THE FINANCIAL SERVICES TRIBUNAL

CASE NO. FSP 67/2025

In a matter between:

CHARL JULIAN SMITH **APPLICANT**

and

BRYCE PRISTEL LEGAL **RESPONDENT**

Tribunal Panel:	Judge C Pretorius (Chairperson), Ms P Maseko and Prof. M Sigwadi
Appearance for Applicant:	No Appearance
Appearance for Respondent:	Ms. Princess Pristel Agbenyegah and Mr. Takunda Bryce Mpala
Date of hearing:	12 March 2026
Date of Decision:	31 March 2026

Summary: Application for reconsideration of the decision of the FSP to debar its former representative in terms of section 14(1)(a)(i) of the Financial Advisory and Intermediary Services Act 37 of 2002 – paragraphs 8(1)(a) of Determination

of Fit and Proper Requirements, 2017 (Board Notice 194 of 2017). Application upheld.

DECISION

INTRODUCTION

1. This is an application in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ("the FSR Act") for reconsideration of the Applicant's debarment.

2. The Respondent is a registered Financial Services Provider ("FSP") as contemplated in the Financial Advisory and Intermediary Act 37 of 2002 ("the FAIS Act").

3. The matter was scheduled for hearing on 12 March 2026 from 09h00 to 11h00 PM. Both parties confirmed that they would attend the hearing in person. In the morning of 12 March 2026 at about 07h55, the Secretariat received an e-mail from the Applicant indicating that he would not attend the hearing. He wanted to convert the in-person hearing to MS Teams, the Secretariat indicated that the request was late and by that time all the parties were ready to proceed with the in-person hearing.

4. The Applicant was sent a reminder on 10 March 2026 about the in-person hearing to be held on 12 March 2026 and he confirmed that he would attend.

5. The Respondent was of the view that the in-person hearing should proceed in the absence of the Applicant.

6. The Tribunal Panel decided to proceed with the in-person hearing as it had all the facts of the matter before it.

THE FACTUAL BACKGROUND

7. The Applicant, Mr Charl Julian Smith**,** was appointed as a representative of the Respondent in terms of the provisions of the FAIS Act on 22 October 2024.

8. The Respondent indicates that around March 2025 it identified concerns regarding the Applicant's compliance with FAIS "fit and proper" requirements (e.g., honesty, integrity, and competence).

9. On 13 May 2025, the Respondent terminated the Applicant's mandate as their representative. The date of termination of mandate of 13 May 2025 is clear on the record and accepted as such by both the Applicant and the Respondent. The only discrepancy on the versions of the two parties is on the date of resignation of the Applicant. The Applicant, on his application for reconsideration, indicates that he resigned on 11 May 2025. The resignation letter that is included in the Tribunal record is dated 17 May 2025. The Respondent argues that the Applicant resigned on 9 June 2025. The focus of the Tribunal is on the date of termination of the Applicant's mandate as a representative of the Respondent.[1]

10. On 25, 28 and 29 June 2025, the Respondent sent a letter to the Applicant where he was advised to return all company property or face debarment.

[1] See paragraph 41 below.

THE DEBARMENT PROCESS

11. The Respondent issued a notice of intention to debar the Applicant dated 13 August 2025.

12. According to the Notice, the purpose of the debarment hearing was to investigate the following allegations of misconduct against the Applicant:

    12.1 *Failure to Follow Instructions*: That the Applicant did not place certain policies on debit despite multiple instructions. The Respondent attached email and WhatsApp conversations.

    12.2 *Non- return of Client Documents*: Ongoing refusal to return original application documents essential for servicing and claims processing.

    12.3 *Unprofessional Behaviour*: Verbal abuse towards staff and management, use of derogatory terms.

    12.4 *Threats & Intimidation*: Attempted to prevent action against him by threatening to lodge a complaint with FSCA.

    12.5 *Client Prejudice*: Actions have directly contributed to delays in policy activation, potentially resulting in a declined claim.

13. It was further alleged that the conduct of the Applicant constituted breach of the following:

    13.1 FAIS Fit & Proper Requirements (Honesty, Integrity, Good Standing).

13.2 Section 17 of the FAIS General Code of Conduct (Duty to act in the client's best interest).

13.3 Protection of Personal Information Act (POPIA) (Retention of client data without authorization).

14. The Applicant was given 7 days to respond to the charges and warned that if he failed to respond before 20 August 2025, the Respondent was to proceed with formal debarment procedure. A copy of the Debarment Policy and Procedure was attached.

