

THE FINANCIAL SERVICES TRIBUNAL

Case FSP 15/2020

In the matter between

RIDWAAN SMITH Applicant

And

SANTAM LTD Respondent

APPLICATION FOR RECONSIDERATION OF DEBARMENT – failure to comply
with sec 14(3)(a) of the FAIS Act – debarment set aside

For the applicant: Jan Rossouw Attorneys

Decision

1. The applicant, Mr Smith, was debarred as financial service representative in terms of sec 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 (“the FAIS Act”) by the respondent, Santam Ltd, a financial service provider. The applicant applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 for a reconsideration of the decision.

2. The parties waived their right to a hearing and agreed that the application may be decided on paper. The applicant filed heads of argument,

but the respondent was content to rely on the record of the proceedings.

3. Central to the Applicant's argument is that the Respondent did not comply with section 14 (3), more particularly sec 14(3)(a)(i), of the FAIS Act. It reads to the extent relevant that –

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.

5. A perusal of the record shows that the respondent did not give the applicant the required notice and realized as much soon after the event.

6. The respondent justified itself by relying on its internal policy, which provides that if a Santam representative is found guilty at a disciplinary hearing, the representative will be removed from the Santam FAIS register immediately, i.e., will be debarred without more.

7. Two remarks: the fact that a FSR is found guilty at a disciplinary hearing may but does not necessarily mean that that FSR does not meet, or no longer complies with, the requirements referred to in section 13 (2) (a) of the FAIS Act; or has contravened or failed to comply with any provision of the Act in a material manner. Furthermore, notice of a disciplinary hearing is not a notice under sec 14(3)(a) although the two notices may be combined, and the disciplinary hearing and the debarring hearing may be run concurrently and be based on the same facts.

ORDER: THE DEBARMENT IS SET ASIDE AND THE MATTER IS REFERRED BACK TO THE RESPONDENT TO FOLLOW THE CORRECT PROCEDURE AND RECONSIDER THE MATTER.

Signed on 4 August 2020 at Pretoria

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

LTC Harms (deputy chair)