

IN THE APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

CASE NO: A40/2015

IN THE MATTER BETWEEN:

THABO JOHANNES RAMAFOLO

AND

REGISTRAR OF FINANCIAL SERVICES PROVIDERS

FINDING

A. INTRODUCTION

1 This appeal is against the decision of the Registrar of Financial Services Providers (“the Registrar”), dated 14 September 2015,¹ in terms whereof she withdrew the appellant’s licence to act as a financial service provider.

2 Although the appellant’s notice of appeal states that this appeal is targeted at both the withdrawal of appellant’s licence to act, and his debarment from acting

¹ Record Page 1

as a financial service provider², at the commencement of these proceedings before us Ms K Pillay, who appeared for the appellant, informed us that the only ground of appeal persisted in is the one pertaining to the withdrawal of the appellant's licence to act as a financial service provider (FSB)³. This Appeal Board, accordingly, focused only on that ground.

B. THE DECISION APPEALED AGAINST

3 On 14 September 2015 the Registrar informed the appellant of her decision which reads as follows:

"2. The licensee is hereby notified of the decision of the Registrar of Financial Services Providers (Registrar) to withdraw its licence to act as a financial services provider in terms of section 9(1) read with section 9(2) of the Financial Advisory and Intermediary Act, No. 37 of 2002 (Act)."

4 The Registrar proffered the following reasons for the withdrawal of the appellant's licence⁴:

4.1 On 8 June 2015 the Registrar issued a notice to suspend the appellant's licence to act as an FSP on grounds, inter alia, that he had failed to successfully complete the relevant first level regulatory examinations in

² Record Page 1

³ Transcript, page 2, line 2- 7

⁴ Record Page 6

contravention to section 10 of the Determination of Fit and Proper Requirements;

- 4.2 On 10 June 2015 the appellant's compliance officer submitted a certificate purportedly confirming that he had successfully completed the relevant regulatory examinations for key individuals, the so-called "RE 1" on 23 April 2012 through an entity known as Financial Planning Institute of South Africa ("the FPI");
- 4.3 Such a qualification would have been captured automatically on the Financial Services Board ("the FSB") system. The qualification was at no stage so captured leading to the inescapable conclusion that no such qualification was at any stage earned by the appellant;
- 4.4 The Registrar also established that the appellant unsuccessfully attempted such examinations on two occasions after 23 April 2012 with an entity known as Moonstone;
- 4.5 The authenticity of the "RE 1" certificate put up by the appellant in support of the contention that he was appropriately qualified was also verified with FPI who refuted its authenticity;
- 4.6 Accordingly, the licence was withdrawn on account of a failure to fulfil the competency requirements for such a licence.

C. THE MATERIAL FACTS

- 5 It is common cause that the appellant:

- 5.1 wrote the “RE 5” examinations which he passed on 23 April 2012⁵;
- 5.2 received a certificate from FPI indicating that he had passed “RE 1” in circumstances where, in truth and in fact, he had neither written nor passed any examination entitling him to such a qualification with FPI⁶;
- 5.3 submitted such a certificate to the Registrar relying thereupon for his representation that he had successfully completed an “RE 1” qualification on 23 April 2012; and
- 5.4 subsequently wrote the “RE 1” certification examinations under the aegis of Moonstone and failed the said examinations⁷.

D. SUBMISSIONS AND ANALYSIS

- 6 On behalf of the appellant it was urged that the Registrar erred in concluding as she did that the “RE 1” certificate submitted to her was false without first taking steps to investigate the authenticity of the certificate through expert evidence⁸.

⁵ Appellants’ Written Submissions; paragraphs 3.1 and 3.2

⁶ Appellants’ Written Submissions; paragraphs 3.3 and 3.4

⁷ Appellants’ Written Submissions; paragraphs 3.3

⁸ Transcript, page 6, lines 9 - 15

- 7 This tribunal was referred to the affidavit deposed to by a certain Penelope Willemse (“WILLEMSE”) of FPI where she states of the “RE 1” certificate that⁹:

“My initial investigations revealed that FPI would not have issued such a certificate as FPI records reflected that the candidate never registered to complete the RE 1 key individual exam. He only completed the RE 5 representative exam.

I have further investigated this matter and can find no record of the candidate having passed the key individual exam through the FPI. I confirm that the official FPI records show that the candidate never registered with FPI to complete the RE 1 key individual exam. I confirm that FPI did not issue the candidate with his (sic) certificate and that I have no knowledge of how the candidate came to be in possession of same.”

- 8 Appellant’s counsel then urged when confronted with WILLEMSE’s affidavit, that the Registrar ought to have undertaken a forensic investigation.
- 9 Quite what that forensic investigation would have yielded, remains obscure. This obscurity results, in part, from appellant’s concession that he at no stage whatsoever undertook and passed the “RE 1” examination under the auspices of FPI.
- 10 We therefore find that this basis for criticism of the Registrar’s decision is anything but meritorious.

⁹ Record page 27

- 11 What compounds this difficulty is the fact that the appellant submitted the erroneously issued certificate (assuming for present purposes that the certificate had been issued in error) to the Registrar, with the full appreciation of the error, as proof of his competency qualifications as an FSP.
- 12 Surely the appellant ought, as a reasonable FSP possessed of the requisite honesty and integrity attributes befitting of an FSP, to have appreciated that his actions fly in the face of the very fundamental honesty and integrity attributes required of every FSP.
- 13 In this latter regard his counsel sought to lay emphasis on the fact that the certificate was issued as a result of an administrative error, as if to suggest that the appellant had not made himself guilty of the crime of fraud and/ or forgery. That, in our view, does not assist the appellant.
- 14 His submission to the Registrar of the erroneously issued certificate as proof that he is appropriately qualified in circumstances where he reasonably ought to have known that he was not so qualified is extremely unsatisfactory. It is difficult to arrive at a conclusion other than that he misrepresented the true facts in order to obtain a licence to act as an FSP.
- 15 We agree with Mr. Bredenkamp's submission in this regard that the appellant misrepresented the content of the certificate to the Registrar knowing it to be false¹⁰.
- 16 We therefore find that the appellant misrepresented the content of the "RE 1" certificate knowing it to be false. This finding is based on, inter alia, his concession that he neither undertook nor passed the "RE 1" examination. A reasonable FSP in

¹⁰ Transcript, page 21, lines 5 - 9

his position would have known that the "RE 1" certificate, regardless of its mode of conveyance, constitutes an administrative error on the part of the supposed issuing authority and he would, thus, not have relied thereupon to induce the issuing of a licence to act as a financial service provider in his favour.

E. CONCLUSION

17 Based on what has gone before, I would dismiss the appeal with costs.

F. ORDER

18 This appeal is dismissed with costs.

L.G NKOSI-THOMAS SC

J DAMOS

N NXUMALO

CHAMBERS

SANDTON

5 JULY 2016