strict mandate rules are designed to provide.

96. The letter from Momentum to Mr EMK, confirming the appointment of Mr AL as the servicing financial adviser on 25 June 2021, is decisive.[13] That letter clearly established the high standard required for any future transaction:

"We refer to your request to appoint Mr AL as your Momentum servicing financial adviser for the above policy. <u>This appointment means that Mr AL will be able to perform electronic transactions on your behalf.</u>

We have updated our records accordingly. <u>We will require a new written instruction if you would like to change the financial adviser's details in future</u>."

97. This correspondence establishes two critical points:

114.1. Mr AL was lawfully appointed as the servicing financial adviser for the policy, with full authority to perform electronic transactions on Mr EMK's behalf.

114.1. Any change to the adviser's details required a new written instruction from the policyholder.

98. I now turn to deal with the interpretation of the WhatsApp communication of 25 August 2022 between Mr EMK and the Applicant. Although the main decision has quoted this exchange[14], I will, for the sake of completeness, quote it again here:

Applicant: "Ek wil net gou met jou chat oor die goedjies wat by my is. Medies ens. Ek weet jy het Riaan se polisse gestop. Ek wil net gou hoor oor die goedjies was by my in plek is apart van Riaan.....Bly dit soos dit is. Asook the polis vir....."

(Translation: "Applicant: I just want to chat with you about the things that are with me. Medical etc. I know you stopped Riaan's] policies. I just want to hear quickly

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[13] Para 10.

[14] Para 13.

about the things that are in place with me apart from Riaan [redaction]. Do they remain as is. As well as the policy for [redaction].)

Mr Keyser: "Hi H I'm overseas but AL L to remain as is thank u."

Applicant: "Perfect! Ek hou alles dan in plek by my."

99. What is clear from the WhatsApp message is that the Applicant did not request Mr EMK to grant her authority to revoke his decision to cancel the policy it, nor did she request Mr EMK to grant her authority to reinstate herself as the servicing broker.

100. The Applicant had a readily available, convenient, and immediate WhatsApp communication channel to request the specific mandate needed to reverse the cancellation and reinstate the policy and herself as a broker for the policy, but she did not do so.

101. The Applicant's intervention on 25 August 2022 must be interpreted against the background of the legal status of the policy and the brokers. The legal status of the policy and the brokers on 22 August 2022 is therefore decisive in interpreting the WhatsApp message. Following the effective cancellation of Policy No. 212901910 on 1 August 2022, neither Mr AL nor the Applicant held the fiduciary status of servicing financial adviser in respect of that contract. Mr AL's role concluded once he had implemented the cancellation on Mr EMK's instructions.

102. This communication occurred 14 months after the Applicant's servicing mandate was formally terminated (25 June 2021) and only days after she received notification of the R113,539.36 commission clawback (1 August 2022). The Applicant's mandate, having been expressly terminated fourteen months earlier

on 25 June 2021 by Mr EMK, meant that her legal authority to process any changes to this policy had ceased.

103. Having established the status quo regarding the policy and the Applicant's limited capacity as a broker, we now turn to the interpretation of the Applicant's WhatsApp phrase *"al goedjies by my"* ("all the things with me"), which must be assessed against the undisputed facts.

104. I accept that the Applicant remained Mr EMK's broker for other, non-disputed products such as medical aid or investments. The phrase *"al goedjies by my"* legitimately refers only to these continuing products. Objectively, there is no basis to read in "the cancelled policy" into this text. The Applicant's subsequent reinstatement of the policy demonstrates that she gave the phrase an expansive, subjective, self-serving interpretation without legal foundation.

105. Mr EMK's opening phrase, *"I'm overseas,"* did not merely convey his physical location; it was a clear statement of his limited capacity to engage in fiduciary transactions at that time. This fact imposed an immediate duty of care on the Applicant to obtain an express, formal mandate.

