Financial Services Tribunal

THE FINANCIAL SERVICES TRIBUNAL

CASE NO. FSP33/2022

In a matter between:

BEVERLEY DABROWA **APPLICANT**

and

PAULINA BINFA & ASSOCIATES

t/a PBA FINANCIAL SERVICES **RESPONDENT**

TRIBUNAL PANEL: LTC Harms J (Chair of the Tribunal) and Legodi J (Deputy Chair)

Appearance for Applicant: Adv S Viljoen instructed by Mbatha Attorneys

Appearance for Respondent: Adv Howard instructed by Vermeulen Attorneys

Date of hearing: 20 March 2026

Date of Decision: 7 April 2026

Summary: Application for reconsideration of the applicant's debarment. On the balance of probabilities, allegations against the applicant based inter alia on her version and several emails between the applicant and the competitor's representative, were found to

have merit to impugn the fit and proper requirement. The application was accordingly dismissed.

DECISION

Introduction

1. A decision taken on 15 July 2022 by Paulina Binfa and Associates t/a PBA Financial Services (**PBA**) to debar the applicant is the subject of an application for reconsideration before us. The decision was ultimately set aside on 26 April 2023 by this Tribunal, differently constituted. After the setting aside of the decision, PBA approached the High Court in Johannesburg to review the Tribunal's decision, and on 12 December 2025, the Tribunal's decision was reviewed and set aside.

2. The matter is thus before us differently constituted as per the order of the High Court. Initially, the present application was meant to be heard before three panel members. However, on 20 March 2026, the date of the hearing, it was discovered that the third member of the panel had been inadvertently included, as she was one of the panel members in the decision of 26 April 2023 and therefore disqualified.

3. To ensure continuity of the matter as scheduled, the proceedings proceeded with two members in terms of section 224 (5).

4. Later in paragraphs 56 to 58 hereunder, we deal with two preliminary issues raised by the applicant. The first issue is related to the introduction of new evidence or documentation. The second issue was a request to tender oral evidence during the hearing of 20 March 2026.

Background

5. On 1 July 2017, the applicant was appointed by PBA as a financial services representative and key individual. The applicant is a registered financial servicers representative or broker licensed to sell life insurance, health insurance, pension benefits, investments, and short-term insurance.

6. On 1 July 2022, the applicant was dismissed on various grounds of gross misconduct. The applicant was accused and found guilty of gross misconduct and gross dishonesty in that, – (a) she moonlighted and performed work for outside interests during her employer's time, (b) she competed against her employer; (c) she acted against the interest of her employer; and (d) she solicited her own business in breach of her contractual agreement with her employer.

7. On 15 July 2022, the applicant was debarred. The applicant then launched an application for reconsideration of her debarment as contemplated in section 230 of the Financial Services Regulation Act 9 of 2017 (the Act).

8. The hearing of the application referred to in paragraph 7 above took place on 15 March 2023 and on 21 April 2023; the debarment was set aside by the Tribunal consisting of three panel members.

9. The setting aside of the debarment prompted PBA to approach the Johannesburg High Court to seek a review of the Tribunal's decision handed down on 21 April 2023. On 12 December 2025, the High Court reviewed and set aside the Tribunal's decision. The application for reconsideration is therefore now before us, differently constituted as ordered by the high court.

Did PBA err in debarring the applicant?

10. As correctly indicated by the applicant in paragraph 2.10 of her written heads of argument, the question is whether PBA erred in concluding that the applicant's

conduct amounted to dishonest conduct that was sufficiently serious to impugn her honesty and integrity to such an extent that debarment may be an applicable sanction.

11. Section 14(1)(a) of Financial Advisory and Intermediary Service Act 37 of 2002 (FAIS Act) provides that an authorised service 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, 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 has contravened or failed to comply with any provision of this Act in a material manner.

12. Section 13(2)(a) provides that an authorised financial services provider must – (a) at all times be satisfied that the provider's representatives, and key individuals of such representatives, are, when rendering a financial service on behalf of the provider, competent to act, and comply with – (i) the fit and proper requirement; and (ii) any other requirements contemplated in subsection (1)(b)(ii).

13. The question, therefore, is whether PBA was satisfied on available facts and information that the applicant was no longer meeting the fit and proper requirement referred to in section 13(2)(a)(i).

