

THE FINANCIAL SERVICES TRIBUNAL

CASE NO: A9/2023

(Consolidated with cases 1241/2022.1 & 1241.2022.2)

In the matter between:

TERRENCE RAMIAH

FIRST APPLICANT

OVERSURE (PTY) LTD

SECOND APPLICANT

OVERSURANCE (PTY) LTD

THIRD APPLICANT

and

THE FINANCIAL SECTOR CONDUCT AUTHORITY

RESPONDENT

*Summary: Reconsideration of the period of debarment and administrative penalties.*

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DECISION

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The Facts

1. The First Applicant brings this application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") for a

reconsideration of the Respondent's decision dated 15 December 2022 to debar the First Applicant for a period of 10 (ten) years. The Second and Third Applicants bring this application for a reconsideration of the quantum of financial penalties imposed upon them by the Respondent.

2. The First Applicant is the sole director of Oversure Broker Services (Pty) Ltd (Oversure) and Oversurance Broker Services (Pty) Ltd (Oversurance). Oversure and Oversurance brought separate reconsideration applications on substantially similar facts and where the Respondent has imposed a financial penalty on each of them. In the circumstances, it is convenient to consolidate the decisions in these three matters into one decision.
3. The Respondent investigated alleged contraventions of financial sector laws by the First Applicant, Oversure and Oversurance. The Respondent established, through this investigation, that:
  - 3.1. Oversure and Oversurance were registered Financial Services Providers ("FSP") as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act") on 9 May 2017 and 10 November 2015, respectively.
  - 3.2. Oversurance sold two financial products via Oversure's call centre during the period 23 April 2015 to 8 May 2017, this period being before it was registered as an FSP.

3.3. Oversure collected the premiums for the two financial products on behalf of Oversurance before being registered as an FSP.

4. As a result of its investigation, the Respondent held that:

4.1. Oversurance contravened:

4.1.1. Section 7(1)(a) of the FAIS Act;

4.1.2. Section 8(9)(c) of the FAIS Act;

4.1.3. Section 7(1)(a) of the Long-Term Insurance Act, 52 of 1998 (LTIA) alternatively section 8(1)(b) of the LTIA.

4.2. Oversure contravened:

4.2.1. Section 7(1)(a) of the FAIS Act;

4.2.2. Section 8A of the FAIS Act.

4.3. First Applicant contravened:

4.3.1. Section 8A of the FAIS Act ("fit & proper requirements")

4.3.2. Attempted, or conspired with, aided, abetted, induced, incited or procured Oversure and Oversurance to contravene financial services laws as envisaged in section 153(1) of the FSR Act.

5. As a result of the findings, the Respondent:

- 5.1. Debarred the First Applicant for a period of 10 (ten) years;
- 5.2. Imposed a financial penalty on Oversure in the amount of R 100,000.00  
(one hundred thousand rand)
- 5.3. Imposed a financial penalty on Oversurance in the amount of R  
150,000.00 (one hundred and fifty thousand rand).
6. The First Applicant, Oversure and Oversurance, do not attack the  
contravention findings of the Respondent but only the length of the  
debarment and the quantum of the financial penalties imposed.
7. The parties agreed to waive a formal hearing by the Tribunal and agreed  
the matter could be decided on the papers file. This is that decision.

### **The Legislation**

8. The relevant sections of the FSR are:

#### **Section 153 Debarment**

- (1) The responsible authority for a financial sector law may make a debarment order in respect of  
a natural person if the person has (a) contravened a financial sector law in a material way and  
(c) attempted, or conspired with, aided, abetted, induced, incited or procured another person  
to contravene a financial sector law in a material way.
- (4) A natural person who is subject to a department order may not engage in conduct that,  
directly or indirectly, contravenes the debarment order.
- (6) The responsible authority that made a debarment order may, by order and on application by  
the debarred natural person (a) reduce the period of the debarment order.

### **Section 167 Administrative Penalties**

- (1) The responsible authority for a financial sector law may, by order served on a person, impose on the person an appropriate administrative penalty, that must be paid to the financial sector regulator, if the person (a) has contravened a financial sector law.
  
- (2) In determining appropriate administrative penalty for particular conduct (a) the matter is that the responsible authority must have regard to include the following (i) the need to deter such conduct (ii) the degree to which the person has cooperated with the financial sector regulator in relation to the contravention (iii) any submissions by, or on behalf of, the person that is relevant to the matter, including mitigating factors referred to in the submissions; and (b) without limiting paragraph (a) the matter is that the responsible authority may have regard to include the following (i) the nature, duration, seriousness and extent of the contravention (ii) any loss or damage suffered by any person as a result of the conduct (iii) the extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct (iv) whether the person has previously contravened a financial sector law (v) the effect of the conduct on the financial system and financial stability (vi) the effect of the proposed penalty on financial stability (vii) the extent to which the conduct was deliberate or reckless.

### **Section 173 Remission of administrative penalties**

The responsible authority that imposed an administrative penalty on a person may, on application by the person, by order, remit all or some of the administrative penalty, and all or some of the interest payable in terms of section 169.

## **DISCUSSION**

9. The First Applicant, Oversure and Oversurance, submit that the administrative penalties and the debarment periods are unreasonable and excessive. The Tribunal in the matter of Renault Otto Kay v the Financial

Sector Conduct Authority Case No: A19/2022 had the following to say in

para 47:

*"The Tribunal has often dealt with similar arguments and dealt with deterrence in Decision - MET Collective Investments (RF) (Pty) Ltd v FSCA and another Case No.: A23/2019, which need not be repeated. And then, the ordinary rule is that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle (M Mwale and another v The Prudential Authority and another PA 19/2019."*

10. The First Applicant, in his Heads of Argument:

- 10.1. Set out his personal circumstances and confirmed *inter alia* that he is married, with two minors, takes care of his mother and is the sole breadwinner in the family;
- 10.2. Indicated that he has no previous convictions, pending cases or previous charges and that this is a first offence;
- 10.3. Stated that he cooperated fully with the investigators;
- 10.4. Stated that he is remorseful and would agree to undergo any required further training;
- 10.5. Indicated that the contraventions were more than six years ago, and nobody suffered any loss.

11. Oversure and Oversurance make similar submissions in their Head of Argument, save that both ceased trading in 2020 and 2019, respectively.

12. The Respondent, on the other hand, submits that:

- 12.1. The submissions made by the First Applicant are nothing more than  
*"an appeal for compassion and pity,"* which is not something that  
the Tribunal should consider;
- 12.2. The Tribunal should consider the interests of the investing public;
- 12.3. The First Applicant has placed no compelling factors before the  
Tribunal to show any misdirection on the part of the Respondent in  
imposing a 10 (ten) year debarment.

## CONCLUSION

- a. While I do not propose to interfere with the financial penalties imposed  
on Oversure and Oversurance, I am not satisfied that the debarment  
period is appropriate, and it seems to me to be excessive having regard  
to periods imposed by the Respondent in other matters when far more  
egregious circumstances are present. Therefore the debarment period  
must be referred back to the Respondent for reconsideration on the  
period only, and it is so ordered.
- b. There is no order as to costs.

**ORDER:** The application for reconsideration of the debarment period is  
upheld, and the debarment is referred back to the Respondent for  
reconsideration on the appropriate period thereof.

**DATED AT CAPE TOWN ON THIS THE 22<sup>nd</sup> DAY OF MAY 2023.**



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PJ Veldhuizen (member)

For self and LTC Harms (deputy chair)