106. The phrase *"remain as is"* must be interpreted within the strict legal status quo of the policy on 25 August 2022. At that date, the undisputed legal position was that Policy No. 212... had been cancelled, effective 1 August 2022. The phrase cannot logically be read as an instruction to reverse a completed cancellation. Even if interpreted broadly to refer to other active products under the Applicant's mandate, it fails entirely as authority to re-appoint herself as servicing broker, a process that,

as Momentum had communicated in June 2021, required a new written instruction from Mr EMK.

107. Accordingly, this message did not grant the Applicant any valid mandate. Instead, she seized upon the inherent ambiguity of *"remain as is"* and the client's stated incapacity (*"I'm overseas"*) to execute a self-serving transaction. Her actions were designed not to serve the client's interests but to avoid the looming R113,539.36 commission clawback, thereby breaching the integrity requirements of the FAIS Act.

108. The Applicant's immediate response, *"Perfect! Ek hou alles dan in plek by my"* ("Perfect! I'll keep everything in place with me then"), naturally suggests maintaining the *current state* of affairs, which, for the disputed policy, was cancelled. By declaring that she would keep *"alles dan in plek"* ("everything then in place") or "as is" suggests maintaining the existing situation. On 25 August 2022, the existing state of Policy 212... was cancelled (effective 1 August 2022).

109. Having conducted a detailed contextual interpretation, I find that the WhatsApp exchange, far from creating a genuine dispute of material fact, provides clarity when read against the settled record. The objective interpretation is that the client's words did not confer authority upon the Applicant to reinstate Policy No. 212... or to re-appoint herself as broker.

110. At the time of the exchange, the policy had already been cancelled on1 August 2022 and the Applicant's mandate had been terminated on 25 June 2021. The phrase "remain as is" can only be understood as a general expression of continuity

in respect of the other active products for which her mandate remained intact. It cannot logically be extended to a cancelled policy or to override Momentum's requirement for a new written instruction. The Applicant's reliance on this phrase was therefore legally unsustainable and executed in bad faith and amounted to an unauthorised interference with Mr EMK's financial affairs.

111. Even if the Tribunal were to accept the Applicant's defence that she genuinely misinterpreted the ambiguous WhatsApp text (a position I find untenable), her subsequent conduct still betrays a fundamental lack of honesty and integrity. If the Applicant honestly believed she had received a clear mandate to reverse the cancellation, she had a professional and ethical duty to immediately notify Mr EMK via the very same, easily accessible channel (WhatsApp) that she had executed the instructions to revoke his cancellation, reinstate the policy, and re-appoint herself as the servicing broker.

112. Her inexplicable failure to send a simple, confirmatory message that she had reversed the cancellation and reinstated the policy, as per Mr EMK's alleged instruction, is inconsistent with the conduct of a broker acting in good faith and in the client's best interest. This significant omission, viewed in light of her prior knowledge of the pending clawback, reinforces the inescapable inference that her actions were calculated to bypass client consent and secure her own financial position.

Applicant's alleged Manipulation of the M-Sign System

113. The main decision addressed the Applicant's alleged manipulation of the M-Sign

system. It ultimately concludes that the finding of manipulation cannot be sustained. I respectfully disagree. I find that the decisive issue is not whether the M-Sign system can be manipulated. The “manipulation” in this matter was not of Momentum’s technical M-Sign system, but of the client’s authority and the authentication protocol.

114. This calculated conduct, which led to the material breach of integrity, can be traced through a clear chronological sequence:

114.1. On 25 July 2022, Mr EMK initiated the policy cancellation, effective 1 August 2022.

114.2. On 25 July 2022, the client initiated the policy cancellation.

114.3. Following the client's instruction to cancel the policy, Momentum notified the Applicant, in a letter dated 1 August 2022, that she would face a:

"...claw back of R113,539.36 that was paid to her as commission."

114.4. This fact immediately established the Applicant’s significant and personal financial interest in reversing the cancellation. I say this because the Applicant was fully aware that she had been removed as the servicing broker for Policy No. 212901910 fourteen months earlier, on 25 June 2021, and equally aware that the policy had been cancelled, as evidenced by her own reference to the cancellation of *“Riaan’s [Mr AL] policies”* in her message.