14. In paragraph 2.11 of her written heads, the applicant listed twelve grounds on which she contended that the PBA erred 'on both factual matrix and host of mitigating factors applicable to the applicant's circumstance'. We do not find it necessary to deal with all those grounds on which the decision to debar the applicant is attacked.

15. What is contained in the applicant's affidavit deposed to on 17 August 2022, is revealing and ends every aspect of seeking to challenge the decision of PBA. The

applicant's husband was a former financial advisor. In 2012, he sold his brokerage book to start a different business.

16. The new business did not last for long. When the new business failed, the applicant's husband decided to return to the insurance business. There were problems, though. The applicant's husband was not registered as FSP or FSR and not financially creditworthy. He was in debt and unable to conduct any business with his own bank account. His bank account was frozen.

17. As indicated in the affidavit referred to in paragraph 15 above, an alleged referral commission agreement was concluded between the applicant's husband and his friend, who was a broker working for another authorised financial services provider.

18. The applicant's husband is said to have agreed with his friend that clients will be referred to him. The friend of the applicant's husband was to service the short-term insurance referred to him. The commission was to be shared on a 60-40 split.

19. What is stated in paragraphs 15 to 18 above must be seen in context. After two months of the alleged agreement, the applicant's husband was employed by another company as a site manager. At that time, he had only referred two clients to his friend.

20. In paragraph 3.8 of her affidavit referred to in paragraph 15 above, the applicant expressed herself as follows:

*"As Carl (*referring to her husband*) was now out of the insurance industry (once again), he was no longer entitled to receive any referral commission. M… (*referring to her husband's friend) *agreed to pay Carl's share of the referral commission to my bank account for as long as the clients remained on his books. I was a registered broker and entitled to receive this commission".*

21. As indicated in paragraph 3.6 of her affidavit, the applicant was fully aware that the agreement between her husband and his friend, and in her own words, was, *'to circumvent her husband's difficulties with his inability to transact'.*

22. The applicant ought to have distanced herself from this arrangement. She was fully aware that her husband, as she puts it, "…was in debt and unable to conduct business with his own bank account." His plan to circumvent these constraints on his ability to transact could only have been intended to evade his creditors. This reflects clear dishonesty, and the applicant knowingly allowed herself to be part of it.

23. Coming back to the quotation in paragraph 20 above, the applicant, immediately after her husband was employed elsewhere as a site manager, decided to actively participate in the facilitation of the payment of "the referral commission" into her bank account. She did so, as she puts it, because her husband '*was now out of the insurance industry, he was no longer entitled to receive any referral commission'.* (Our emphasis).

24. The statement disposes of any suggestion that the referral commission was that of her husband. It could not have been, because her husband was not entitled to receive it. The applicant cannot have it both ways. That is, the referral commission was not hers, but that of her husband. If it were her husband's commission, and she facilitated payment thereof, knowing that her husband was not entitled to receive it, then she was dishonest in allowing herself to be a conduit for payment and receipt thereof. This offended against the fit and proper requirement.

25. If, on the other hand, it was her commission, because she was a registered broker and 'entitled to receive this commission', as she puts it, without the permission or knowledge of PBA, that too would have offended against the fit and proper requirement.

26. The fit and proper principle requires the highest standards of honesty, integrity, and reputation. The standard is necessary to protect public interests through ethical conduct and trustworthiness. The standard is also intended to protect the reputation of the financial services providers in their dealings with the members of the public. To have earned a referral commission that goes into the bank account of the applicant from a competitor of the applicant's employer, without the knowledge of the employer, is a serious matter that warrants a severe sanction.

27. Whilst the applicant seeks to minimise the extent of her role in referring clients to her husband's friend, she states in paragraph 3.10 of her affidavit referred to in paragraph 15 above, that she attended to ''some of the administration necessary to enable and record the referral commission earnings''. By this, in a way, she concedes that she not only allowed the referral commission to be paid into her bank account, but she also actively participated to ensure that payments were made into her bank account.

28. Looking at the emails that were retrieved after having been deleted, there is no indication that what was discussed had anything to do with the applicant's husband. We do not find it necessary to refer to all the emails, but only a few.

