

# Factors to be Considered when Debarring a Registered Financial Services Representative

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*Masela v Momentum Insure Company Ltd (FSP11/2024) [2024] ZAFST 43 (30 July 2024)*

## INTRODUCTION

Section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 (FAIS Act) provides that an authorised service provider has the power to debar a financial representative for reasons as stated in the Act. The Financial Services Tribunal in the matter between Bongani Progress Masela (Applicant) and Momentum Insure Company LTD (Respondent) was tasked with deciding whether the Applicant's debarment was reasonable.

## BACKGROUND

The Applicant, previously employed as a financial services representative by the Respondent, was dismissed over allegations related to the client's motor vehicle accident claim. The Applicant failed to add a 'car hire' benefit to the client's policy on inception, resulting in a courtesy vehicle being provided to the client for 30 days on the Respondent's own account due to the omission. According to the client's version, when she sought help with extending the courtesy vehicle use as her claim with the Respondent had not been finalised during the 30-day period, the Applicant offered to assist her at a fee of R1200.00, however, he insisted on meeting the client in person for this cash payment. After receiving the payment, the Applicant provided the client with a non-existent contact, 'Lerato', claiming that Lerato would handle the car hire extension. Following several WhatsApp messages exchanged between the client and the Applicant regarding this extension, the client's courtesy vehicle was never extended. The client alleged that the Applicant had robbed her of the R1200.00 she paid to him and did not extend the courtesy vehicle hire as agreed. The Respondent's entire case was based on these WhatsApp messages and the allegations made by the client when she reported the matter to the Respondent.

Resultantly, the Respondent dismissed the Applicant from his employment as its financial services representative and later debarred him based on section 14(1) of the FAIS Act stating that he no longer met the requirements of honesty and integrity.

The allegations levelled by the Respondent against the Applicant were that the Applicant:

1. exhibited negligence by failing to incorporate a car hire benefit into the client's policy on inception, thereby compelling the Respondent to bear the cost of the car hire and causing a delay in the resolution of the claim;
2. unjustifiably accepted money from the client to extend the car hire; and
3. did not follow due process when the client requested an extension of the car hire and referred her to an unauthorised person instead.

In the light of the above, the Respondent contended in its notice of intention to debar the Applicant, that the Applicant failed to comply with proper process to extend the client's courtesy car and received money from a client to bypass the standard procedure, thereby exposing the client to financial harm and the Respondent to serious reputational damage. The Applicant was accordingly summarily dismissed and debarred.

Following his dismissal, the Applicant applied to the Financial Service Tribunal for a reconsideration of his debarment based on section 230 of the Financial Sector Regulation Act 9 of 2017 (FSR Act), stating that he did not breach the Respondent's policy.

In his application, the Applicant contends that he did not accept a bribe from the client for purposes of extending the use of the courtesy vehicle but rather the money paid to him by the client was in respect of personal errands which the Applicant had attended to on the client's request and therefore he did not breach the Respondent's policy.

Upon consideration of the WhatsApp messages between the client and Applicant, which formed the crux of the Applicant's dismissal and subsequent debarment, the tribunal made the following comments amongst others:

1. There was an investigation wherein Mr Fivas, a senior at Momentum testified that “the Applicant was negligent in not providing the client with car hire”;
2. However, there was no indication in the WhatsApp messages that the client requested an extension in respect of the courtesy vehicle. Furthermore, although a payment of R 1200.00 is mentioned in text messages there is no mention of the intended use of these funds.

Based on the above-mentioned observations, the tribunal found that the WhatsApp messages between the client and the Applicant did not support the allegations made by the Respondent that the Applicant had accepted a bribe from the client for purposes of extending her car hire benefit. Accordingly, the Applicant’s debarment was set aside.

## CONCLUSION

A Financial Service Provider “FSP” does not have unlimited powers in respect of debarment of its employees. Gross misconduct on the part of the employee must be proven for an FSP to debar a service provider. Furthermore, an inquiry where all evidence, including oral evidence is heard is important to determine whether grounds for debarment are justifiable. This case underscores the importance of ensuring that the grounds for debarment unequivocally constitute a violation of the FSPs internal policies and contravenes the FAIS Act, with substantiated evidence duly provided to support such claims.

## VALUE

Debarment prohibits a financial services representative from working for a period. This has a long-term effect on the representative’s reputation as a debarment status remains on their record permanently. It is thus important for FSPs to thoroughly investigate their representatives’ actions to which the complaint relates in determining whether such actions may be deemed as gross misconduct.



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