APPEAL BOARD OF THE FINANCIAL SERVICES BOARD

A17/2017

In the matter between:

ZAKIR AHMED YUSUF Appellant

and

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS Respondent

Appeal panel: LTC Harms (chair), Mr J Damons and Adv W Ndinisa

For the appellant: Adv BS Osborne

For the respondent: Mr BJJ Bredenkamp

Hearing: 31 January 2018

Judgment:

Summary: Appeal against debarment as financial service provider – appeal dismissed

Judgment

1. This is an appeal of the Respondent's (Registrar's) decision dated 28 April 2017 to debar the appellant from rendering financial services for a period of five (5) years. The grounds of the Registrar's decision are that the appellant: -

1.1. no longer meets the requirements contemplated in section 8 of the Financial Advisory and Intermediary Services Act, No. 37 of 2002 ("the FAIS Act") with reference to character qualities of honesty and integrity; and

1.2. contravened sections 2 and 3(1)(d) of the General Code of Conduct for Authorised Financial Services Providers and Representatives ("the Code of Conduct").

2. The fact that the appellant caused information to be misrepresented in the process of applying for life cover policies for his clients with Discovery Life (Discovery) is the main ground for the Registrar's decision. The misrepresentations can be summarised as follows:

2.1. the appellant caused to be submitted fictitious and/or fraudulent Discovery HIV and Pathology Screening Request Forms for purposes of undergoing blood tests in respect of policy applications for his clients. These forms were found to be fictitious and/or fraudulent in that the appellant's clients' signatures appearing thereon were forged;

2.2. the appellant colluded with an employee and former employee of Lancet to identify other patients with favourable blood screening results and to swop the appellant's clients' blood samples with extra samples of these other patients.

3. The crux of the appellant's case as set out in his heads of argument is that: -

3.1. the Registrar could not rely on the handwriting examination reports of Discovery's expert (Mr Van Vuuren) to substantiate the appellant's disbarment as van Vuuren's expertise was not established;

3.2. no reliance could be placed on the evidence of the two Lancet's employees implicating the appellant due to their contradictory evidence. According to the appellant, it could well have been that they ran a scam on their own;

3.3. the Registrar failed to follow due process and her actions were one sided and biased and lacked objectivity;

3.4. should the Appeal Board find that the Registrar was justified to debar the appellant, the debarment period was too harsh.[1]

4. The appellant was in the course of the protracted investigation confronted with many allegations, confirmed by affidavits, concerning his misconduct. The appellant chose, through his former attorneys of record, to avoid the issues, attack the messenger and the character of the some of the witnesses and to raise contrived procedural issues. The obvious stratagem was to delay the day of reckoning. What is glaringly absent is the appellant's version of the facts.

5. This immediately puts to rest the third point, which was that the Registrar should have allowed the appellant to cross-examine the witnesses. There were no bona fide factual disputes.

6. There is, however, one exception and that relates to the first point, the expertise of van Vuuren. The point can be dismissed on a very simple ground. It is common cause that the signatures of all the witnesses, who had been clients of the appellant, in relation to their blood tests were forged. They not only said so but so did the expert who examined their signatures on behalf of the appellant.

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[1] The first three paragraphs are based on the Registrar's heads.

7. The only dispute between the handwriting witnesses was whether it could be established that the appellant himself had forged the signatures. The Registrar, in her reasons, chose to accept the appellant's expert evidence and not that of van Vuuren. In other words, the expertise of van Vuuren is irrelevant.
8. Nevertheless, that does not affect the general conclusion that the appellant caused the signatures to be forged. He was the only person to benefit from the forgery. On his argument, his clients chose to forge their own signatures – a ridiculous contention, which also puts to rest the second point. The Registrar was very conscious of the fact that she was dealing with accessories to the fraud and approached the evidence with the necessary suspicion but found more than enough objective corroboration for their version.
9. Counsel, without prompting, fairly conceded that there was nothing to be said for the appellant on the merits. He, accordingly, concentrated, not on the disbarment itself, but on the period of disbarment, something in the discretion of the Registrar. It was not and could not be argued that the Registrar misdirected herself or failed to exercise her discretion properly. In the light of the elaborate and massive scale of the fraud a much longer period could have been justified. See, in general, Executive Officer FSB v Dynamic Wealth 2012(1) SA 453 (SCA) and FSB v Barthram and Another (2015) 3 ALL SA 665 (SCA).
10. Conclusion: The appeal is dismissed with costs, which are to be taxed in terms of the Uniform Rules of Court.

Signed on behalf of the Appeal Panel on 2 February 2018

LTC HARMS