

Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz ASF 062/2023

MN ('l-ilmentatrici')

vs

Eagle Star (Malta) Ltd. (C 104)

('il-provditur tas-servizz')

Seduta tal-24 ta' Novembru 2023

L-Arbitru,

Ra l-ilment¹ fejn l-ilmentatrici tissottometti li kien mar rapprezentant tal-provditur tas-servizz id-dar u hajjarha tixtri din il-polza ilmentata. Kien accertaha li jekk thallas Lm149.69 kull sena ghal tletin sena shah, hi kienet, mal-maturità tal-polza, tircievi s-somma ta' Lm25,108 ekwivalenti ghal €61,012.44. Kien proprju dan l-argument li pperswadiha sabiex tixtri din il-polza.

L-ilmentatrici stqarret li tul is-snin hi dejjem hallset l-ammont kollu dovut minnha. Izda minkejja dan, hi giet infurmata li issa, minflok dak l-ammont orinarjament imsemmi, hi ser tinghata biss is-somma ta' €30,433.31. Insistiet li hi kienet thajret li tixtri l-polza hekk kif offruta lilha minhabba din is-somma imwieghda ghax kieku kienet tinvesti f'xi haga ohra.

Ghaldaqstant, minhabba f'hekk, hi qed titlob lill-Arbitru sabiex jordna lill-provditur tas-servizz ihallasha s-somma ta' €61,012.44.

Ra t-twegiba² tal-provditur tas-servizz

¹ P. 3

² P. 62

Illi t-talbiet tal-ilmentatrici huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez, stante:

1. Illi fl-ewwel lok, *Eagle Star (Malta) Limited* fl-ebda stadju ma kienet is-socjetà assikuratrici li harget il-polza in kwistjoni favur l-ilmentatrici izda dejjem agixxiet biss ta' agent tas-socjetà assikuratrici li fil-fatt harget il-polza in kwistjoni u li dak iz-zmien kienet maghrufa bhala *Eagle Star Life Assurance Company Limited* u li fis-sena 2004 bidlet isimha ghal *Zurich Assurance Ltd (Principal)*. Qed jigi anness kopja tac-certifikat mahrug mill-*Companies House*, immarkat bhala Dok. ES1, li jikkonferma din il-bidla fl-isem.

Fil-prezent, *Eagle Star (Malta) Limited* lanqas hija l-agent ta' *Zurich Assurance Ltd* ghax m'ghadhiex tbiegh poloz ta' *Zurich Assurance Ltd* izda, permezz ta' *Service Agreement* li sar bejn *Zurich Assurance Ltd* u *Eagle Star (Malta) Limited*, *Eagle Star (Malta) Limited* giet appuntata sabiex tiehu hsieb ilmenti kontra *Zurich Assurance Ltd*. Fil-fatt fuq il-*website* tal-*Malta Financial Services Authority*, *Eagle Star (Malta) Limited* qed tidher li hija licenzjata sabiex tagixxi ta' *run-off agent* u mhux ta' agent ta' *Zurich Assurance Ltd*. Ghalhekk, is-socjetà esponenti hija tal-umli fehma li l-okkju tal-kaz ghandu jinbidel ghal "*Eagle Star (Malta) Limited fil-kapacità ta' run off agent u service provider ta' Zurich Assurance Ltd.*"

2. Illi fit-tieni lok, is-socjetà esponenti tixtieq tirreferi ghall-fatt allegat mill-ilmentatrici illi l-*maturity value* fir-rigward tal-polza in kwistjoni, li huwa fl-ammont ta' Euro 30,433.31, ma kienx ekwivalenti ghal dak li allegatament gie mwieghed lill-ilmentatrici mis-*sales representative*, maghruf bhala *Azzopardi & Azzopardi Ltd* (C 9460) (liema entità illum giet xolta) fil-mument tal-bejgh tal-polza in kwistjoni. Konsegwentement, l-ilmentatrici qieghda titlob lill-Onorabbli Arbitru, fir-rigward tal-polza bin-numru 3520135, sabiex tordna lil *Eagle Star (Malta) Limited* thallas l-ammont skont kif indikat fl-*estimated maturity value* fl-ammont ta' Euro 61,012.44 fl-istima (fol. 9) minflok dak offrut lill-ilmentatrici bhala *maturity value* fl-ammont ta' Euro 30,433.31. Irid jinghad illi fl-umli fehma tas-socjetà esponenti, hemm zball fil-konverzjoni mil-Lira Maltija ghall-Ewro ghax fl-istima l-*estimated maturity value* huwa fl-ammont ta' Lm25,108 u l-konverzjoni ta' dak l-ammont huwa Ewro 58,485.91 u mhux Ewro 61,012.44.

