

THE FINANCIAL SERVICES TRIBUNAL

Case No: **FSP21/2019**

In the matter between:

PIETER JOHAN GRONUM

Applicant

and

OUTSURANCE INSURANCE COMPANY LIMITED

Respondent

Tribunal: H Kooverjie (chair), J Pema, N Nxumalo

Hearing: 5 November 2019

Decision: 12 November 2019

Summary: Reconsider debarment in terms of Section 14 of the Financial Services Conduct Authority Act (“**FAIS**”). Applicant committed fraud whilst suffering from mental illness thereby compromising his honesty and integrity.

DECISION

1. The applicant filed an application for reconsideration on 21 May 2019 in respect of his debarment. The applicant was not present at the hearing of this application. However his submissions were considered and ventilated with the respondent.

2. The nub of the application before us is that the applicant requests a more lenient sanction. He pleads that the sanction is too harsh and that alternative punishment is more appropriate.
3. On 3 May 2019, the respondent informed the applicant of its intention to debar him, provided him with the debarment policy and invited him to make representations as to why he should not be debarred.
4. On 17 May 2019 and thereafter on 28 May 2019, the respondent gave notice to the Financial Sector Conduct Authority (“FSCA”) of the debarment and the removal of the applicant from its representative register.
5. The applicant made such representations to the respondent’s key individual. Essentially in such response, the applicant informed the respondent that he was suffering from a mental condition namely: PTSD, depression and addiction.
6. The applicant pleaded that the debarment be reconsidered as he has an obligation to maintain his two children. He could therefore not afford to lose his job.
7. He confessed that it was due to his severe anxiety and disorder which led to his misconduct. In essence the applicant submitted that he was suffering from untreated chronic disorder at the time of the misconduct which caused him to create false sale insurance policies. He did so in order to meet his sales targets.
8. The mitigating factors he proffered were *inter alia* that: He regretted his actions and had experienced a lapse of good judgment; He remains a law abiding

citizen with family responsibilities and appealed that he be given another chance to prove his worth; He acknowledged that he understood the basis of his debarment in that he did not comply with the fit and proper requirements as expected of him in terms of the FAIS Act.

9. It must be accepted that even though the applicant previously complied with the provisions of the FAIS Act, and that he was an experienced representative with a wealth of experience prior to the said actions, we cannot ignore what transpired thereafter.
10. As a financial services provider, the applicant was obliged to adhere to the Code of Conduct which required of him to at all times render financial services honestly, fairly, with integrity, with due skill and diligence and in the interest of clients.
11. It is further appreciated that as an employer, the respondent has a duty in terms of Section 14(1) of the FAIS Act to debar a representative who no longer fails to comply with the fit and proper requirements as set out in the FAIS Act.
12. We take cognisance of the contents of the applicant's letter dated 26 April 2019 to the respondent which demonstrates his incapability to remain in the financial services space and engaging with clients. The letter states:

"I herewith notify you of my resignation and serve the 30 day notice period as of today.

I cannot handle the pressure of this job. I suffer from severe clinical depression and the anxiety panic attacks I experience is affecting my judgment in the worst possible ways."

13. As alluded to above the applicant's relief essentially seeks a less stringent punishment. The applicant requests:

"Other means or actions. (recourse).

Consequential to the misconduct towards OUTsurance but there are still many other administrative (non-sales), less stressful positions in the industry that I can work in to support my two precious children."

14. In his termination letter the applicant commented:

"...I desperately appeal to the compliance officers of OUTsurance not to debar me. I admit that I made a mistake. I misled OUTsurance to believe that I had sold certain policies when I had in fact not finalised it with clients. There was huge pressure on us to make very difficult sales targets and I panicked. There was already threats of a review process if the targets weren't reach (sic) so I really panicked and tried to buy time."

15. It must be emphasized that the fundamental character trait of a financial services provider who provides financial services and furnishes advice to members of the public is honesty and integrity and to conduct oneself with the necessary due skill and care. It remains undisputed that Mr Gronum's health condition had compromised his integrity.

16. Even as late as 26 April 2019, the medical records reflect that he was still treated for substance abuse, depression and anxiety.

17. The debarment policy of the respondent records that:

"The purpose of debarment is to prevent a representative who fails to

comply with the Fit and Proper Requirements set out in the FAIS Act from rendering financial services to clients.”

18. The respondent had no option but to proceed with the debarment in light with its statutory obligation to the public.

19. We therefore find that the debarment was rational, reasonable and justifiable. The applicant failed to meet the fit and proper requirements of honesty and integrity. No evidence is placed before us to indicate otherwise.

20. Surely if the applicant recovers from his medical condition he can apply to have his debarment uplifted. It would then be incumbent for him to provide evidence that his defect of character no longer exists and that he had undergone a genuine, complete and permanent reform and can be trusted to engage with the public once again. Until such time, the applicant remains a risk to the public.

21. In the premises we therefore make the following order:
 - (1) The application is dismissed.

SIGNED at **PRETORIA** on this **15th** day of **NOVEMBER 2019** on behalf of the Panel.



ADV H KOOVERJIE SC

With the Panel consisting also of:

J Pema

N Nxumalo