29. In one of the emails, the applicant expressed herself as follows:
"Working with you is like Christmas I love you, "M" (full particulars withheld) *that's amazing".*

30. The message was prompted by a payment of R6,119.68 made to the applicant on 29 July 2021. The payment was preceded by a request for payment from the applicant, in an email dated 26 July 2021.

31. The friend to the applicant's husband then responded to what is quoted in paragraph 29 as follows:
"Keep them leads rolling".

32. There is no reference to the applicant's husband in all these emails and thus, making it less probable that the applicant could have been doing or attending to only "some of the administration necessary to enable and record the referral commission earnings", on behalf of her husband.

33. The "Keep them leads rolling" message, referred to in paragraph 31 above, was not directed at the applicant's husband, but for the applicant after she had praised the husband's friend as indicated in paragraph 29 above. Therefore, the suggestion by the applicant's husband that his wife was not involved in any other aspect of his arrangement with his friend, as indicated in paragraph 6.7 of his affidavit deposed to on 28 July 2022, must be seen in the context of what is stated in paragraphs 29 to 33 above. We view this explanation as an afterthought prompted by the letter of debarment served on his wife on 15 July 2022.

34. The allegation of referral of clients to another authorised financial services provider, once proven, amounts to dishonesty and lack of integrity , materially impacting on the fit and proper requirement.

35. The contention by the applicant seems to be that she simply could not have referred the PBA's clients to a competing financial service provider, as those clients were not hers.

36. On 21 November 2019, the applicant wrote an email to her husband's friend. Amongst others, she indicated that she wanted to chat with him about clients. She then continued in the email as follows:

"We also need to talk about Blue clients. I thought it would be a great idea for you to come through to us (I will even fetch you) so you can see our set up and meet Viv, as we discussed, Viv and I are both very happy to sign a disclaimer that all the clients we sort btw us, will belong to you and the portion that is under me at PBA will be retained

to you on your request, we are happy to complete a disclaimer, fill out transfer Form for relevant company.

The idea is that I write for you, split the comm at source and have the written disclaimer in place that although I am writing for all clients below to your FSP, I, a KI and rep can only operate under one FSP which will have to be PBA, your thoughts here?

Also remember Group Life options we are keen to jump in and get started.

<u>BTW me you only</u>, <u>I will refer my commercial all to you".</u>

37. The quotation above is seen by PBA as displaying dishonesty, a view with which we agree. To begin with, "BTW" is understood to mean "between", suggesting that the phrase "between you and me only" was intended to convey that the arrangement should remain confidential. Of course, the applicant did not want anyone to know about the arrangement, as she was aware that it was improper to refer her commercial clients to her husband's friend, who was working for another financial services provider.

38. The statement, 'I am a KI and rep and can only operate under <u>one</u> FSP which will have to be PBA', is also telling. The applicant knew that she could not operate as a key individual and representative for two financial services providers at the same time and receive commission from both. It is for this reason, based on probabilities, that the applicant wanted the arrangement to be a matter between herself and her husband's friend only.

39. The applicant further contended that nothing was stopping her from earning a commission from another financial services provider for short-term insurance. This must be seen in the context of her own assertion.

40. In paragraph 2.11.5 of her written heads, she contends that she was licensed to sell short-term insurance. Having made this assertion, she then indicated that she 'simply did not sell any short-term while with the respondent' and that her 'employment contract is also silent on the issue of short-term'.

41. This contention has no merit and is confusing. The applicant was actively involved in facilitating payments of the commission into her bank account. She did so without the knowledge of PBA, who employed her in her capacity as a key individual and as a representative.

42. During oral argument and also as indicated in paragraph 5.1 of the applicant's affidavit deposed to on 17 August 2022, there was an attempt to suggest that the applicant was not obliged to disclose the commission money deposited into her account by her employer's competitor through its representative. The contention in this regard was based on the provision of clause 5.5 of the employment agreement.

43. Clause 5.5 provides that the employee shall disclose to the company, on request, full details of any business, trade, firm, undertaking or concern other than that of the company in or by which he/she directly or indirectly, has an interest, is engaged, is concerned or is employed.

