

# THE FINANCIAL SERVICES TRIBUNAL

Case No: FSP73/2023

In the matter between:

**MARCEL VAN DER LINDE**

Applicant

and

**STANDARD BANK FINANCIAL CONSULTANCY**

Respondent

*Summary: Fairness of Debarment*

---

## DECISION

---

### A. INTRODUCTION

1. The Applicant brings this application in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act").
2. The Respondent is a registered Financial Services Provider as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("FAIS Act").
3. The parties have agreed that this matter can be decided on the papers filed, and this is that decision.

### B. THE FACTS

4. The Applicant was appointed as an independent contractor as a FAIS

representative of the Respondent on 15 October 2021. The parties concluded a new written independent contractor agreement on 1 September 2022 wherein the Applicant agreed to render services to the Respondent and its clients subject to the terms and conditions contained in the written agreement.

5. Naturally, the independent contractor agreement provides *inter alia* that the Applicant will be required to comply with all the relevant provisions of FAIS and that he will meet the relevant honesty and integrity requirements at all material times.
6. During April, Stanlib informed the Respondent of possible suspicious transactions involving the Applicant. Upon investigation, it was established that the Applicant had performed several switches between funds in circumstances where either required documentation had not been completed or where client signatures did not match those on record.
7. As a result of these findings, the Respondent:
  - 7.1 Issued a temporary suspension of the Applicant's mandate on 19 May 2023.
  - 7.2 Terminated the independent contractor agreement on 3 July 2023.
  - 7.3 Issued a notice of potential debarment, along with all required documentation, on 17 August 2023 and requested the Applicant to explain why he should not be debarred.
8. In the notice of potential debarment, the Respondent set out the following facts and reasons for considering the potential debarment:

- 8.1 The Applicant was appointed as a FAIS representative within Standard Bank with effect from 1 September 2022;
- 8.2 The Applicant was dishonest during the period of his contract in that he performed various transactions for five clients without following processes and policies;
- 8.3 The Applicant performed various switches for these clients without their knowledge or consent, and as a result, these clients were charged fees in the amount of R1,867,372.67.
- 8.4 The aforementioned conduct:
  - 8.4.1.1 caused loss to the clients and the Respondent;
  - 8.4.1.2 constituted a conflict of interest;
  - 8.4.1.3 was a breach of the code of ethics;
  - 8.4.1.4 was serious, dishonest and failed to meet the FAIS requirements of honesty and integrity;
  - 8.4.1.5 failed to meet the FAIS Act's General Code of Conduct standards.
9. The Applicant submitted his written representations to the Respondent on 31 August 2023.
10. The Respondent advised the Applicant on 4 September 2023 that it had carefully considered the written representations and had decided nevertheless to debar the Applicant ("Notice of Debarment"). The Respondent provided full

reasons for its decision in the Notice of Debarment, and these reasons can be summarised as the Respondent finding that the conduct of the Applicant impugned the requirements of honesty and integrity and that nothing in the Applicant's written representations could gainsay this conclusion. In the circumstances, the Respondent was under an obligation to debar the Applicant.

## C. LEGAL FRAMEWORK

11. Section 14(1)(a) of the FAIS Act provides the following:

**"14. Debarment of representatives – (1)(a)** *An authorised financial services provider must debar a person from rendering financial services which is or was, as the case may be –*

- (i) a representative of the financial services provider or*
- (ii) a key individual of such representative,*

*if the financial services provider is satisfied on the basis of available facts and information that the person –*

- (iii) does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or*
- (iv) has contravened or failed to comply with any provision of this Act in a material manner."* (Emphasis added)

12. Section 13(2)(a) of the FAIS Act provides that an authorised financial services provider must at all times be satisfied that the provider's representatives, and the key individuals of such representative, are, when rendering a financial service on behalf of the provider, competent to act, and comply with (i) the fit and proper requirements; and (ii) any other requirements contemplated in subsection 1(b)(ii).

13. Section 13(1)(b)(iA) of the FAIS Act provides that a person may not act as a representative of an authorised financial services provider, unless such person meets the fit and proper requirements.
14. In terms of section 6A(2)(a) of the FAIS Act, fit and proper requirements include, *inter alia*, appropriate standards relating to personal character qualities of honesty and integrity.
15. Section 14(3)(a) provides that a financial services provider must, before debarring a person:
  - 15.1 give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;
  - 15.2 provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and
  - 15.3 give the person a reasonable opportunity to make a submission in response.
16. Section 14(3)(c) provides that the financial services provider must immediately notify the person in writing of:
  - 16.1 its decision;

- 16.2 the person's rights in terms of Chapter 15 of the FSR Act; and
- 16.3 any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

## **D. DISCUSSION**

### **Honesty and Integrity**

- 17. As foreshadowed above, the Respondent did not accept the explanation proffered by the Applicant in his written representation, which, in the main, was nothing more than a plea for compassion and leniency. I must agree that the written representation did not take serious issue with the gravamen of the claims made by the Respondent and focused on the personal interests of the Applicant and the effect that debarment would have on him. Put differently, the Applicant did not take issue with the Respondent's reasons to debar him potentially but instead sought to make suggestions as to how to avoid this eventuality.
- 18. The Applicant's submissions in the Heads of Argument suggest that he was unsure of the case he had to meet and that the allegations made by the Respondent were *inter alia* vague. I disagree, and it is clear from the response by the Applicant to his mandate having been withheld and the written representations that he was fully aware of the conduct being complained of.
- 19. In the circumstances, once the Respondent established that the Applicant had no proper explanation for his conduct, which would refute the allegations of dishonesty and contravene the FAIS honesty and integrity requirements, it was


under an obligation to debar him. It has no other choice.

## **E. CONCLUSION**

20. In the premises, the Tribunal can find no grounds to interfere with the Respondent's decision to debar the Applicant.

**ORDER:** The application for reconsideration is dismissed.

Signed on 21 March 2024



---

**PJV Veldhuizen**  
**(Member)**



**LTC Harms**  
**(Deputy Chairman)**