**FINANCIAL SERVICES TRIBUNAL**

Case No.: FSP6/2024

In the matter between:

**JANET ELAINE GREENE** Applicant

and

**NEDBANK LIMITED** Respondent

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**DECISION**

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Tribunal: Judge J Francis
PR Long
K Magano

Date of Decision: **26 September 2024**

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## INTRODUCTION

1. The applicant was employed by the respondent from 1 October 2001. At the time of her debarment the applicant occupied the position of a risk advisor. Following a disciplinary enquiry, on 6 September 2023 the respondent dismissed the applicant and on 30 November 2023, the applicant was given written notice of the respondent's intention to debar her. The applicant was subsequently debarred on 19 January 2023.

2. The applicant, a financial services representative, applies in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ('the FSR Act') for a reconsideration of the respondent's decision to debar her in terms of section 14 of the Financial Advisory and Intermediary Services Act 37 of 2002 ('the FAIS Act').

3. In essence, the applicant claims that the respondent's decision to debar her was unfair, irrational, and unreasonable.

4. The matter was previously enrolled for hearing. However, the applicant's attorney sought a postponement of the matter on the basis that he lost five of his family members in a car accident. The Tribunal agreed that the matter could not proceed as the applicant's attorney was dealing with and attending to the loss of his family members.

5. In the result, the matter was postponed. On the hearing date, the applicant sought a further postponement, claiming that her attorney had been admitted to the hospital. The applicant alleged that she received a WhatsApp message from her attorney stating that he was admitted to hospital and that the matter should nonetheless proceed based on heads of argument filed on behalf of the applicant because he did not believe that the Tribunal would afford the applicant another postponement. We stood the matter down to allow the applicant to contact her attorney. She was unable to do so.

6. Accordingly, we proceeded to hear both parties on the issue of the postponement. The applicant claimed that she was not a 'lawyer' and therefore did not feel comfortable to proceed. The respondent argued that the matter is ripe for hearing, the grounds for reconsideration were duly pleaded and that both parties have prepared heads of argument.

7. In terms of rules 66 and 67 of the Tribunal Rules the unavailability of a legal representative is not a ground for postponement and the argument is limited to the grounds upon which the application for reconsideration is based.

8. Accordingly, the Tribunal is confined to the record before it and the grounds for reconsideration pleaded by the applicant. All the applicant is required to do is address the Tribunal on why her debarment should be set aside. This falls within the applicant's purview and the matter does not concern any complex legal issues.

9. In the result, the applicant agreed to address the Tribunal on her grounds for reconsideration and the hearing proceeded.

**THE REASONS FOR DEBARMENT**

10. The facts which gave rise to the applicant's debarment are as follows:

    10.1 On 14 June 2023, a key individual of the respondent received a request to authorise the release of an email addressed by the applicant to an individual

from PSG Wealth Financial Planning ('PSG'). The email was titled 'Insurer Collect Commission May 2023'.

10.2 Upon investigation, it was discovered that there were in fact three emails that were sent by the applicant to PSG on the same day and to the same addressee, each with a different attachment.

10.3 The attachments to each of the three emails contain, *inter alia,* the names of the respondent's clients, their identity numbers, their policy inception dates and premium details.

10.4 With the knowledge of the emails, the respondent conducted an investigation and discovered a further email dated 22 August 2019 that was sent by the applicant to PSG. The subject line of this email reads 'Janet Greene (pipeline)'. The attachment to this email contained names of the respondent's clients, which the relevant banker (within the respondent) sent to the applicant, being lead referrals and included information relating to the type of products that these clients had.

11. Following the completion of the investigation, disciplinary action was taken against the applicant on a charge of gross misconduct. Following a disciplinary enquiry, the applicant was found guilty of misconduct and summarily dismissed.

12. In the notice of intention to debar dated 30 November 2023, the respondent, in reference to the aforementioned emails, alleged that the applicant failed to meet the fit and proper requirements as prescribed by the FAIS Act and Board Notice 194 of 2017 in that each of the emails contained confidential informal of the respondent's clients which the applicant sent to PSG, a competitor of the respondent '*without a valid business reason and while knowing that the policyholders identified therein had not consented to such sharing of their information and/or that* [the respondent] *had not, and if approached for consent, would not consent to such sharing of information with PSG*'.

