Financial Services Tribunal

In the matters of:

A35/2025

I-PROP (PTY) LTD	First Applicant
PETRO HEYDENRYCH	Second Applicant
and	
JOHN RODERICK GRAEME POLSON N.O.	First Respondent
JACO SPIES N.O.	Second Respondent
COMMISSIONER OF THE FINANCIAL SECTOR CONDUCT AUTHORITY	Third Respondent

Tribunal panel: LTC Harms (Chair), Adv G Goedhart SC and Adv W Ndinisa

For the applicants: Advocates L Morison SC, M Seape, B Wildenboer

For the respondent: Mr S Rossouw

Hearing date: 19 February 2026

Decision date: 13 April 2026

Subject: Reconsideration application – *locus standi* - meaning of 'person aggrieved' – separation of issues

DECISION

Introduction

1. The applicants seek a reconsideration in terms of section 230 of the Financial Sector Regulation Act, 2017 (the FSR Act) of the third respondent (FSCA)'s 15 May 2025 refusal to call upon the first and second respondents, in their capacities as curators of Corporate Money Managers (CMM), to render an account to the FSCA for the fees earned and the disbursements incurred during the period of their curatorship, from April 2009 to date.

2. The applicants sought an order that the FSCA be directed to:

   2.1. Direct the curators to render to the FSCA an accounting for all fees paid, and all disbursements made by the curators as from date of their appointment to the date on which they provide the FSCA with an electronic copy of:

      2.1.1. the invoice paid in respect of such fee or disbursements; and

      2.1.2. an electronic copy of the bank statement reflecting the payment from the bank account used by the curators to settle the invoice for such fee or disbursement.

   2.2. Render the aforesaid accounting to the FSCA in electronic form on/or before such date as the Tribunal may direct.

3. In terms of sections 234(1)(a) and (c) of the FSR Act, the powers of the Tribunal are limited to setting aside the decision and to remitting it to the FSCA for further consideration, or dismissing the reconsideration application. The applicants acknowledged that the order sought was not competent.

4. In the hearing, the applicants sought a remittal to the FSCA, so that the FSCA can reconsider its refusal to so direct the curators.

5. The FSCA seeks a summary dismissal of the application on the basis that:

   5.1. the FSCA's letter of 15 May 2025 does not constitute a "decision" as contemplated in section 218 of the FSR Act; and

   5.2. the applicants are not "persons aggrieved" as envisaged in section 230 of the FSR Act. Section 230(1)(a) of the FSR Act provides that: "*A person aggrieved by a decision may apply to the Tribunal for a reconsideration of the decision by the Tribunal in accordance with this Part*."

6. The FSCA argued that, in the event that either of the two bases were to be upheld, the Tribunal has no jurisdiction and the application is to be dismissed.

7. Pursuant to argument, the parties were requested to address further written submissions to the Tribunal on the following:

7.1. where, if an order for remittal were to be granted, such an order would lead; and

7.2. the issue of costs, as the applicants sought an order for costs against the FSCA.

8. The applicants' further submissions were received on 26 February 2026 and those of the FSCA on 19 March 2026.

9. In terms of section 232 (1) (b) of the FSR Act, the proceedings are to be conducted with as little formality and technicality, and as expeditiously as the requirements of the financial sector laws and a proper consideration of the matter permit. Section 232 (2) permits the person chairing the panel to give directions to facilitate the conduct of proceedings for reconsideration before the panel. There is nothing that precludes the Tribunal from determining the points *in limine* raised by the FSCA separately. The full record is not required to determine the points *in limine*. The parties were afforded a full hearing, having regard to the information relevant to the issues.

Background

10. The applicants were investors in CMM. The first applicant invested approximately R100 million in CMM and the second respondent invested R3 million. At the time of investment, CMM was under the trusteeship of ABSA Bank Limited.