3. Illi fit-tielet lok, is-socjetà esponenti hija tal-umli fehma illi l-ilmentatrici ma sofriet l-ebda danni u ghalhekk m'huwa dovut l-ebda kumpens oltre l-*actual maturity value* fl-ammont ta' 30,433.32 minhabba s-segweni ragunijiet:
 - a. Is-socjetà esponenti tixtieq tispjega illi *s-sales representative* kienu obbligati johrogu l-istimi tagghom abbazi tal-*bonuses* li kienu qed jigu iddikjarati mill-Principal tas-socjetà esponenti (u b'assunzjoni illi l-istess *bonuses* ma jinbidlux matul il-perjodu tal-polza). Il-*bonuses* li kienu qed jigu iddikjarati mill-Principal kienu jigu ikkomunikati lis-*sales representatives*, inkluz *Azzopardi & Azzopardi Ltd*. Fil-fatt, *Azzopardi & Azzopardi Ltd* ibbazat il-kalkoli taghha fuq il-*bonus rates* li kienu iddikjarati fis-sena ta' qabel sabiex taghti ezempju tal-*maturity value* li seta' jithallas mal-maturità tal-polza in kwistjoni jekk wiehed jassumi illi l-*bonus rates* tas-sena 1992 ma kinux sa jinbidlu matul is-snin.
 - b. Il-*bonus rates* kienu ivarjaw minn sena ghall-ohra u ghalhekk l-*estimated maturity value* ma setax kien garantit izda kienu biss kalkoli ibbazati fuq il-*bonuses* iddikjarati ghas-sena 1992 u ibbazati fuq assunzjoni illi dawk ir-rati ma jinbidlux. Barra minn hekk, l-*estimated maturity value* ma setax kien garantit ukoll ghax matul il-perjodu tal-polza, huwa fid-diskrezzjoni tal-Principal sabiex jiddikjara jew le *reversionary bonus* u *terminal bonus*, li fin-natura tagghom huma suxxettibbli ghac-caqliq fis-suq u t-*terminal bonus* jista' jinbidel u jigi rtirat ghal kollox, fid-data tal-maturità tal-polza, mill-Principal minghajr avviz. Ghalhekk, wiehed ikun jaf jekk hux ser jithallas *terminal bonus* u f'liema ammont fuq il-polza meta timmatura l-istess polza u mhux qabel.
 - c. Kieku wiehed seta' jiehu l-*estimated maturity value* indikat fl-imsemmija stima sabiex jiddetermina l-kumpens allegatament dovut lill-ilmentatrici, allura ifisser li l-*Estimated Maturity Value* issa tkun giet moghtija tifsira ferm differenti minn dik ta' stima (*estimate* jew *illustration*) fil-kuntest tal-investimenti u tiehu minflok tifsira zbaljata ta' ammont garantit, sabiex konvenjentement l-ilmentatrici tista' tivvanta l-pretensjoni infondata taghha. Il-figura indikata fl-istima in kwistjoni bhala *estimated maturity value* bl-ebda mod ma setghet

kienet garantita minhabba illi l-*actual maturity value* kien ser ikun affettwat mill-prestazzjoni tal-investment sottostanti. Fil-fatt, fis-snin recenti, il-prestazzjoni tal-investment kienet aktar baxxa u ghalhekk il-*bonus rates* kienu bdew nezhin mis-sena 1991.

- d. Is-socjetà esponenti tixtieq izzid illi l-polza in kwistjoni kienet intiza biex tinbiegh lil individwi bhal ma hija l-ilmentatrici.
- e. Il-polza in kwistjoni inbieghet ai termini tar-regoli u prattika ta' dak iz-zmien illi inbieghet il-polza in kwistjoni.
- f. Is-socjetà esponenti u l-Principal taghha dejjem agixxew bl-aktar *bona fede vis-à-vis* l-assikurati taghhom f'kull stadju. Il-Principal tas-socjetà esponenti dejjem immannigjat il-fond maghruf bhala 90:10 *With Profits Fund* fl-ahjar interess tad-detenturi tal-poloż taghha. L-immannigjar tal-fond huwa taht skrutinju tal-*management* eżekuttiv u ta' l-*investment committees* tal-Principal tas-socjetà esponenti, taht skrutinju tal-attwarji, l-*Principles & Practices of Financial Management* kif ukoll taht skrutinju tal-*Prudential Regulation Authority* u l-*Financial Conduct Authority* fl-Ingilterra u tal-Awtorità ghas-Servizzi Finanzjarji ta' Malta.

L-andament tal-istess fond huwa kompletament u dejjem soggett ghal dawk il-kambjamenti u caqliq ta' valuri fis-swieq kemm finanzjarji, kemm ta' proprjetà immobili u kif ukoll ohrajn illi gewwa fihom tinvesti l-Principal tas-socjetà esponenti. L-ebda indikazzjoni ta' kif jista' jizviluppa l-valur tal-investment ma jista' qatt jittiehed bhala vangelu u kif jaf kulhadd, il-valur tal-investment jista' joghla kif ukoll jinzel u l-passat m'huwiex garanzija tal-futur. Id-diminuzzjoni mill-valur tal-*estimated maturity value* fl-ammont ta' Euro 58,485.91 (Lm25,108) li kien ibbazat fuq il-*bonuses* li kienu gew iddikjarati fis-sena 1992 ghall-*actual maturity value* fl-ammont ta' Euro 30,433.31, ma huwa xejn hliet riflessjoni tal-andament tal-investment u tal-fond hawn fuq imsemmi tul il-perjodu kollu li ilha fis-sehh din il-polza.

- g. Barra minn hekk jekk wiehed jaghmel analizi dettalljata fejn jittiehdu in konsiderazzjoni l-fatturi kollha (u mhux uhud biss minnhom) wiehed

jasal għall-konkluzjoni li xorta wahda dik il-parti tal-polza in kwistjoni li hija l-parti tal-investment (u mhux il-parti tal-assikurazzjoni fuq il-hajja) marret tajjeb tul il-kors tal-perjodu tal-polza *de quo*. Fil-fatt kien hemm gwadann fl-ammont ta' Ewro 20,322.41 (cioè, *average rate of return* 6.4% kull sena ikkombinata fuq perjodu ta' 30 sena).