13. On 27 December 2023, the applicant provided the respondent with her written submissions to the notice of intention to debar. Therein the applicant claims that her debarment was unfair and that she did not act dishonestly. The applicant also claimed that she embarked on a process of a job application with a new company as her employment with the respondent became untenable. The applicant applied for a job with PSG and the purpose of sending the commission statements to PSG was to prove her income. The attachments were in PDF format and can therefore not be '*edited*' and PSG has confirmed that they have deleted the information. Moreover, the client's information has not been used and the sharing of the information has not caused any harm to the clients of the respondent. In addition, the respondent '*abruptly*' took the applicant's '*work computer*' containing her confidential information which is '*in breach of the POPI Act*'.

14. In her application for reconsideration to this Tribunal and in reference to the emails sent to PSG, the applicant states the following:

> *'19 The intended purpose of sending the commission statement was to prove income to the potential new employer's regional manager who is also the recruitment adviser to the company.*
>
> *20 I believed that as the commission statement I sent to PSG has my income detail on it, and is addressed to me, that it was within my rights to forward to PSG.*
>
> *21 Proof of gross commission production is a requirement for prospective employment in the short-term insurance industry.*
>
> *22 The intended purpose for which the information was sent was to prove commission performance. No other information was relevant'.*

**APPLICATIONS TO SUBMIT FURTHER EVIDENCE**

15. In addition to applying for a suspension of her debarment, which the Chairperson of this Tribunal dismissed, the applicant made two applications to submit further evidence. Before we address the merits of the application for reconsideration, we decide on the application for the submission of further evidence.

16. An application for submission of further evidence is filed in terms of section 232(5) of the FSR Act. In terms of Rule 24 of the Tribunal Rules, the application must show good cause, including the reason why the evidence was not submitted earlier, its likely credibility, and its relevance to the decision.

17. The respondent opposes the application.

18. The first application is for the submission of a document which relates to the respondent's code of ethics and conduct. Accordingly, in the said document, the applicant is prohibited from removing confidential information from the respondent's premises or sending such information to her personal email address. However, as expressly stated in the document, this excludes '*information relating to your own remuneration, tax affairs, or banking*'. Accordingly, the applicant deems this information relevant in that the emails sent to PSG relates to her remuneration.

19. Our interpretation of the document and the provided exclusion differs. The emails contained confidential client information that was shared with a third party without the clients' consent. If the information was indeed sent to prove "remuneration," the applicant had two options. First, she could have sent her payslip. Second, she could have sent a redacted version of the information. She chose neither option. Consequently, the document the applicant seeks to submit as further evidence is irrelevant to the current inquiry.

20. The second application for the submission of further evidence concerns emails exchanged between the applicant and PSG. In essence, PSG confirms that it will not use the information attached to the applicant's emails.

21. The applicant claims that she did not have access to these emails before her debarment in that the respondent confiscated her laptop.

22. Notably, in one of the emails dated 18 October 2022, PSG refers to a non-disclosure agreement to protect the information shared by the applicant with PSG. The agreement is not before this Tribunal, and therefore, we are unable to comment on its terms and whether it relates to the applicant's interaction with PSG for purposes of the job application or the confidential information of the respondent's clients. However, in the same email the applicant is requested to complete an excel document in terms of business '*you can conservatively bring over the next 24 months*.' 'Business' in all probabilities refer to clients.

23. Be that as it may, PSG only confirmed that it would not use the client information after Nedbank prompted it to do so and after the applicant was debarred. It made no such undertaking during its engagement with the applicant. Moreover, the emails were sent to and from the applicant's personal email address. She, therefore, had excess thereto at all relevant times and did not require her 'work laptop' to access them. Therefore, there is no acceptable reason for not submitting this information during the debarment proceedings.

24. Accordingly, the application for the submission of further evidence is dismissed.

**THE MERITS OF THE DEBARMENT**

25. As stated above, the applicant applied for a suspension of her debarment. In her reply to that application, the applicant claims that she made a mistake in sending the attachments to PSG and that a 'mistake' does not warrant a debarment.

26. Before this Tribunal, she claims that the information was sent pursuant to a job application as proof of income and she '*believed that as the commission statement I sent to PSG has my income detail on it, and is addressed to me, that it was within my rights to forward PSG*'. Accordingly, the applicant now claims that the information sent is, in essence, her property as it relates to her income and that she had every right to send the information to PSG.

