

**APPEAL BOARD OF THE FINANCIAL SERVICES BOARD**

**A29/2015**

In the matter between:-

**LOUVENDREN RIAAN GOVENDER**

First Appellant

and

**THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS**

Respondent

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**DECISION**

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**A. INTRODUCTION:-**

1. The appellant (Mr Govender) was debarred by the Registrar in terms of Section 14A of the Financial Advisory and Intermediary Services Act, 37 of 2002 [FAIS Act] for a period of 6 years. The debarment was issued on 12 June 2015.
2. The appellant has appealed this decision on the basis that the debarment is not justified.

**B. THE DEBARMENT:-**

3. The debarment was based on him contravening Sections 2 and 3(1)(d) of the General Code of Conduct for Authorised Financial Services Providers and Representatives (Code of Conduct).

**Section 2 stipulates**

*“A provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interests of clients and the integrity of the financial services industry.”*

**Section 3(1)(d) stipulates**

*“When a provider renders a financial service – (d), the service must be rendered with in accordance with the contractual relationship and reasonable requests or instructions of the client, which must be executed as soon as reasonably possible and with due regard to the interests of the client which must be accorded appropriate priority over any interests of the provider.”*

4. At all material times Mr Govender was registered as a representative under FSP licence number: 41158.

**C. THE REGISTRAR’S CASE:-**

5. In summary, the factual matrix which the Registrar based its findings on were *inter alia* the following:

- 5.1 On 5 January 2011, Ms Chetty met with the appellant at a FNB branch in Durban (Queen Street Branch);

- 5.2 Ms Chetty requested the Appellant to invest an amount of R215 700,00. The appellant advised her to do so in a Momentum Investment policy, which she agreed to. Such investment was effected under policy number PP023731150;

- 5.3 Subsequent to the investment, Ms Chetty was furnished with the respective statements setting out her investment growth;
- 5.4 In September 2012, when Ms Chetty enquired about her policy, directly from Momentum, she learned that no such policy existed in her name;
- 5.5 It was established that the policy with the aforesaid reference number was in the name of "*Ms Naidoo*" (who was identified as the appellant's wife);
- 5.6 When Ms Chetty approached Mr Govender, he advised her that he was no longer employed with FNB. Mr Govender's contract of employment was terminated with FNB on 29 September 2011;
- 5.7 On 3 September 2012, it appears that the appellant admitted his fraudulent conduct in writing (admission letter);
- 5.8 The Registrar concluded that based on the aforesaid facts, Mr Govender abused his powers, for his own personal gain and Ms Chetty fell into his trap by depending on the integrity of the authority and position he had occupied.

**D. MOMENTUM AND FNB:-**

6. FNB and Momentum embarked on an investigation in respect of this matter. FNB requested the relevant information from Momentum upon Ms Chetty enquiring about her investment. In various correspondence, Momentum *inter alia* confirmed that the account holder was at all times Ms Naidoo. Momentum was unable to trace any other policies or investments in the name of Ms V Chetty on their administration system.
7. Momentum also verified that the statements Ms Chetty was furnished with, were false and fabricated. The true statements reflected Ms Naidoo to be the policy holder under contract number PP023731150. This was established in March 2014.
8. On 5 March 2014, FNB requested the FAIS Enforcement Unit to issue a Section 14A debarment in respect of Mr Govender. FNB in this notice, set out the reasons for the debarment based on their findings. FNB further noted that a disciplinary enquiry process had taken place against Mr Govender subsequent to him leaving the employment of FNB.
9. Upon their investigation and findings, they established that *“Mr Govender was a representative of FSP licence number 3075 and he misrepresented to a client that he was acting as such or representative in good faith, whilst at all times he was aware that he would defraud client”*.

10. In November 2014, Momentum also issued a S14 A debarment recommendation in respect of the appellant to the FAIS Enforcement Unit.

**E. THE APPELLANT'S VERSION:-**

11. Mr Govender, subsequent to the Registrar's notice of intention to debar had submitted an affidavit in June 2015, setting out his version. The Appeal Board Panel, at the hearing, gave Mr Govender an opportunity to present his case.

12. At the hearing the appellant's version was that:

- 12.1 Ms Chetty had never been a client of his;

- 12.2 he had never furnished her with any financial advice;

- 12.3 the only relationship he ever had with her, was to facilitate the deposit of her monies (by way of a cheque) into a Momentum policy. According to his knowledge, the policy was to be in the name of Ms Naidoo;

- 12.4 he confirmed that Ms Chetty and Ms Naidoo were friends. It was upon this basis that the two had entered into some business arrangement, which he understood to be a "loan" made by Ms Chetty

to Ms Naidoo. The loan was to be arranged in the manner where the deposit was to be made into an investment policy of Momentum;

12.5 he confirms that he had only furnished Ms Naidoo (his wife) with financial advice, specifically that the investment platform of Momentum would allow her to accrue interest on the "loan";

12.6 he left FNB's employment in July 2012 as he had joined Liberty;

12.7 at no stage had he ever misled her, neither had he made an "admission" to that effect. The "admission" referred to appears on page 76 of the record;

12.8 he persisted that he has no knowledge of this document and such was only furnished to him in the form of the appeal record;

12.9 his understanding always of the business arrangement between Ms Chetty and Ms Naidoo was that Ms Chetty was to loan Ms Naidoo certain monies for Ms Naidoo's business;

12.10 he denied any wrongdoing on his part. His act of facilitating the loan in the form of a policy was not fraudulent at all.

