

FINANCIAL SERVICES APPEAL BOARD
IN THE APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

A45 /2014

In the matter between

AGM COETZER

APPELLANT

And

REGISTRAR OF FINANCIAL SERVICES PROVIDERS

RESPONDENT

HEARING: 12 AUGUST 2015

JUDGMENT

INTRODUCTION

[1] This appeal is against the decision of the Registrar of Financial Services Providers (“the Registrar”), debarring Ms AGM Coetzer (nee Kriel) (“Ms Coetzer”) from rendering financial services to clients and on behalf of any authorised financial services providers (“FSP’s”). The debarment is in terms of Section 14A of the Financial Advisory and Intermediary Services Act, 37 of 2002 (“the FAIS Act”) and is for a period of two (2) years. The basis for debarment is that Ms Coetzer no longer satisfied the fit and proper requirements regarding the personal character qualities of honesty

and integrity in terms of Section 8(1)(a) of the FAIS Act, read with Board Notice 106 of 2008.

FACTUAL BACKGROUND

- [2] Ms Coetzer, (Ms AGM Kriel at the time of her conduct in question), was employed by Old Mutual Personal Financial Advise (Old Mutual) as an advisor. She resigned from there on 28 may, 2013.
- [3] In response to a complaint from a client against Ms Coetzer, Old Mutual conducted an internal forensic investigation into the allegations. The investigations revealed that she had misrepresented information to Old Mutual, where she had submitted unauthorised business in that, the signatures of the particular clients on the final declaratory forms had been falsified regarding six policies for which she had been paid commission.
- [4] The policies were in regard to the following references and respective clients:
- 16726520 : Mr JJ Apollis and Mrs Apollis
 - 16764861: Ms JDC Botha

- 16764856: Mr C Botha
- 16651925: Ms AG Baadjies
- 16728750: Mr H Baadjies and Ms AG Baadjies
- 16728858: Mr H Baadjies

[5] All the above clients deposed to sworn affidavits, disputing that they had taken out the policies in question. They all indicated that their personal information was known to Ms Coetzer. The information had been provided in previous dealings with her. In particular, they all denied having signed the final policy declaratory forms. It turned out, as indicated, that their signatures had been falsified.

[6] Both Mr Botha and Mr Baadjies, in their affidavits, disputed that they had given permission and or their consent for the policy applications, so too did Mrs Botha. Additionally, Old Mutual collected specimen signatures from these three (3) clients for the expert analysis of a Mr Sarel Snyman (Mr Snyman) who concluded that the signatures on the application forms had indeed been falsified.

[7] The registrar was at pains to point out to Ms Coetzer that the period of two (2) years of debarment was motivated by the mitigating circumstances she had pleaded in her response to the notification of the intention to debar her.

[8] In particular, Ms Coetzer, in her response to the Registrar's notification, admitted that the signatures on the declaratory forms of the policy applications had been falsified, not by herself however, but by her former husband, Mr Wouter Kriel ("Mr Kriel"). She also did not dispute that she had submitted the policy applications to Old Mutual, knowing well that the signatures thereon were not those of her clients, and had been forged by Mr Kriel.

[9] In her own words, Ms Coetzer stated in her response:

(a) "I have told the truth from the outset and as such admitted that I was aware of the falsified declaration forms submitted on behalf of client's Botha and Baadjies.

(b) At the time I was in a serious abusive relationship with my ex-husband Mr Wouter Kriel, who was also my manager and

boss at the time. Due to this abusive relationship and undue pressure, I was in a situation where it was 'do as he says or face his wrath'. I was honestly not thinking straight under these circumstances and never realized the consequences.

- (c) I am also aware that there was a duty on me to act honestly and in the best interests of the clients and should have reported the falsification of the declaration forms to Old Mutual. But honestly, as mentioned, at the time I was more afraid of being assaulted by Mr Kriel than considering the consequences that could flow from not disclosing the submission of falsified documents.”

[10] It is on the basis of these facts and information that the Registrar concluded that Ms Coetzer no longer complied with the Fit and Proper Requirements,¹ debarring her for a period of two (2) years, thus removing her name from the central register of Financial Services Providers (FSP's).²

¹ See in Section 8(i)(a) of the FAIS Act read with Board Notice 106 of 2008.

² See Section 14A of the FAIS Act.

APPLICATION TO SUBMIT NEW EVIDENCE

[11] When she made the decision in relation to the falsification of the signatures, it was the submission of the Registrar that she had focussed on those policy applications where the appended signatures had been subjected to forensic expert analysis; namely:

- (i) 16764861 : Mrs Dorothea Botha (Mrs Botha)
- (ii) 16764856 : Mr Cornelis Botha (Mr Botha) and Mrs Botha
- (iii) 16728750 : Mr Baadjies and Mrs Baadjies

For that reason, we assume Ms Coetzer, in her grounds of appeal, in turn placed focus on the above mentioned clients when she articulated her grounds of appeal.

