

FINANCIAL SERVICES TRIBUNAL

CASE NO: FSP8/2018

In the application of:

SELVIN NAIR

Applicant

and

BROPRO INVESTMENTS (PTY) LTD

Respondent

Tribunal: H Kooverjie (chair), Mr W Ndinisa and Mr L Makhubele

Hearing: 5 October 2018

Judgment: 14 December 2018

Summary: Failure to meet the competency requirements in terms of Determination of Fit and Proper Requirements (Board Notice 194 of 2017).

DECISION

[1] The matter presents itself before this Tribunal in terms of section 234 of the Financial Sector Regulation Act, Act 9 of 2017 ("**FSRA**")

[2] From the record, we note that on 19 June 2018 the respondent held a disciplinary hearing in the applicant's absence where the applicant was found guilty for failing to attend the hearing.

[3] The applicant submitted that he was being victimised by the FSP of the respondent, Mr Moodley. His debarment was *mala fides*. The sole purpose for the debarment was to withhold the commissions earned by the applicant whilst in the respondent's employment.

[4] The applicant lodged an application for the suspension of his debarment in terms of section 231 for the FSRA. Section 231 stipulates that:

“Neither an application for reconsideration of a decision, nor the proceedings of an application, suspend the decision of the decision maker unless a Tribunal so orders.”

[5] This issue was then considered by the Tribunal and on 24 August 2018, which then made the following ruling namely:

“The debarment is suspended due to the respondent not complied with section 14(3) of the FAIS Act 37 of 2002 as amended in debarring the applicant.”

[6] Accordingly the applicant's main ground for reconsideration of the decision in terms of section 230 of the FSRA, was that the respondent failed to notify him

of his debarment and he was further not aware of any compliance queries. Consequently he did not have an opportunity to defend himself.

[7] At the hearing of this matter, it was only the applicant who attended. The respondent had advised that he would not be attending.

[8] The applicant maintained that he had obtained the necessary NQF level 5 credits thereby achieving the full qualification. The Tribunal further referred the applicant to the various correspondence contained in the record reflected that he still has 12 outstanding credits. The explanation proffered by the applicant in this regard was that he had obtained the outstanding 12 credits through a provider called One2One. Furthermore he submitted that due to the fact that One2One had closed down its business, he was unable to locate these credits directly from this institution.

[9] Since the Tribunal was not furnished with the applicant's status regarding his credits from an accredited institution, it was decided that the Tribunal would furnish its decision upon receipt thereof.

[10] An independent accredited institution, the Insurance Sector Education and Training Authority ("**INSETA**") was approached by the Regulator.

[11] INSETA advised that as at 16 November 2018, the applicant had completed 108 credits of the required 120. Furthermore at that stage, the applicant was still completing his outstanding credits with a training authority.

- [12] The applicant persisted that he obtained the necessary qualifications through the Damelin institution. However, it also came to light that although Damelin conducts the assessment it remains unofficial until an assessment from INSETA is obtained. Once INSETA conducts the verification, then the providers are able to update the credits on the INSETA system. INSETA will thereafter issue the qualification certificate which remains the official record.
- [13] We were also furnished with a formal response on 20 November 2018 by the Financial Sector Conduct Authority advising us that the applicant does not hold the necessary qualifications. As alluded above, INSETA advised the Financial Sector Regulatory Authority that it had no record of the applicant's missing credits. The applicant only achieved 108 credits of the 120. It was also confirmed that the applicant had obtained its credits already in 2014.
- [14] It is trite that all financial service providers were required to meet certain criteria in terms of their qualifications (Competency requirements). In terms of 2008, Determination of Fit and Proper Requirements (Board Notice 106 of 2008 – (2008 Fit and Proper Requirements) the applicant was required to comply with the qualification requirements in column 2 of table E, applicable to certain categories or sub-categories by 31 December 2011, or complete a qualification on the list of recognised qualifications, as applicable to the categories of sub-categories that he was appointed for by 31 December 2013. With the transitional provisions of the 2017, Determination of Fit and Proper Requirements (Board Notice 194 of 2017 – (2017 Fit and Proper

Requirements) had the applicant complied with the aforementioned qualification requirements, then he would be deemed to comply with the qualification requirements set out in section 23 of the Fit and Proper Requirements.

[15] Section 10 of the 2008 Fit and Proper Requirements required of all financial service providers, key individuals and representatives to have successfully completed the exam by 31 December 2011. However, in July 2011. What had actually transpired is that in July 2011, the deadline was extended to 30 June 2012. Those who had written the exam but did not make it by 30 June 2012, were given an additional 3 months until September 2012 to rewrite and pass the examination. This deadline was then finally extended to 31 March 2013.

[16] Having been furnished with the aforesaid information specifically from the accredited independent institution, INSETA, the Tribunal is not convinced that the applicant had achieved the full qualification requisite. The applicant has failed to demonstrate that he indeed had achieved the 120 credits and it is on that basis, that this Tribunal cannot find in his favour.

Therefore the following order is made namely that:

- (1) The applicant is debarred from providing financial services in his capacity as a financial services provider;
- (2) The debarment takes effect from date of this decision.

Signed at **PRETORIA** on this **14th** day of **DECEMBER 2018** on behalf of the
Tribunal.

A handwritten signature in blue ink, appearing to read 'H Koooverjie'.

**CHAIRPERSON
H KOOVERJIE SC**