114.5. Her knowledge of both the termination of her mandate and the cancellation of the policy demonstrates that her subsequent actions were not the product of misunderstanding, but a deliberate attempt to reassert control over a policy from which she had been lawfully excluded, solely to protect her personal financial interest against the looming commission clawback. I find that the Applicant sent this WhatsApp message on 25 August 2022, not to clarify or protect Mr EMK's interests, but to create a pretext for authority to override the cancellation and secure her financial position. This act, beginning with a communication that ignored her long-standing termination of mandate, marks the intentional first step in the manipulation process.

114.6. The Applicant immediately acted on the client's reply, *"AL L to remain as is."* This message was not ambiguous. It meant the cancelled policy should remain as is-cancelled. "*AL L to remain as is",* cannot, by any stretch of imagination, mean "*revoke the cancellation of the policy, reinstate the policy and reinstate yourself as broker for this specific policy*." The Applicant knew that her servicing mandate had been terminated and that the policy was legally cancelled. Yet she failed to use the opportunity presented by the WhatsApp exchange to request explicit written authorisation to reverse the cancellation or to reinstate herself as a broker. The failure to request the mandate and the absence of such authority are fatal to her case.

114.7. The Applicant's reply, "*Perfect! Ek hou alles dan in plek by my*," reveals

her intent to proceed without further clarification, interpreting the instruction "remain as is" not as maintaining the cancelled status, but as reversing the cancellation to restore her commission stream.

115. The manipulation culminated in the use of the M-Sign system to implement the policy changes without Mr EMK's mandate. First, she used an OTP sent to a third party's cell number (Ms WK's number) to obtain the electronic signature on her own computer. This undermined the client’s two-factor authentication protocol and allowed her to submit documents containing false declarations to Momentum.

116. Second, the Myriad: Revoke Cancellation Instruction Form (the Reinstatement Form) contains detailed legal declarations that place responsibility on both the financial adviser and the policyholder for reversing a cancellation and restarting a policy. These declarations are not mere formalities; they are designed to ensure that the revocation of a cancellation is properly mandated, fully explained, and lawfully authorised.

117. The declarations fall into three critical parts. First, the Financial Adviser Declaration requires the adviser to certify that a clear mandate has been received from the policyholder. that proper consultation has taken place, and that the adviser indemnifies the insurer against any loss arising from the revocation. Second, the Policyholder Declaration requires the policyholder to confirm that he has reconsidered his decision to cancel, that he wishes to revoke the cancellation, and that he authorises Momentum to continue collecting premiums. Third, the Insured Life Declarations require confirmation of the truth and completeness of statements

made, acceptance of liability for non-disclosure, and acceptance of the two-year suicide clause, which restarts upon reinstatement.

118. The Applicant's case contains no evidence that Mr EMK was ever made aware of, or understood the significance of, the declarations being submitted on his behalf. It is not the Applicant's case, nor is it proven in the record, that Mr EMK was informed that the M-Sign process would commit him to these high-stakes declarations, including the re-imposition of the suicide clause.

119. Furthermore, the Applicant's case does not contain any evidence that Mr EMK granted Ms WK specific authorisation to act as his proxy or to sign on his behalf for this specific transaction.

120. The Applicant’s conduct in completing this form is the clearest evidence of material misrepresentation. She certified that she had obtained a clear mandate and had consulted with the policyholder. This was untrue. Her only basis was a WhatsApp message, and she acted knowing that the client was overseas and unable to provide proper authorisation. Her mandate had been terminated more than a year earlier. By submitting this declaration, she misrepresented her compliance with statutory and fiduciary duties, thereby inducing Momentum to process the reinstatement and resume premium collection.

121. The misrepresentation extended further. The Applicant orchestrated the M-Sign process in such a way that the Policyholder Declaration was electronically signed. This falsely represented that the client had reconsidered his cancellation and wished to revoke it. The signature was obtained through a manipulated OTP

process routed via a third party, without the client's explicit authorisation. This amounted to lack of consent. The same process was used to affirm the risk-related declarations, including acceptance of the suicide clause, again without lawful authority.

