



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 1 June 2015
STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

Financial Services Board v Barthram (20207/2014) [2015] ZASCA 96 (1 June 2015)

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) (i) upheld an appeal by the Financial Services Board (the FSB) and overturned the decision of the Gauteng Division of the High Court, Pretoria, relating to the effect of a debarment of a representative of a financial services provider (FSP) in terms of s 14 of the Financial Services Advisory and Intermediary Services Act 37 of 2002 (FAIS); and (ii) upheld an appeal by Mr PGE Barthram (Barthram) and accordingly set aside a decision taken by Discovery Life Ltd (Discovery) to debar Barthram as a representative in terms of that section.

The issues before the SCA were (i) whether a debarment of a representative of an FSP in terms of s 14 of the FAIS was an industry-wide debarment or operated only in respect of that specific FSP; and (ii) whether the decision taken by Discovery to debar Barthram in terms of s 14 of the FAIS should be set aside on the grounds of procedural unfairness.

The facts of the case were as follows. Barthram was employed by Discovery to market and sell financial products and to provide financial advice. When he later resigned, he returned his various clients' files, and during the handover Discovery detected certain irregularities. A meeting was held to discuss these, and then Discovery took the step of removing Barthram from their register of representatives and informed the FSB that the reason for this related to his 'honesty and integrity'. The FSB then listed Barthram on its website as a debarred representative who did not comply with the personal character qualities of honesty and integrity. Barthram launched proceedings to (i) have the debarment uplifted because, he argued, it operated as an industry-wide debarment which prevented him from being employed by another FSP; and (ii) have Discovery's decision reviewed and set aside.

The court a quo held that a debarment in terms of s 14 of the FAIS only related to the specific FSP that applied for the debarment; that Barthram was accordingly not prevented from being employed by another FSP as a representative; and therefore the FSB must remove the industry-wide debarment of Barthram from its website. Flowing from this, the court a quo held that Discovery's decision to have him debarred did not have any material prejudicial effect, and so considered it unnecessary to deal with the application for its review.

On appeal, the SCA held that the court a quo misinterpreted the effect of s 14 of the FAIS. A debarment in terms of that section indicates that the FSP believes that the representative no longer meets the fitness and propriety or competency requirements. A representative who does not meet these requirements lacks the character qualities of honesty and integrity or lacks competence and thereby poses a risk to the investing public generally. It must therefore follow, the SCA held, that any representative debarred in terms of s 14(1), is debarred on an industry-wide basis from rendering financial services to the investing public. Accordingly, the FSB's appeal relating to the effect of a debarment in terms of s 14 of the FAIS was upheld.

With respect to the review of Discovery's decision to debar Barthram, the SCA held that the process followed by Discovery when making its decision was procedurally unfair and that it should have been set aside. Accordingly, Barthram's appeal was also upheld.

-- ends ---