

SOUTH AFRICA / JUDGMENT

Bartram v Discovery Life Ltd and Another (59909.2012) [2013] ZAGPPHC 355 (21 November 2013) [2013] ZAGPPHC 355

COURT

North Gauteng High Court, Pretoria

BEFORE

E M Makgoba

CASE / FILE NUMBER

59909/2012

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

/SG

IN THE NORTH GAUTENG HIGH COURT,
PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE

NO: 59909/2012

DATE:

21 November 2013

NOT

REPORTABLE

NOT

OF INTEREST TO OTHER JUDGES

In the matter between:

PERCY GEORGE EDWARD

BARTRAM.....APPLICANT

And

DISCOVERY LIFE

LTD.....1ST

RESPONDENT

FINANCIAL SERVICES BOARD

.....2ND

RESPONDENT

JUDGMENT**MAKGOBA. J**

- [1] The applicant brought an application against the first and second respondents for relief as set out in the notice of motion that can be summarised as follows:

Reviewing and setting aside the decision(s) purportedly taken by the first respondent alternatively the second respondent alternatively both the first and second respondents to debar the applicant from rendering any new financial service, purportedly in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act").

Reviewing and setting aside the decision of the second respondent to update the register of debarred persons to include the name of the applicant pursuant to the above.

- [2] The decision taken by the first respondent which the applicant seeks to have reviewed and set aside is the first respondent's election on 13 June 2012 to withdraw the applicant's authority to act on its behalf and to remove the applicant's name from the first respondent's register as referred to in section 13(3) of the FAIS Act. In taking the steps aforementioned, the first respondent followed the procedure provided for in section 14(1) of the FAIS Act and following on that procedure, the first respondent notified the second respondent of its decision.

- [3] The application for review follows on an urgent application that was launched under case number 50855/2012 (which the second respondent did not oppose) as a result of which an order in the following terms was made on 18 September 2012:

3.1 That the second respondent be ordered to reinstate the applicant as a representative of an authorised financial services provider with immediate effect, should such application be received.

3.2 That the second respondent be ordered to immediately enter the name of the applicant in the register referred to in section 13(3) of the Act;

3.3 That the second respondent be ordered to remove any mention of the debarment of the applicant by notice in the government gazette or by means of any other appropriate public media in which it is presently published, including its website;

3.4 That the above would act as interim relief pending the finalization of review proceedings, reviewing, setting aside and/or varying decisions and/or rulings of the respondents to bar the applicant and to publish such debarment;

That costs will be costs in the review.

- [4] As is apparent from the above interim order, none of the relief impacts upon the first respondent.

- [5] The second respondent does not oppose the present review application. Only the first respondent opposes this application.
- [6] The applicant was a representative/broker in the employ of the first respondent with effect from 28 September 2009. For various other reasons the applicant handed in his resignation on 31 May 2012 on 24 hours notice. He then joined Old Mutual Life Insurance Limited on 1 June
2012. There is a dispute as to whether the applicant's resignation on 31 May 2012 was lawful. The first respondent avers that the applicant should have given a month's notice of termination of his employment.

For purposes of the present case it is not necessary, as it will appear later in the judgment, to resolve the dispute as to whether the applicant resigned on 24 hours or one month notice.

- [7] After his alleged resignation and on 12 June 2012 the applicant was called to the offices of the first respondent where a meeting was held with Mr Mark Bamford, first respondent's forensic investigator and Messrs Warren Allan and Drew Hudson, the compliance officers of the first respondent.

At this meeting the applicant was confronted and questioned on certain complaints regarding the applicant's professionalism, honesty, integrity, fitness and entitlement to function as a representative/broker in terms of the FAIS Act.

According to the applicant he was brought under a false impression that there was only a few small things to sort out.

He alleges that before the aforesaid meeting took place, he did not receive any notice, did not have the opportunity to prepare and that there was no proper procedure at all and the purpose of the meeting was never mentioned.

- [8] No mention was made of any disbarment or debarment at this meeting. At approximately 17:00 on the same day Mark Bamford phoned the applicant and told him that the first respondent was proceeding with debarment.

The applicant did not receive any further information and continued working for Old Mutual until 22 June 2012 when a former colleague, one Paul Erasmus informed him that he (the applicant) had been debarred. He was referred to the second respondent's website which he immediately checked and found that he had been listed on the second respondent's website for debarred representatives as a person who does not comply with personal character qualities of honesty and integrity.

- [9] The applicant contends that the respondents and especially the first respondent acted unlawfully and in bad faith and that the actions taken by the respondents to debar him should be reviewed and set aside.

The applicant contends further that he did not have the opportunity to address the complaints raised against him and in fact did not have the opportunity to answer to any complaints as no proper complaints were put to him.

[10] It is opposite to state the provisions of section 14 of the FAIS Act.

Section 14(1) reads as follows:

"14 DEBARMENT OF REPRESENTATIVES

- (1) An authorised financial services provider must ensure that any representative of the provider who no longer complies with the requirements referred to in section 13(2)(a) or has contravened or fail to comply with any provision of this Act in a material manner, is prohibited by such provider from rendering any new financial service by withdrawing any authority to act on behalf of the provider, and that the representative's name and the names of the key individuals of the representative are removed from the register referred to in section 13(3): provided that any such provider must immediately take steps to ensure that the debarment

does not prejudice the interest of clients of the representative and that any unconcluded business of the representative is properly

concluded.

For purposes of the imposition of a prohibition contemplated in subsection (1) the authorized financial services provider must have regard to information regarding the conduct of the representative as provided by the registrar, the Ombud or any other interested person.

