

**IN THE APPEAL BOARD OF THE FINANCIAL SERVICES BOARD**

**CASE NO. A28/2015**

In the matter between:

**F. P. ELLIS**

Appellant

And

**REGISTRAR OF FINANCIAL SERVICES  
PROVIDERS**

Respondent

**Appeal panel: Justice LTC Harms (Chair), Mr J. Pema and Mr. G. O. Madlanga**

**For the Appellant: Advocate P. ELLIS SC**

**For the Respondent: Mr B.J.J. Bredenkamp**

**Hearing date: 8 June 2016**

**Judgement date: 4 July 2016**

**JUDGMENT**

- 1 This appeal arises from the decision of the of the Registrar of Financial Services Providers, dated 12 May 2015, to debar the appellant, Mr Francois Petrus Ellis, for a period of two years in terms of section 14A (1) (a) of the Financial Advisory and Intermediary Services Act 37 of 2002 from rendering any financial services to clients or on behalf of any authorised financial services provider (“FSP”) in terms of section 7 of the Act.
- 2 Section 14A(1) empowers the Registrar to debar a person, including a representative, from rendering financial services for a specified period of time if satisfied, on the basis of available facts and information, that such person or representative does not meet or no longer meets the “requirements of fit and

proper”, set out in section 8(1)(a) of the Act, relating to the personal character qualities of “honesty and integrity”. The Registrar may also debar a person from rendering financial services if that person has contravened or failed to comply with any other provision of the Act.

- 3 The Registrar concluded that there was satisfactory proof that the appellant no longer complied with the requirements of fit and proper, particularly the honesty and integrity components. She relied on two sets of facts, namely those relating to the appellant’s actions as an employee of Standard Bank and, secondly, his involvement with a concern known as Mayfair Mining (Pty) Ltd.
- 4 The appellant was initially employed by Mayfair Mining and upon its demise he entered the employ of Standard Bank as an FSP. The Bank initiated disciplinary proceedings against him and he stood accused of (a) misconduct relating to the irregular use of documents signed in blank by clients and photocopying documents contrary to the bank’s policy; (b) misconduct by having obtained a personal loan from a client which breached the Bank’s conflict of interest policy and his conditions of employment; and (c) the failure to disclose his outside business interests as required by the Bank’s policy.
- 5 He was found guilty on all three counts on 28 October 2014, and the disciplinary board found that apart from being guilty of the allegations, he had “not acted in a manner becoming of a FAIS representative, and as such has not acted in a fit and proper manner in this regard” and recommended his summary dismissal. He was dismissed.
- 6 The Bank gave the required notice to the Registrar but the notice itself did not reflect the findings of the board accurately because it said that he no longer complied with the fit and proper requirements because of a lack of honesty

and integrity. However, the full decision of the disciplinary board was also provided.

- 7 A month later, on 28 November 2014, the appellant applied to be removed from the list of debarred representatives and to be re-appointed. A similar application was made by Odin Financial Services (Pty) Ltd and for him to be an authorised representative and director of Olin.
- 8 These applications succeeded and on 19 December 2014 he was reappointed by the Registrar as representative of Olin and his debarment was removed on 7 January 2015 based on confirmation by Olin that the requirements for reappointment of a debarred representative had been met.
- 9 Standard Bank was not amused by this sudden *volte face* by the Registrar and raised its objection. It would appear that only after this objection did the Registrar give proper attention to the matter and on 18 March 2015 the appellant was notified of possible debarment action. In spite of his response he was debarred on 12 May 2015.
- 10 As to the Standard Bank matter, the Registrar said both in the warning letter and the letter recording her decision that it was established that the appellant had been found “guilty of dishonesty” and breach of company policy for arranging a loan agreement with a bank customer.
- 11 The appellant takes issue with the finding – quite rightly. The appellant was not charged with or found guilty of dishonesty. The Registrar did not read the decision properly. There was however much in the decision which could have been held against the appellant by the Registrar but which was not.

- 12 If one assumes in favour of the Registrar that the decision was capable of meaning that he had been found guilty of dishonesty, the decision to lift the debarment within a matter of weeks is incomprehensible.
- 13 We accordingly find that the Registrar misdirected herself on a material factual matter. Unfortunately, the Registrar in connection with the Mayfair Mining matter also made a finding that cannot be justified on the record. She alleged in her letter of intent that he had been “dismissed by Mayfair Mining for dishonesty”. The appellant denied it. In spite of the denial and the absence of any evidence on the record on appeal on which the accusation was based the Registrar in her decision nevertheless found as a fact that he had been dismissed for dishonesty.
- 14 It ought not to be necessary to remind the Registrar’s office that decisions must be based on facts that appear from the record and that if an allegation is disputed it should not as a matter of course be found against the person accused. Probabilities play a decisive role and in this matter one could ask how likely it would be that a fraudulent business would dismiss an employee on the ground of dishonesty.
- 15 However, that is not the end of the case as far as the Mayfair Mining matter is concerned because the other relevant facts are uncomplicated and not in dispute and we turn to deal with them.
- 16 Prior to his employment by Standard Bank, the appellant was involved in the unlawful and unregistered financial services business of Mayfair Mining, which was subsequently liquidated. Although he pretended that his job involved merely answering telephone enquiries from clients, he was a (or “the”) senior investment manager. He solicited clients to invest in Mayfair

Mining and participated in unregistered financial services related business contrary to the Act. It is not in dispute that he in this regard contravened section 7 of the Act by acting as an FSP and a representative without the necessary licence or appointment.

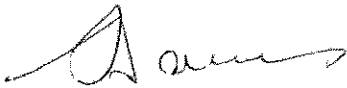
- 17 Mayfair Mining conducted a pyramid scheme, something the appellant knew. Mayfair Mining had a problem with its banking account and by agreement used the appellant's banking account to launder funds received from investors in the pyramid scheme.
- 18 The funds were then dissipated by both (if one believes the appellant) Mayfair Mining and the appellant. The investors lost all. In short, at least some of the funds were appropriated by the appellant for his personal use.
- 19 The appellant concealed these facts from the Registrar critically during his application for re-admission, and the Registrar was accordingly entitled to conclude that he is a "person with proclivities of dishonesty" and to reach the decision she did in spite of the misdirections referred to.
- 20 We may add that the appellant's own statement shows a lack of understanding of the seriousness of his transgressions and a refusal to acknowledge his wrongdoings. He lives in a state of denial and repeatedly sought refuge behind technicalities that are so bad that his counsel did not even mention them in argument.
- 21 He tried to shift the blame for his wrongdoings onto others. They may share in the blame but that does not exonerate him. In the words of the Registrar, his argument that he "accepted the client deposits acting on the instruction of the directors of Mayfair, if it were to be believed, it is even reasonably remote to conceive how such an instruction would have made your conduct any less

wrongful in the context of the precepts of the FAIS Act.” And as pointed out, he is on his own (often conflicting) version guilty of two crimes involving dishonesty.

22 The appeal thus cannot succeed and must be dismissed.

THE APPEAL IS DISMISSED.

**Signed at Pretoria on behalf of the Panel on 4 July 2016**

A handwritten signature in black ink, appearing to read 'LTC Harms', written in a cursive style.

**LTC Harms (Chair)**