

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP45/2021

In the matter between:

XOLANI VINCENT KULA

Applicant

and

NEDBANK LIMITED

Respondent

DECISION

- 1 The applicant applies for the reconsideration of her debarment as financial services representative by the respondent, her former employer, a financial service provider.
- 2 The debarment was under sec 14 of the Financial Advisory and Intermediary Services Act 58 of 2002, and the present application is in terms of sec 230 of the Financial Sector Regulation Act 9 of 2017.
- 3 The applicant had applied for suspension of the debarment, which was dismissed on 31 August 2021.
- 4 The applicant did not file a reply to the respondent's response containing its submissions and the record of the proceedings. The applicant also did not file any argument.
- 5 The parties waived their right to a formal hearing although
- 6 The applicant was notified on 16 February 2021 of the respondent's intention to suspend her employment pending investigation and/or disciplinary hearing. Typically, the applicant resigned before the hearing could take place, but a REDS enquiry (post-

termination Register of Dishonest and Dismissed Employees) was conducted within the time limit set by the Act.

7 The applicant did not respond to the notice of the proceedings and the respondent proceeded in her absence.

8 The prescribed procedure for debarment was meticulously followed and after having been found guilty of the charges, the applicant was debarred.

9 The charges speak for themselves:

a) On 12 January 2021 the Applicant assisted one Ms SMB to open a savings account in the name of a club that Ms SMB represented. Ms SMB was unable to deposit the funds into the club's account at the ATM. According to a statement obtained from Ms SMB, the Applicant advised Ms SMB to make the deposit into the Applicant's MobiMoney account using the Applicant's cell phone number. The investment account application form reflects the Applicant's cell phone number xxxx. The sum of R2 200,00 (two thousand two hundred rand) was deposited into the Applicant's MobiMoney account on 12 January 2021 and withdrawn by the Applicant on the same day.

b) On 19 December 2018 the Applicant took out a Nedbank funeral policy number yyyy in the name of Ms NGM at a time when he knew that Ms NGM was terminally ill. The Applicant allowed a third party, Ms NN, who became the beneficiary of the policy, to manage the signing of the policy with Ms NGM. The Applicant is not related to Ms NGM and had no legal basis to take out a policy to insure her life.

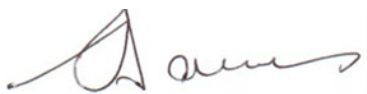
c) On 3 February 2021 the sum of R49 110,00 was paid into the Applicant's account. The funds originated from the mentioned Nedbank Insurance funeral

policy number yyyy. Ms NN received the full proceeds of the funeral policy, being R50 110,00 on the death of Ms NGM and Ms NN then transferred the above sum to the Applicant. By the Applicant's own admission in an affidavit signed by the Applicant on 9 March 2021, these funds were not used to make payment for Ms NGM's funeral expenses but were used by the Applicant to pay debts.

- 10 The applicant, in her reconsideration application, presents factual defences which she had not raised earlier. For instance, in the first case she says that all was due to client error. She had given the client both the account number and her cell number – the latter for when she required assistance. When she saw the money on her account, she did not know whence it came and used it immediately, assuming that whoever had paid it would soon inform her of the payment.
- 11 Since the applicant admitted that she was in financial difficulties, her version is the more improbable. If this were true, she could have told the investigator when she was first interviewed, and she could have presented it by letter or otherwise to the chair of the disciplinary body. She does not offer any explanation for the lateness of her version, and it is inherently improbable.
- 12 In relation to the second and third charges, she now contradicts her affidavit which was before the disciplinary committee, and which accorded with the findings. There is no credible explanation for what appears to amount to perjury.

The application is dismissed.

Signed on behalf of the Tribunal on 15 November 2021

A handwritten signature in dark ink, appearing to read 'A. Harms', written on a light-colored background.

LTC Harms (deputy chair)