Financial Services Tribunal

Case No: FSP47/2026

In a matter between:

THANDEKA APHANE **APPLICANT**

and

CLIENTÈLE LIFE **RESPONDENT**

TRIBUNAL PANEL: Judge LTC Harms & K.D Magano

Date of Decision: 13 July 2026

<u>Summary:</u> *FAIS Act – section 14 – debarment – reconsideration application – representative alleged to have misled prospective client during telephonic sale of funeral policy – respondent establishing shortcomings in compliance with prescribed sales process but failing to establish that conduct was sufficiently serious to impugn representative's honesty and integrity – jurisdictional requirements for debarment not established – application upheld and debarment set aside.*

DECISION

INTRODUCTION

1. This is an application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("*the FSR Act*"). The applicant seeks reconsideration of the respondent's decision to debar her as a representative in terms of section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 ("*the FAIS Act*").

2. The decision followed disciplinary proceedings arising from the applicant's sale of a funeral policy to a prospective client. The respondent found that, during the sales call, the applicant failed to follow its prescribed sales process and, in doing so, acted dishonestly. On that basis, it concluded that the applicant no longer met the Fit and Proper Requirements relating to honesty and integrity.

3. The applicant seeks reconsideration of the respondent's decision. She contends that the respondent failed to establish that she no longer met the Fit and Proper Requirements prescribed under the FAIS Act.

4. The issue before this Tribunal is whether the respondent established, on the evidence before it, that the applicant no longer complied with the Fit and Proper Requirements relating to honesty and integrity, thereby entitling it to debar her in terms of section 14 of the FAIS Act.

FACTUAL BACKGROUND

5. The applicant was employed by the respondent as a sales representative and was authorised to render financial services on its behalf. Her duties included marketing and selling the respondent's insurance products telephonically.

6. The present application arises from a telephonic sales call conducted by the applicant on 20 March 2026 with a prospective client. The respondent alleges that the applicant failed to conduct the sale in accordance with its prescribed sales process. In particular, it alleges that the applicant created the impression that she was calling in relation to the client's loan application, failed adequately to disclose that the purpose of the call was to market a Clientèle Funeral Dignity Plan, departed from the approved sales script, and failed properly to explain the product and the implications of the monthly premium before obtaining the client's consent to the debit order.

7. The respondent further alleges that the applicant's disclosures regarding the Funeral Dignity Plan were inadequate and were delivered in a manner that was rushed or unclear. It contends that, as a result, the applicant created the impression that the call related to the client's loan application rather than the sale of a funeral policy. The respondent also alleges that the applicant failed to communicate the required disclosures clearly and did not adequately explain the implications of the transaction before obtaining the client's consent.

8. The respondent thereafter instituted disciplinary proceedings against the applicant. The chairperson found her guilty of the disciplinary charge and recommended that she be dismissed and debarred on the basis that her conduct was dishonest and demonstrated that she no longer met the Fit and Proper Requirements relating to honesty and integrity. The respondent accepted that recommendation and debarred the applicant.

9. The applicant disputes the respondent's account of the sales call. She contends that the respondent considered the call in isolation and ignored the context in which it was made. According to the applicant, the call formed part of the respondent's approved Phone Finder/Credit and Loan campaign, which required agents to inform clients that they had recently applied for credit online and had requested Clientèle to contact them. She states that her references to the client's credit application were made in accordance with that campaign and were not intended to convey that she was processing or approving a loan.

10. The applicant further contends that the respondent relied on her use of the expression "cash payout" as evidence of dishonesty, despite the same terminology appearing in the respondent's approved sales script. She maintains that the respondent conflated alleged shortcomings in how she conducted the sales call with dishonesty, and incorrectly treated non-compliance with its internal sales procedures as evidence that she no longer satisfied the Fit and Proper Requirements relating to honesty and integrity.

RELEVANT STATUTORY PROVISIONS

11. Section 14(1) of the FAIS Act requires an authorised financial services provider to debar a representative if it is satisfied, on the basis of available facts and information, that the representative no longer complies with the Fit and Proper Requirements referred to in section 6A, or has contravened or failed to comply with a provision of the FAIS Act in a material manner.

12. Section 6A of the FAIS Act empowers the Financial Sector Conduct Authority to determine Fit and Proper Requirements for financial services providers, key individuals and representatives.

