

THE FINANCIAL SERVICES TRIBUNAL

Case Number: **A4/2024**

In the matter between:

SANTHREKESEN PILLAY

Applicant

and

FINANCIAL SECTOR CONDUCT AUTHORITY

Respondent

For the Applicant:

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

For the Respondent:

Mr Ziyanda Mshunqane on the documents filed of record.

Tribunal Panel:

Judge L.T.C Harms (Chair) and Adv M. Holland.

Date of Decision:

07 August 2024

Summary: Application for Reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 ("FSR Act") – Application for reconsideration dismissed.

DECISION

INTRODUCTION

1. The Applicant, Mr Santhrekesen Pillay, lodged an application for reconsideration in terms of Section 230 of the Financial Sector Regulation Act, 9 of 2017 (“the FSR Act”) of the FSCA’s decision to debar him.
2. The parties have waived their right to a formal hearing and the matter will be decided on the papers and submissions filed of record.
3. On 14 March 2024 the FSCA issued a debarment order in terms of Section 153(1)(a) of the FSR Act and in terms of the debarment order the Applicant is prohibited for a period of five (5) years from:
 - 3.1 Providing, or being involved in the provision of, any financial products or financial services to financial customers;
 - 3.2 Acting as a key person of any financial institution; and
 - 3.3 Providing specified services to a financial institution, whether under outsourcing arrangements or otherwise.
4. The FSCA found that the Applicant no longer complied with the fit and proper requirements, particularly the character qualities of honesty and integrity as required in terms of section 8A of the Financial Advisory and Intermediary Services Act, 37 of 2002 (“the FAIS Act”) read with section 8(1) of Board Notice 194 of 2017

(Determination of fit and proper requirements for financial services providers, 2017), as well as section 2 and section 3(1)(d) of the General Code of Conduct for Authorised FSPs and representatives ("the General Code").

5. A brief summary of the legal framework relevant to this matter is set out before the facts which underpinned the FSCA's decision to debar the Applicant are dealt with.

LEGALFRAMEWORK

6. Section 153(1)(a) of the FSR Act provides that the FSCA (the responsible authority for a financial sector law - in this case the FAIS Act) *"... 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 ..."*.
7. Section 8A of the FAIS Act provides as follows:

"Compliance with fit and proper requirements after authorisation

An authorised financial services provider, key individual, representative of the provider and key individual of the representative must-

- (a) continue to comply with the fit and proper requirements; and*
- (b) comply with the fit and proper requirements relating to continuous professional development."*

8. Chapter 2 of Board Notice 194 of 2017 published in Government Gazette No. 41321 ("the Board Notice") sets out the fit and proper requirements relating to honesty, integrity, and good standing. In terms of section 8 thereof, an FSP must be a person who is honest and has integrity and be of good standing. Section 9 of the Board Notice lists incidents (without limiting the generality of s 8(1)) which constitute *prima facie* evidence that a person is not honest, or lacks integrity, or is not of good standing.

RELEVANT BACKGROUND FACTS AND CHRONOLOGY OF EVENTS

9. The Applicant was previously appointed as an independent intermediary at Sanlam Life Insurance Limited ("Sanlam") and by virtue of his role he was also a representative in terms of the FAIS Act.
10. In and during July 2019 Senior Management at Sanlam detected irregularities in four (4) policy application documents submitted by the Applicant, allegedly on behalf of prospective clients, all of which contained the Applicant's own particulars (address, contact number and email address) and, on face value, exhibited forged signatures of the clients.
11. Sanlam then immediately commenced with a forensic investigation into these irregularities.
12. On 01 September 2019 the Applicant's contract was terminated by Sanlam, before the forensic investigation was completed.

13. The forensic investigation culminated into a forensic report dated 01 April 2020 (“the forensic report”), which found that the Applicant made fraudulent representations of material information regarding certain policies (“the complaint”).
14. Upon receipt and due consideration of the findings of the forensic report, which encapsulated the complaint from Sanlam, on 14 March 2024 the FSCA debarred the Applicant premised upon the following pertinent facts, *inter alia*,:
 - 14.1 Sanlam detected irregularities in four (4) policy application documents submitted by the Applicant, allegedly on behalf of prospective clients, all of which contained the Applicant’s own particulars (address, contact number and email address);
 - 14.2 these four (4) clients subsequently lodged complaints wherein they deny having any knowledge of the policies issued in their names and deny that they signed any policy application documents submitted by the Applicant to Sanlam;
 - 14.3 these four (4) policy application documents were submitted to a Forensic Handwriting and Signature Expert (“the expert”) for analysis and it was found that the documents were not signed by the complainants; and
 - 14.4 the personal particulars of eight (8) policy holders were fraudulently misrepresented in the relevant policy application documents submitted by the Applicant to Sanlam.

GROUND'S FOR RECONSIDERATION

15. The crux of the Applicant's grounds of complaint is that the FSCA did not properly investigate his version and had only considered Sanlam version with reference to the forensic report. The Applicant averred that he submitted a response to Sanlam, which included recordings between himself and one of the complainants that was not considered by Sanlam and would have had a bearing on the findings of the forensic report.
16. The Applicant took issue with the fact that Sanlam terminated his contract before finalising its investigation and thus he was not given a fair opportunity to respond to the complaint and refute the findings of the forensic report, rendering his debarment procedurally unfair.

