Financial Services Tribunal

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP84/2025

In a matter between:

SIMPHIWE NDLOVU **APPLICANT**

and

SANLAM DEVELOPING MARKETS LIMITED **RESPONDENT**

Tribunal Panel:	Advocate TJ Golden SC (Chairperson), Advocate Aasifa Saldulker & Prof. M Sigwadi
Appearance for Applicant:	Self and Union Representative, Mr Osman Melansi
Appearance for Respondent:	Ms. Aphiwe Mkhize (Sanlam Legal Advisor)
Date of Virtual hearing:	22 April 2026
Date of Decision:	10 June 2026

Summary: Application for reconsideration in terms of section 230 of the FSR Act of the decision of the FSP to debar its former representative in terms of section 14(1)(a)(i) of the FAIS Act 37 of 2002 – paragraphs 8(1)(a) of the Determination of Fit and Proper Requirements, 2017 (Board Notice 194 of

2017) – non-compliance with the debarment process – Procedural irregularities established. Application upheld.

DECISION

INTRODUCTION

1. This is an application in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") for reconsideration of the Applicant's debarment.

2. The Respondent is a registered Financial Services Provider ("FSP") as contemplated in the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act").

THE RELEVANT FACTS

3. The Applicant, Mr Ndlovu**,** was employed with the Respondent as a Sales Consultant on 01 March 2020.

4. The Respondent received complaints that the Applicant had issued policies in the name of clients without their knowledge and consent, and that he forged the clients' signatures on the policy applications.

5. The Respondent investigated and produced a Forensic Investigation Report dated 7 March 2025 which concluded that the Applicant, in his engagements with the Respondent's clients, conducted himself in a manner contrary to the "fit and proper" requirements set out in the FAIS Act.

6. Based on the Forensic Report, the Respondent concluded that the Applicant was guilty of the alleged misconduct which warranted the termination of his mandate as its representative and that he should be debarred.

THE DEBARMENT PROCESS

7. The Respondent issued a notice of intention to debar the Applicant dated 9 May 2025. It alleged that the Applicant no longer met the fit and proper requirements contained in section 13(2)(a) of the FAIS Act because he:

    7.1 fraudulently submitted four policies, in respect of three clients, without their express, knowledge and consent.

    7.2 recorded incorrect contact numbers of the disputed policy.

    7.3 recorded incorrect occupation details and the incorrect employment date of the client on the disputed policy.

    7.4 the clients did not sign the policies and their signatures were forged.

8. Attached to the notice was a copy of the Respondent's written policy and procedure governing the debarment process, the grievances against the Applicant, and the Forensic Investigation Report.

9. The Applicant was given 10 days to respond to the charges and warned that if he failed to respond before the due date, the Respondent would proceed with a formal debarment procedure.

10. According to the Respondent the debarment process established that the Applicant contravened all the charges against him.

11. The Respondent submitted that it sent a Notice of Debarment letter to the Applicant on 26 August 2025 to notify him that he had been found guilty of all the charges against him which were set out in the debarment letter of 9 May 2025, and which formed the basis of the debarment.

12. According to the Respondent a debarment hearing was held which the Applicant attended.

13. The Respondent debarred the Applicant on 26 August 2025.

14. The debarment of the Applicant was recorded with the FSCA on 26 August 2025. The stated ground of debarment is the Applicant's non-compliance with fit and proper requirements in that he lacks honestly and integrity.

THE APPLICATION FOR RECONSIDERATION

15. The Applicant challenges the decision to debar him on substantive and procedural grounds.

16. He states that the debarment was unlawful, unreasonable, and procedurally unfair.

17. He contends that he did not receive any communication or documentation of the debarment. He states that he only received the notice of debarment on 1 September 2025 from his ex-manager after the debarment was already registered with the FSCA on 26 August 2025.

18. The Respondent submitted that the Applicant must have received the notice of intention to debar as it was sent to his last known email address. It contends that it followed the correct debarment procedure.

19. The Respondent could however offer no proof that the notice of intention to debar was sent or delivered to the Applicant. It also no longer had the electronic recording of the debarment hearing. The Tribunal was subsequently informed by the respondent that it could not confirm that the Applicant attended the debarment hearing. It appeared that the hearing was held in the Applicant's absence which the Respondent could not dispute.

20. The Applicant submits that the Respondent failed to communicate directly with him, which contravened procedural fairness principles under the FAIS Act and PAJA. Procedural irregularities render the debarment questionable.

21. Although the Respondent maintains that the Applicant does not meet the fit and proper requirements of personal character qualities of honesty and integrity as stipulated in the FAIS Act and that the debarment process was fair, proper, and lawful, it was constrained to accept that he did not receive the notice of intention

to debar and did not receive notification of the debarment hearing.

22. The Respondent was unable to prove that the Applicant received the debarment notice and that he was afforded a reasonable opportunity to respond to the charges.

23. The issue in the application is whether the Respondent followed the correct process in debarring the Applicant.

24. It is necessary for the Tribunal to consider the provisions of section 14(2)(a) of the FAIS Act to answer the preceding question. This section states that an FSP must ensure that the debarment process is lawful, reasonable, and procedurally fair.

