THE FINANCIAL SERVICES TRIBUNAL

Case No. FSP55/2024

In the matter between:

MONEHELA LECHEKO Applicant

and

STANDARD BANK OF SOUTH AFRICA LIMITED Respondent

Tribunal Panel: Judge LTC Harms, Judge J Francis, GM Goedhart SC

Summary: *Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 of the respondent's decision to debar the applicant in terms of section 14(1)(a) of the Financial Advisory and Intermediary Services Act 37 of 2002 for dishonesty. No grounds to interfere with the respondent's decision demonstrated. Application dismissed.*

DECISION

Introduction

1. The applicant, Mr Monehela Lecheko, was disbarred for dishonesty by the respondent, Standard Bank of South Africa Limited, in terms of section 14(1)(a) of the Financial Advisory and Intermediary Services Act 37 of 2002 (the FAIS Act) on 3 September 2024. He seeks a reconsideration of the respondent 's decision

to disbar him as provided for in section 230 of the Financial Sector Regulation Act 9 of 2017 (the FSR Act).

Relevant facts

2. The applicant started his employment with Standard Bank Insurance Brokers (SBIB), a division of the respondent, in 2016 and made stellar progress. He was promoted to account manager in June 2023. He was also appointed as a financial services representative (FSR) of the respondent, a registered financial services provider (FSP), in terms of the FAIS Act.

3. The applicant resigned on 20 May 2024. The last day of his 30 days' notice period was to be 19 June 2024. On 7 June 2024, the applicant sent information consisting of the respondent's data base of clients from his work email address to his personal Gmail address. The applicant titled the first email "*Kindergarden*", and attached two Excel documents being a "*Call Log Sheet 2017*" and a "*Client List (Active and Quotes)*" to this email. The email was intercepted by the respondent's internal security system and redirected to his manager, Ms Motloung. She advised the applicant at 13h37 on 7 June 2024 that his work laptop was to be handed in. At 13h49 that same day, the applicant attempted to send a second email entitled "*Baby Formula 2*" to which was attached an Excel document with file name "*Baby Formula 2.xlsx*" also containing client information to his Gmail address.

4. The second email was also intercepted by the respondent’s internal security system. Ms Motloung directed that an employee collect the applicant’s work laptop from his home. The applicant was then placed on garden leave, meaning that he was not required to work out the remainder of his notice period.

5. On 21 June 2024, the applicant was notified that he was to attend a post-termination REDS (Register of Employees Dishonesty System) enquiry.

6. The notice set out that the purpose of the enquiry was to consider the respondent’s concerns relating to the applicant’s alleged dishonesty in that on 7 June 2024 he had sent the respondent’s information consisting of data of clients to his personal email without the respondent’s knowledge, consent or authorisation. Further, that his conduct was in breach of the respondent's policy and requirements relating to confidentiality of information.

7. The enquiry proceeded on 3 July 2024 and 2 August 2024.

8. On 7 August 2024, the chairperson of the REDS enquiry, Mr Breytenbach, found the applicant guilty of the alleged misconduct. It appears from the ruling that the client information in the attachments addressed to the applicant’s personal Gmail related to virtually his entire portfolio since the commencement of his employment with the respondent.

9. On 15 August 2024, the applicant was served with a notice of potential debarment in terms of section 14 of the FAIS Act. On 2 September 2024, the applicant submitted written reasons why he should not be debarred by the respondent. On 3 September 2024 the respondent issued the debarment decision.

10. The applicant applied for a reconsideration in terms of section 230 of the FSR Act on 13 September 2024. On 19 September 2024, he applied to the Tribunal for an order suspending the respondent's decision to debar him, pending the reconsideration application, in terms of section 231 of the FSR Act. The application for suspension was dismissed on 8 October 2024.

Statutory framework

11. Section 14(1)(a) of the FAIS Act is couched in peremptory terms. It provides:

> "*14.* ***Debarment of representatives***
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> *(1)(a) An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be –*
>
> *(i) a representative of the financial services provider; or*
>
> *(ii) a key individual of such representative,*
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> *if the financial services provider is satisfied on the basis of available facts and information that the person –*

(iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or

(iv) has contravened or failed to comply with any provision of this Act in a material manner." (own emphasis)

12. Section 13(1)(b)(iA) of the FAIS Act provides that a person may not act as a representative of an authorised financial services provider unless such person meets the fit and proper requirements.

13. In terms of section 6A(2)(a) of the FAIS Act, fit and proper requirements include, *inter alia*, appropriate standards relating to personal character qualities of honesty and integrity.

