

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP70/2020

In the matter between:

SL BALOYI

APPLICANT

and

TRACKER(PTY)LTD

RESPONDENT

Applicant's application for reconsideration and suspension of a decision in terms of sections 230 and 231 of the Financial Sector Regulation Act, 9 of 2017, dated 10 December 2020 - time-barred

DECISION

[1] The applicant was employed by and was a financial service representative of the respondent, Tracker, a financial service provider. While a disciplinary hearing was in the air, the applicant resigned on 1 March 2019.

[2] He was informed on 19 April of Tracker's intention to debar him in terms of sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 and provided with the underlying documents.

[3] The applicant did not respond within the given time nor did he take any further action to defend himself against a debarment. He was debarred on 16 May and because of difficulties in reaching him, the FSCA was informed of the debarment on 3 December 2019.

[4] The applicant filed an application for the suspension and upliftment of his debarment on 10 December 2020, alleging that he had only become aware of the debarment on 7 December. The suspension application was dismissed and this decision deals with the debarment itself. The parties have agreed to waive their right to a formal hearing.

[5] Tracker filed an affidavit in answer to the application. It dealt with the facts, provided the record and in relation to the allegation of late knowledge the following was stated:

In addition to Tracker having further attempted to contact Mr Baloyi telephonically as well as via WhatsApp on numerous occasions, which went unanswered; notifications was also sent to him via registered mail on the 29th of May 2019 as evidenced by the registered mail receipt, via courier on the 4th of October 2020 as evidenced by the waybill and via email on the 15th of May 2019 as evidenced by the annexed delivery receipt, the aforesaid is annexed to this affidavit and marked Annexure "G". This email address is the same email address that Mr. Baloyi is using to date.

As evident from the aforesaid, specifically the correspondence dated the 15th May 2019, Mr Baloyi was accordingly advised regarding the finalisation on the decision to debar him, and that notification will be sent to the FSCA to effect the debarment.

After Mr Baloyi failed to respond to any of the aforesaid notifications, the debarment was sent to the FSCA on the 3rd of December 2019 as evidenced by the herewith attached email extract marked Annexure "H"

Mr Baloyi was advised telephonically of the debarment proceedings and numerous attempts were made to contact him, in order for him to make representation. Mr. Baloyi

was afforded multiple opportunities to represent himself. The email address used by Mr Baloyi appears on the face of it to be the same email address that he is using to this day.

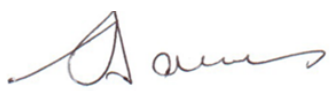
It is my submission that it is not a logical assumption that Mr. Baloyi's debarment was a foregone conclusion regardless of the outcome of the hearing, that he chose not to attend, by resigning Immediately.

[5] The applicant did not file a response to dispute these allegations and they must, accordingly, be taken as being correct. This means that the application is time-barred and no grounds, even as to the merits, for condonation have been set out. In fact, the applicant's allegations that he was not notified that after his resignation there would be a process or hearing for debarment and that the debarment was processed without his knowledge are, on his own papers, untrue.

[6] The applicant's attention is drawn to BN 82, the Determination of Requirements for Reappointment of Debarred Representatives, 2003.

The application for setting aside the debarment is dismissed.

Signed on behalf of the Tribunal.

A handwritten signature in black ink, appearing to read 'LTC Harms', enclosed in a thin black rectangular border.

LTC Harms (deputy chair)

2 March 2021

