THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: FSP61/2025

In the matter between:

TIELMAN FRANCOIS ROOS — APPLICANT

and

PRIVATE WEALTH MANAGEMENT — FIRST RESPONDENT

DIRK WOLFAARDT — SECOND RESPONDENT

Appearance for Applicant: n/a

Appearance for Respondent: n/a

Date of hearing: n/a

Date of decision: 29 January 2026

Summary: Application for reconsideration in terms of section 230 of the FSR Act 9 of 2017

DECISION

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1. The applicant has brought an application for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 against the decision of the second respondent to debar him from rendering financial services on 3 July 2025.

2. The parties have agreed that the Tribunal decide the application on the papers filed of record.

RELEVANT FACTUAL MATRIX

3. On 26 February 2020, the applicant was appointed as a Financial Consultant of the first respondent.

4. In terms of clause 19.13 of the applicant's Employment Contract:

"*19.13 The Employee furthermore specifically acknowledges that all client information is and remains the property of the Employer in perpetuity. To this extent, the Employee shall not:*

19.13.1. Utilise the client information for any other purpose than that of rendering financial services under this Agreement, unless the Employer provides written consent to the Employee;

19.13.2. Sell, assign, lease or otherwise dispose of to third parties or commercially exploit the client information."

5. The applicant tendered his resignation from the employ of the first respondent on 31 March 2025, thereby terminating his employment as a Financial Consultant with effect from that date.

6. On 3 July 2025, the applicant was formally notified of the decision to debar him in terms of section 14(1) of the Financial Advisory and Intermediary Services Act 37 of 2002 ("the FAIS Act"). This decision followed upon a notice of intention to debar issued by the first respondent on 20 May 2025, affording the applicant an opportunity to make representations prior to the decision being taken.

7. The basis for the applicant's debarment was that his conduct demonstrated dishonesty and a lack of integrity, with the result that he no longer satisfied the fit and proper requirements contemplated in section 13(2)(a) of the FAIS Act, read together with the Determination of Fit and Proper Requirements for Financial Services Providers, 2017. *Alternatively*, it was alleged that the applicant had failed to comply with the provisions of the FAIS Act and the General Code of Conduct in a material respect.

8. During the debarment process, the first respondent alleged that the applicant unlawfully transferred client information and/or client lists belonging to the first respondent onto his personal laptop on two separate occasions, namely shortly prior to his resignation on 12 March 2025 ("Charge 1") and subsequent to his resignation on 2 April 2025 ("Charge 2"). The factual basis and particulars of these charges are set out in detail in the Notice of Intention to Debar (Tribunal Record, Part A, pages 76–83).

9. Prior to the decision to debar the applicant, a Debarment Inquiry was convened by the first respondent and presided over by an independent chairperson, Mr G R Meyer ("Meyer"). In his Debarment Inquiry report (Tribunal Record, Part A, page 62), Meyer found as follows, *inter alia*:

9.1. That the periods afforded to the applicant for the submission of representations were extended in order to ensure procedural fairness and to afford the applicant a reasonable opportunity to be heard.

9.2. That Meyer had retired from Old Mutual in 2011 and had been in private practice since that time, and accordingly acted independently in the conduct of the inquiry.

9.3. That the ruling was delivered approximately five weeks after service of the relevant notices on the applicant, and that, in Meyer's assessment, the process was neither unfair nor prejudicial to the applicant.

9.4. That the applicant had concluded an Employment Contract in which it was expressly agreed, in clause 19.13 thereof, that all client information is and remains the property of the first respondent.

9.5. That, in light of this contractual undertaking, the applicant could not legitimately claim ownership of the clients or assert an entitlement to deal with the client information as he saw fit.

9.6. That the applicant did, on the dates specified in Charges 1 and 2, transfer client information belonging to the first respondent to an external and unauthorised source.

9.7. That such conduct constituted a failure to comply with the fit and proper requirements relating to honesty and integrity and amounted to a material breach of section 3(3) of the General Code of Conduct.

9.8. That, on the strength of these findings, the applicant was liable to be debarred in terms of section 14(1) of the FAIS Act.

10. The applicant contends that there is no evidence that the Executive Committee of the first respondent properly considered whether he should be debarred. On this basis, he submits that the first respondent acted in contravention of section 14(2) of the FAIS Act and that the debarment process was not conducted in a lawful, reasonable or procedurally fair manner.