14. Chapter 2 of Board Notice 194 of 2017 (the Board Notice) published in Government Gazette number 41321, sets out the fit and proper requirements relating to honesty, integrity and good standing applicable to all financial service providers, key individuals and representatives.

15. Section 8 of the Board Notice provides that an FSP must be a person who is honest and has integrity and is of good standing.

16. Section 9 of the Board Notice lists incidents that constitute *prima facie* evidence that a person is not honest or lacks integrity or good standing. Section 9(1)(l) of the Board Notice provides that a person lacks honesty, integrity and good

standing when the person has demonstrated a lack of readiness and willingness to comply with legal, regulatory or professional requirements and standards.

17. Section 3(3) of the FAIS General Code of Conduct for authorised financial services providers and their representatives published in Board Notice 80 of 2003 (the General Code) provides that a provider (including a representative):

> "*may not disclose any confidential information acquired or obtained from a client or, subject to section 4(1),*[1] *a product supplier in regard to such a client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law.*"

18. The phrases "honesty and integrity" and its opposite "dishonesty and lack of integrity" are not defined in the FAIS Act, the General Code or the Board Notice. The *New Oxford Dictionary of English*[2] defines "dishonest" as "*behaving or prone to behave in an untrustworthy, deceitful or insincere way".* In Behrman v Law Society, Transvaal[3] the court defined integrity, with reference to the *Shorter Oxford English* dictionary, as "*Sinlessness…Soundness of moral principle, the character of uncorrupted virtue, uprightness, honesty and sincerity*."[4] In the *New*

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1 Section 4(1) of the General Code deals with information to be provided to a client about a product supplier.

2 Oxford Dictionary University Press, 2017.

3 1980 (4) SA (TPD).

4 At 9D.

Oxford Dictionary of English,[5] "integrity" is defined as "*the quality of being honest and having strong moral principles*."

19. In *Rampersadh and First National Bank*[6] this Tribunal, with reference to the decision in ***Behrman***[7] accepted that, for purposes of determining the fit and proper requirements for FSP's and representatives, honesty and integrity means "purity of character, soundness of moral principle and uncorrupted virtue". The converse, dishonesty and lack of integrity, was found to mean a defect of character, unsoundness of moral principle and corrupted virtue.

20. The reconsideration procedure before this Tribunal constitutes a full re-hearing on the merits.[8] This Tribunal is not empowered by the FSR Act to consider issues of leniency or mitigation. The sole inquiry is whether the respondent's decision to debar the applicant was correct.

The Applicant's submissions

21. The applicant does not dispute that he had sought to send the client information to his personal Gmail.

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5 Fn 2 above.

6 FSP 50/2021 decided on 13 June 2022.

7 Fn 3 above.

8 *Nichol and Another v Registrar of Pension Funds and Others* 2008 (1) SA 383 (SCA) para 22.

22. The grounds for reconsideration were in essence the same grounds as were submitted on 2 September 2024.

23. The applicant contends that the clients were not the respondent's clients. He had sourced clients during his employment with the respondent and he also had brought clients with him prior to commencing his employment with the respondent.

24. According to the applicant, the attachments comprised dormant client lists. He was trying to get back some of his own clients and to provide to them with new product offerings which were not available through the respondent.

25. Over the years, he had shared client information with colleagues to give them leads for business. When colleagues exchanged the details of clients between them at the respondent, it would, so it was argued, be common practice to refer to such emails by the title of "*Kindergarden*" or "*Baby Formula*".

26. Mr Luthuli, appearing on behalf of the applicant, was constrained to agree that the applicant's conduct was dishonest, but sought to argue that there are "degrees of dishonesty". In this case, he argued that there was "an attempt at dishonesty" by the applicant because, due to the respondent's internal security systems, the applicant had not actually succeeded in transferring the client information to his personal Gmail address. Thus, an "attempted honesty" should

not be viewed in the same manner as “actual dishonesty”, much like the distinction that is drawn in criminal law between theft and attempted theft.

27. The applicant also contended that the rules of *audi alteram partem* had not been complied with in the debarment process. The basis of this complaint is that the applicant’s submissions in answer to the notice of debarment were “received” but not properly considered, because no reference is made to the submissions in the notice of debarment of 3 September 2024.

28. Lastly, it was submitted that the applicant had ceased to be an employee of the respondent on 19 June 2024 and that the decision by the respondent to proceed with the REDS enquiry reflected on the “motive and vindictiveness” of the respondent.

