

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP31/2020

In the matter between:

LEHLOHONOLO MOKOTEDI

APPLICANT

and

FIRST NATIONAL BANK (a division of FIRSTRAND BANK LTD)

RESPONDENT

Application for reconsideration of debarment of the applicant as FSP

DECISION

[1] The applicant applies for the reconsideration of his debarment as financial service representative by his employer, the Bank. The application is in terms of section 230 of the Financial Sector Regulation Act 2017, and the debarment was done under sec 14 of the Financial Advisory and Intermediaries Services Act 37 of 2002.

[2] The parties waived their rights to a hearing and agreed that the application may be decided on the papers as filed. The applicant did not file heads, but his application is extensive and contains his full argument. The Bank though filed heads of argument.

[3] There are no procedural issues of substance and the only matter to decide is whether the applicant, on the evidence, was correctly found not to be a fit and proper person to be a FSR because he lacked the qualities of honesty, integrity and good standing.

[4] The allegations against the applicant were these:

*The reason for your intended debarment relates the following dishonesty related charges:*

*Charge 1:*

*Dishonesty (in terms of paragraph 4.2.1 of the bank's disciplinary code and procedure) in that it is alleged that you were not on the Bank premises on 29 January 2020 and 28 February 2020 and you failed to capture family responsibility leave on the banks system.*

*Charge 2:*

*Dishonesty (in terms of paragraph 4.2.1 of the bank's disciplinary code and procedure) in that you were not on the Bank premises on 13 January 2020, 24 February 2020, 25 February 2020, 26 February 2020 and you failed to capture annual leave on the banks system.*

*Charge 3:*

*Dishonesty (in terms of paragraph 4.2.1 of the bank's disciplinary code and procedure) in that it is alleged that you were not on the Bank premises on 10 February 2020, 11 February 2020, 12 February 2020, 13 February 2020, 14 February 2020, 17 February 2020, 21 February 2020 and you failed to capture Sick leave on the banks system.*

[5] The facts are not in dispute. The applicant did not capture his absences on the bank's system as required by the Bank's disciplinary code. The effect of such failure is that the applicant could have claimed more leave than what he was entitled to claim. As the Bank rather dramatically submitted, this meant that he was able to steal the bank's time.

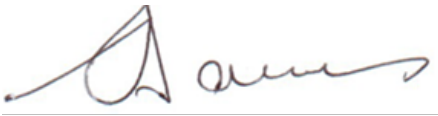
[6] The applicant's excuses as to why he failed to enter the information are not all that impressive, but the question remains whether his failure amounted to dishonesty which affects his ability to act as FSR.

[7] The major facts overlooked by the Bank is that the applicant, in all these instances, notified the Bank in writing on or before the date of his absence, together with the reason for the absence. That refutes a dishonest intention.

[8] A breach of the Bank's rules and regulations does not translate directly into the fit and proper requirements of the FAIS Act.

As a result, the debarment is set aside.

Signed at Pretoria on 25 September 2020

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

LTC Harms (deputy chair)