[12] In truth, however, the Registrar contended, the fraudulent activities and actions related to all six clients mentioned in paragraph [4] and [11] above.

[13] To correct the anomaly, the Registrar, in her reasons for debarment and prior to the hearing, applied to the Appeal Board to

introduce the information relating to the clients and their policies which had earlier been left out, namely:

- (i) 16651925 : Ms AG Baadjies
- (ii) 16726520 : Mr J Apollis and Ms D Apollis
- (iii) 16728858 : Mr H Baadjies

[14] The application was in terms of Section 26(B)(12)(a)(ii) of the Financial Services Board Act ("FSB Act"). Rather than treating the application as an interlocutory matter, the Appeal Panel in its discretion, decided to consider the application and the reasons therefore, together with the merits of the case as an integrated process, for the convenience of all concerned. Both parties agreed.

[15] The Registrar's justification for introducing the additional information was that, due to an administration oversight on her part, the information was not included in the notice of intention to debar, dated 25 September, 2014 and in her reasons for debarment, dated 7 November 2014. Further, the Registrar

argues, the information is relevant in that it demonstrates the manner in which Ms Coetzer operated.

[16] Besides, contended the Registrar, in a strict sense, the information is not new. It formed part of Old Mutual's charges against Ms Coetzer and in her defence against those charges. Thus the information had been known to both parties. Further, when Old Mutual made their findings against her, Ms Coetzer was provided with the report, which related to all the incidents she had been charged with.

[17] Further, argued the Registrar, when she gave Ms Coetzer notice of intention to debar, she did not specifically single out in her response, any particular incidents or clients to which the debarment related. Rather, the intention to debar was generally based "on the submission of unauthorised business to Old Mutual". That too, is how Ms Coetzer responded in her reply. In any case, the Registrar contends, the introduction of this new information is not prejudicial to Ms Coetzer. It would make no difference in her defence. Although she averred that it was her former husband, Mr

Kriel who falsified the clients' signatures, she did not dispute that she was the one who had submitted the falsified business to Old Mutual in respect of all six policies.

[18] Ms Coetzer, correctly so, did not oppose the Registrar's application. Indeed at no stage did she give any impression that the purported policies mentioned in paragraph [13] above, are not included in the case against her. Thus at all relevant instances, the Registrar's case against her was based on the allegations by and findings of Old Mutual in regard to all six policies. Thus the Registrar's application is logical and so is Ms Coetzer's non-opposition. For the above reasons, the application to introduce the evidence into the record is granted and the additional information is admitted as part of the record in this case.

[19] On the other hand, although the applicant confirmed at the oral hearing that she was fully conversant with the Section 26B (12)(a)(ii) requirement and procedure to submit an application in writing with regard to any new information intended to be introduced into the record, at no stage did she take advantage of

this statutory accommodation and apply to introduce new information into the record. At the hearing, however, she attempted to submit additional defences not at the disposal of the Registrar at the time of her decision to debar her. The panel agreed that any new information she submits and relies upon would be inadmissible in terms of Section 26B (12) (a) (ii) of the FAIS Act.

[20] Thus, the evidence or information which forms part of the record in this matter and which she may rely on is confined to all the information up to the point of her submissions in response to the Registrar's notice of possible debarment. Particularly critical for the purposes of this case, is her admissions, concessions and defence in regard to the allegations against her.

[21] Indeed she admitted early on that she had been aware of the falsified declaratory forms when she submitted them to Old Mutual. However, she reiterated, it was not herself but her former husband, Mr Kriel who had falsified the forms, forging the signatures of the clients because, as she claims, it was too cumbersome and costly to revert to clients for their signatures.

[22] She was powerless to stop Mr Kriel from falsifying client's signatures because at the time, she submits, she was in a serious abusive relationship with him where, as her boss and manager, he had subjected her to immense pressure and fear , so that she was not in a state of mind to realize the consequences of her actions.

[23] Mr Kriel having admitted falsifying the documents and Ms Coetzer having submitted these knowingly, she demonstrated her remorse, admitting her wrongful actions and apologised to Old Mutual and to the Registrar. At pains to deny her intention to defraud anyone, she emphasised that she *did* have business dealings with the clients and they *had* taken out the policies with her. Conceding that as an FSP, she was fully conscious of her duty to serve her clients with honesty and in their best interest and should have reported the fraudulent signatures to Old Mutual, it was however, fear for her safety that precluded her from doing so.

THE ISSUES

[24] In our view and in the context of her admissions and concessions regarding her dishonesty and therefore her want of integrity, submitting falsified “Finalisor Declaration Forms” to Old Mutual, without undermining the seriousness of the scourge of spousal abuse, in particular as it affects women in our society and the impact that abusive relationships can have on survivors, it is not necessary to enter into questions of the cogency of her submissions in relation to her abusive relationship with her spouse. However, in view of the need for completing the picture, we will briefly deal with that evidence.

