

**THE FINANCIAL SERVICES TRIBUNAL**

**CASE NO: FSP68/2023**

In the matter between:

**TUMISANG ESSAU CHIPANE**

**Applicant**

and

**KING PRICE INSURANCE COMPANY LIMITED**

**Respondent**

Tribunal: Adv W Ndinisa (Chair), Adv SM Maritz and Prof M Sigwadi

For the Applicant: Default of appearance

For the Respondent: Adv AG Brümmer (In-House Counsel Legal Department), Mr S De Swardt (Specialist Compliance Manager) and Mr R Malunga (Operations)

Date of Hearing: 19 February 2024

Date of Decision: 21 February 2024

Summary: Application for Reconsideration in terms of Section 230 (1) of the Financial Sector Regulation Act, 9 of 2017 ("the FSR Act") of decision of Respondent to debar Applicant in terms of section 14(1) of the Financial Advisory and Intermediary Services Act, 37 of 2002 ("the FAIS Act") due to non-compliance with Fit and Proper Requirements: Specifically, non-compliance with requirements of honesty and integrity. Awarding of Costs: Exceptional circumstances in terms of section 234(2) of the FSR Act established.

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## DECISION

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### A. INTRODUCTION

1. The Applicant applied for the reconsideration of a decision taken by the Respondent to debar him in terms of section 14(1) of the FAIS Act due to non-compliance with the Fit and Proper Requirements: specifically, non-compliance with the requirements of honesty and integrity.
2. The application was set down for hearing on 19 February 2024 at 11:00 am. The Applicant was in default of appearance and the matter was struck from the roll. Thus, there is no need to deal with the merits of this application.
3. The Respondent requested this Tribunal to grant costs against the Applicant.

### B. COSTS

4. Section 234(2) of the FSR Act allows the Tribunal *"...to make an order that a party to proceedings on an application for reconsideration of a decision pay some or all of the costs reasonable and properly incurred by the other party in connection with the proceedings,"* but only in exceptional circumstances.

The following transpired prior to the hearing:

5. On 9 November 2023 an email was sent to the Applicant by the Secretariat of the Tribunal to which the Tribunal record was attached. On the same day the Applicant replied by stating as follows: *"Thank you for the email above and acknowledge its contents thereof and will await the tribunal to find/allocate a date for the hearing sitting as I am not choosing the option for a paper based hearing decision."*

6. On 14 November 2023 the Tribunal duly informed the Applicant that the matter was set down for hearing on 19 February 2024 at 11:00 am. On the same day the Applicant replied as follows: *"Kindly note I will be available on the proposed date for the hearing."*
7. On 15 November 2023 the Applicant was provided with a copy of the directive by the Secretariat of the Tribunal per email. This email further confirmed that the meeting invite and electronic Tribunal record were sent to him previously. On 23 January 2024 the Applicant acknowledged receipt thereof. From the above stated, the Applicant was duly informed of the hearing date as well as provided with the relevant documentation to prepare for his case.

On the date of the hearing the following transpired:

8. On the date of the hearing, 19 February 2024 at 11:00 am, the Applicant was not present. The Secretariat of the Tribunal made two telephone calls to him to enquire of his whereabouts. On the first attempt his mobile phone rang without any answer and on the second attempt his mobile phone was switched off. The matter then stood down until 11:22 am whereafter the Tribunal resumed with the hearing in his absence.
9. As previously stated, the matter was struck from the roll due to default of appearance by the Applicant and the Respondent requested the Tribunal to grant costs against the Applicant.

Submissions made by Respondent in support of its request for costs:

10. In support of its request for costs the Respondent submitted that at all material times it duly conveyed to the Applicant that it would abide by a decision taken by the Tribunal on the papers alone and that a formal hearing was unnecessary. Notwithstanding this, the Applicant persisted with a formal hearing of this matter. The Respondent submitted that in light thereof it had no choice but to prepare for a formal hearing. Irrespective of the Applicant's persistence with a formal hearing, he was in



default of appearance on the date of the hearing. Three senior officials of the Respondent attended the hearing, and it was submitted that the non-appearance of the Applicant was an abuse of the process and a waste of time and money.

11. The Respondent further submitted that the application is frivolous and vexatious as the Applicant pleaded guilty at a disciplinary hearing on all charges of misconduct which includes that he participated in a dishonest scheme where his commission was inflated and he benefitted financially in a fraudulent manner, and that he has no prospects of success. The Respondent submitted that it duly complied with all procedural requirements pertaining to the debarment of the Applicant.
12. It was further submitted that at no stage was there any request for a postponement or any explanation given by the Applicant for his default of appearance. Neither to the Respondent nor to the Secretariat of the Tribunal.
13. It was submitted that the Applicant was in wilful default and that the Respondent has shown exceptional circumstances to warrant the granting of a costs order against the Applicant. In support of its submission the Respondent referred to *Oasis Group Holdings (Pty) Ltd v Mia & Others (PFA74/2020) [2021] ZAFST 105 (20 May 2021)*.

#### Tribunal's decision:

14. The Tribunal meticulously considered the submissions made by the Respondent, noting that the Applicant was duly informed of the hearing date. Further, it is noted that the Applicant opted for a formal hearing. Furthermore, the Applicant opted not to attend the hearing without seeking a postponement or explaining his absence. Additionally, the Tribunal carefully considered the Applicant's admission of guilt to all charges of misconduct, which rendered the application moot from its inception.
15. The Tribunal considered the Applicant's awareness of the hearing date, evidenced by the emails sent by the Tribunal's Secretariat beforehand. The Applicant's decision not to answer his mobile phone on the scheduled hearing day, despite knowing well in

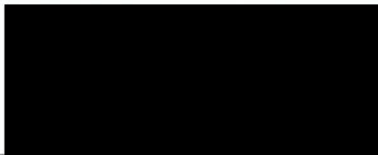
advance of the proceedings, suggests a deliberate and intentional absence. Furthermore, despite the Respondent's indication of willingness to proceed without a formal hearing, the Applicant insisted on having one.

16. As stated above, in terms of section 234(2) of the FSR Act the Tribunal may, in exceptional circumstances, order costs. For reasons stated above, this Tribunal finds that in this case exceptional circumstances were established [See: *Allen Vivian Waterston vs Altron Group Pension Fund and the Pension Funds Adjudicator (Case: PFA58/2023)*].

**C. ORDER**

1. The Applicant is ordered to pay the Respondent's costs reasonably and properly incurred on a party and party High Court Scale.

**SIGNED on this 21<sup>st</sup> day of FEBRUARY 2024.**



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**ADV SALMÉ MARITZ**

With the Panel also consisting of:

Adv W Ndinisa (Chair)

Prof M Sigwadi