

IN THE FINANCIAL SERVICES TRIBUNAL

CASE NO: FSP29/2019

In the matter between: -

GLADYS MOSIUOA MORAKE

APPLICANT

and

CEBEKHULU FINANCIAL SERVICES CC

RESPONDENT

Tribunal: L DLAMINI (Chairperson), A JAFFER and G MADLANGA

Summary: Debarment of persons no longer in the employ of the Financial Services Provider – section 14(5) of the Financial Advisory and Intermediary Services Act

DECISION

INTRODUCTION

1. This is an application in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“FSRA”). The applicant is GLADYS MOSIUOA MORAKE (“Applicant”). The Applicant is a former financial services representative (“FSR”) of CEBEKHULU FINANCIAL SERVICES CC, a financial services provider (“FSP”) trading as such under FSP Number 44048.
2. The Applicant seeks reconsideration of the decision of the FSP to debar her dated 7 December 2018.¹ The Applicant challenges the debarment on procedural grounds.
3. In her grounds for reconsideration, the Applicant states that the debarment was unlawful, unreasonable and procedurally unfair. Particularly the Applicant argues that she did not receive any communication or documentation to attend a debarment hearing.
4. Furthermore, the Applicant states that she terminated her employment with the FSP during the course of 2017. She therefore only learnt of the debarment on 16 January 2019 from another company that employed her after she left the FSP.
5. Consequently, the argument proceeds, the Applicant was not given any chance to give a response to the debarment charges.

¹ Refer to record of proceedings pages 16 and 17.

ISSUE

6. In the circumstances, the application is concerned with the process and procedure that was followed to debar the Applicant. Therefore, the nub of the issue is whether or not the FSP complied with the provisions of section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 (“FAIS Act”).

THE APPLICATION

7. There was no dispute that the Applicant was employed by the FSP during 2016. Both parties do not remember the precise date on which the Applicant became the representative of the FSP. No employment contract was provided on which the date could be established. Similarly, (although strange) both parties did not know the precise date on which the FSR ceased to be a representative. However, there was no dispute that the Applicant ceased working for the FSP in 2017 and that the Applicant did not tender a written resignation.
8. Against this backdrop, one of the FSP’s clients lodged a dispute on or about 27 July 2018 concerning a policy that the Applicant apparently improperly submitted to the FSP on 26 May 2016 and from which she

received commission.² The client concerned demanded from the FSP a refund of the monies that had been paid in terms of the disputed policy.

9. After some investigation the FSP took a peculiar step. Knowing that the Applicant was no longer in its employ, the FSP instituted disciplinary proceedings against the Applicant and set the disciplinary hearing for 5 December 2019. The FSP also sought to debar the Applicant at such hearing. We do not seek to deal with the legality of a disciplinary hearing in respect of someone who is no longer employed by the company instituting such proceedings. Employment contract issues fall outside our domain.

10. The FAIS Act authorises debarment of financial services representatives who have left the employ of the FSP. The process to be followed to achieve this is clear. Section 14 (1) of the FAIS Act provides, inter alia, that:

“An authorised financial services provider must debar a person from rendering financial services who is or was, as the case may be a representative of the financial services provider ...” [underlined for emphasis].

11. Section 14 (5) of the FAIS Act reads further:

“A debarment in terms of section 14(1) that is undertaken in respect of a person who no longer is a representative of the financial services provider must be commenced not

² See Part record of proceedings p,14.

longer than six months from the date that the person ceased to be a representative of the financial services provider.”

12. Therefore an FSP would be well within its right and in fact, would be obliged to debar its former representative where justification exists for such debarment. However, section 14 (5) of the FAIS Act sets the period of six months as time within which an FSP must commence the process to have its former FSR debarred. The FAIS Act therefore proscribes the FSP from commencing debarment of its former FSR outside the six months period reckoned from the time the FSR ceased to be its representative.

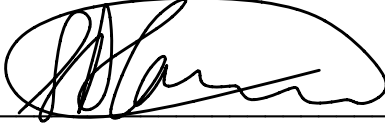
CONCLUSION

13. On the facts of this matter the FSP sought to debar the Applicant after the Applicant ceased to be its representative for over a year.
14. In the circumstances the FSP acted outside the boundary prescribed by section 14(5) of the FAIS Act.

ORDER

15. The following Order is made: -
 - 15.1. The Application for reconsideration succeeds and the debarment is set aside with immediate effect.
 - 15.2. No order as to costs.

Signed on behalf of the Tribunal on this 10 February 2020 at Pretoria.



Langa Dlamini (Chairperson)