122. The ultimate effect of the Applicant’s calculated deception was the inducement of Momentum into processing an entirely unauthorised transaction. By submitting the electronically signed documents through the M-Sign system, the Applicant intentionally caused Momentum to believe:

117.1. Mr EMK had authorised her reinstatement as the servicing broker, thereby restoring her professional authority over the policy.

117.2. Mr EMK had genuinely reconsidered his prior decision and granted a clear, informed mandate to revoke the cancellation instruction.

117.3. That she had complied with all statutory consultation and mandate requirements, as falsely certified in Section 2 of the Reinstatement Form.

123. Momentum, acting on this misrepresentation and relying on the Applicant’s professional certification and the purportedly authenticated electronic signature, proceeded to reverse the cancellation and started debiting the account monthly.

124. The integrity breach is further compounded by the absence of any Record of Advice of the reinstatement and the related change of adviser. The Applicant's action in reversing a cancellation and reinstating a cancelled policy is classified as providing "*advice on the variation, replacement or termination of any financial*

product." This transaction, regardless of the short timeframe, triggers the mandatory documentation requirements under the FAIS Act, specifically Section 9 of the General Code of Conduct.

125. In the absence of any Record of Advice or formal mandate, the Applicant's actions resulted in Mr EMK being unknowingly bound by declarations and financial liabilities that he never authorised. The Applicant's failure to secure this fundamental informed consent is conclusive proof of a material lack of honesty and integrity.

126. The fact that the Applicant executed the reinstatement and secured her re-appointment without generating a formal Record of Advice means she bypassed the very regulatory mechanism designed to ensure the client received an appropriate warning about the risks associated with reversing a cancellation. The omission of the Record of Advice is therefore not a mere procedural oversight; it is conclusive evidence that the Applicant failed to render financial services with the required degree of skill, care, and diligence. This, in my view, cements the finding that she contravened the character qualities of honesty and integrity.

127. Section 8A(1) of the FAIS Act requires that a representative must at all times comply with the fit and proper requirements. A representative's failure to maintain the character qualities of honesty and integrity amounts to a material contravention of a financial sector law, as contemplated in Section 153(1)(a) of the FSR Act**.**

128. I find that the Applicant ceased to be a fit and proper person and materially contravened Section 8A of the FAIS Act on 25 August 2022. This is the date on

which she executed the unauthorised M-Sign documents and submitted false declarations to Momentum, thereby confirming the material breach of her honesty and integrity requirements.

129. Taken together, the false professional certification and the absence of Mr EMK's consent to the declarations made on his behalf were not procedural oversights. They were deliberate and calculated misrepresentations. The Applicant used these misrepresentations as a tool to achieve an unauthorised financial end, namely the avoidance of a substantial commission clawback. This conduct strikes directly at the core of the qualities of honesty and integrity required of a financial adviser.

130. In concluding that manipulation of the M-Sign system could not be sustained, the main decision respectfully overlooked the fundamental nuance that the contravention lies not in manipulating the technical M-sign system. The contravention lies in her bypassing her clear obligation to obtain explicit instructions from the client before revoking the cancellation, reinstating the policy, and reinstating herself as broker. By using a third party's OTP and submitting false declarations, she manipulated the client's authority and the authentication protocol. This is where the breach of honesty and integrity is found, not in the technical workings of the system itself.

131. The Applicant questioned the admissibility of the "secret recording" of the interview with Mr DeB. This concern, which forms the basis of a procedural challenge, is legally immaterial and serves as a fundamental distraction from her substantive guilt. Furthermore, the suggestion that the Applicant was secretly recorded is

undermined by the fact that the Applicant was speaking directly to Momentum's forensic investigator in relation to a multi-hundred-thousand-rand transaction that the client had formally disavowed. In such a high-stakes forensic investigation environment, the expectation that statements will be recorded and documented is standard and implicit.

132. More critically, the Applicant's subsequent conduct ratified the admissions made during the interview, rendering the recording itself superfluous. When Mr DeB directly challenged her lack of legal mandate, identifying the circumvention of the OTP as her "Achilles Heel," the Applicant did not contest the facts. Instead, her immediate response was to negotiate a remedy, which culminated in the formal Acknowledgement of Debt being signed on 15 March 2023 to refund R301,676.70. This repayment was not an act of benevolence; it was the direct admission of liability for the losses caused by her unauthorised conduct.