13. The Fit and Proper Requirements regarding honesty and integrity are directed at the representative's personal character. They are not concerned with every instance of misconduct or poor performance, but with whether the representative possesses the personal qualities of honesty and integrity required to render financial services. As the Tribunal explained in *Ntongana v Standard Bank*,[1] a representative's dishonesty, negligence, or incompetence must be sufficiently serious to impugn the representative's honesty and integrity. It follows that not every breach of an employer's internal procedures, act of negligence or instance of poor performance justifies a conclusion that the representative no longer satisfies the statutory Fit and Proper Requirements.

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[1] FSP70/2019

14. Therefore, section 14 permits debarment only where the financial services provider is satisfied, on the basis of available facts and information, that a representative no longer complies with the applicable Fit and Proper Requirements.

ANALYSIS AND FINDINGS

27. The question before the Tribunal is whether the respondent established, on the available facts and information, that the applicant acted dishonestly and, if so, whether that conduct was sufficiently serious to impugn her honesty and integrity so as to justify debarment under section 14 of the FAIS Act.

28. The respondent's concerns arise principally from the opening portion of the sales call. According to the respondent's summary, after referring to the client's credit application, the applicant informed the client that Clientèle was not affiliated with any credit company and stated that she was calling to assist him with a "*cash payout*" payable within 24 hours of a successful death claim under the Ultimate Funeral Dignity Plan. Shortly thereafter, she asked the client whether he preferred the minimum cash payout of R30 000 or the maximum cash payout of R50 000. When the client elected the maximum cash payout, the applicant informed him that he would pay a monthly premium of R390.

29. The respondent criticised the manner in which the applicant continued with the sales call after the client elected the R50 000 cash payout. It found that the applicant continued to describe the product principally in terms of a cash payout, failed adequately to explain the implications of the DebiCheck mandate, did not properly explain the purpose of a beneficiary, and obtained the client's consent without

ensuring that he understood the nature of the transaction. It further found that these shortcomings demonstrated a deliberate attempt to mislead the client. The record, however, demonstrates that the applicant subsequently referred to the Clientèle Funeral Dignity Plan when requesting the client's consent to the monthly premium.

30. The respondent's case rests substantially on inference rather than direct evidence. It invites the Tribunal to infer from the manner in which the applicant conducted the sales call that she deliberately sought to mislead the client regarding the nature of the product being sold and, consequently, acted dishonestly.

31. An inference of dishonesty cannot be drawn merely because the respondent identified shortcomings in how the sales call was conducted. The Tribunal must be satisfied that the objective facts relied upon reasonably support the inference sought by the respondent. If those facts support the inference that the applicant deliberately intended to mislead the client, the Tribunal may draw that inference. If, however, they are equally consistent with poor communication, inadequate explanation or non-compliance with the respondent's prescribed sales process, the inference of deliberate dishonesty cannot properly be drawn.

32. We have noted from the record that the respondent's approved sales script required agents to inform prospective clients that they were calling from Clientèle Life Insurance regarding the Funeral Dignity Plan, to explain that Clientèle was not affiliated with any credit company, to inform clients that the policy provided cash benefits payable upon a valid death claim, and to explain the various policy benefits

and terms before obtaining the client's consent to the monthly premium. The script also required agents to explain the DebiCheck process and to read the prescribed terms and conditions to the client. The script itself repeatedly refers to "cash" and "cash pay-out" when describing the benefits available under the Funeral Dignity Plan.

33. The summary of the call between the applicant and the client demonstrates that she referred to the Ultimate Funeral Dignity Plan during the introductory portion of the sales call, again when requesting the client's consent to the monthly premium, and once more towards the conclusion of the conversation when informing the client that she was not assisting him with a loan but with the Clientèle Funeral Dignity Plan. The record further demonstrates that the applicant read the prescribed terms and conditions to the client and, when the client requested that they be repeated, read them a second time. During that process, she again informed the client that Clientèle was not affiliated with any credit company, that she was not assisting him with a loan, and that she was assisting him with the Clientèle Funeral Dignity Plan. The respondent's complaint is therefore not that these disclosures were omitted altogether. Rather, it contends that they were communicated in a manner that was rushed or unclear and were insufficient to ensure that the client understood the nature of the product and the transaction. In the respondent's view, the applicant could and should have conducted the sales call more clearly and in closer compliance with the approved script.