11. CMM was conducted fraudulently and in 2009 its business and portfolio and related entities were placed under curatorship. The first and second respondents were appointed by the High Court on application by the Financial Services Board (the FSCA's predecessor) in 2009 as curators to CMM, in terms of section 5 of the Financial Institutions, Protection of Funds Act 28 of 2001 (as amended) (the Protection of Funds Act).

12. The court order in terms of which the curators were appointed on 25 April 2009, which was confirmed on 18 June 2009, provided that the curators:

12.1. were to give consideration to the best interests of the investors;

12.2. were authorised to incur reasonable expenses and costs in the performance of their duties, which were to be paid from the assets under curatorship;

12.3. were permitted to engage (after consultation with the FSCA) such assistance of a legal, accounting, administrative, or other professional or technical nature, as they deemed reasonably necessary for the performance of their duties and to defray reasonable charges and expenses so incurred from the assets under curatorship;

12.4. were to be remunerated in accordance with the norms of the attorneys' and auditors' professions, such remuneration to be paid from the assets under curatorship on a preferential basis.

13. Summons was issued on behalf of the curators and the investors in CMM against ABSA for a sum of more than R1 billion. The claim against ABSA became time-barred and subsequently, in late 2019, ABSA settled with the curators in an amount of R175 million, which was paid by ABSA to the curators in October 2019.

14. The applicants have instituted two sets of legal proceedings against the curators. The first is the action against the curators and their attorneys for their negligence in *inter alia* allowing the summons to be issued too late. The damages claims for the R100 million and the R3 million that the applicants lost respectively are found in delict, breach of a court order and breach of contract.

15. The second is an application launched in 2024 to compel the curators to distribute the amount of about R100 million to investors in terms of their contractual undertaking. The applicants contend that the undertaking, given in 2020 by the curators, has not been honoured.

The applicants' submissions

16. In this application, the applicants do not assert a right to the curators' information. They assert a right to ask the FSCA to direct the curators to render an accounting. The applicant say that this right is premised on:

    16.1. statute, because section 5(6) of the Protection of Funds Act provides that the curators act under the control of the FSCA. In accordance with

its guidelines, the object is to "*facilitate supervision of curators by the FSCA in the best interest of the FSCA and investors*.";[1]

16.2. the court order appointing the curators;

16.3. the common-law, because the curators are in a fiduciary position and thus obliged to provide an accounting to the person to whom the fiduciary duty is owed; and

16.4. section 33 of the Constitution, which entitles the applicants to reasonable administrative action from the FSCA.

17. Section 5(6) of Protection of Funds Act provides:

> *"The curator acts under the control of the Registrar who made the application under subsection (1) and in accordance with guidelines prescribed by the Registrar by notice in the Gazette, and the curator may apply to that Registrar for instructions with regard to any matter arising out of, or in connection with, the control and management of the business of the institution."*

18. Regulation 11 deals with the statements of accounts and invoices and provides that:

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[1] Regulation 2(a) of the Financial Services Board: Guidelines on the Conduct of Curators published in terms of the Financial Institutions (Protection of Funds) Act 28 of 2001, Government Gazette 38550 of 6 March 2015 ("***the Regulations***").

"*(1) A curator must –*

(a) on a continual basis maintain statements of account for fees in respect of services rendered and disbursements incurred for and related to the curatorship;

(b) periodically submit the statements of account in the format determined by the registrar for approval by the registrar prior to recovery of the fees or expenses from the institution or assets of investors, as the case may be.

(2) A statement of account must be accompanied by a full narrative of the services rendered supported by proof of disbursements and payments to other service providers as well as the time spent on the execution of the curator's functions.

(3) Payment to the curator may not be made directly from funds realised by the liquidation of assets, such funds must first be paid into the bank account held in the name of the curatorship.

(4) Payment to other service providers may not be made unless pursuant to an invoice approved by the curator and, in case of joint curatorship, approved by all the curators.