11. The applicant accordingly seeks the reconsideration and setting aside of his debarment, alleging multiple procedural and substantive deficiencies in the process. He further asserts that the debarment process was fundamentally abused, resulting in significant prejudice to him, in that he remains unable to transfer his clients to another financial services provider and is effectively precluded from securing alternative employment within the financial services industry.

12. In addition, the applicant submits that the recommendations made by Meyer were tainted by a reasonable apprehension of bias and that the findings and conclusions reached in the Debarment Inquiry were both factually unsustainable and legally flawed.

13. Finally, the applicant maintains that the clients in question belonged to him rather than to the first respondent and contends that the information relating to those clients did not constitute confidential information, on the basis that it was allegedly not confidential, sensitive or proprietary in nature and did not, according to him, come to his attention or knowledge in the course of his employment with the first respondent.

CONFIDENTIAL INFORMATION

14. In terms of the applicant's Employment Contract with the first respondent, Confidential Information and Client data as defined in clause 1.1.9 and clause 1.1.10 of his Employment Contract, are defined as follows:

"***Confidential Information*** *means … all information of a confidential, sensitive and/or proprietary nature and includes, without limiting the generality of the aforesaid, all Client lists, Client particulars, details of Clients' investments, marketing and business strategies, minutes of meetings, corporate memoranda, details of suppliers and their terms of business, details of remuneration and other benefits paid to the employees, information relating to research activities, inventions, processes, designs, formulae and product lines relating to the business and/or Clients of the Employer, and which comes to the attention or knowledge of the Employee*". ; and

"***Client****" means any specific person or group of persons who is or may become the subject to whom a Financial Service is rendered by the Employee in respect of the Authorised Product Ranges.*

15. The Employment Contract states at clause 20.14 that:

"20.14 The Employee specifically agrees that:

20.14.1 he/she shall have no claim of any nature whatsoever in and to the Confidential Information, and that all rights, title and interest in and to the Confidential Information shall be the absolute free and unencumbered property of the Employer;

20.14.2 the Employee shall not attempt to access any Confidential Information of the Employer within the information systems environment to which the Employee is not entitled in terms of this Agreement;"

16. It is common cause that, prior to the applicant's resignation on 12 March 2025, the applicant downloaded a document titled *"clientlist (1).pdf"* from Xplan, being the first respondent's client database, onto the "*Downloads*" folder of his work-issued laptop. The client list contained the names and surnames, residential addresses, telephone numbers, and email addresses of 84 clients of the first respondent.

17. The applicant admitted to downloading the client list, contending that he was still employed by the first respondent at the time and that the client information was not confidential while in the possession of the first respondent.

18. Notwithstanding a directive from the first respondent requiring the applicant to return all property and data belonging to the first respondent by close of business on 2 April 2025, the applicant failed to comply with this instruction.

19. Between approximately midnight and 02h05 on 2 April 2025, the date on which the applicant was instructed to return the work laptop, and prior to returning it to the first respondent, and after receiving notice that his access would be restricted, the applicant sent 14 emails from his first respondent email account to his private, personal, and unauthorised email address, together with multiple attachments. Included in these communications was an email sent at approximately 02h05 on 2 April 2025 with the subject line "*Reviews*", to which 29 attachments were appended. These attachments contained the first respondent's client policy information as well as personal and confidential client information, and were sent to the applicant's private email address, namely tielman63@gmail.com.

20. The attachments transmitted by the applicant included, *inter alia*, policy schedules, living annuity income reviews, regulatory disclosures, information consent forms, letters of engagement, client portfolio summaries, wealth perspective (portfolio overview) documents relating to 21 of the first respondent's clients, as well as separate tabulated lists reflecting outstanding client reviews for February, March, and April 2025.

21. The applicant argues that Clause 20.12.3 of the employment agreement clearly, and correctly, envisages that confidential information can only come into existence if it is independently developed by the first respondent, without using the confidential information provided by the applicant. He argues further that as

part of rendering the applicant's services, the applicant had written permission to obtain information from all his clients; thus, he had the right to client information. All the applicant's clients expressly gave consent for him to have and use their personal information, and this consent is independent of his employment with the first respondent and remains valid until the client decides otherwise, not the first respondent.

22. The first respondent argues that the applicant has no legal or contractual right to claim that the clients belonged to him. As a result, the applicant had no right to take or use the client information. The first respondent also denies the claim that the information was not confidential, stating that the information is confidential and must be protected by law.