- h. Irid jinghad ukoll illi ta' kull sena, is-socjetà esponenti dejjem zammet lill-ilmentatrici mgharrfa b'dak li kien qed jigri fid-dettall bl-andament tar-rati tal-imghax li kienu qeghdin jigu ikkreditjati lill-polza *de quo* billi forniet lill-ilmentatrici (kif ghamlet ovvjament mad-detenturi tal-poloż kollha taghha) bil-valuri attwali tal-polza *de quo*, permezz tal-*Bonus Statements* (fol. 25-53). Il-*Bonus Statements* kienu juru l-progressjoni fit-tkabbir tal-polza minn sena ghal sena u l-ilmentatrici kellha tkun konxja bis-shih dwar kif il-polza kienet qed tikber minn sena ghal sena.

Barra mill-*Bonus Statements*, is-socjetà esponenti kienet ukoll tibghat ittri lill-assikuraturi taghha fejn tispjega fid-dettall dwar il-polza bhal dik in kwistjoni u l-fond fuq imsemmi u dwar ir-*revised estimated maturity value*. (Kopja tal-ittri li kienu jintbaghtu lill-assikurati huma hawn annessi u mmarkati bhala Dok. ES2).

Fost l-ittri mahruga, l-ittra tas-sena 2021 u 2022 jispjegaw b'mod car illi *'the future reversionary and terminal bonus rates are reviewed regularly taking into account a range of factors including investment performance and are not guaranteed. The above estimates therefore, are not the amount you will receive at maturity but only an illustration of what the value may be at maturity given these assumptions. The payment at maturity may be larger or smaller than the illustrations.'*

- i. Irid jinghad ukoll illi l-polza *de quo*, apparti l-element ta' investment, li hija s-suggett principali ta' din il-vertenza, kellha ukoll tkopri r-riskju tal-mewt tal-ilmentatrici matul il-kors tal-perjodu tal-istess polza, liema kopertura ovvjament ghandha prezz u liema prezz qed jigi totalment injorat mill-ilmentatrici fl-ilment taghha. L-ghan tal-polza in kwistjoni kien li jipprovdi pagament hieles mit-taxxa meta timmatura l-polza u beneficcju garantit pagabbli fil-kaz ta' mewt qabel il-maturità tal-polza.

Fil-fatt, l-ammont li seta' kien garantit fuq il-polza in kwistjoni kien is-*Sum Assured* li kien jikkonsisti fil-*Basic Assurance* fl-ammont ta' Lm3,900 flimkien mal-*bonuses* li kienu iddikjarati matul is-snin u dawn kienu jithallsu meta timmatura l-polza jew jekk l-ilmentatrici kienet tmut qabel il-maturità tal-polza.

Fil-fatt, il-kuntratt tal-polza (fol. 19) in kwistjoni jghid b'mod car illi

*"This Policy witnesses that in consideration of the payment to EAGLE STAR Life Assurance Company LIMITED (hereinafter called "the Company" _ of the first premium for the Assurance the particulars of which are stated in the First Schedule hereto and of the subsequent premiums if any to be paid as thereby provided the Company hereby grants the Assurance described in the said First Schedule and **will pay the Sum Assured** (enfazi mizjud) on the happening of the event(s) therein stated at its Principal Office in Malta."*

Fol. 20 li hija l-*Policy Schedule* tipprovdi illi *"SUM ASSURED AND WHEN PAYABLE: Lm3,900 with profits on 30th March, 2023 or proof of earlier death of the Life Assured."*

Dan juri illi s-socjetà esponenti ottemprat mal-obbligi kuntrattwali taghha ghax lahqet l-ghanijiet tal-polza in kwistjoni meta l-istess polza lahqet il-*maturity value* fl-ammont ta' Euro 30,433.31. Ghalhekk, minkejja t-tnaqqis recenti fir-rati tal-*bonuses* matul iz-zmien xorta wahda l-polza in kwistjoni kienet investiment siewi ghaliex minbarra l-*"Maturity Value"* hieles mit-taxxa, il-polza ipprovdiet ukoll kopertura fuq il-hajja li mhux generalment disponibbli taht forom ohra ta' tfaddil regolari.

4. Finalment, is-socjetà esponenti tixtieq tishaq ghall-ahhar darba illi hija qatt, fl-esekuzzjoni tal-kuntratt relattiv u, cioè, fir-rigward tal-polza bin-numru 3520135, ma kienet inadempjenti jew kisret termini pattwiti bejn il-partijiet u, ghalhekk, m'ghandhiex tkun ordnata sabiex thallas kumpens lill-ilmentatrici jew spejjez ta' din il-procedura li saret inutilment mill-ilmentatrici, hekk kif ser jigi ippruvat waqt it-trattazzjoni ta' dan l-ilment.

Salv eccezzjonijiet ulterjuri.

Seduti

Fil-ewwel seduta³ tat-12 ta' Settembru 2023, xehdet l-ilmentatrici u qalet:

'Nghid li l-complaint tieghi hu li jien kelli With Profit Life Assurance mal-Eagle Star Malta Limited li taghlaq wara 30 sena. Il-polza ghalqet din is-sena f'Marzu u l-Eagle Star kienu qaluli meta kont dhalt magghom li kont ser niehu estimate ta' Lm25,000, li approximately jigu xi €60,000. Kont inhallas l-ammont dovut kull sena.