133. More importantly, the undisputed material facts upon which this dissent relies are all documented in writing and admitted by the Applicant herself. The "secret" recording is therefore superfluous. Her lack of honesty and integrity is proven by her own documentary evidence and admissions. She does not deny making those admissions.

134. Finally, the argument that Momentum was conflicted and that the FSP lacked impartiality is immaterial to the merits of the debarment decision.

135. The issue before this Tribunal is the Applicant's failure to meet the fit and proper requirements of honesty and integrity as prescribed by Section 8A of the FAIS Act

and Section 8 of Board Notice 194 of 2017. This is a regulatory determination that applies to her personal conduct and her adherence to fiduciary duties.

136. The Applicant's lack of honesty and integrity is overwhelmingly proven by her own documentary evidence and her irrefutable admission of liability in the Acknowledgement of Debt. Therefore, any argument regarding the recording is respectfully without merit.

Mr Keyser's conduct post 25 August 2022

137. The main decision ultimately sets aside the debarment based mainly on procedural grounds, finding that the FSCA failed to discharge its onus of proof. The majority concludes that the FSCA's investigative shortcomings are evident, specifically because the investigators failed to adequately address the contradiction posed by the complainant's subsequent conduct. The main decision notes that the FSCA failed to obtain clarification from the complainant regarding his completion of the Interactive Reassessment Questionnaire in October 2022 and his contradictory statements. This omission, the majority argues, resulted in the FSCA lacking any factual basis to conclude that the Applicant acted without authority or without the complainant's knowledge and consent.

138. I accept these facts as correctly cited by the majority. However, I do not accept the inferences or the legal conclusions that the majority has drawn from them. The facts themselves are not in dispute, but the proper interpretation of those facts leads to a different conclusion. In my view, the Applicant's conduct must be assessed against her statutory duties of honesty and integrity, and once that

framework is applied, the majority's reasoning cannot stand.

139. The decisive question before the Tribunal is not whether Mr EMK was asked enough questions, but whether the Applicant herself acted with honesty and integrity at the time of reinstatement. That breach was complete when she bypassed her obligation to obtain explicit instructions, rerouted the OTP, and submitted false certifications. Later questioning of Mr EMK cannot alter the fact that the Applicant acted without mandate and misrepresented her authority. The remittal, therefore, rests on a procedural concern that does not affect the substantive determination of her fitness and propriety.

140. The fundamental legal error of the main decision is its failure to distinguish between a client's administrative awareness and the legal standard required for granting a fiduciary mandate. The reliance on Mr EMK's later completion of the Reassessment Questionnaire and his delay in objecting as evidence of tacit consent or a shortcoming of the investigation is flawed. It ignores Momentum's own strict contractual requirement, which the Applicant also violated.

141. When Momentum informed Mr EMK about the replacement of the Applicant with Mr AL as a servicing broker for the policy (see the letter of 25 June 2021), it specifically informed him as follows: *"We will require a new written instruction if you would like to change the financial adviser's details in future."* The flaw in the Applicant's case is also that Mr EMK did not instruct Momentum in writing to re-appoint the Applicant as a broker for this policy. He also did not instruct Momentum in writing to revoke his earlier decision to cancel the policy and to reinstate it.

142. The Applicant's unauthorised action went far beyond changing adviser details. She reversed a policy cancellation and reinstated herself as the servicing broker. These are significant fiduciary transactions that demand a clear, explicit written instruction from the client granting that authority. Mr EMK's later completion of a general interactive form designed for lifestyle discounts, or his failure to object immediately to Momentum's standard confirmation letter, cannot be equated to the "*new written instruction*" required by Momentum.

143. To accept such a low standard would undermine the consumer protection aims of the FAIS Act. The integrity breach was complete the moment the Applicant failed to secure the necessary written authority.

