

Quddiem l-Arbitru ghas-Servizzi Finanzjarji

Kaz ASF 074/2023

GH & HH ('l-ilmentaturi')

vs

MAPFRE MSV LIFE p.l.c. (C 15722)

('il-provditur tas-servizz')

Seduta 21 ta' Dicembru 2023

L-Arbitru,

Ra l-ilment¹, fejn l-ilmentaturi issottomettew li fis-sena 1998 rapprezentant tal-provditur tas-servizz kien mar id-dar taghhom u offriehom investiment, liema investiment deher li kien tajjeb hafna u, eventwalment, gew ipperswaduti sabiex jixtru dak offrut lilhom.

Sostnew li l-ftehim kien li jekk huma jhallsu s-somma ta' Lm410 (Euro 955.04) kull sena, wara hamsa u ghoxrin sena, kienu mbaghad jircievu Lm35,400 ekwivalenti ghal Euro 82,459.81.

L-ilmentaturi ilmentaw li issa, wara dan iz-zmien kollu, il-provditur tas-servizz qiegħed biss joffrilhom is-somma ta' €33,066.44 u li għalhekk ifisser li ma zammx mal-wegħda li kienet originarjament saritilhom.

Għaldaqstant, huma qed jitolbu li jingħataw is-somma originarjament imwiegħda lilhom lura fis-sena 1998, jgħidli dik ta' Euro 82,459.81 (Lm35,400).

¹ Pagna (P.) 3

Ra t-twegiba² tal-provditur tas-servizz

1. *'MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainants that the maturity value of the policy in question numbered 41738 of the nature Joint Endowment Assurance with Profits including Funeral Expenses ("the Policy") was not equivalent to highest estimated maturity value which was indicated by MMSV when the Policy was sold to the complainants.*

Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to pay the complainant the difference between the said figures by paying an amount in addition to the Maturity Value of the policy which originally amounted to Euro 33,567.83 (but now has been reduced due to the Automatic Premium Loan as explained below), and which amount MMSV was in a position to pay upon the maturity of the Policy.

2. *Without prejudice, to the above it needs to be pointed out that the original maturity value of the policy amounted to Euro 33,567.83. However, in accordance with the maturity letter dated 26th April 2023 (fol. 065) the maturity amounted to €33,066.44. This was a result of the complainants failing to make a number of premium payments which triggered the automatic premium loan in terms of the General Conditions of the Policy. Then again, as per the correspondence sent by Victor Farrugia (attached to the claim fol. 8) it was decided that the interest which amounted to Euro 6.89 that was created on the automatic premium loan is to be reversed and the said amount shall be added to the maturity value (subject to the automatic premium loan).*

In this regard, MMSV is of the view that the claimant's request is unfounded and therefore, the complainant is not entitled to receive any compensation in addition to the maturity value, and this for the reasons that have already been communicated in detail to the complainant by virtue of the reply letter of MMSV to the complaint made by the complainant, dated 26th April 2023 (a copy of which was presented with the complaint marked as fol. 065-067) and as is going to be explained in further detail hereunder.

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3. *In the first place, the amount being requested by the complainant is based on an estimate shown in two quotations that were presented by the complainant together with his complaint (the quotations are marked as fol. 13 and fol. 14 of the complaint). The quotations in question contained the words Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses. The quotation also included the following wording: “The quotation is for illustration only and does not confer any rights.” Therefore, none of the figures which were indicated in the quotation as “estimated” could be said to have been guaranteed. Therefore the complainants are incorrect when stating in their complaint that “The financial provider did not hold up to their promise.”*
4. *The estimated maturity value shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold. **The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.** At the time, the value of the investment was much higher than it is today. In fact, the rate used to calculate the estimated maturity value as shown in the quotations, was that of 6.75%, which rate had remained constant until the year 1998 and then increased slightly in 1999 to 7% and started to decrease from the year 2000. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower. **In the light of the above, the quotations in question were in fact correct because they were issued according to the circumstances at the time and therefore MMSV had acted in good faith.***
5. *The fact that the quotations indicate two estimated maturity values, the values of which are substantially far apart from each other, further confirm that there was an investment element to the Policy and that the amount being claimed by the complainant could not have been guaranteed. In the circumstances at the time that the Policy was being sold, MMSV was already indicating that if the circumstances in the investment market had remained constant, the Policy could have matured either at a value of Lm25,748 (Euro 59,976.71) or at the higher value of Lm35,404 (Euro 82,469.14). It results that*

the complainants based their complaint on the largest estimated maturity value indicated in the quotation.