(5) Advanced payments must be dealt with as such in the accounting records and not as partial payments on invoices: provided that all advanced payments must be approved by the registrar."

19. In the circumstances, the applicants say that the decision or non-decision of the FSCA is the refusal to order the rendering of accounts in accordance with Regulation 11(2) as read with Section 5 (6) of the Protection of Funds Act in terms of which it was promulgated.

20. The applicants require the curators to provide to them the names of the firms paid, as well as the amounts and the dates. The amount of information sought goes back to a period of 17 years, from the date when the curators were first appointed.

The FSCA's submissions

21. Section 218 (a) of the FSR Act defines a "decision" as being, amongst others, a decision by a financial sector regulator in terms of a financial sector law "in relation to a specific person". As there was no "decision" in relation to the applicants to begin with, there was also not an omission envisaged under sections 218 (f) and (g).

22. The FSCA argues that its letter of 15 May 2025 explains why it does not have the power which the applicants want it to exercise. Further, that the letter of 15 May 2025 does not contain a directive, a determination, an exercise of

statutory power or a refusal to exercise a statutory power that the FSCA is legally obliged to exercise.

23. Only a person whose own legal rights or legally protected interests are directly and adversely affected by a decision, or by an omission to take a decision, qualifies as a "person aggrieved", for purposes of section 230 of the FSR Act. The section does not confer standing on every person who has a commercial, financial, or practical interest in the subject matter of the regulatory process.

24. The FSCA submits that the true nature of the complaint appears to be that the FSCA has declined to assist the applicants in their litigation against the curators. This dissatisfaction does not make them "aggrieved persons" as contemplated by section 230. The applicants have the provisions relating to discovery available to them in the litigation proceedings. Further, in terms of section 5(8)(a)[2] of the Protection of Funds Act, the applicants are empowered, on good cause shown, to approach the High Court to challenge any action, decision or remuneration of the curators, which they have failed to do.

25. The applicants' legal rights have not been affected, because nothing contained in the third respondent's letter of 15 May 2025 affects any of the rights of the applicants.

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[2] Section 5(8)(a) provides: "*Any person, on good cause shown, may make application to the court to set aside or alter any decision made, or any action taken, by the curator or the registrar with regard to any matter arising out of, or in connection with, the control and management of the business of an institution which has been placed under curatorship.*"

Decision

26. Section 230 of the FSR Act permits an application for reconsideration only by a person who is "aggrieved" by a decision, including an omission contemplated by the Act. That requirement is not satisfied by every person who has an interest in the subject matter of the decision or omission.

27. *Francis George Hill Family Trust v South African Reserve Bank and Others*[3], established that a "person aggrieved" bears a narrower meaning: it refers to a person whose own legal rights or legally protected interests are directly and adversely affected, and not to a person who complains of a commercial, financial or derivative prejudice.

28. *George Hill* established that a shareholder is not a "person aggrieved" for purposes of challenging regulatory action against company assets unless their own legal rights are directly affected. The legal interest required is a direct legal right, not a mere financial or indirect interest. See also more recently the decision in *Discovery Life Provident Umbrella Fund and Another v Financial Services Tribunal and others*.[4]

29. In regard to the use of the term "specific person" in section 218(a) of the FSR Act, as set out in the matter of *Banxso*,[5] the FSR Act "*draws a distinction*

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[3] 1992 (3) SA 91 (AD); [1992] 2 All SA 137 (AD) (***George Hill***).

[4] (132345/2023) [2025] ZAGPPHC 1118 (10 October 2025).

[5] A31/2025 (Sekler and others v FSCA) & A32/2025 (Banxso (Pty) Ltd v FSCA) decided on 11 December 2025.

between decisions of a general (policy) and those directed at a specific person. The Tribunal does not reconsider administration, policy, rules or regulations but only decisions directed at a particular individual. In the result, the use of "specific person" was not intended to qualify the requirement of "person aggrieved", and there is no reason to assume that the legislature did not intend to use the latter term in its accepted sense."[6]

30. The applicants' stated purpose is to obtain information relating to the names of firms paid, the amounts paid, and the dates of such payments, in order to scrutinise what has been charged against assets under curatorship.