Nghid li meta ghalqet f'Marzu, ircevejt mill-Eagle Star li ser niehu €30,000, nofs l-ammont li kienu qaluli bejn wiehed u iehor ser niehu. Nghid li dan hu l-complaint tieghi ghax lili qaluli li ser niehu madwar €60,000. Nghid li huma vera qaluli li s-somma kienet 'estimate', imma l-varjazzjoni hija kbira hafna, li kienu qaluli bejn wiehed u iehor li ser niehu.

Nghid li meta ghamilt il-polza fl-1993, jien kont nurse u ghadni nurse. Nghid li bhala edukazzjoni, jien kont spiccajt is-Secondary School u wara mort Nursing School. Imbaghad, iggradwajt bhala nurse fl-1989.

Huma veru li qalu 'estimate' imma jekk ikollok somma ta' Lm25,000 almenu tiehu 95% jew 90% tas-somma.

Id-differenza hija kbira, nofs is-somma.'

Fil-kontroezami,⁴ l-ilmentatrici kompliet:

'Mistoqsija min bieghli l-polza, nghid li skont il-karti li ghandi, hi Jennifer Azzopardi, Senior Insurance Consultant. Però, min gie d-dar insejt. Ma niftakarx kinitx mara jew ragel.

Qed jinghad li, allura, jien ma niftakarx kelma b'kelma x'qaltli din il-persuna li giet id-dar ghandi la ma niftakarx kinitx mara jew ragel. Nghid li jien ergajt qrajt il-karti li ghandi.

³ P. 93

⁴ P. 94

Qed jinghad li min bieghli l-polza kien ragel, Josef Busuttil.

Nghid li ma niftakarx kelma b'kelma x'qalli Josef Busuttil, li qed nghid hu mill-karti li tawni u li ffirmajt.

Jiena nixtieq nikkoregi xi haga. Fil-laqgħa li kellna tal-medjazzjoni, jien kont għidt li kienet weghda tal-ammont, però, imbagħad, iddecidejna li tigi 'estimate', bejn wiehed u iehor.

Naqbel li jien kont fhimt li kont ser nircievi 90% tal-profitti li kien ser jagħmel il-fond fejn kien hemm il-premiums, nghid li iva.

Naqbel li ma setghux jinfurmawni kemm il-fond kien ser jagħmel profitti dak iz-zmien għax riedu jaraw kemm kien ser jagħmel profitti matul is-snin.

Mistoqsija naqbilx li jien għamilt l-ilment tiegħi mhux għax kelli xi weghda u li gejt imqarrqa imma għax ma kontx sodisfatta kif marru l-investimenti, nghid ezatt. Jien ippretendejt li Eagle Star tinvesti aħjar għax kien hemm cans 30 sena biex jibdlu l-investimenti tagħhom.

Qed jinghad li għalkemm jien m'inix sodisfatta kif mar l-investment, jien fil-fatt għamilt profitt ta' €20,322, li huma average rate of return ta' 7.5% kull sena, u li apparti dan kelli life cover ta' Lm3,900, nghid li iva.

Mistoqsija naqbilx li jien ma ridtx nagħmel investment riskjuż, li dak li ninvesti bħala premium niehdu zgur, nghid li meta jiena hadt il-polza, dawn spjegawhomli u kont naf li dawn il-flus kont ser nehodhom lura u ma kontx ser nitlifhom.

Nghid li Eagle Star zammitni nfurmata bid-dettall dwar il-bonuses, fejn kienu jinvestu, x'fiex qed jinvestu u x'kien għaddej fid-dinja, nghid li kull sena kienu jibagħtuli l-karti.

Nghid li l-persuna giet darba għandi d-dar. Kont għamilt appuntament, gie d-dar u spjegali fuq l-investimenti u ddecidejt li nagħmel il-polza. L-ewwel kont cempilt jien u spjegali u meta gie d-dar spjegali aktar u dakinhar iddecidejt li mmexxi bil-polza. Mingħalija li dakinhar iffirmajt il-karti.'

Gie pprezentat l-Affidavit⁵ ta' Soile Maarit Borg, li tokkupa l-irwol ta' *Manager* fi hdan il-provditur tas-servizz fejn qalet li:

'I occupy the role of Manager of Eagle Star (Malta) Limited (C104). I started working with Eagle Star (Malta) Limited in 1992 intermittently until 2000 and then continuously to date.

The policy that I shall be giving evidence about was purchased by MN nee XXX ('the complainant') from Eagle Star (Malta) Limited in its capacity as agent of Eagle Star Life Assurance Company Limited (today known as Zurich Assurance Ltd ('the Principal') through a certain Joseph Busuttil who was representing Azzopardi Insurance Consultancy ('Azzopardi'), with effect from the 30th March 1993 and is known as "Endowment With Profits Life Assurance" numbered 3520135 in the name and on the life of the complainant for a period of 30 years ('the Policy').

I have understood that although the complainant was presented with the amount of (Euro 58,485.91) Lm25,108 as "estimated maturity value" on the quotation (fol. 9) issued by Azzopardi at the time that the complainant was purchasing the Policy, the complainant had understood that she was not being promised to be paid a sum which was close to estimated maturity value since said amount depended on the performance, during the term of the Policy, of the 90:10 With Profits Fund ('the Fund') in which the premium of the Policy and that of all the other policyholders who owned the policies of the same nature were invested. I have understood that the complainant was aware that upon the maturity of her Policy she would receive 90% of the profits of the Fund and hence the estimated maturity value could not have been guaranteed to be paid to her since she needed to wait to see how the Fund performed during the term of the Policy. Therefore, it was not possible to know in advance and with certainty what profits the Fund was going to make during the term of the Policy. Therefore, the complainant is not complainang that she was misled about what she was going to receive upon the maturity of the Policy or pressurized to purchase the Policy since it was her who approached Azzopardi for a quote, but that Eagle Star (Malta) Limited /Principal failed to invest the premium forming part of the 90:10 With Profits Fund in the best way possible

⁵ P. 97

and is of the view that the Fund could have performed better. The complainant has also confirmed that she does not recall who sold the Policy to her and what was explained to her by the salesman at the time that she was purchasing the Policy but was basing her claim on the documentation.

