THE FINANCIAL SERVICES TRIBUNAL

Case Number: **FSP74/2023**

In the matter between:

ALFRED LESETJA RASAKANYA Applicant

and

CLIENTÈLE LIFE Respondent

For the Applicant: The Applicant appears in person on the documents filed of record;

For the Respondent: Mr Hans Niewoudt on the documents filed of record.

Date of Decision: 28 May 2024.

Summary: Application for reconsideration – Debarment is justified in circumstances where the misconduct is serious enough to impugn one's character traits of "*honesty and integrity.*"

DECISION

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1. The Applicant, Mr Alfred Lesetja Rasakanya, approached this Tribunal in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act"), challenging the decision of the Respondent, dated 09 October 2023, to debar him ("the application").

2. The Respondent, Clientèle Life Assurance Company Limited, is an authorised Financial Services Provider ("FSP") and the decision maker in this matter.

3. The parties have waived their right to a formal hearing and the matter will be decided on the papers and submissions filed of record.

RELEVANT BACKGROUND FACTS AND CHRONOLOGY OF EVENTS:

4. The Applicant was employed by the Respondent as a sales representative from 01 March 2023 and by virtue of his role he is also a representative in terms of the Financial Advisory and Intermediary Services Act, 37 of 2002 ("the FAIS Act").

5. On 09 October 2023, after a formal debarment enquiry was held, the Respondent debarred the Applicant due to the fact that the Applicant no longer complied with the fit and proper requirements of section 13(2)(a) of the FAIS Act, in that the Applicant was found guilty of committing an act of dishonesty. The Applicant tendered his resignation from his employment before the debarment enquiry was held.

THE RESPONDENT'S CASE:

6. In the *"Notification of Disciplinary Hearing"*, dated 04 October 2023, which was sent by the Respondent by email and received by the Applicant, the Applicant was duly informed that the following charge was levelled against the Applicant:-

"Code 1: Seriously dishonest practice, which may include, but not limited to the following:

On 12 August 2023, you spoke to a client who has an existing Clientèle Funeral Policy and Clientèle Classic Legal Plan. The client told you that he lost his bank card and would like to change his banking details. You were dishonest in that you knowingly used false statements to capture and activate a new Funeral Dignity Plan and Classic Legal Plan without making him aware, Therefore, this client did not give you consent to activate the Funeral Dignity Plan and the Classic Legal Plan or to debit his account for these policies".

THE APPLICANT'S CASE:

The grounds for reconsideration:

7. The Applicant approached this Tribunal on essentially one ground which may be summarised as follows:-

    7.1 the Applicant alleges that, due to the fact that he was not charged and/or found guilty of any other misconduct during the time of his employment, the decision of the Respondent to debar him was not justified in the context of the charge levelled against him.

THE DEBARMENT ENQUIRY:

8. The record before the Tribunal reflects that:-

8.1 on 04 October 2023 the Respondent delivered the *"Notification of Disciplinary Hearing"*, dated 04 October 2023, to the Applicant by email, wherein the Respondent duly notified the Applicant of the charge levelled against him and of the Respondent's intention to debar him if he should be found guilty;

8.2 on 09 October 2023, a formal debarment enquiry was held in the absence of the Applicant, despite the Applicant being duly informed of the debarment enquiry, as the Applicant elected not to attend the debarment enquiry and tendered his resignation from his employment before the debarment enquiry was held; and

8.3 at the debarment enquiry, the Chairperson, appointed by the Respondent to chair the debarment enquiry, after having considered the charge levelled against the Applicant and the evidence presented by the Respondent, which included the summary of the transcript of the calls between the Applicant and the client which the charge pertained to, decided that the appropriate sanction for the Applicant's misconduct was the debarment of the Applicant; and

8.4 the decision to debar the Applicant was communicated to the Applicant by email on 09 October 2023, wherein the Applicant was duly informed that he may approach the offices of the Financial Services Tribunal should he feel aggrieved by the debarment.

LEGAL FRAMEWORK AND ANALYSIS:

9. The relevant legislation and regulations in respect of this application is as follows:

9.1 the FAIS Act, read with *inter alia* the General Code of Conduct and the Determination of Fit and Proper Requirements, 2017 ("the Fit and Proper Requirements"), regulates the conduct of FSPs, key individuals and representatives;

9.2 section 2 of the General Code of Conduct states that an FSP must at all times render financial services honestly, fairly and with due skill, care, and diligence in the interests of clients and the integrity of the financial services industry;

9.3 section 8(1), read with section 7(1) of the Fit and Proper Requirements, states, amongst other things, that the representative must be a person who is (i) honest and has integrity and (ii) of good standing;

9.4 FSPs must ensure that their representatives and key individuals are fit and proper persons to be entrusted with providing financial advice to the investing public Thus , FSPs are charged with a duty to take reasonable steps to ensure that representatives comply with any applicable code of conduct and applicable laws in the conduct of business; and

9.5 accordingly, if it is found that a representative has committed an act of dishonesty sufficiently serious to impugn the honesty and integrity of the representative, the FSP must ensure that the representative is debarred in terms of section 14(1) of the FAIS Act (our emphasis).

THE MERITS:

10. The charge levelled against the Applicant centred around elements of dishonesty and from the summary of the transcript of the calls between the Applicant and the client it is clear that:

10.1 the client wished to change his banking details on his existing polices and the Applicant created the false impression that the Applicant was doing so, when in fact the Applicant was activating new policies; and

10.2 the client neither gave the Applicant the requisite consent to activate the new policies nor consented to his bank account being debited for these new policies.

11. If recourse is had to the application before this Tribunal, it is apparent that the Applicant admits that he committed the misconduct complained of and, accordingly, there is no merit in the Applicant's argument that the decision to debar him was not justified in the context of the charge levelled against him and the evidence presented at the debarment enquiry.

CONCLUSION:

12. It is the view of the Tribunal that the Applicant committed serious misconduct, which misconduct impugns his character of honesty and integrity, thus, the Respondent's finding on the Applicant's guilt must be upheld.

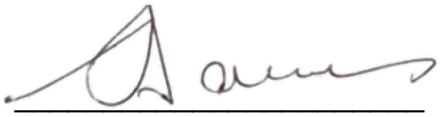
13. The Tribunal concludes that, on the merits, the debarment was warranted and justified.[1]

14. In the circumstances, the Tribunal finds no reason to interfere with the Respondent's decision to debar the Applicant.

ORDER:

15. The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 28 May 2024.



Adv M. Holland & LTC Harms (Chair)

[1] *White v Liberty Group Limited* (FSP47/2023) [2023] ZAFST 169 (6 December 2023); *Hlongwa v Assupol Life Limited and Another* (FSP56/2023) [2024] ZAFST 3 (9 April 2024)