15. The Respondent sent a Notice of Debarment letter to the Applicant on 20 August 2025 to notify him that he had been found guilty of the charges against him which were stated on the debarment letter of 13 August 2025, and which formed the basis of the debarment. The letter stated the following:

> *"After careful consideration of the information, facts and evidence, including testimony by clients and members of staff, the FSP is satisfied that undisputed evidence exists to conclude that you no longer comply with the fit and proper requirements, particularly the character qualities of honesty and integrity, as provided in section 8(1)(a) of the FAIS Act."*

16. The debarment of the Applicant was recorded with the FSCA on 22 August 2025.

THE APPLICATION FOR RECONSIDERATION

17. The Applicant filed application for reconsideration of the debarment decision with

the Tribunal on 2 September 2025,

18. On 03 September 2025, the Applicant filed an application in terms of section 231 FSR Act to suspend debarment pending reconsideration. On 17 September 2025, the Chairperson of the Tribunal granted the suspension of the debarment pending the finalisation of the reconsideration application and in his ruling, he stated that "*the allegations post 13 May did not entitle the Respondent to debar the Applicant*" and that *"the seriousness of the earlier action is debatable*".

GROUNDS RELIED UPON FOR THE APPLICATION

19. The Applicant challenges the decision to debar him.

20. The crux of the Applicant's challenge is based on the following:

    20.1 That he resigned in May 2025. On 23 July 2025 the Respondent requested an AVBOB document for client Mrs V. The Applicant submits that he had already sent the requested document to the Respondent. The Respondent refutes this allegation. The Applicant indicates that he has now found the documents of Mrs V and would resend to the Respondent.

    20.2 The Applicant is asking the Tribunal to suspend the debarment as soon as possible.

21. The Respondent opposes the application for reconsideration.

22. It submits that the debarment process was fair and procedurally correct as required by section 14(1) of the FAIS Act.

23. It submits that the Applicant failed to comply with instructions. It states that upon the termination of the Applicant's mandate as a representative, the Applicant was required to submit and return documents which he failed to do.

24. According to the Respondent, the Applicant has shown that he is dishonest, lacks integrity, incompetence, and disregard for client protection. It alleges that the Applicant's focus was on getting commissions. His conduct falls far short of the fit and proper requirements of personal character qualities of honesty and integrity as stipulated in the FAIS Act. He had contravened Part 2(2) of FAIS General Code of Conduct in that he failed to render financial services honestly, fairly, with due skill, care, and diligence, and in the interest of the client and the integrity of the financial services industry. The Respondent argues that suspending the Applicant's debarment would pose a clear risk to the public and undermines confidence in the regulatory system.

25. It is important to note that all the evidence that the Respondent produced to substantiate the grounds for debarment as stated in paragraphs 12 and 13 above occurred after the Applicant's mandate as a representative of the Respondent was already terminated on 13 May 2025. The Respondent could not produce any evidence of the Applicant misconduct(s) that occurred before 13 May 2025.

26. The Applicant's misconducts and incompetence are not evident on the reasons to debar the Applicant as stated on the notice of 13 August 2025 and paragraph 12 above.

27. The Tribunal does not have a problem with the process that the Respondent

followed to debar the Applicant. The issue that the Tribunal has is that the grounds that the Respondent relied on to debar the Applicant are not aligned with the process of debarment.

28. The Respondent submitted that the Applicant failed to follow multiple instructions. The Tribunal notes that neither in the record nor during the Tribunal hearing did the Respondent produce such evidence.

29. The Respondent could also not show any prejudice suffered through the conduct of the Applicant regarding the AVBOB policy referred to in paragraph 20.1 above.

30. According to the Respondent, the actions of the Applicant are in contravention of the fit and proper requirements.

31. The Respondent concluded that considering the above, it was both entitled and duty-bound to take regulatory and disciplinary action, including termination of the Applicant's mandate and the filing of the debarment process in terms of section 14 of the FAIS Act.

32. The Respondent submitted that the Applicant no longer met the requirements of section 13(2)(a) of the FAIS Act namely, honesty, integrity, due skill, are, diligence and acting in good faith in the interest of client and the financial services industry, which means he is no longer fit and proper.

33. The Respondent requested the Tribunal to uphold its decision to debar the Applicant as it deems him to be a threat to the financial services industry.

LEGAL PRINCIPLES AND ANALYSIS

34. Section 14(1)(a) of the FAIS Act provides that an FSP must debar its representative, if it is satisfied on the basis of available facts and information, that he or she does not meet, or no longer complies with the requirements in section 13(2)(a) or has contravened any provision of the FAIS Act in a material way.