In fact, the policy clearly provides that “This Policy ... will pay the Sum Assured (emphasis added) on the happening of the event(s) therein stated ...” (Fol. 19). Therefore, the only amount that was in fact guaranteed in connection with the Policy was the payment of the Sum Assured. Sum Assured is defined as “Lm3,900 with profits” (fol. 20). As already explained above, the profits which are added to the Lm3,900 are derived from the Fund above-mentioned. The profits represent the profits added to the Policy which is made up of regular bonuses that were declared by the Principal over the years and a final-terminal bonus added at the date of the claim. These bonuses reflect the performance of the Fund and were calculated from the Guaranteed Sum Assured and the Guaranteed Bonues.

If the complainant had passed away the day after the payment of the first premium in the amount of Lm149.69 (Euro 348.68), her heirs would have received the guaranteed sum of Lm3,900 (Euro 9,084.55). Therefore, the Policy in question was a good investment because besides the Maturity Value (free of taxes), it also provided life cover in the amount of Lm3,900 (Euro 9,084.55) and therefore a guaranteed benefit payable upon death of the complainant if it took place before the maturity of the policy, which benefit is not generally offered in other saving investments and which benefits is being totally ignored by the complainant.

The maturity value of the Policy, which amounted to Euro 30,433.31, comprised of Euro 3,668.17 declared annual reversionary bonuses, Euro 17,680.58 final/terminal bonus and Euro 9,084.55 Sum Assured. Therefore, the difference between the Sum Assured in the amount of Euro 9,084.56 and the actual maturity value in the amount of Euro 30,433.31 represents the profits added to the Policy. This shows that Eagle Star (Malta) Limited and its Principal adhered to the contractual obligations under the Policy since the Policy achieved the objectives thereof.

I wish to emphasise that although it could not have been known what the maturity value of the Policy will be since no one could be in a position to predict how the Fund was going to perform over a period of 30 years, Eagle Star (Malta) Limited/the Principal were still obliged to issue a quotation to the complainant. Eagle Star (Malta) Limited/the Principal were able to calculate the estimated maturity value using the bonus rate that was declared by the Principal in the previous year (in this case in 1992) based on the assumption that said value will only be achieved if said bonus rate remained the same throughout the term of the Policy. However, the bonuses that were being declared by the Principal varied over the years because said bonuses needed to reflect the performance of the Fund but said declared bonuses were being clearly communicated to the complainant on an annual basis and the complainant was well informed how its Policy was growing and that it was not going to reach the estimated maturity value for the reasons that it clearly explained in the bonus statements, valuation statements and in the letters that the Eagle Star (Malta) Limited was sending to the complainant throughout the term of the Policy, such as those marked as Dok. ES2 and fol. 25 – 53. The said documentation clearly informed the complainant that there was no guarantee except for the payment of the Lm3,900 and the declared bonuses. The documentation also informed the complainant where the premium was being invested and what was happening in the financial market and how it was affecting the Fund. I am attaching herewith a table setting out a summary of what was disclosed to the complainant in the relevant year in the bonus statements and valuations statements that were sent to her during the term of the Policy marked as Document ES3.

Although the maturity value of the Policy was lower than the estimated maturity value, it may still be said that the Policy was not a risky investment but simply a savings one because all the bonuses which were declared by the Principal during the term of the Policy and the amount of Lm3,900 (Sum Assured) were guaranteed to be paid to the complainant upon the maturity of the Policy despite the shift downwards in the investment markets. Such guarantees have been fulfilled. This guarantee comes with great responsibility. Therefore, the Principal is only able to declare bonuses that are sustainable and is able to pay since once declared they are guaranteed even if in case of financial crises.

I feel that besides adhering to its contractual obligations under the Policy, unlike what is being alleged by the complainant, the Principal has also invested the premium as best as it could. This be said particularly because the complainant has managed to make a gain of Euro 20,322.41 (equivalent to an average return of 6.4% net of taxes and an average return of 7.5% per annum (gross of 15% taxes). This gain is extraordinary when comparing it to similar investments and this besides the fact that this type of product has also served as a life cover. I also note that the final bonus rate calculated by the Principal includes an enhancement to allow for the distribution of part of the fund's estate. The enhancement is currently 49% of the asset share, increased from 44% a year ago.

Eagle Star (Malta) Limited and its Principal have acted in good faith in relation to the complainant at all stages. The Principal has always managed the Fund in the best interest of its policyholders. The gain made under the Policy speaks for itself even though there have been several financial turmoils. The management of the Fund was under the scrutiny of the management executive and of Board, the investment committees of the Principal, the Principles & Practices of Financial Management as well as under the scrutiny of the financial regulators in the United Kingdom and in Malta. As the complainant was well aware, the performance of the Fund is completely and always subject to the changes and movements in the market of immovable property and financial assets in which the Principal has invested the premiums of its policyholders, including that of the complainant.