- (3) (a) The authorized services provider must within a period of 15 days after removal of the names of the representative and key individuals from the register as contemplated in subsection (1), inform the registrar in writing thereof and provide the registrar with reasons for the debarment in such format as the registrar may require.
- (b) The registrar may make known any such debarment and the reasons therefore by notice in the Gazette or by means of any other appropriate public media."

[11] Section 14A of the Act provides for debarment by the registrar and reads as follows:

"14A. DEBARMENT BY REGISTRAR

- (1) The registrar may, subject to subsection (2), at any time debar a person, including a representative, for a specified period from rendering financial services if satisfied on the basis of available facts and information that the person -
- (a) does not meet, or no longer meets, the requirements contemplated in section 8(1)(a); or
- (b) has contravened or failed to comply with any provision of this Act.

- (2) The provisions of section 9(2), regarding a decision to suspend a license, apply with the necessary changes to the debarment of a person contemplated in subsection (1).
 - (3) An authorized financial services provider must within a period of 5 days after being informed by the registrar of the debarment of a representative or key individuals, remove the names of that representative and key individuals from the register as contemplated in section 13(3).
 - (4) The registrar may make known any such debarment and reasons therefor, or the lifting thereof, by notice in the Gazette or by means of any other appropriate public media.”
- [12] A vital distinction should be drawn between what is contained in section 14 and 14A of the FAIS Act. Section 14 of the Act allows for the removal by a financial services provider of a representative from the statutory required register. The effect thereof is that the representative can no longer represent that particular financial services provider in the rendering of any financial services. In addition, the consequence of such debarment is the removal of the representative from the financial service providers section 13 register of representatives.
- [13] In the context of this case the effect of a debarment in terms of section 14(1) of the Act was that the applicant was thereby precluded from rendering any new financial service on behalf of the first respondent. This preclusion was achieved by removing the applicant's authority to represent the first respondent and by removing the applicant's name from the first respondent's register. However, the applicant was still at liberty to render financial services with other financial service providers, as he continued doing with Old Mutual.
- [14] Conversely section 14A of the FAIS Act deals with the debarment by the Registrar of a person. A section 14A debarment precludes a representative from rendering any financial services on behalf of any services provider for a specified period. In effect, the debarment by the Registrar of a person in terms of section 14A of the FAIS Act precludes such person from rendering financial services on behalf of any services provider whereas a debarment in terms of section 14(1) of the FAIS Act precludes the debarred representative only from representing the particular provider who effects the debarment.
- [15] The applicant prays for the court to review and set aside the decisions of the respondents to debar the applicant and to publish such fact, in terms of PAJA and the common law. The applicant contends that the first respondent could not purport to debar the applicant in terms of section 14 of the Act, as the applicant was no longer in its employ when the first respondent purported to debar the applicant and therefore did not have the authority to act in terms of section 14 of the Act.

The applicant further contends that even if the court finds that the respondents acted within their authority and correctly in terms of section 14(1) of the Act, their actions are to be reviewed and set aside on the basis that various of the other requirements of PAJA and common law are not satisfied especially reasonableness and procedural fairness.

- [16] As pointed out earlier in this judgment, I do not deem it necessary to address the applicant's abovementioned contentions or arguments. This is so in the light of the legal and/or factual points raised by the first respondent with which I agree.
- [17] The first respondent contends that it followed the procedure provided for in section 14(1) of the FAIS Act. In terms of the FAIS Act the first respondent is duty bound or obligated to report the removal of the applicant's name to the Registrar (that is the second respondent in this context). Once the first respondent's report has been delivered it was for the Registrar to determine in terms of section 14(3)(b) of the FAIS Act what he was to do with that information. The publication of the applicant's debarment on the second respondent's website is not a decision that the first respondent did or could make. It is for the Registrar to determine whether the first respondent's notification in terms of section 14(1) of the FAIS Act was to be made known and published.
- [18] Counsel for the first respondent submitted that the first respondent, as a registered financial services provider with many thousands of clients has a responsibility placed upon it by the provisions of the FAIS Act to ensure that only fit and proper persons act as its representatives or intermediaries. Once facts had become available to it which confirmed that the applicant was not fit and proper the first respondent was compelled to act in terms of section 14(1) of the FAIS Act. I agree.
- [19] In my view the function of the first respondent was no more than to convey to the second respondent its election to have the applicant removed from the first respondent's register given that in the first respondent's view the applicant was no longer a fit and proper person to represent the first respondent in the provision of financial advice to the public. The steps taken by the second respondent following thereon have nothing to do with the first respondent.
- [20] It is common cause that the applicant is currently still in the employ of Old Mutual and not the first respondent. In the result the effect of the removal of the applicant from the first respondent's register (that is the debarment in terms of section 14(1) of the FAIS Act) did not and will not preclude the applicant from rendering financial services on behalf of his new employ, Old Mutual.
- [21] In the light of the foregoing the applicant has not made out a case for the relief he seeks against the first respondent.

The second respondent does not oppose this application. Consequently the interim relief obtained against the second respondent on 18 September 2012 is confirmed and made a final order of this court.

- [22] As against the first respondent, the application is dismissed with costs including the costs occasioned by the urgent application on 18 September 2012.

E M MAKGOBA

JUDGE OF THE NORTH GAUTENG HIGH COURT

59909/2012/sg

Heard on:.....12 November 2013

For the Applicant:.....Adv J R Minaar

Instructed by:.....Peet Delport Attorneys

For the Respondent:.....Adv A R G Mundell SC

Instructed by:.....Keith Sutcliffe & Associates c/o Andrea Raw Attorney

Date of Judgment:.....21 November 2013

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPPHC/2013/355.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/bartram-v-discovery-life-ltd-and-others-unknown-topic-agpphc-2013>

Prepared on 12 October 2026 · Esheria