27. These explanations relate to the three emails sent in June 2023. When asked about the email sent in May 2019 containing confidential client information, the applicant, during her disciplinary enquiry, claimed that she had sent it to a PSG employee who wanted a copy of the respondent's documentation template and blamed her actions as being 'naïve and trusting' of people. Further, she acknowledged that she should not have sent the information to the PSG employee but did not think that he would do anything with the information.

28. Section 14(1)(a) of the FAIS Act provides as follows:

"***14. Debarment of representatives*** *– (1)(a) An authorised financial services provider must debar a person from rendering financial services which is or was, as the case may be –*

*a representative of the financial services provider or*

*a key individual of such representative,*

*if the financial services provider is satisfied on the basis of available facts and*

*information that the person –*

*does not meet, or no longer complies with, the requirements referred to in section 13(2)(a); or*

*has contravened or failed to comply with any provision of this Act in a material manner*." (Emphasis added)

29. Section 13(1)(b)(iA) of the FAIS Act provides that a person may not act as a representative of an authorised financial services provider unless such person meets the fit and proper requirements.

30. In terms of section 6A(2)(a) of the FAIS Act, fit and proper requirements include, *inter alia*, appropriate standards relating to personal character qualities of honesty and integrity.

31. Board Notice 194 of 2017 ('the Board Notice') was published in Government Gazette No. 41321. Chapter 2 of the Board Notice sets out the fit and proper requirements relating to honesty, integrity, and good standing. In terms of section 8 thereof, an FSP must be a person who is honest and has integrity and is of good standing. In turn, section 9 of the Board Notice lists incidents that constitute prima facie evidence that a person is not honest or lacks integrity or good standing. In terms of section 9(1)(l) of the Board Notice, a person lacks honesty, integrity, and good standing when the person has demonstrated a lack of readiness and willingness to comply with legal, regulatory, or professional requirements and standards.

32. Section 3 of the FAIS General Code of Conduct for Authorised Financial Services Providers and their Representatives published in Board Notice 80 of 2003 ('the General Code') pursuant to the FAIS Act, requires that a provider (including a representative) must at all times render financial services honestly, fairly, with due skill, care, and diligence, and in the interests of clients and the integrity of the financial services industry.

33. In terms of section 3(3) of the General Code a provider (including a representative):

'*may not disclose any confidential information acquired or obtained from a client or a product supplier in regard to such a client or supplier, unless the written consent of the client or product supplier, as the case may be, has been obtained beforehand or disclosure of the information is required in the public interest or under any law*'. (Emphasis added)

34. Although not defined in the FAIS Act, this Tribunal has held that the phrase means a defect of character, unsoundness of moral principle, and corrupted virtue.[1]

35. The applicant claims to have over twenty-six years of experience. Yet, on the one hand, the applicant claims to have made a mistake and was 'naïve and trusting' of people in sending the confidential information, and on the other hand, she claims

[1] *Rampersadh v FNB* FSP50/2021 dated 13 June 2022 at para 33.

to be entitled to do what she did. There is no dispute that the applicant was in the process of seeking other employment. It is for this reason that she acted in her own interests and, in so doing, knowingly disclosed the confidential information of the respondent's clients to demonstrate her eligibility for her new role and the clients she could '*bring over*' to PSG.

36. As we have stated, if the information sharing was truly about the applicant's proof of income, she had other options available to her.

37. The applicant disclosed the information to advance her own interests and failed to act in the interests of the clients. Moreover, she disclosed confidential information in breach of the FAIS Act and without the express consent of the clients or the respondent.

38. Moreover, the applicant has failed to demonstrate that she appreciates the seriousness of her conduct and acted in a dishonest manner by attempting to understate her conduct as a 'naïve' and a 'mistake', and the fact that none of the clients were prejudiced. She knowingly disclosed the confidential information of clients for self-gain. This is unbecoming of a financial services representative and especially one with her experience.

**ORDER**

39. Accordingly, we make the following order:

The application for reconsideration is dismissed.

**DATED AT SANDTON ON THIS THE 26TH DAY OF SEPTEMBER 2024**

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**PR Long (obo the Tribunal)**