31. On the facts presented, the applicants' complaint is not that the FSCA has made a determination altering, extinguishing, or refusing to recognise any right vested in them personally. Their complaint is rather that the FSCA declined to require the curators to furnish a historical accounting of fees and disbursements so that the applicants may scrutinise the depletion of assets under curatorship and, ultimately, challenge the reasonableness of those charges. That interest is an indirect financial interest in the fund or asset pool under curatorship.

32. The fact that the applicants, as investors, may ultimately benefit from the proper preservation of those assets, or may suffer practical prejudice if expenses reduce the available pool, does not mean that every regulatory act

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[6] Ibid at para 28.

or omission affecting the administration of the curatorship constitutes an infringement of the investors' own legal rights.

33. The applicants' interest is, at most, an indirect financial interest in the proper administration of the curatorship estate and in maximising a possible recovery from it.

34. Therefore, what the applicants seek is not the vindication of a right denied or altered by the FSCA, but the obtaining of material/information that *may* assist them in pursuing a further challenge to the curators' fees and disbursements. That is not enough to render them persons aggrieved under section 230. Nothing in the third respondent's letter of 15 May 2025 deprived them of, altered, or prejudicially affected any legal right vested in them personally. They retain the right to approach a court in terms of section 5(8)(a) of the Protection of Funds Act.

35. The applicants' reliance on Regulation 11(2) does not advance their position. Regulation 11 requires a curator to maintain statements of account and periodically submit them to the registrar for approval, accompanied by a full narrative and proof of disbursements and payments to service providers. Those provisions regulate the curator's accounting obligations to the registrar. They do not, on their terms, confer on individual investors a personal right to compel the FSCA, through reconsideration proceedings, to enforce those obligations in a particular manner or at their insistence.

36. If the applicants contend that the curators have overreached, charged impermissibly, or failed to account in accordance with the law or the curatorship order, their remedy lies in proceedings directed at the curators in a competent court. Section 230 is not a mechanism by which an investor may compel the regulator to exercise supervisory powers for the purpose of facilitating such litigation.

37. What is alleged is no more than dissatisfaction with the FSCA's refusal to intervene in the administration of assets under curatorship in a manner desired by the applicants. That does not suffice.

38. Even if the order sought by the applicants were to be granted, and the FSCA were to direct the curators as requested, and receive these documents, it would not result in any practical effect for the applicants, because it is not within the powers of the FSCA to order a taxation of the curators' bills. The only real practical effect is that the FSCA and this Tribunal would be inundated with a plethora of documents with which neither it, nor the FSCA, could do anything. Receipt of the information sought by the applicants encompassing a period of 17 years could not, and would not, advance the point which the applicants seek to advance, which is that they need to have a taxation of these accounts.

39. The Tribunal finds that the applicants' indirect financial interest does not amount to a direct legal right capable of founding standing under section 230. The applicants are not "persons aggrieved" as required by section 230 of the FSR Act, and thus the application falls to be dismissed.

40. The applicants sought costs against the FSCA based on what was termed the extraordinary circumstances relating to the FSCA's refusal to grant the decision sought already in April 2025. The applicants contend that the FSCA's complaint has been "technical" and "evasive".

41. The application for extraordinary costs is misguided. What the applicants sought at the outset is not an order that would have been competent for this Tribunal to make. As set out above, quite apart from the applicants' lack of *locus standi*, a remittal would serve no practical purpose. In any event, the FSCA's application for summary dismissal has been upheld.

Order

42. The application for reconsideration is dismissed.

__*Sgd Adv G Goedhart SC*_____

G Goedhart SC on behalf of the panel