Analysis

29. The only question is whether the facts demonstrate that the applicant is not fit and proper because of a lack of honesty and integrity.

30. The applicant admits that he sought to send the private and confidential information of the respondent’s client data base to his own private Gmail address. Having been caught in the act, he could hardly do otherwise. The subject titles to the intercepted emails, being “*Kindergarden*” and “*Baby Formula 2*”, to which the respondent’s confidential client information was attached, are not subject titles

one would ordinarily expect within the insurance division in which the applicant was employed. These subject titles were a misrepresentation and were used because the applicant knew that what he was doing was wrong. By using these subject titles, he sought to conceal the attachments and circumvent detection.

31. It was a condition of the applicant's employment that he would maintain the confidentiality of customer information and that he would not, during his employment or thereafter, make irregular use of, directly or indirectly, and would not disclose, any of the respondent's confidential information.[9] The terms of his employment also include a non-poaching and solicitation clause which provides that during his employment with the respondent and thereafter, he should not encourage or entice customers of the respondent to transfer their business to another institution.[10] The applicant was employed with the respondent since 2016 and is taken to have been aware of the terms of his employment contract.

32. The submission that, whilst employed by the respondent, he would often provide his colleagues with leads containing client information makes logical sense. Such sharing would be in the respondent's interests and would constitute lawful use of the information contained in the respondent's client data base. However, the applicant's further explanation presented to this Tribunal, that using the words "*Kindergarden*" and "*Baby Formula* 2" was consistent with the manner in which

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9 Record, Part B, p106.

10 Record, Part B, p108.

the respondent's employees would generally exchange client information with each other, is so inherently improbable that it can be rejected outright.

33. The applicant admits that he sought to use the client information for his own purpose, to generate leads and work at his new employer. This he sought to do well-knowing that there was a prohibition on utilising the respondent's client data base, other than in the interests of the respondent and then only within the permitted framework stipulated by the respondent in his employment environment.

34. The letter of appointment[11] records that, in the event that the applicant should resign or leave the respondent's employment before an enquiry commences or concludes, an enquiry may be conducted during or after the end of the applicant's employment, and depending on the outcome of the enquiry, the respondent may list the applicant on the Register of Dismissed Employees (REDs). The debarment process was commenced by the respondent within the six months contemplated by section 14(5) of the FAIS Act. The respondent is statutorily obliged, in terms of section 14(1)(a) of the FAIS Act, to debar a financial services representative if that representative's conduct is found to be dishonest. There is no merit in the applicant's submission that the respondent was vindictive or

[11] Record, Part B, p103.

biased merely because the REDS inquiry was commenced after he ceased to be an employee.

35. The applicant was given an opportunity to state his case in the REDS enquiry. He was given a further opportunity to make submissions when he provided a written answer to the debarment notice on 2 September 2024. He has also been given the opportunity to state his case before this Tribunal. The applicant has been heard repeatedly. There was no absence of *audi alterem partem*.

36. It matters not that the respondent's internal security mechanism prevented the actual transfer of the client information to the applicant's private Gmail. The applicant's dishonesty, as well as the intention to act in a dishonest manner and to retain confidential information to which he was not entitled, was plainly evident from the intercepted emails. Within minutes of having been notified by his manager that he had to hand in his laptop, the applicant again attempted to send a second email with client information to his private Gmail address. He only failed because the respondent's IT department had by then blocked his work laptop.

37. The applicant had access to the respondent's client data base as an incidence of his employment with the respondent. He did not have permission from either the respondent or the affected clients to utilise or attempt to utilise the confidential information in the manner he sought to do. The endeavour to transmit confidential client information to his private, unprotected Gmail account in his own interest

could have had serious adverse consequences for the respondent and the affected clients.

38. The applicant's conduct demonstrated deceit and an intention to misappropriate confidential information in his own self-interest contrary to the terms of his employment contract and in contravention of section 3(3) of the General Code.

39. We find no reason to interfere with the respondent's decision to debar the applicant. In our view, the applicant's conduct was manifestly dishonest and demonstrated that the applicant is not fit and proper. The applicant's persistence with far-fetched explanations before this Tribunal evidences a failure to appreciate the seriousness of his conduct.

Order

40. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 19 February 2025.

GM Goedhart SC (Panel Member)

Appearance for the applicant:	Mr B Luthuli
	Bongani Khanyile Ka Luthuli Attorneys
Appearance for the respondent:	Mr S Mlangeni
	Tabacks Attorneys Inc.
Date of hearing:	17 February 2025
Date of decision:	19 February 2025