

THE FINANCIAL SERVICES TRIBUNAL

In the matter between:

Case No: FSP5/2024

NOMAVUNDLE INNOCENCE MATEE

Applicant

and

DISCOVERY LIFE LIMITED

Respondent

DECISION

Tribunal: Justice LTC Harms (Chairperson) and Adv N K Nxumalo

Date of hearing: No hearing, matter was decided on the papers

Date of decision: 7 August 2024

Appearances:

For the Applicant : No appearance / No heads of argument

For the Respondent : No appearance / No heads of argument

Summary: Application for reconsideration of the decision of the FSCA to debar the applicant, fit and proper requirement. Submission of fictitious policy applications and activation of fictitious policies.

I INTRODUCTION

- 1 The respondent is Discovery Life Limited ("*Discovery*"). Discovery carries on businesses including as a registered life insurer and authorised financial services provider ("*FSP*") as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 ("*FAIS Act*").
- 2 The applicant was employed by Discovery as a Financial Advisor, her functions included marketing and sales of funeral policies to clients. As such, she was Discovery's "*representative*", as defined in section 1 of the FAIS Act.
- 3 In this application, the applicant applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("*the FSRA*") for reconsideration of Discovery's decision to debar her as a representative. Discovery opposes the application.

II THE FACTS

- 4 After various funeral policies sold by the Applicant were terminated, either following their cancellation by the insureds or having lapsed due to non-payment of premiums, Discovery commissioned an internal forensic investigation into the applicant's portfolio.
- 5 The findings of the internal forensic investigation are contained in the forensic report submitted by Discovery and the most pertinent of which may be summarised as follows:

5.1 Mrs HGS and Mrs LL were friends and colleagues.

- 5.2 They each had five policies with Discovery, two of which were sold by the applicant.
- 5.3 The first of the two policies were activated on the 1st and 2nd of November 2022, with both application forms having been signed on 1 November 2022.
- 5.4 The first policies lapsed on 3 March 2023, due to non-payment of premiums.
- 5.5 The second policies were activated on the 8 March 2023, with both application forms having also been signed on that day.
- 5.6 The second policies were cancelled at the client's written requests on 17 May 2023 and 24 May 2023, respectively.
- 5.7 Comparisons of the signatures in the termination letters revealed that the signatures in the first policies had been swapped around, which indicated that the clients had signed blank policy applications forms which were subsequently completed by the applicant.
- 5.8 The reasons provided by both clients for cancellation of the second policies were that they had not applied for the second policies. They stated that they had last applied for policies in November 2022.
- 6 It seems that Discovery suspended the applicant on 12 June 2023 and laid charges of misconduct against her on the basis of the findings of the forensic investigation. The applicant states that she was told to resign but it is not clear whether she did in fact or what became of the disciplinary hearing.

- 7 On 18 October 2023, Discovery issued the applicant with a notice of intention to debar her on the basis that she no longer complied with the fit and proper requirements of honesty and integrity for the following reasons:
- 7.1 She had acted dishonestly, without integrity and without necessary competence by forging client signature on application forms, and/or compliance documents, and/or service requests.
- 7.2 She had acted dishonestly, without integrity and without necessary competence by requesting clients to sign blank and/or partially completed documents.
- 7.3 She had acted dishonestly, without integrity and without necessary competence by submitting application forms without client's knowledge or consent.
- 7.4 She had acted dishonestly, without integrity and without necessary competence by submitting application forms and activating policies knowing that the clients could not afford the premiums and/or never had the intention to pay the premiums.
- 8 On 16 November 2023, Discovery issued the applicant with a notice to attend a debarment inquiry to enquire into whether she still complied with the fit and proper requirements of honesty and integrity in view of the allegations set out above, which were repeated in this notice.
- 9 Although the minute of the debarment inquiry was not included in the record, it appears that the debarment inquiry proceeded as scheduled.

- 10 The outcome of the debarment inquiry, the relevant recordals, findings and recommendations are set out in the undated letter titled “Recommendation by Chairperson”. The essence of the findings is that the inquiry recorded that the applicant could not produce any evidence to gainsay the findings of the forensic investigation, which were accepted and the applicant found guilty of the above contraventions.
- 11 On 13 December 2023, Discovery issued the applicant with the notice of debarment notifying her that Discovery had decided to debar her on the basis that she no longer complied with the fit and proper requirements of honesty and integrity for the reasons set out in the notice of intention to debar and the notice to attend the debarment inquiry.

III GROUNDS FOR RECONSIDERATION

- 12 The applicant’s grounds for reconsideration are set out in the document attached to the application for reconsideration form and in the augmented grounds.
- 13 With regard to the mix-up of signatures in the application forms of Mrs HGS and Mrs LL in respect of their first policies, the applicants stated that she completed the application forms in the presence of both clients but in the rush to finalise them as they had to go back to work, she erroneously gave each completed form to the wrong client to sign.
- 14 The grounds for reconsideration thereafter deal with the feedback she got from her other clients after they were contacted by Discovery’s internal forensic investigators. This theme continues in her augmented grounds.

- 15 Of utmost importance is what is not dealt with in the grounds for reconsideration. The applicant does not deny the allegations and findings of the debarment inquiry.
- 16 The most material of those allegations and findings are that she submitted application forms without knowledge and consent of the clients, in other words, she submitted and activated fictitious policies.
- 17 It will be recalled that Mrs HGS and Mrs LL stated in their cancellation letters that they did not apply for the second policies written up by the applicant on 8 March 2023.
- 18 It is fair to accept that, with regard to the first policies, there was a genuine error concerning the mix-up of signatures because those policies were confirmed by the clients as having been approved by them.
- 19 However, the second policies were – according to the findings of forensic investigation as well as the debarment inquiry – fictitious. The applicant's failure to deny and rebut these findings lead us to the conclusion that those findings are irrefutable.

IV ANALYSIS

- 20 The sole issue for determination is whether the applicant's conduct shows that she no longer complies with the fit and proper requirements of honesty and integrity.
- 21 The provisions of the FAIS Act that govern the debarment of FSP's, representatives and key individuals for non-compliance with the fit and proper

requirements of honesty and integrity have been considered in numerous decisions¹ of this Tribunal, and need not be repeated.

22 The phrase “dishonesty and lack of integrity” mean defect of character, unsoundness of moral principle and corrupted virtue.²

23 The question is therefore whether the applicant’s submission of fictitious application forms and activation of fictitious policies demonstrates dishonesty and lack of integrity on her part.

24 There can be no doubt that a representative’s submission of fictitious application forms and activation of fictitious policies demonstrates dishonesty and lack of integrity on her part.

25 For this reason, the application for reconsideration must fail.

V CONCLUSION AND ORDER

26 For all the above reasons, the application for reconsideration must be dismissed. We therefore make the following order:

“The application for reconsideration is dismissed”.

Signed on behalf of the panel at Pretoria on 7 August 2024.



Adv N K Nxumalo
With Justice LTC Harms (chair)

¹ For the most recent, see: *S T Bheqezi v Assupol Life Ltd* Case No: FSP 60/2023 dated 22 April 2024, at paras [21] to [27].

² See *Yatheen Rampersadh v First National Bank, a Division of FirstRand Bank Limited* Case No: FSP50/2021, dated 13 June 2022, at para [33].