144. The central challenge identified by the Main decision, as a shortcoming in the FSCA's investigation, is the alleged failure to obtain an explanation of how the Applicant's breach of integrity remains established despite the seemingly contradictory conduct of Mr EMK, namely, his delayed objection and his completion of the Reassessment Questionnaire.

145. I find that this contradiction is not an insurmountable hurdle to the finding of misconduct; rather, it is legally irrelevant because the Applicant's breach of integrity was complete and irreversible before Mr EMK's alleged contradictory actions. The issue is addressed by drawing a clear legal distinction between the fiduciary duty of the representative and the administrative diligence of the client.

146. The proper legal standard for assessing consent is found in the client's sworn and

legally initiated statements, not in administrative compliance. The main decision's reliance on the October form completion overlooks the overwhelming evidence of Mr EMK's actual legal intent.

147. On 7 February 2023, Mr EMK deposed an affidavit under oath stating that the reinstatement occurred without his knowledge or consent. He then filed criminal charges against the Applicant and lodged formal complaints with both the FSCA and the Ombudsman. These sworn actions are the most compelling evidence of his intent and destroy any inference that he tacitly approved the reinstatement in October. No financially astute individual would pursue criminal and regulatory remedies against a transaction they had already consented to three months earlier.

148. The final cancellation of the policy on 6 March 2023 and the premium refund do not mitigate the Applicant's misconduct; they prove it.

149. The fact that the policy was ultimately cancelled and all premiums repaid placed Mr EMK back in the financial position he was in before the Applicant's unauthorised conduct. This outcome confirms that the reinstatement of the policy on 25 August 2022 was a voidable, unauthorised transaction that could not legally stand. The successful reversal of her actions due to their illegality affirms the finding of misconduct at the point of action.

150. The Applicant's material breach of the honesty and integrity requirements remains established by the undisputed facts of her own actions on 25 August 2022. Her calculated subversion of mandate and protocol cannot be excused or legitimised by the client's later administrative steps or remedial actions.

151. This sequence is critical. It proves that the withdrawal of complaints was based on compensation, not on a finding that the Applicant satisfied the statutory requirements of honesty and integrity. The FSCA was therefore correct to reject the withdrawal request, as regulatory integrity cannot be compromised by settlements that merely buy forgiveness.

Mr EMK's withdrawal letter

152. The Applicant's defence relies heavily on the complainant's withdrawal letter, which asserts that the dispute was resolved amicably, that the issue arose from *a "material misunderstanding,"* and that *"no misconduct or malfeasance occurred*." This reliance is misplaced under regulatory law.

153. The most decisive legal principle is that parties cannot, by private agreement, contract out of statutory requirements intended to protect the public interest.

154. The FAIS Act and the Fit and Proper Requirements (Board Notice 194 of 2017) are public law measures designed to ensure that all financial representatives maintain the qualities of honesty and integrity (Section 8A). These standards are imposed by statute and cannot be displaced by private arrangements between an adviser and a client.

155. The Applicant's agreement with the client to acknowledge that "no misconduct or malfeasance occurred" is binding only between those two private parties. It does not bind the FSCA. The FSCA's statutory duty to protect the integrity of the financial sector and to assess the Applicant's fitness to practice subsists regardless

of the client's willingness to withdraw the complaint.

156. The FSCA's decision to persist with the debarment, despite the amicable settlement and withdrawal letter, correctly recognised that the underlying issue is the risk the Applicant poses to the broader public. Her demonstrated willingness to make false certifications and to subvert client authentication protocols for personal financial gain, specifically to avoid the R113,539.36 commission clawback, establishes that risk.

157. Of importance, the withdrawal letter itself confirms the Applicant's lack of authority. It expressly records that the policy reinstatement and premium deductions occurred "*without his express knowledge or consent at the time."* This statement, drafted by the client's own legal representative, directly validates the FSCA's core finding that the Applicant acted without a clear mandate on 25 August 2022.

158. I therefore find that the withdrawal letter is legally irrelevant to the determination of the Applicant's fit and proper status. The Applicant's material breach of the honesty and integrity requirements on 25 August 2022 is established by her own documented actions, and no private agreement can mitigate that contravention of public law.