[25] All the affected clients, in unison and on affidavit, have attested that they had earlier had dealings with Ms Coetzer, in that they had previously taken out insurance policies with her. She was therefore familiar with their personal details and their signatures. This is what had assisted the overall falsification of the forms.

[26] Further, it is certainly more than a coincidence that Ms Coetzer had made similar mistakes on *all* the “Finalisor Declaration Forms”

in relation to *all* the clients at around the same time. In this day and age of technological sophistication and access, that there was no alternative way of contacting her clients other than physically driving over to meet with them, is an astonishing claim to make and therefore highly unlikely.

[27] Furthermore, if she was not party to the falsification scheme, and truly had the interests of her clients at heart, her integrity should have stood her in good stead, and she could have found the means, time and opportunity to report the incident to Old Mutual. She however did not show sufficient honesty and strength, failing to take the earliest opportunity to counter her abusive spouse's fraudulent actions. The question then is whether she can be trusted to withstand and survive similar conduct in future dealings with her clients?

[28] Defending her version, she argues that she is now divorced from Mr Kriel and will no longer be subjected to the undue pressure he exerted on her. This line of argument is however not of much assistance. It does not show how her own honesty, integrity and

strength of character in similar circumstances in the future will avoid the recurrence of similar incidents when serving clients..

[29] Section 2 of the General Code of Conduct for Authorised Financial Services Providers and Representatives requires that providers must at all times render honest and fair services and do so with due skill, care, diligence and in the interests of clients. Services must also take into account the integrity of the financial services industry.

[30] Also important in the regulation of financial services is Section 3(1) (d) of the General Code of Conduct which demands that the service of FSP's must be rendered in accordance with the existing contractual relationship and the reasonable request of the client. While it must be executed as expeditiously as possible, the Code also requires that due regard be had to the interests of the client, where these interests are prioritised over those of the FSP.

[31] Viewed in the context of the requirements of both sections of the Code, by knowingly submitting falsified business to Old Mutual, Ms

Coetzer's conduct was dishonest, unfair, lacked sufficient care and due skill, even if the question of undue pressure placed on her was made likely. She did not exercise due care to take into account the financial interests of her clients and the integrity of the financial industry. She did not demonstrate, even in the face of the circumstances she claimed, the slightest effort, to serve the interests of her clients.

[32] The advisory role of an FSP is critical in determining and providing financial security for those who place their trust and financial well-being in their hands. It is in this context that the Code insists on the high standards of services. To tolerate the contrary is to place the financial interests of an unsuspecting public at risk. Thus in our view, Ms Coetzer must take responsibility and account for her own dishonest actions. For that reason and as shown above, she cannot point a finger at Mr Kriel for her own actions.

[33] In her own words, Ms Coetzer was fully aware that,

"I may be debarred as a result of my omission to notify Old Mutual or to have refused to submit the falsified

documentation but humbly request that I be given a chance to succeed in my profession and that I not be debarred from rendering financial services”.

[34] However, we agree with the Registrar’s findings that by knowingly submitting policy applications to Old Mutual with falsified information, she was dishonest, lacked integrity and placed her own (financial) interests above those of her clients. Even if the mitigating circumstances she pleads are taken into account, she does not inspire sufficient confidence that there would not be a recurrence of the conduct in question should she not be debarred for a period of time, enabling her to regenerate and rehabilitate herself.

[35] When the Registrar made the decision to debar Ms Coetzer, she had taken into account all the evidence at her disposal at the time of her decision, including the evidence or information submitted in mitigation. However, the Registrar was not satisfied that Ms Coetzer was fit and proper to continue rendering financial services in terms of Section 8(1) of the FAIS Act. With all that evidence in

mind, she debarred her for a period of 2 (two) years in terms of Section 14A of the FAIS Act.

[36] Section 8(1) of the FAIS Act requires honesty and integrity from all FSP"s, and it is now established that, to determine the necessary honesty and integrity indeed requires a moral judgment, taking into account a person"s conduct in both her private life and in her interaction with others. An inference is drawn from her acts and motives, not once but over a period of time or through a number of incidents. She must possess the qualities of unqualified honesty, the ability to avoid the conflict of her own interests with those of her clients, placing them above her own. And particularly relevant in this matter, honesty and integrity implies the possession of incorruptible virtue³.


We agree with the Registrar that overall, Ms Coetzer failed the test. In our view, the two-year period of debarment is minimal and therefore most appropriate.

³See Hamilton Smith and Company (Pty) Ltd and the Registrar of Financial Markers, decide on 16 September 2003.

ORDER

- 1 The appeal is dismissed.
- 2 The debarment for a period of 2 (two) years is confirmed.
- 3 There is no order as to costs.

Signed at Pretoria on this 7th day of October 2015.

p.p. 

Judge Yvonne Mokgoro: Chairperson

J. Pema

Mr J Pema (Member)

G. O. Madlanga

Mr G.O. Madlanga (Member)