34. The respondent found that certain disclosures made by the applicant during the sales call were "rushed", "unclear" or "lowered". Those findings do not arise from the content of the conversation itself, but from the manner in which the words were allegedly spoken. They are evaluative findings drawn from the respondent's review of the audio recording. That recording was not placed before the Tribunal. Consequently, the Tribunal is unable to independently assess whether the manner in which the disclosures were delivered supports the respondent's characterisation of the sales call.

35. The documentary record before the Tribunal nevertheless demonstrates that the applicant informed the client that Clientèle was not affiliated with any credit company, referred to the Ultimate Funeral Dignity Plan during the call, informed the client that the cash benefit related to a successful death claim, later informed the client that she was not assisting him with a loan but with the Clientèle Funeral Dignity Plan, and read the prescribed terms and conditions, repeating them when requested by the client. Those are objective features of the record. Whether those disclosures were delivered in a manner that was rushed, lowered or unclear is a matter that depends on the audio recording and cannot be independently verified by the Tribunal.

36. The respondent further contended that the applicant misrepresented the Funeral Dignity Plan by repeatedly referring to a "cash payout". According to the respondent, the applicant presented the product as a direct cash benefit linked to the client's credit application without adequately explaining that the amounts referred to funeral

insurance cover payable only upon a valid death claim. It was on this basis that the respondent concluded that the applicant had misled the client and manipulated his consent to the debit order.

37. The Tribunal accepts that the respondent was entitled to criticise the manner in which the applicant presented the product. Read as a whole, the sales call contains repeated references to a "cash payout" before the nature of the product is fully explained. The respondent's approved sales script, however, also employs the concepts of "cash", "cash pay-out" and "cash benefit" when describing the benefits available under the Funeral Dignity Plan. The documentary record establishes that the applicant's explanation of the product may have lacked the clarity required by the respondent's prescribed sales process. However, this does not objectively establish that the applicant deliberately misrepresented the nature of the Funeral Dignity Plan. The respondent's criticism is directed principally at the adequacy of the applicant's explanation rather than the terminology she employed. Viewed objectively, that criticism does not justify the inference that the applicant acted dishonestly or that her conduct was sufficiently serious to impugn her honesty and integrity.

38. The respondent further relied on the applicant's explanation of the DebiCheck mandate. It accepts that the applicant informed the client that he would receive a DebiCheck mandate. However, it contends that her explanation of the process was vague, incomplete and misleading. In particular, the respondent relied on the applicant's statement that the DebiCheck mandate would "unlock everything" for the

client and that, once it had been completed, "your things will be going well" and the client would "be able to use everything". According to the respondent, the applicant failed to explain that the DebiCheck mandate constituted authority for the monthly deduction of premiums under the Funeral Dignity Plan or the financial obligations arising from the policy. It was on this basis that the respondent concluded that the applicant had misled the client and manipulated his consent to the debit order.

39. The difficulty for the respondent is that the criticism again relates to the adequacy and quality of the applicant's explanation rather than its complete omission. The documentary record establishes that the applicant mentioned the DebiCheck mandate and attempted to explain the process. Whether that explanation met the respondent's required standard is a different question. Viewed objectively, the shortcomings identified by the respondent suggest possible deficiencies in how the applicant communicated with the client and adhered to the prescribed sales process. They do not, without more, justify the inference that the applicant deliberately sought to mislead the client or establish conduct sufficiently serious to impugn her honesty and integrity.

CONCLUSION:

40. Even accepting the respondent's criticisms at their highest, the evidence establishes no more than shortcomings in the manner in which the applicant communicated with the client and complied with the respondent's prescribed sales process. Those shortcomings do not demonstrate conduct of such a nature as to impugn the applicant's honesty and integrity. The Tribunal is therefore not persuaded that the

respondent established that the applicant no longer met the Fit and Proper Requirements relating to honesty and integrity. It follows that the jurisdictional requirements for debarment under section 14 of the FAIS Act have not been established.

ORDER:

41. As a result, the following order is made:

    36.1. The application for reconsideration is upheld.

    36.2. The applicant’s debarment is set aside.

Signed on behalf of the Tribunal panel.

__*Sgd Adv KD Magano*_____

ADV KD MAGANO