Lastly, I wish to emphasise that the bonuses that were offered to the complainant were identical to those that were offered to the other policyholders participating in the Fund, including those with similar policies which were sold in the United Kingdom, and therefore, the complainant was not treated less favourably than the others. In addition, it would be irresponsible and incorrect and inequitable vis-à-vis the other policyholders if the Principal were to offer the complainant a sum that was higher than the maturity value.

It is well understood that the Policy did not perform as the complainant was hoping for because of the poor performance in the investment markets during the term of the Policy and not because Eagle Star (Malta) Limited/the Principal

invested poorly. In fact, Eagle Star (Malta) Limited/the Principal did all that was possible to nonetheless provide as high a return as possible to the complainant despite the several financial turmoils, a return that is by far higher than that achieved by the Principal's competitors in Malta. Therefore, Eagle Star (Malta) Limited/the Principal should not be ordered to pay the complainant any other amount, including the expenses of this procedure, in addition to the maturity value.'

Fit-tieni seduta tas-6 ta' Novembru 2023, xehed Josef Busuttil, li kien impjegat ta' Azzopardi Financial Services u li kien ukoll il-persuna li biegh il-polza ilmentata lill-ilmentatrici. Hu qal:

'Nghid li fl-1993, jien kont nahdem ma' Azzopardi Financial Services.

Qed nigi referut ghad-dokumenti minn fol. 8 sa fol. 17 tal-process, li jinkludu l-quotation b'letterhead ta' Eagle Star, u nikkonferma li huma miktubin bil-kitba tieghi.

Nghid li waqt il-bejgh tal-polza tas-Sinjura MN, jien ma ppersejtx biex tixtri l-polza, imma spjegajt, iva.

Nghid li jiena jew il-klijent kien jigi l-ufficcju jew jiena mmur id-dar ta' dak li jkun u nispjega kif tahdem il-polza. Kont inhalli daww id-dokumenti li qed tirreferi ghalihom. Kont inhallihom lill-prospective customer jew il-customer wara li nkun spjegajt fid-dettall kif tahdem il-polza.

Kont nispjega kif tahdem il-polza; kont anke nuri kopja ta' statement; kont ukoll inhalli daww id-dokumenti kollha li rreferejt ghalihom li huma l-bazi tal-ispjegazzjoni kollha tieghi li kienet tkun dettalljata u bir-reqqa kif tahdem il-polza.

Kont nispjega li parti mill-polza hija life cover, li parti minnha hija investimenti. Kont inkun cert li l-klijent fehem dak li nkun qed nispjega. Kont nispjega wkoll li l-ammonti huma bbazati (li huma stima) fuq il-performance tal-kumpanija, qed nitkellmu fuq Eagle Star dak iz-zmien.

Kif jidher car fid-dokumenti li jien inhalli kont nghid li huma stima – an Estimated Maturity Value, cara. Imma, f'kaz ta' mewt, Alla jhares qatt, jew

upon maturity, il-klijent jiehu s-Sum Assured plus il-bonuses kollha li jkun hemm sa dik il-gurnata.

Nghid li kif jidher fid-dokument u, allura, la nhalli d-dokument ma nistax nghid xi haga bil-kontra, qatt ma kont niggarrantixxi l-ammont tal-ahhar, imma dejjem kont nghid li huma Estimated Maturity Value based on current values tal-Eagle Star ta' dak iz-zmien. Nghid li le, assolutament qatt ma ggarantejt l-ebda Estimated (tohrog waheda) Maturity Value. Li kien hemm garantit huwa ovvjament is-Sum Assured plus il-bonuses li tiehu kull sena. U kont nispjega wkoll li tircievi statement ta' kull sena. Kont inhalli sample ta' dak l-istatement biex dak li jkun ikun jaf kull sena kemm qed tizdied mas-Sum Assured.'⁶

Waqf din l-istess seduta, l-ilmentatrici iddikjarat⁷ li ma kellhiex mistoqsijiet x'tagħmel, la lil Ms Soile Borg u lanqas lis-Sur Josef Busuttil.

Bhala sottomissjonijiet finali, l-istess ilmentatrici stqarret li:

'Jien ma naqbilx ma' li hemm miktub fl-affidavit ta' Ms Soile Borg, (fol. 097) fejn kitbet li:

'Therefore, the complainant is not complaining that she was misled about what she was going to receive upon the maturity of the Policy or pressurized to purchase the Policy since it was her who approached Azzopardi for a quote, but that Eagle Star (Malta) Limited/Principal failed to invest the premium forming part of the 90:10 With Profits Fund in the best way possible and is of the view that the Fund could have performed better.'

Nghid li jiena fdajt fl-Eagle Star.'⁸

Barra minn hekk, Dr Veronica Grixti, f'isem il-provditur tas-servizz, issottomettiet li:

'Fl-ewwel lok, nixtieq naccenna li l-ilmentatrici stess hadet l-inizjattiva biex tixtri l-polza. Fil-fatt, hija qalet li kienet ghamlet l-appuntament u l-ewwel kienet cemptet hi, jigifieri, hadd mill-Eagle Star ma mar biex igenninha tixtri l-polza.

⁶ P. 101 - 102

⁷ P. 102

⁸ *Ibid.*

Fit-tieni lok, il-quotation inghatat mill-Eagle Star ghax l-Eagle Star kienet obbligata li taghtiha; u meta tat il-quotation kienet spjegatilha dik il-quotation fid-dawl ta' li ser nghid.