25. During the hearing on 22 April 2026 the Panel requested the Respondent's legal adviser to confirm whether the Applicant received the notice of intention to debar and whether he attended the debarment hearing.

27. According to the Respondent, the notice of intention to debar was emailed to the Applicant's last known email address which appeared on the Respondent's internal system and was not emailed to the Applicant's email address used by him (through his advisor) when he appealed to the Tribunal. He was afforded 10 days to reply or make a submission as to whether or not he would be attending the debarment hearing.

28. The Respondent attached proof of an e-mail titled 'Debarment Invitation' that was sent to the Applicant via the email address it had on its system to which the Applicant did not reply. The e-mail was sent on 21 August 2025, and it indicated that the Applicant's debarment hearing would be held on 22 August 2025.

29. The Respondent confirmed that the debarment hearing was held on 26 August 2025.

30. The Respondent submitted that once the 10 days passed without the Applicant's response, it was accepted that he waived his right to attend the debarment meeting which entitled the debarment committee to proceed with the meeting in his

absence. The case was concluded, and the Applicant was notified of his debarment via the same e-mail address that was used for the transmission of the notice of the intention to debar.

31. The Respondent further submitted that it requested its compliance IT team to assist with the recording as its machine/laptop had automatically deleted some of the files and the transcription after a few months. It was thus unable to provide the recording or the transcription of the debarment hearing.

32. The Respondent conceded during the hearing that the Tribunal was placed in a situation where there is a dispute of fact as to the procedure adopted by it for the debarment process and it thus remains committed to complying with any order and/or decision that the Tribunal may deem appropriate.

33. The Applicant submitted that the debarment hearing which was scheduled for 22 August 2025 was held on 26 August 2025, yet the Respondent claims that they allowed 10 days for the Applicant to respond to the debarment hearing invite. A deficit of 6 days was to his disadvantage. The Respondent provided no proof that the Applicant was informed of the change of the scheduled date of the debarment hearing.

34. The Applicant further submits that failure of the Respondent to produce the record of the debarment proceedings is a fatal defect. The Respondent conceded that the recordings and transcripts were deleted, and no record exists.

EVALUATION

35. A debarment under section 14 of the FAIS Act must comply with the procedural requirements provided for in section 14(3). The FSP must give adequate prior notice of the intention to debar; must clearly state grounds and reasons for debarment; must provide the Applicant with its written debarment policies; a reasonable opportunity to make representations and must give proper consideration of those representations before a decision to debar is taken. Once

a decision is taken, the FSP must provide written notification and reasons.

36. The Applicant denies having received the notice of intention to debar that preceded his debarment. He also submitted that he did not attend the debarment hearing because he did not receive the notice.

37. Notwithstanding that the Respondent's representative maintained during the hearing that the Applicant must have received the notice and that he attended the debarment hearing, she could provide no proof of this and was not able to verify that the contact details which the Respondent had for the Applicant was correct. The Respondent also later confirmed that it did not have the electronic recording of the hearing. The Respondent essentially accepted that it was not in a position to verify that the notice to debar was emailed to the correct email address for the Applicant and received by him.

38. The Respondent could not explain the discrepancy between the communicated date of 22 August 2025, per the debarment notice and the alleged hearing date of 26 August 2025. Even if the Tribunal were to accept that the Applicant received the notice, there is no explanation for the change in the date of the debarment hearing and no explanation and evidence that the Respondent had notified the Applicant of the change in date which would have been to his prejudice.

39. We accept that the Applicant did not receive the notice of intention to debar and that he was not aware of the intended hearing which was held in his absence on 26 August 2025. The Respondent could not provide the Tribunal with an explanation why the debarment hearing was changed to a later date and why the Applicant was not informed of this.

40. The Respondent was not able to verify and confirm that the Applicant was in the hearing notwithstanding that it maintained that he would have and did attend the debarment hearing.

41. The process followed to debar the Applicant was clearly irregular, unfair and in

contravention of the Act. This is a material procedural irregularity which warrants the setting aside of the debarment.

42. It is not necessary for the Tribunal to engage the merits of the debarment given the finding that debarment process was materially flawed, and a contravention of the procedural requirements set out in FAIS.

43. In terms of section 234(1) of the FSR Act the Tribunal is competent, *inter alia,* to make the following order:

> "*234(1). In the proceedings on an application for reconsideration of a decision the Tribunal may, by order –*
>
> *(a) set the decision aside and remit the matter to the decision- maker for further consideration*."

44. It would serve no purpose for the decision to be remitted as the Respondent accepts that its inability to provide the recording and transcripts of the debarment hearing cannot be remedied and that it is unable to provide any proof to the Tribunal that the notice was emailed to the Applicant, that he had received the notice and that he attended the hearing.

45. Accordingly, the Applicant's debarment stands to be set aside.

ORDER

46. The following Order is made:

(a) The application for reconsideration is granted.

(b) The debarment of the Applicant is set aside.

__*Sgd Prof. M Sigwadi*_____

PROF. M SIGWADI

On behalf of the Tribunal

10 June 2026