- 6. Besides the fact that the quotation indicates two maturity values as “estimated” and therefore, said figures could not have been guaranteed, the complainant was also presented with notes together with the quotation (a copy of the notes attached to the quotation are being attached and marked as Dok. MSV 1). In fact the quotation states that “IMPORTANT NOTES OVERLEAF: Please read carefully these notes before accepting and signing this quotation.” The said notes delve into the meaning of “Reversionary Bonuses” and “Terminal Bonus”. The said notes also explain that the Policy was participating “in the Company’s distribution of its profits by means of an allocation of an Annual Bonuses declared from time to time ... The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured.” **Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.** Therefore, the amount that was indicated in the quotation as estimated maturity value including reversionary bonuses in the amount of Lm25,748 (Euro 59,976.71) was not guaranteed because one needed to wait at the end of every year in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the affirmative at what rate and it was only at that time that the complainant could have been certain how the value of the policy Account of his Policy was increasing over the years. This is so, because as was explained in the notes, it was only thoses bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.*
- 7. In fact, the baby bond schedule of the Policy (presented with the complaint fol. 021), provides that “In respect of each premium paid, Lm395.26 shall be credited to the Policy Account which will be increased by the bonuses which **may** be declared by the Company from time to time.” This continues to support what was provided for in the notes above mentioned in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholder. This also explains that, the investment premium, which as at the date of the*

maturity of the policy had amounted to Euro 23,017.89, was in fact also guaranteed to be paid upon maturity or on prior death of the life assured and this in addition to the bonuses which would have been declared by MMSV during the term of the Policy. This was not the case with other investments, such as those known as the unit linked policies where the payments of no amounts were guaranteed. Therefore, MMSV adhered to its obligations under the Policy because the Maturity Value of the Policy exceeded the investment premium that was paid by the complainant by an additional Euro 10,549.94 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. **Furthermore, the only amount mentioned on the Baby Bond Schedule was the sum assured, and no amounts containing the word 'Estimate' in the quotation were mentioned on this Schedule, which further shows that therefore according to the agreement between the parties the estimate maturity value including reversionary bonus and the estimate maturity value including reversionary bonus and terminal bonus were never guaranteed.**

8. The notes that formed part of the quotation above mentioned also provided that “Whilst the purpose of these notes is to guide the policyholders and prospective policyholders the benefit provided by the Policy are conferred by the Policy document ... In the case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail.” **This meant that the complainant could not treat the quotation as a stand-alone document, but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the policy document (also presented with the claim).**
9. In addition, the Important Notes make it clear that “The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end. **Depending on the performance of the company, bonus rates may go down as well as up.**”
10. In so far as the Terminal Bonus is concerned, the notes forming part of the quotation, provided that: “Depending on its profit experience, the Company may, after the Policy’s TENTH year decide to allocate from time to time a Terminal Bonus in addition to the other declared bonuses ... as they depend materially on the investment performance at the time of the claim, they may

be reduced or even withdrawn altogether.” Therefore, the amount being indicated in the quotation as “estimated maturity value including reversionary and terminal bonus” in the amount of Lm35,404 (Euro 82,469.14) was likewise not guaranteed because MMSV had the discretion not to pay a terminal bonus.

11. It must also be mentioned that as from the 1st May 2009, the complainants took the facility to change the frequency of the payment of premiums and agreed to start paying the premium every quarter, instead of every year and IMPORTANT NOTES themselves had made it clear that “Payment of premiums on a more frequent basis will result in slightly lower returns.” (a copy of the policy endorsement showing said change in frequency is attached herewith and marked as Dok. MSV 2).
12. Furthermore, on 15th April 1998, the complainants also signed a document known as “Product Information” (a copy of which is attached herewith and marked as Dok. MSV 3) which explained among many things how policy bonuses are calculated and paid. This document explains that “With Profits policies may earn Reversionary and Terminal Bonuses.”

The method of calculation is as follows:

Reversionary Bonuses are calculated daily as a percentage of the Investment premium whilst Terminal Bonuses, **if declared at the option of the Company**, are normally expressed as a percentage of the Policy Account or as a nominal amount after payment of ten full years’ premium.

A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrender.

The rate of bonus if declared will depend upon the performance of the Company and the investment market both locally and overseas.