Fil-fatt, l-ilmentatrici stess, fix-xhieda taghha, ammettiet li kienet fehmet li l-Estimated Maturity Value ma kienx imwieghed u li ghalhekk seta' jitla' u jinzel, u li hija kienet ser tiehu 90% tal-profitti tal-fond flimkien mal-ohrajn.

Hija wkoll ammettiet li ma setghetx tkun taf mill-ewwel gurnata kemm kienu ser jitilghu dawk il-profitti u li kellha tistenna sal-ahhar.

Fil-fatt, l-ilment huwa li l-Eagle Star ma nvestietx kif suppost u li mhux ghax giet imqarrqa li l-ammont kien imwieghed lilha. Ghalhekk hemm kontradizzjoni bejn l-ilment u x-xhieda. Fl-ilment qalet li 'r-rapprezentant qatt ma qalli li l-ammont moghti mill-polza seta' jonqos matul iz-zmien', imbaghad, fix-xhieda qalet li l-ilment taghha huwa illi l-Eagle Star ma nvestietx tajjeb.

Però, minkejja li l-ilment taghha huwa li l-Eagle Star ma nvestietx tajjeb, fl-umli fehma taghna, l-ilment huwa infondat ghax il-gwadann li ghamlet jirrifletti r-rendiment ta' prodotti li huma simili; anzi, mhux simili imma ahjar. Dan hu attribwit minhabba li s-Sinjura inghatat aktar milli kienet infurmata li ser tiehu ghax dan il-fond waqqfu li jbieghu dan it-tip ta' poloz u issa qed jiddistribwixxu l-assi ta' dan il-fond. Allura, s-Sinjura hadet Terminal Bonus straordinarju ta' 482% u, ghalhekk, gabet ir-rendiment ta' 7.5% average ta' kull sena. Jigifieri, ghall-prodott li hu, li huwa life cover u li ma kienx fih riskju u l-kapital kien garantit, xorta hadet 7.5% over thirty years.

Hi ammettiet ukoll li barra li kienet taf li l-Estimated Maturity Value ma kienx imwieghed, Eagle Star kienet qed izzommha infurmata dwar kif kienet qed tmur il-polza; fejn kienu qeghdin jigu investiti; dwar is-Surrender Value; dwar ir-Revised Illustrated Maturity Value. Kull sena giet mgharrfa li l-valur tal-polza issa kien daqshekk; minn sena ghal sena kienet tigi infurmata x'kien qed jigri fid-dinja tal-investimenti.

Is-Sinjura taf taqra u tikteb u, minkejja dan kollu, s-Sinjura ma haditx passi in the meantime sabiex tipprova tara jekk setghetx tbiddel l-investment taghha.

Ghalhekk, fl-opinjoni taghna, hemm nuqqas t'aspettativa legittima u ragonevoli tas-Sinjura MN biex tippretendi li tircievi xi haga ohra li mhux simili ta' investimenti ohra.⁹

Sema' lill-partijiet

Ra l-atti kollha tal-kaz

Jikkunsidra

FIL-MERTU

L-Arbitru jrid jiddeciedi l-kaz b'referenza ghal dak li, fil-fehma tieghu, huwa ekwu, gust u ragonevoli fic-cirkostanzi partikolari u merti sostantivi tal-kaz¹⁰.

Il-punt kruċjali f'dan l-ilment jittratta l-informazzjoni moghtija lill-ilmentatrici u l-allegati weghdiet li saru fir-rigward tal-ammont li hi kellha tircievi mal-maturità tal-polza.

L-Arbitru jrid imur ghall-waqt li kienet qed tinbiegh il-polza ilmentata, x'gie imwieghed lill-ilmentatrici u x'eventwalment gie moghti jew offrut lilha mal-maturità. Irid jara ukoll kif sar il-bejgh tal-prodott ilmentat u, fuq kollox, jekk dan lahaqx *'l-aspettattivi ragonevoli u legittimi tal-konsumaturi u dan b'referenza ghaz-zmien meta jkun allegat li jkunu sehew il-fatti li jkunu taw lok ghall-ilment.*¹¹

Fl-ilment originarjament sottomess, l-ilmentatrici indikat li hi thajret taghmel il-polza hekk kif offruta lilha mir-rapprezentant tal-provditur tas-servizz li mar id-dar taghha, meta giet imwieghda li mal-maturità, ser tiehu s-somma ta' Lm25,108, ghax kieku ma kienx hekk, kienet tinvesti flusha f'xi haga ohra. Dan filwaqt li sostniet li qatt ma ntqal lilha mill-istess rapprezentanta li l-ammont li l-polza kienet ser trendilha, seta' jonqos matul iz-zmien.

Mill-banda l-ohra, fix-xhieda taghha, hi ammettiet li kien fil-fatt intqal lilha li l-ammont li hi kienet ser tiehu kien proprju *'estimate'*, izda fl-istess waqt iddikjarat li ghalkemm huwa minnu li l-ammont ikkwotat lilha kien *'estimate'*,

⁹ P. 102 - 103

¹⁰ Kap. 555, Artiklu 9(3)(b)

¹¹ Kap. 555, Artiklu 19(3)(c)

ma stennietx li d-differenza bejn dan l-ammont u dak eventwalment offrut liha mal-maturità kellha tkun daqshekk kbira ghax tistenna li almenu tiehu bejn 90% u 95% tas-somma kkwotata.