44. "On request," referred to in paragraph 43 above, cannot reasonably be interpreted to apply to any business, trade, firm, undertaking, or concern that competes with the applicant's employer, (PBA). Reliance on clause 5.5 ought to be rejected. The applicant ought to have disclosed her other activities with her husband's friend.

45. Of relevance, clause 5.5, inter alia, is preceded by clause 5.3, which provides that an employee shall be true and faithful to the company in all dealings and transactions whatsoever relating to its business and interest.

46. Receiving a commission from a competitor in the same field, are all dealings and transactions, negatively impacting on the business and interests of PBA. This offended against the “true and faithful” requirement in cause 5.3, in particular, failure to disclose the arrangement or commission from a competitor. The ‘true and faithful requirement is akin to the fit and proper requirement.

47. In any event, the applicant cannot have it both ways. She cannot, on the one hand, assert that she did not sell any short-term insurance while with PBA, and on the other, seeks to rely on clause 5.5 referred to above. It is either that she was selling short-term insurance and receiving commission in terms of clause 5.5, or she was not engaged in such sales and received no commission.

48. The probabilities based on the emails before her dismissal and debarment suggest that the applicant was selling short-term insurance or received commission in relation thereto from another financial services provider without the knowledge of the PBA. In so doing, she acted dishonestly, and PBA cannot be faulted for having debarred her.

49. It is not necessary to refer to every email upon which PBA relied for its decision. The emails referred to in paragraphs 29, 31, and 36 above provide justification for PBA's decision to debar the applicant.

50. However, it is useful to consider two additional emails. On 31 July 2021, the applicant’s husband’s friend wrote to one of PBA’s clients, indicating in his email that he had been referred by the applicant.

51. The client, apparently baffled by the approach, responded as follows:
“Thanks for coming to see me on Wednesday. I just want to ask where you got my info from. I thought I was dealing with another company. Please do not go any further with this matter for now. I’m not sure if I still want to do this move”.

52. This is what PBA regarded as a data breach. That is, providing information about PBA's client to a competitor. The applicant in paragraph 3.13 of her written heads contends that the decision maker in debarring her, '*seemingly ignored the evidence of the supposed victim of the data and instead, a negative inference against the applicant',* was made. In making the contention, the applicant alleges that the client in question had requested the applicant to forward her details. This contention is without merit.

53. Look at it this way: In the email of 31 July 2021 referred to in paragraph 50 above, amongst others, the applicant's husband's friend stated: *"I was referred by Bev Diabrowa".*

54. The quotation above, in our view, justified the PBA's contention that the applicant attempted to rectify what the friend of the applicant's husband conveyed to the client in his email as quoted in paragraph 51 above. On probabilities, the client would not have asked the friend of the applicant's husband, where he got his information from, after the client was told that the referral to him came from the applicant. Accordingly, the decision maker was correct in finding against the applicant and concluded that the applicant was dishonest.

55. The fact that the applicant had worked in the industry for over 33 years and that she is an expert in risk assessment does not minimise the impact of dishonesty that seriously and negatively offended the fit and proper requirement. Given her many years of experience, she ought to have known better. In the circumstances, the application is destined to be dismissed.

56. This then brings us to deal with the two preliminary issues mentioned in paragraph 4 above. In paragraph 4.5 of her written heads, the applicant contends that after her debarment, she procured a comprehensive affidavit from her husband's friend and her husband confirming the arrangement. We do not think that the affidavits

would make any difference to what was placed before PBA when it took a decision to debar the applicant.

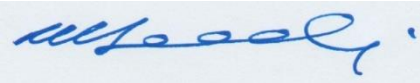
57. Regarding the other preliminary issues in paragraph 4.14 of the written heads, the applicant wanted to advance evidence and that of witnesses to contextualise the basis surrounding each email interaction and the efforts thereof.

58. We did not think it was necessary to do so apart from the fact that the request did not comply with the Rules of the Tribunal. The emails referred to earlier are capable of being contextualised, seen in the context of what is explained in the preceding paragraphs. The facts presented before the decision maker and laid before us make it unnecessary to hear oral evidence which could not have been more than sugar-coating (as did the affidavits) the acts of the applicant.

Order

59. Consequently, the application for reconsideration is dismissed.

Signed on 7 April 2026 on behalf of the panel.



MF Legodi J (Deputy Chair)