13. In submitting further evidence, the affidavit of Ms Naidoo was provided. The effect thereof was to clarify that his instructions to endorse Ms Naidoo as the policy holder resulted from her instructions.

**F. ANALYSIS AND FINDINGS:-**

14. In addition to FNB and Momentum's findings, the three affidavits which we had sight to were those of Ms Chetty, Ms Naidoo and the appellant himself.
15. Counsel for the registrar demonstrated numerous improbabilities in the appellant's and Ms Naidoo's versions and requested that their versions be rejected.
16. During the course of the hearing, the Panel members requested clarification from Mr Govender on various aspects of his version. The onus was on Mr Govender to show that the Registrar's decision was wrong. We have considered both arguments and find that the appellant has failed, on a balance of probabilities, to demonstrate that he had complied with the fit and proper requirements.
17. The discrepancies in his case are not only contradictory and misleading, but the Panel was faced with submissions from Mr Govender without any concrete evidence to substantiate his version.

18. We find his version improbable when having regard to the record and the factual evidence. We particularly point out the following discrepancies:
- 18.1 whether Ms Chetty was his friend? In his statement he states that they were friends since 2009, but at the hearing he brushed her off to be Ms Naidoo's friend;
  - 18.2 that no concrete facts substantiating the exact nature of the business arrangements between Ms Chetty and Ms Naidoo was furnished;
  - 18.3 no concrete facts were presented that the loan amount was settled by Ms Naidoo and the details of the repayment of the loan;
  - 18.4 no evidence to show that Ms Chetty was aware and agreed to the *"loan –investment policy arrangement"*;
  - 18.5 if there was such an agreement why would Ms Chetty still have been under the impression that she was the policy holder, and entitled to statements in her name?
  - 18.6 moreover if such an agreement existed between Ms Naidoo and Ms Chetty, why would Ms Naidoo fraudulently tamper with the Momentum policy statements. At no point was she authorised to do so;

- 18.7 the monies shortly after it was deposited in the Momentum policy, was withdrawn by Mr Govender. This evidence certainly does not tally with Mr Govender's version or Ms Naidoo's version. At all times Ms Chetty was misled into believing that she was the policy holder with a handsome investment;
- 18.8 particularly Ms Naidoo's version contradicts the true facts. She stated that the only time she would access the funds would be when she required it for her business venture. In the meantime the funds would remain in the investment accruing interest.
19. The appellant has failed to rebut the version of the Registrar, despite being given an opportunity to do so at various stages.
20. Already in November 2012, when Ms Chetty's attorneys confronted him about the repayments of the loan and the misrepresentations made, he failed to demonstrate any reasonable probable version. In fact he omitted to respond to their letter.
21. Certainly if he had a defence, FNB would have been informed of same at his disciplinary hearing. What is not before us is the version he gave FNB regarding his involvement in such disciplinary enquiry.

22. As alluded to above, the onus, at all times was on the appellant to show that he had acted with honesty, integrity and as required of a "broker" in the financial services industry.
23. On the evidence presented in the record, we are unable to accept the appellant's version that he was a mere facilitator ensuring that he monies were deposited in a Momentum policy and that the only financial advice he had furnished was to Ms Naidoo.
24. We find that he failed to comply with the requisite provisions of the "Code of Conduct". He failed to demonstrate honesty, skill, diligence and the integrity required of a financial services provider rendering financial services.
25. More specifically, Mr Govender has failed to rebut FNB findings that he failed to comply with the provisions of the FAIS Act in a material manner in that he caused misrepresentation by fraudulently obtaining money from Ms Chetty under the pretences that he would invest the money on her behalf. This constitutes a contravention of Section 2.
26. In the premises the appeal fails. The appellant had been debarred in June 2015. He has already served 10 months of the debarment period and should serve the remaining 5 years and 2 months.

**COSTS**

27. Both parties made representations as to the issue of costs. The Appeal Board Panel finds that each party should bear its own costs.

**THE FOLLOWING ORDER IS MADE:-**

- (1) The appeal is dismissed.
- (2) The debarment of the Registrar stands.

SIGNED AT PRETORIA ON THIS 25TH DAY OF APRIL 2016.

*H Koooverjie*

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H KOOVERJIE  
Chairperson

*L Makhubela*

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L MAKHUBELA  
Panel Member

*N Dongwana*

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N DONGWANA  
Panel Member