THE FINANCIAL SERVICES TRIBUNAL

In the matter between:	**CASE NO.: FSP27/2020**
MADINGANE MARIA TSHABALALA	**APPLICANT**
and	
CELSUM FINANCIAL SERVICES	**RESPONDENT**
and	
In the matter between:	**CASE NO.: FSP28/2020**
THERMOCIOUS TERRY MAMAILE MANASOE	**APPLICANT**
and	
CELSUM FINANCIAL SERVICES	**RESPONDENT**

Application for reconsideration in terms of sec 230 of the Financial Sector Regulation Act 9 of 2017 of debarment under the FAIS Act.

DECISION.

[1] The applicants apply in two different but identical application for the reconsideration of their debarment as financial service representatives by their employer, the respondent. Debarment took place under sec 14 of the Financial Advisory and Intermediaries Services Act 37 of 2002.

[2] The parties waived their right to a formal hearing and the matter will be decided on the papers, including the heads of argument filed on their behalf.

[3] Section 14(3) provides as follows:

A financial services provider must-

(a) before debarring a person-

(i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;

(ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and

(iii) give the person a reasonable opportunity to make a submission in response;

(b) consider any response provided in terms of paragraph (a)(iii), and then take a decision in terms of subsection (1); and

(c) immediately notify the person in writing of-

(i) the financial services provider's decision;

(ii) the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and

(iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

[4] On 27 January 2020, the respondent sent an email to the email address of the first applicant. The email address c is the same as the email address which appears on the present application for reconsideration. An identical email was sent to the email address of the second

applicant and, once again, the email address is the same address which appears on the second applicant's present application.

[5] The emails attached notices of intention to debar the applicants and also the written policy and procedure governing the debarment process of the respondent, including an exposition of the rights in terms of Chapter 15 of the Financial Sector Regulation Act; and the formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal.

[6] The notices gave as reason for the debarment that the applicants had submitted life assurance policies during August to November 2019 that were found to be dishonest. The terms of debarment were set out and the applicants were granted the opportunity to respond to the allegations by not later than 3 February, and they were notified that the final decision would thereafter be taken whether to debar them or not.

[7] The applicants did not respond to the invitation and the respondent then decided to debar them. On 11 February, the respondent sent the debarment notices to the applicants using the same email addresses mentioned above. There is an obvious typing error because the year of the first notice was given as 2012 instead of 2020. This could not fool anyone and the point made about it is contrived.

[8] The applicants baldly deny having received the first notices but do not explain why they received the second notices at the same addresses. Their denial is unconvincing and is rejected and it follows that the allegation that the respondent had failed to comply with sec 14(3)(a) is

dismissed. The same applies to the allegation that sec 14(3)(a) or the provisions of PAJA were not complied with.

[9] Turning then to the merits. The reason the applicants were debarred was the following:

> "The above representatives were contracted to CFS on 8 July 2019, to market Assupol Life Assurance Policies. They submitted policy applications on which commission was paid in advance, as is the norm when premiums are deducted via a payroll deduction by the employer. It soon became clear that no premiums were received on any of the policies submitted by the representatives. An investigation was launched and it was discovered that the modus operandi was to offer applicants part of the commission payable to the representatives. The applicants then cancel the policies immediately after receiving the agreed payment. The applicants acted in collusion with the representatives and is therefore implicated in this blatant dishonest and illegal act of bribery and theft. To be expected, during the investigation, none of the policy holders concerned were prepared to provide written statements to the effect that the representatives paid commission to them. It is however highly unlikely that all the clients advised by an honest representative, will cancel EVERY SINGLE POLICY before paying the first premium. This is the case with all the policies written by the now debarred representatives."

[10] The answer of the applicants was once again a bald denial and as submitted by their representative:

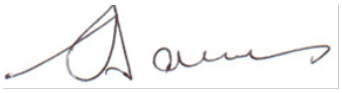
> "It is with respect submitted that it is the client's prerogative to decide to keep the policy or cancel it later on, if the circumstances have changed. The applicant played no role in

cancellation of the policies by the clients. The Respondent's basis for deciding to debar the applicant has no merit. It is a misdirection for the respondent to construe the cancellation of policies by the clients, the applicant recruited be equated to dishonestly and debar the applicant on that basis. It is respectfully submitted that the respondent took back the commission received by the applicant for recruiting the clients whose policies were cancelled."

[11] The applicants, however, do not answer the crux of the matter namely that "it is however highly unlikely that all the clients advised by a honest representative, will cancel EVERY SINGLE POLICY before paying the first premium. This is the case with all the policies written by the now debarred representatives."

ORDER: The applications are dismissed.

Signed at Pretoria on 24 September 2020



LTC HARMS (deputy chair)