Izda, iktar minn hekk, fil-kontroezami, l-ilmentatrici stqarret li,

‘Naqbel li jien kont fhimt li kont ser nircievi 90% tal-profitti li kien ser jaghmel il-fond fejn kien hemm il-premiums, nghid li iva.

Naqbel li ma setghux jinfurmawni kemm il-fond kien ser jaghmel profitti dak iz-zmien ghax riedu jaraw kemm kien ser jaghmel profitti matul is-snin.¹²

Dan ifisser li, minkejja dak imnizzel fl-ilment originarjament sottomess, l-ilmentatrici innifisha ikkonfermat li hi stess kienet konxja tal-fatt li l-polza in kwistjoni fiha element ta' investiment u li, fuq kollox, ir-ritorn fuq din l-istess polza kien jiddependi mill-profitti li l-polza kienet ser taghmel tul is-snin.

Hawn l-Arbitru ma jistax ma jinnutax li l-argumenti pprezentati mill-ilmentatrici huma kemmxejn kontradittorji.

Fl-ilment sottomess, l-ilmentatrici ukoll tat l-impressjoni li kienet proprju fuq inizjattiva tar-rapprezentant tal-provditur tas-servizz meta dan mar id-dar taghha li hi, fuq kliemu, thajret biex taghmel din il-polza. Mill-banda l-ohra, fil-kontroezami, mbaghad ammettiet li kienet hi li cempt, talbet l-informazzjoni li imbaghad nghatilha, u eventwalment ir-rapprezentant kien ***‘... gie d-dar spjegali aktar u dakinhar iddecidejt li mmexxi bil-polza.***¹³

Fuq kollox, fil-kontroezami, l-ilmentatrici iddikjarat ukoll li,

‘Mistoqsija naqbilx li jien ghamilt l-ilment tieghi mhux ghax kelli xi wegħda u li gejt imqarrqa imma ghax ma kontx sodisfatta kif marru l-investimenti, nghid ezatt. Jien ippretendejt li Eagle Star tinvesti ahjar ghax kien hemm cans 30 sena biex jibdlu l-investimenti tagħhom.¹⁴

Dan għalhekk ifisser li dan il-kaz imressaq mhuwiex kif ippruvat tinghata l-impressjoni meta giet sottomessa l-formola tal-ilment, li l-ilmentatrici hasbet li

¹² P. 94

¹³ P. 95

¹⁴ P. 94

ser thallas ammont partikolari fis-sena u mal-maturità kienet ser tircievi dak ikkwotat.

Hawn l-Arbitru ghandu kaz fejn, kif digà saret referenza aktar kmieni, l-ilmentatrici kienet talbet għall-informazzjoni dwar il-polza in kwistjoni, giet mogħtija din l-informazzjoni fuq it-telefon u, eventwalment, regghet nghatatilha meta r-rapprezentant tal-provditur tas-servizz mar id-dar tagħha; kienet taf li l-polza fiha element ta' investiment, kienet taf li l-*premiums* imhallsa kienu ser jigu investiti go fond u li hi kienet ser tircievi 90% tal-profitti minn dan l-istess fond; filwaqt li kienet konxja ukoll tal-fatt li, fil-mument tal-bejgh ta' din l-istess polza, ma setghetx tinghata informazzjoni dwar kemm il-fond imsemmi kien ser jagħmel profitti.

Fuq kollox, irrizulta li l-ilment mhuwiex dwar il-fatt li hi giet imwieghda li ser tinghata somma partikolari li, eventwalment, din ma nghatatx, jew li ma nghatatx bizzejjed informazzjoni dwar il-mod kif taħdem din il-polza u fuq xiex din is-somma imwieghda lilha kienet dipendenti, izda, l-ilment qed jigi mressaq għax l-ilmentatrici ma kinitx sodisfatta bl-andament tal-investment.

L-Arbitru għalhekk jikkonkludi li l-proprja raguni għalfejn gie mressaq dan l-ilment ma kinitx għax l-ilmentatrici thoss li, b'xi mod jew iehor, il-provditur tas-servizz naqas fil-konfront tagħha, izda, bl-ghan li tagħmel tentattiv sabiex takkwista xi haga aktar minn dak li digà giet offruta. Barra minn hekk, l-ilmentatrici fl-ebda hin ma ndikat x'seta' sar differenti jew iktar minn hekk fejn thoss li sar il-hazin min-naha tal-provditur tas-servizz.

Fuq kollox, l-Arbitru ma jistax ma jinnutax ir-ritorn li l-ilmentatrici għamlet minn din il-polza ilmentata. Fl-*Affidavit* imressaq minn Soile Borg, *Manager* fi hdan il-provditur tas-servizz, gie indikat li **'... the complainant has managed to make a gain of Euro 20,322.41 (equivalent to an average return of 6.4% net of taxes and an average return of 7.5% per annum (gross of 15% taxes),'**¹⁵ fattur li l-ilmentatrici ikkonfermat fil-kontroezami tagħha. Allura, tikkunsidra c-cirkostanzi kollha tul il-perjodu kollu tal-polza, zgur ma jistax jinghad li l-andament kumplessiv ta' din l-istess polza kien wiehed hazin.

¹⁵ P. 98 - 99

Ghaldaqstant, ghar-ragunijiet kollha msemmija f'din id-decizjoni, l-ilment m'huwiex gust, ekwu u ragonevoli u l-Arbitru ma jistax jilqghu.

Kull parti thallas l-ispejjez taghha.

Alfred Mifsud

Arbitru ghas-Servizzi Finanzjarji