

FINANCIAL SERVICES TRIBUNAL

Case Number: A1/2024

In the matter between:

SIYASANGA MADULI

Applicant

and

THE FINANCIAL SERVICES CONDUCT AUTHORITY

Respondent

DECISION

Panel members: S. MAHABEER SC
PR. LONG
P. MASEKO

Hearing date: 28/08/2024

Date of decision: 17/09/2024

Summary: Application in terms of section 230 of the Financial Sector Regulation Act, 2017 for reconsideration of a decision to debar due to non-compliance with sections 6A and 8 of the Financial Advisory and Intermediary Services Act, 2002 and paragraph 8(1) of the Determination of Fit and Proper Requirements, Board Notice 194 of 2017

Introduction

1. On 7 February 2024, the applicant was debarred in terms of section 153(1) of the Financial Sector Regulation Act, 2017 (*"the FSR Act"*) for contravention of the Financial Advisory and Intermediary Services Act, 2002 (*"the FAIS Act"*) in a material manner.
2. The applicant was found to have misrepresented to Sanlam Life Insurance Limited (*"Sanlam Life"*) when he presented to it the policies of one Mr S and eight others *"as if he [had] consulted with them, rendered advice and thereafter sought their consent for issuing the policies, while knowing that he had consulted with the payer"*, one Mr M. Mr M had claimed to be Mr S's and the other policy holders' employer and designated representative.
3. The second count levelled against the applicant was that he had failed to hold a qualification recognised by the respondent for the purposes of rendering financial services.

Relevant background

The facts

4. The material facts are as follows:-
 - 4.1 Mr S's policy was concluded on 23 September 2021. His occupation, according to the policy, was described as a contractor earning R15,000.00 per month;

- 4.2 Mr M submitted a resolution letter declaring his authority to sign all documentation regarding retirement annuities, group life and company-owned policies, and completed a Sanlam Life's Identification of Association Parties' Form which gave him authority to transact with Sanlam Life in respect of all the employees' policies, including that of Mr S;
- 4.3 the policy was accepted and issued, with the inception date of 31 October 2021 and at a monthly premium of R685.79;
- 4.4 Mr M was the premium payer and cited as the beneficiary of the disputed policy;
- 4.5 the policy was reissued with a new inception date of 15 November 2021 as *"the client was not financially ready"*;
- 4.6 Sanlam Life received a beneficiary form dated 24 November 2021 purportedly signed by Mr S. According to this, Mr S had nominated the company by which he was employed (and which was owned by Mr M), as the beneficiary of the accidental benefit. Although provision was made for a beneficiary for the funeral benefits, this part was not completed;
- 4.7 the applicant received a commission of R5,829.73;
- 4.8 Mr S was murdered a month after the inception of the policy. Upon his death, Mr M submitted a claim to Sanlam Life;

- 4.9 the Forensics Department submitted a report dated 6 April 2023, in which it set out *inter alia* its findings of discrepancies in the application forms in relation to Mr S's employment status and income;
- 4.10 other discrepancies were noted by the investigators from the policy application:-
 - 4.10.1 the contact information (address, cell phone number and email address) of Mr M was provided as that of Mr S;
 - 4.10.2 the monthly income of R15,000.00 on the application form was significantly different from the income of R3,960.00, which was submitted by Mr M;
- 4.11 the applicant, as the person who had concluded the policy, had stated in his written response to Sanlam Life that he had liaised directly with Mr M during the conclusion of the policy and not with Mr S. The applicant had further explained that he had obtained Mr S's income from Mr M via WhatsApp and from an Old Mutual quotation which had been shared with the applicant;
- 4.12 in support of the policy application, the applicant contended that he had submitted a copy of the letter purportedly signed by Mr M dated 26 November 2021. This purported to be Mr M's confirmation that his employees would be taking policies providing for R1 million accidental benefit with R60,000.00 funeral benefits;

- 4.13 on 24 January 2023, Sanlam Life requested Mr S's personal information from the South African Social Security Agency ("SASSA") following confirmation that he was a beneficiary of a grant from the agency. Sanlam Life then proceeded to instruct a Forensic Document Examiner to analyse Mr S's signatures on the SASSA documents and the Sanlam Life application documents to determine common authorship. The analysis confirmed that Mr S's signatures on the declaration form on the policy and on the beneficiary form were forged; however, a determination could not be made on who was responsible for this. A review of the supporting documents attached to the claim form that had been submitted by Mr M revealed that those documents too had been forged;
- 4.14 the conclusion was that Mr M, who was the payer and beneficiary of the disputed policy, had facilitated a fraudulent policy which contained Mr S's forged signature and inflated income;
- 4.15 according to the forensic report, the applicant had made a misrepresentation to Sanlam Life when he presented all the policies, including that of Mr S, as if he had consulted with all the policyholders, rendered advice and thereafter sought their consent to issue the policies, all whilst knowing that he had consulted Mr M instead. As a result of this misrepresentation, so it was reported, the applicant had unduly benefited from a total commission of R48,318.30 and had exposed Sanlam Life to a potential loss of R1,060,000.00.