23. The first respondent argues that it is legally required to protect client information and has a clear and legitimate interest in it. They believe that the applicant, while trying to join a competing financial services provider (Warwick Wealth) for his own financial gain, deliberately breached his contractual duties, company policies, data protection and confidentiality laws, and the FAIS Act**.**

24. According to the respondents, the applicant unlawfully accessed, used, and removed confidential client data without permission, which has already caused or could cause harm to both the first respondent and its clients. The clients' personal information was exposed to an unsafe and unsecured environment, creating a serious risk of harm to the clients and the first respondent.

LEGAL ANALYSIS

25. In terms of section 14(2)(a) of FAIS:

"(2) (a) Before effecting a debarment in terms of subsection (1), the provider must ensure that the debarment process is lawful, reasonable and procedurally fair."

26. In terms of section 14(3) of FAIS:

"*(3) A financial services provider must-*

(a) ***before*** *debarring a person-*

(i) give adequate notice in writing to the person stating its intention to debar the person, the grounds and reasons for the debarment, and any terms attached to the debarment, including, in relation to unconcluded business, any measures stipulated for the protection of the interests of clients;

(ii) provide the person with a copy of the financial services provider's written policy and procedure governing the debarment process; and

(iii) give the person a reasonable opportunity to make a submission in response;

(b) consider any response provided in terms of paragraph (a)(iii), and then take a decision in terms of subsection (1); and

(c) immediately notify the person in writing of-

(i) the financial services provider's decision;
(ii) the persons' rights in terms of Chapter 15 of the Financial Sector Regulation Act; and

(iii) any formal requirements in respect of proceedings for the reconsideration of the decision by the Tribunal."

27. The applicant admits to receiving the notice of intention to debar on 20 May 2025 and that he delivered a response thereto on 1 June 2025. It is accordingly common cause that the first respondent informed the applicant of its intention to debar him by serving a notice of intention to debar and providing detailed reasons for the proposed debarment. The applicant was given an opportunity to make submissions in response, outlining why he believed debarment was unwarranted. Additionally, the first respondent provided the applicant with the procedure governing the debarment process. On 3 July 2025, after receiving recommendations from Meyer, the second respondent debarred the applicant.

28. In summary, the applicant disputes the debarment on the basis that the process was procedurally unfair, biased, and not conducted in accordance with the first respondent's own debarment policy or the FAIS Act. He contends that the appointed Chairperson lacked true independence and that the inquiry was

approached with a predetermined outcome, rendering it a formality rather than a genuine fact-finding exercise. According to the applicant, his submissions and evidence were not properly considered, insufficient time was afforded for a meaningful response, and conclusions of dishonesty and lack of integrity were drawn without proof of any material contravention, disclosure of confidential information, or client solicitation.

29. Furthermore, the applicant contends that the debarment was misused as a commercial tool to prevent him from competing and to enable the first respondent to retain or appropriate his client base after his resignation, rather than to protect the public as contemplated by the regulatory framework. He maintains that the sanction imposed on him was grossly disproportionate, particularly given his more than 40-year unblemished career, absence of prior misconduct, and advanced age. On this basis, he submits that the debarment constituted an abuse of process, driven by the first respondent's commercial interests and not by legitimate regulatory concerns.

30. The Tribunal has duly considered the applicant's arguments and submissions relating to the debarment process and the procedures followed. The applicant was provided with sufficient written notice of the intention to debar, including the grounds and reasons underpinning the proposed debarment. Furthermore, the applicant was afforded a reasonable opportunity to submit representations in response to the notice of intention to debar. From a procedural perspective, the Tribunal finds no basis to fault the respondents, as the debarment process was lawful, reasonable, and procedurally fair. In fact, the first respondent exceeded the requirements of its own debarment policy to ensure fairness to

the applicant, who is an attorney and was legally represented throughout the process.

31. The first respondent took several steps to ensure that the debarment process was lawful, reasonable, and procedurally fair, including appointing an independent chairperson to ensure impartiality, granting the applicant an extended 10-day period to respond instead of the 5 days provided for in the policy, allowing the applicant to inspect confidential investigation documents at Webber Wentzel's offices (an opportunity the applicant chose not to use), permitting legal representation despite the policy not allowing it, and offering the applicant a further opportunity to respond to the first respondent's additional submissions, which the applicant declined.