Mr EMK's withdrawal of the complaint

159. Turning to the issue of the reasons for the withdrawal of the complaint, I find the FSCA's argument more compelling. Mr EMK did not withdraw his complaint because of the alleged "*bona fide error"*. He withdrew his case because of the

subsequent settlement of the case, the repayment of the premiums by the Applicant, and the cancellation of the policy.

160. The case of *Future Insurance Brokers & Mr Dumisani Albert Dlamini v Registrar of Financial Services Providers* arose from a complaint lodged by Old Mutual in 2011, alleging that Mr Dlamini had fraudulently submitted insurance applications without client consent. Several clients initially confirmed this in affidavits, later issued multiple contradictory statements in his favour, and ultimately reverted to their original complaints after independent interviews by the Registrar, alleging that Dlamini had pressured them to sign supportive affidavits. Despite Dlamini's defence that Old Mutual's investigation was biased, that clients were manipulated, and that he had an otherwise clean career, the Appeal Board accepted the final corroborated versions of the clients, supported by evidence of unexpected debit orders and consistent allegations of pressure. It concluded that Dlamini had acted dishonestly, failed to meet the FAIS Fit and Proper requirements of honesty and integrity, and contravened the General Code of Conduct, thereby upholding his debarment and the withdrawal of the FSP's licence, though reducing the period of debarment.

161. The principle established in the *Future Insurance Brokers* case is that this Tribunal must adopt a "common sense approach". If indeed there was a *bona fide* error, Mr EMK would not have complained or sought redress. Mr EMK's affidavit of 7 February 2023, his criminal charges, and his repeated complaints are the reliable, uninfluenced versions. The later withdrawal letter, issued only after the Applicant offered repayment through the AoD, is the unreliable version, shaped by financial

leverage. Just as in *Future*, the Tribunal must recognise that the client's sustained objections and legal actions are the strongest evidence that the reinstatement was unauthorised.

162. The Applicant's repayment of R301,676.70 was not proof of innocence but the very mechanism of influence. It silenced the dispute by curing the financial harm, but it simultaneously confirmed the wrongdoing. The consistent complaints, affidavit, and criminal charges show that Mr EMK never consented, and the AoD is a formal admission of liability for a wrongful act.

163. I am of the view that we must adopt the common-sense approach as established by the ***Future Insurance Brokers*** case. This Tribunal should:

158.1. Give weight to Mr EMK's initial, independent actions (complaints, affidavit, charges).

158.2. Treat later retractions or withdrawals as unreliable if they followed a financial settlement.

158.3. Recognise that commercial leverage can be as influential as emotional pressure.

158.4. Focus on the integrity breach, the unauthorised reinstatement and manipulated consent rather than procedural distractions.

164. Applying the *Future Insurance Brokers* case, we must conclude that Mr EMK's consistent complaints, sworn affidavit, and criminal charges are the reliable

indicators of his true intent. The later withdrawal letter, obtained only after the Applicant's repayment, is the product of influence and cannot override the earlier evidence. The AoD itself is a formal admission of liability for a wrongful act. On a common-sense approach, the reinstatement was unauthorised, the misconduct proven, and the repayment merely compensation for the damage caused.

165. My respectful view is that the majority commits a significant legal error by asserting that Mr EMK's status as an "*astute businessperson*" shields him from influence. This reasoning conflates financial acumen with the real issues in this case. The Appeal Board in *Future Insurance Brokers* made clear that influence in these matters is seldom about personal intimidation; rather, it arises from exploiting a client's vulnerability to secure a regulatory outcome.

166. Mr EMK might not be vulnerable, but in this case, the influence was exerted through commercial leverage. He was unjustly deprived of R379,316.15 due to unauthorised debit orders, forcing him into protracted and costly litigation to recover the funds. Against this backdrop, the Applicant offered immediate financial certainty through an AoD and repayment of R301,676.70. This offer, aligned with an earlier proposal made by Mr DeB, indicates that the repayment was not merely a charitable gesture but a calculated strategy to secure the withdrawal of complaints.