5. The respondent debarred the applicant following receipt and consideration of the parties' submissions and the investigation report from Sanlam Life.

The Parties' Contentions

6. The applicant opposed the debarment on broadly the same grounds which he advances in support of the present application for reconsideration. His grounds may be distilled to the following:-
 - 6.1 the applicant did not have access to documents to support his application. These were under the control and in the possession of Sanlam Life;
 - 6.2 at all material times he had acted under the supervision and on the advice of a manager and enterprise manager;
 - 6.3 he too was misled by Mr M;
 - 6.4 at all material times, and particularly since the commencement of his employment with Sanlam Life, the applicant had been upfront in admitting that his qualifications did not meet the respondent's requirements and was awaiting direction from Sanlam Life on what he ought to do. In an endeavour to resolve the problem he, of his own volition, enrolled in a wealth management course at the time. But in any event, so the applicant argued, it was the responsibility of the Financial Services Provider ("FSP") to ensure that all its representatives are compliant with the qualification requirements.

7. The applicant did not contest the period of debarment.
8. The respondent opposed the application contending that:-
 - 8.1 the applicant did not provide any facts to contradict those set out in the investigation report. Accordingly, on the facts that were common cause and/or indisputable, the debarment was justified;
 - 8.2 the corroborative evidence in the form of the Forensic Document Examiner's findings confirmed the discrepancies in Mr S's signatures. This was also not challenged by the applicant;
 - 8.3 the Tribunal had correctly found that the applicant had presented to Sanlam Life Mr S's policy application with a fraudulent signature purporting that the signature was valid when this was not the case;
 - 8.4 regarding the matter of the applicant not holding a recognised qualification, it was common cause that at the time of rendering the financial services relating to the present dispute, the applicant did not hold a qualification recognised by the respondent for purposes of rendering financial services;
 - 8.5 it was common cause that the applicant knew that he did not hold the qualification, having been so informed by the respondent on 30 April 2019, whilst in the employ of another FSP;
 - 8.6 the applicant had failed to disclose the foregoing to Sanlam Life notwithstanding that section 10 of the Determination of Fit and

Proper requirements places a duty on representatives to disclose all material information that may affect their fitness to be representatives on appointment;

- 8.7 the applicant's shortcomings go *"to the heart of the standard applicable to the requisite fit and proper requirements that a representative must meet at all times. The standard being competency. In terms of section 57(b) of the FSR Act, one of the objectives of the FSCA is to protect financial customers."* This last point, in particular, regarding the respondent's objective resonates with this Tribunal.

Determination

9. On the first count, we find that the applicant's failure to tender any evidence to contradict those facts which served before the respondent and that were undisputed alternatively common cause leaves this panel without reason to interfere with the respondent's decision.
10. Regarding the second issue – that of the applicant's failure to hold qualifications to provide services - we find that whilst Sanlam did not provide evidence to rebutt the applicant's contention that at all material times he had acted under supervision, the applicant did not at the time of rendering financial services to Mr M and his employees hold a qualification recognised by the respondent. This the applicant knew, and the opportunity to obtain the required qualification had already lapsed by the time he had rendered the aforesaid financial services. The applicant could

therefore not act as a financial services representative, including one under supervision.

11. Furthermore, the applicant does not tender a reasonable explanation for not seeking an extension from the respondent to acquire a recognised qualification and allegedly relied on the respondent's reassurance that he could act as a financial services representative. We find this to be improbable. But, even if that was the case, the applicant was expressly informed by the respondent of his lack of qualification, elected not to rectify the non-compliance and instead continued to render financial services - at risk to financial customers.
12. In conclusion therefore, we find no basis to interfere with the debarment of the applicant.

ORDER: The application for reconsideration is dismissed.

SIGNED ON BEHALF OF THE TRIBUNAL PANEL ON 17th SEPTEMBER 2024.



S. MAHABEER SC