35. Section 13(2)(a) of the FAIS Act states that an FSP must at all times be satisfied that the representatives are, when rendering a financial service on its behalf, competent to act and comply with the fit and proper requirements and other requirements referred to in the FAIS Act.

36. Chapter 2 of the *Determination of Fit and Proper Requirements*[2] deals with honesty, integrity, and good standing of representatives. It provides in paragraph 8(1) that a representative, must be a person who is honest and has integrity, and be of good standing.

37. The provisions of section 14(2)(a) of the FAIS Act, states that an FSP must ensure that the debarment process is lawful, reasonable, and procedurally fair.

38. In matters of this nature, it is important to conduct a factual inquiry and decide whether the alleged concerned conduct has been established on the preponderance of probabilities.[3] It is the view of the Tribunal that the Respondent has failed to produce evidence of the Applicant's misconduct that occurred before

[2] BN 194 in GG 41321 of 15 December 2017

[3] *Malan & another v Law Society of the Northern Provinces* [2008] ZASCA 90; 2009 (1) SA 216 (SCA) para [4]

13 May 2025 when he was still mandated to act as its representative.

39. The issue at hand is whether the Respondent was wrong or correct in debarring the Applicant on the grounds set out in paragraph 12 above.

CONCLUSIONS

40. The Respondent indicates that around March 2025 it identified concerns regarding the Applicant's s compliance with FAIS "fit and proper" requirements (e.g., honesty, integrity, competence). It should be mentioned that the Respondent does not point out specific dates of when these concerns were identified. The Respondent also referred to annexures that contain WhatsApp conversations and e-mails. Again, these messages and emails neither include details of specific concerns identified nor proper dates of when the actual conversations took place.[4]

41. The focus of the Tribunal is on the date of termination of the Applicant's mandate as a representative of the Respondent. This is crucial because besides the events mentioned below in footnote 4, all other incidents that are stated by the Respondent as grounds for debarring the Applicant occurred after the Applicant's mandate as representative was terminated on 13 May 2025. The Respondent is correct in its argument that an agent cannot resign to escape accountability and, in that case, the FSP is obligated to debar the agent where it is found that the agent no longer complies with the fit and proper requirements. The Respondent referred

[4] The Respondent in its opposing affidavit dated 9 September 2025 states that "from early March 2025, the Brokerage observed conduct inconsistent with the FAIS Fit and Proper requirements, including but not limited to" the following: 1. Disrespectful conduct towards colleagues and superiors and insubordination; 2. Placing his own commission- driven interests ahead of clients' interests; 3. Failing to prioritise fair client outcomes. See Tribunal Record Part A at page 13.

to the relevant case law to support this point.[5]

42. There is a crucial point that is being missed by the Respondent in its arguments. The Applicant misconduct(s) should have occurred while the agent was still mandated as a representative. In the matter before the Tribunal, the alleged misconducts occurred after 13 May 2025 when the Applicant was no longer mandated to act as an agent of the Respondent.

43. The Respondent in its Heads of Argument (paragraph 5.1.1) points out that "nothing in section 14 requires that the representative must still be employed/mandated at the time of the debarment. The duty arises as soon as the <u>FSP becomes aware of misconduct that occurred during the representative's mandate</u> (our emphasis). Section 13(2)(a) states that a representative must render services honestly and fairly <u>while mandated</u>. If they fail, the FSP's duty to debar arises from that failure, not from their employment status.

44. It is the conclusion of the Tribunal that the Respondent was not justified to debar the Applicant based on misconducts that occurred when the Applicant was no longer mandated to act as a representative of the Respondent.

45. We agree with the ruling of the Chairperson of the Tribunal of 17 September 2025 to suspend the debarment of the Applicant pending the finalisation of the application for reconsideration by this Tribunal.

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[5] See paragraph 5.1.2 of the Respondents Arguments where the Respondent referred to case law confirming that "debarment is about fitness and propriety, not employment status. Even if the representative resigns or leaves, the FSP is still duty-bound to act if the misconduct occurred under mandate".

46. The suspension of the Applicant's debarment is hereby lifted and the application for reconsideration succeeds.

47. It should be mentioned that the Applicant did not cover himself with glory by disrespecting his seniors as indicated on the WhatsApp messages and e-mails. As already mentioned above, this happened after the Applicant's mandate as a representative of the Respondent was already terminated.

48. The Respondent does not have valid grounds to debar the Applicant.

49. In the circumstances, the application for reconsideration must succeed.

ORDER

50. The following Order is made:

(a) The application for reconsideration is granted.

(b) The debarment of the Applicant is set aside.

__Sgd Prof. M Sigwadi_____

PROF. M Sigwadi
On behalf of the Tribunal
31 March 2026