167. The decisive factor in Mr EMK's withdrawal of the complaints was therefore the Applicant's agreement to repay the funds. The settlement was not a vindication of the Applicant's conduct, nor an acknowledgement of regulatory compliance, but a

straightforward commercial transaction. Once the unauthorised debits were reimbursed, the client had no remaining financial incentive to pursue either the criminal charges or the regulatory complaint. The settlement was a commercial transaction: repayment purchased the withdrawal of all proceedings.

168. This reality is confirmed by the subsequent correspondence in July 2023. On 14 July, Mr EMK's representative, Ms SL, informed Mr M that the matter had been resolved with the Applicant, despite the complaint also being directed at Momentum. On 15 July, the FSCA emphasised that the allegations were viewed as serious and requested details of how the resolution had been achieved. Finally, on 17 July, Ms SL clarified that the broker had been held liable for the premiums and had reimbursed Mr EMK. These letters demonstrate that repayment was the overriding factor in the client's cooperation and the abandonment of further legal avenues (dropping complaints against the Applicant to the regulatory authorities and dropping the criminal charges laid against her). These letters demonstrate that the repayment was the overriding factor in the client's cooperation and the abandonment of both the regulatory complaint and the criminal cases.

169. The legal implication is clear: the AoD was not a gesture of goodwill but a substantive admission of wrongdoing. By agreeing to pay a significant sum to settle a *delictual claim*, the Applicant acknowledged that the reinstatement was unauthorised and culpable. The repayment compelled the client to withdraw his criminal charges and his regulatory complaint, underscoring that the resolution was based on financial leverage rather than on any finding of innocence or integrity.

170. Although the main decision criticised the FSCA for not independently interrogating Mr EMK, the authority established in the Future Insurance Brokers case confirms that the FSCA may rely on underlying, corroborated facts established by the insurer's investigation. This doctrine is even more compelling when those facts, i.e., the false certification, the lack of consent, and the Acknowledgement of Debt, are admitted by the Applicant herself.

171. The precedent compels the conclusion that the Applicant's lack of honesty and integrity is established by undisputed documentary evidence. Procedural *ex post facto* arguments and contradictory administrative conduct cannot overcome the weight of this evidence. The critical issue remains the Applicant's actions on 25 August 2022, which constituted a breach of fiduciary duty and integrity.

172. The debarment order was therefore justified. The FSCA recognised adequately that the Applicant's conduct posed a risk to the integrity of the financial sector and to consumer protection. No amount of procedural criticism or client inconsistency can alter the central fact: the Applicant acted dishonestly and without mandate.

Remittal is Futile: The Misconduct is Proven on the Merits

173. The main decision sets aside the debarment and remits the matter primarily to allow the FSCA to cure the procedural defect of failing to reconcile Mr EMK's subsequent, contradictory statements, specifically regarding the Interactive Reassessment Form and Momentum's letter of 30 August 2022. I must respectfully submit that this exercise in remittal is futile. The Tribunal's focus on this procedural

gap distracts from the core, unrefuted substantive integrity breaches committed by the Applicant on 25 August 2022.

174. Remitting the matter merely delays a predictable outcome while allowing the Applicant's defence to overshadow the overwhelming evidence of her failure to meet the mandatory honesty and integrity requirements.

175. Therefore, the application for reconsideration should be dismissed on the merits, rendering remittal unnecessary.

Conclusion and Order of the Dissenting Decision

176. Based on the detailed factual and legal analysis set out above, I find that the Applicant materially contravened the character qualities of honesty and integrity as required by Section 8A of the FAIS Act, read with Section 8(1) of Board Notice 194 of 2017.

177. I therefore conclude that the Authority has discharged the onus of proving that the Applicant is no longer a fit and proper person to act as a representative in the financial services sector.

178. Therefore, the following order is made:

173.1. The application for reconsideration is dismissed.

173.2. The decision of the Financial Sector Conduct Authority dated 26 May 2025, to debar the Applicant for a period of six years, is confirmed.

SIGNED at <u>PRETORIA</u> on this the 15th day of DECEMBER 2025.

Signed on behalf of the Tribunal panel.

__*Sgd Adv K D Magano*_____

KD Magano