ANALYSIS OF GROUND'S FOR RECONSIDERATION

17. Paragraph 8(2) of BN194 provides that in determining whether a person complies with the fit and proper requirements relating to honesty, integrity and good standing (which applies to the Applicant), the Respondent may refer to "any information" in possession of the Respondent or brought to the attention of the Respondent.
18. Sanlam, was not only in the best position to carry out the investigation into the Applicant's conduct, but was duty bound to do so having regard to section 14 of the FAIS Act.

19. The FSCA was entitled to rely on the information placed before it by Sanlam, with due regard to paragraph 8(2) of BN194 and section 153 of the FSR Act.

Procedural aspect

20. The Applicant was afforded ample opportunities to answer to the complaint and to set out his defence in response to the Respondent's intended regulatory action.

21. The record before the Tribunal reflects that:-

21.1 on 26 June 2023 the FSCA approached the Applicant with the salient allegations received from Sanlam in a Notice of Intention to Debar him. The notice also afforded the Applicant an opportunity to state his case, which he made full use of by submitting responses to the FSCA between 26 July 2023 and 8 August 2023; and

21.2 the Applicant was not caught by surprise by the FSCA's intended regulatory action, having been made aware of the ambit of the forensic report on 23 July 2023; and

21.3 the FSCA did not rely solely on the forensic report, but also had regard to the Applicant's responses.

22. The Tribunal is therefore of the view that the argument raised by the Applicant, that he was not given a fair opportunity to respond to the complaint and refute the findings of the forensic report, is without merit.
23. Based on the reasoning above, it is the view of the Tribunal that the debarment was procedurally fair.

The merits

24. With regard to the merits of the debarment itself, the Tribunal has the power to conduct a complete re-hearing, reconsideration and fresh determination of the entire matter that served before the FSCA, with or without new evidence or information.¹
25. The Tribunal agrees with the FSCA's submission that the Applicant misunderstands the Respondent's case in that the Applicant has failed to rebut the fact that the disputed policies contain forged signatures which do not belong to the complainants and, thus, the expert's opinion remains uncontested.
26. In light thereof, the Tribunal finds that the grounds for reconsideration do not deal with the merits of the debarment decision of 14 March 2024.

¹ Amanda Dolores Laetitia Niemec and Others v Constantia Insurance Co. Ltd and Others (Case Nr: PA1/2021) para 33 citing Nichol and Another v Registrar of Pension Funds and Others 2008 (1) SA 383 (SCA) para 22.

27. The Applicant had the opportunity to fully address the merits of the complaint against him before this Tribunal. His responses, as evidenced in the record, were either dilatory or amounted to bare denials or were evidently implausible.
28. The Tribunal finds that on the undisputed facts, the Applicant had:
- 28.1 submitted four (4) policy application documents to Sanlam containing forged signatures which do not belong to the complainants;
 - 28.2 fraudulently misrepresented the personal particulars of eight (8) policy holders in the relevant policy application documents submitted by the Applicant to Sanlam; and
 - 28.3 fraudulently earned commission in respect of the aforementioned eight (8) complainants in the total amount of R154 068.23.
29. This is serious dishonest conduct, which demonstrates that the Applicant has a dishonest character and lacks the honesty and integrity required of a financial services provider. Such conduct demonstrates that the Applicant cannot be trusted, especially when dealing with members of the public in rendering financial services.
30. The Applicant's approach to the serious charges levelled against him demonstrates that he neither has any appreciation nor remorse for the seriousness of his conduct.

31. The FSCA submitted that the Applicant adopted the approach of accusing the accuser.

32. This approach has been previously disapproved by the Tribunal's predecessor in the matter of ***Sarel van der Walt v The Registrar of Financial Services Providers, June 2015***, in which the Appeal Board described the approach at paragraph 17 as:

"It is... another instance of the common occurrence for persons accused of a wrongdoing, instead of confronting the allegation, to accuse the accuser and seek to break down the institution involved. (Law Society of the Northern Provinces v Mogami and Others 2010 (1) SA 186 (SCA); [2010] 1 All SA 315 (SCA) at paragraph [26])"

33. Reliance on purported defences which do not address the merits of the complaint against him do not assist the Applicant.

CONCLUSION

34. It is the view of the Tribunal that there is no question about the Applicant's guilt and on the merits the debarment was warranted and justified.

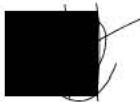
35. Given the common cause and/or indisputable facts, as read with the Applicant's responses, the Tribunal finds there are no grounds to interfere with the decision of the FSCA to debar the Applicant.

36. The Tribunal also finds that there is no reason to interfere with the sanction imposed on the Applicant.

ORDER:

(a) The application for reconsideration is dismissed.

Signed on behalf of the Tribunal on 07 August 2024.

A handwritten signature in black ink, appearing to be 'M. Holland & LTC Harms', is written over a solid black rectangular redaction box.

Adv M. Holland & LTC Harms (Chair)