32. Having regard to the above, it is clear that the applicant was given an adequate opportunity to respond to allegations surrounding the reasons relating to his debarment. Therefore, the Tribunal concludes that the first respondent did indeed provide the applicant with the relevant debarment policy.

33. In *casu* it is our considered view that the procedure employed by the respondents to debar the applicant was procedurally fairly.

34. Turning now to the substantive argument, the main question which this Tribunal must consider is whether the applicant did misuse any confidential information. In this regard, we are guided by the decision of *Adviceworx (Pty) Ltd and Another v Roux and Others (J1402-23) [2024] ZALCJHB 52 (23 February 2024)* which aptly stated as follows:

"[102] It is trite that in the industry in which ADX operates, being the financial services industry, client relationships, trust and confidence are of critical importance. This business is extremely competitive in the sense that any client can without much difficulty move his or her portfolio to another FSP. It is virtually always the case that a financial adviser would have a very close working relationship and relationship of trust with the clients he or she services, and would often describe these clients as 'my clients'. But that does not make it so. In TWK Agriculture Ltd v Wagner and Another[35], where the Court specifically dealt with a broking relationship, it was held:

'… The applicant's interest in those connections is an important aspect of the applicant's incorporeal property in the form of goodwill and it is trite law that it is entitled to protect that interest. When the respondents dealt with those clients, they did so on behalf of the applicant's business and not for their own account. Whether those clients were ones that they had originally brought into the applicant's business through the sale agreement, or whether those with clients they acquired in the course of working for the applicant, the insurance business and relationship developed with those clients and was that of their employer and not theirs to exploit for their own personal gain, even if they had been responsible for obtaining such business or sustaining it through their personal relationship with those clients …'"

35. The principles enunciated in *Adviceworx* find direct application to the present matter. As in *Adviceworx*, the applicant operated within the highly competitive

financial services industry, where client relationships are built and maintained under the auspices of the authorised financial services provider and not for the personal proprietary benefit of the representative.

36. This Tribunal aptly stated the following in *N P Malahlela v Nedbank Limited* FSP50/2024:

32. The applicant intentionally violated his employment contract by transferring sensitive and confidential information to his personal email. He was aware that his employment contract and the respondents policies prohibited him from unauthorised possession of the respondent's clients confidential information. He knew or should have known that if this information were to fall into the wrong hands, it could harm the respondent and its clients. Consequently, he breached his fiduciary duty toward the respondent.

33. The applicant's conduct raises concerns about his honesty and integrity, which are key elements of the "fit and proper" requirements. His unauthorised possession and transfer of confidential client information, in breach of his employment contract and the respondent's policies, calls into question his trustworthiness and suitability to operate as a financial services representative. Although he did not distribute the information, his actions demonstrate a disregard for client confidentiality and professional ethics, which are fundamental to maintaining the integrity of the financial services industry. Therefore, the respondent's decision to debar the applicant aligns with the "fit and proper" requirements outlined in Section 6A of the FAIS Act."

37. Notwithstanding the applicant's assertions and submissions in his reconsideration application that the clients were "his", both the Employment Contract and the applicable legal principles make it clear that the goodwill, client relationships and associated client information vested in the first respondent.

38. The applicant rendered financial services to those clients in his capacity as an employee of the first respondent and for its benefit, and not in his personal capacity. Accordingly, the Tribunal agrees with the respondents that the transfer of client information to the applicant's personal devices, whether prior to or after his resignation, constitutes a misuse of information belonging to the first respondent and undermined the trust and integrity required of a financial services representative. In the circumstances, the Tribunal finds that the applicant's conduct supports the conclusion that the client information was confidential and improperly appropriated.

39. Furthermore, the Tribunal finds that the applicant's conduct undermines the confidence that a financial services provider and the public are entitled to place in a representative such as the applicant and justifies the conclusion that the applicant no longer met the fit and proper requirements, thereby rendering debarment in terms of section 14(1) of the FAIS Act an appropriate response by the respondents. The applicant's behaviour suggests that he is no longer fit and proper to serve in the financial service industry.

40. In light of the applicable case law and the established factual matrix, the Tribunal concludes that the applicant's debarment was properly imposed and that there is no warrant for the Tribunal's intervention.

41. We accordingly make the following order:

41.1. The application for reconsideration of the debarment decision is dismissed.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS THE 29th JANUARY 2026.

__*Sgd Adv A Saldulker*_____

Adv A Saldulker

For self and on behalf of LTC Harms (Chair)