

FSB Appeal Board upholds Debarment of Interneuron's Key Individual

On 18 November 2016, the Appeal Board of the Financial Services Board (FSB) dismissed an appeal brought by Willem Daniel Jonker (Mr Jonker) against his debarment by the Registrar of Financial Services Providers (the registrar).

On 26 April 2016, the Registrar debarred Mr Jonker (sole key individual) of Interneuron (Pty) Ltd (Interneuron) because he no longer met the Fit and Proper requirements contemplated in terms of section 8 of the Financial Advisory and Intermediary Services Act (FAIS Act). With Mr Jonker at the helm of Interneuron, various provisions of the General Code of Conduct for Authorised Financial Services Providers published in Board Notice 80 in GG 25299 of 8 August 2003 (General Code) and the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 (FI Act) were contravened.

The debarment followed an inspection into the affairs of Interneuron during 2012, where the FSB found among other things that one of their clients sustained substantial losses after the management of the client was entrusted to a representative of Interneuron. The client experienced trading losses and substantial amounts of the client's investment were transferred to another client over the years. The representative falsified investment reports to the client regarding the performance of the investment. Interneuron also invested the client's funds in unsecured loans. These investments were outside the parameters of the client's mandate to Interneuron. In short, the Registrar debarred Mr Jonker, not because she attributed the representative's dishonesty to him, but rather because he had a legal duty in his capacity as key individual to manage and oversee the activities of both Interneuron and the representative. Further, that legal duty required him to act with due care skill and diligence in terms of the FAIS Act. It is the failure in that regard which contributed to the substantive losses sustained by the client.

In her judgement, the Appeal Board chair Justice Yvonne Mokgoro agreed with the Registrar's reasoning. Justice Mokgoro pronounced extensively on the need for the gatekeepers (key individuals) to be positioned internally in a FSP to oversee the activities of the FSP in accordance with the FAIS Act. Justice Mokgoro stated among other things that: *"[184] For the reasons stated above, [the representative's] dishonest actions are not attributed to [the key individual], in the manner he formulated his grounds of appeal. Rather, and the Registrar is correct in that regard, as key individual at Interneuron by virtue of the legal duty he has, [the key individual] must account for [the representative's] dishonest actions. That is a requirement of the FAIS Act and the Code. And as a highly experienced FSP, [the key individual], as he himself indicated, knew and appreciated that fact."*

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Note to Editor

The court order is available on www.fsb.co.za.

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