When presenting you with the Company’s official written quotation for the Estimated Maturity Value we have based our calculations on current bonus rates.

Please note that past performance is not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed.

13. The complainant also attached to 'Advertising material' to his complaint (attached as fol. 16-17). If one reads the Advertising Material and understands the comparison highlighted by this material, it is noted that it is comparing endowment assurance with profits investment which is a "medium to long term tax efficient investment" where the Maturity Value is tax free, with an alternative investment at the same rate (which in the year 1998 was 6.75%) after a deduction of the 15% tax. In no way does the leaflet guarantee that the rate of 6.75% would remain unchanged after 25 years. In fact the rate was described as current and was therefore referring to the interest rate in 1998. This comparison is truthful because if the complainants had chosen to invest in alternative investment that was not tax-free, the final maturity value would have been much lower.

When reading the leaflet it is clear that it is not guaranteeing any amount to be paid at maturity. In fact the amounts used in this leaflet are different from the amounts indicated in the aforementioned quotations and the figures indicated in the leaflet are inapplicable to the Policy in question. The amount of the premium mentioned in the advertising material was a simple example of Lm1 per day, which therefore amounts to Lm365 per year.

In fact, the amount that the complainants claim to have been promised is that stated in the quotations given to them and not on the Advertising material. The advertising material must be placed in the context of all documents and explanations provided to the complainants. It was not the case that the complainant was only given the brochure to make the decision whether to take the policy in question but other documents such as quotations, policy, policy schedules, Important Notes and Product Information (all referred to in this reply) were provided which give a more detailed idea of what the product includes. In fact, in the policy document and in particular in the policy schedule, it is stated that bonuses were not mandatory but it was within the MSV's discretion to declare or not to declare such bonuses. This is another reason why the estimated maturity value of the policy in question indicated in

the estimate was not guaranteed but was only an estimate and only the sum assured was guaranteed.

- 14. Therefore, at the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment and what the eventual maturity value shall be made up of and how said amount was calculated. **Notwithstanding, the complainant is merely basing his claim on the quotations without putting them in the context of all the other documents also provided to the complainant when the Policy was being sold to him and every year thereafter as shall be explained hereunder.***
- 15. MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainant. Said Fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority. The performance of the said Fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. The investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future. Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.*
- 16. Notwithstanding the fact that the maturity value could not be equivalent to any one of the estimated maturity values indicated in quotations due to the said shift in the performance of the market investments, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the term of the Policy despite the fact that the return was made while there were three financial crisis, besides the fact that during the year 2018, the classes of assets around the world had registered a negative income and when the Policy matured the investment markets had been substantially negatively impacted as a result of the COVID 19. In fact, the complainant made a gain in the amount of Euro 10,549.94*

after deducting the maturity value from the investment premium that was paid by the complainant. It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from his return.

- 17. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to him, on a yearly basis, a Bonus Statement together with the so-called Important Notes. As from 2001, MMSV had also started sending to the complainant, every year, a Media Release (copies of the bonus statements are attached with the complaint and marked fol 37 -60 and copies of some Important Notes and Media Releases are being attached to this reply and marked as Document "MSV 4"). Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the terms "Estimated" and "Illustration" used in the quotations which are self-explanatory, the Important Notes forming part of the Bonus Statements above-mentioned as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy. Furthermore, the complainants sent a request to MMSV for the revised illustrative maturity value in the year 2015, where MMSV replied and supplied information to a complainant (the document annexed and marketed as Doc. MSV 5) giving them a picture of profit rates based on three different percentages and at the same time informed the complainant the following:*

"The revised illustrative Maturity Values have been calculated using three different levels of assumed bonus rates. The assumed bonus rates shown

above are not guaranteed and they are not minimum or maximum rates or amounts. The most important factor that affects bonus rates is the underlying investment performance. **Investment returns can go up as well as down and therefore past performance is not necessarily a guide to the future.** It is not possible to predict what the bonus rates will be in the future, and they may be higher or lower than they are today.”

“Depending on its profit experience, MSV may, after the end of the policy’s tenth year, or after ten years full premiums have been paid, decide to allocate from time to time a Final bonus in addition to other declared bonuses. Such Final Bonuses will normally be expressed as either as a percentage of the Policy Account or as a nominal amount. A Final Bonus, if declared, is payable on policies that become claims by maturity or death, but not by surrender. You should be aware that Final Bonus rates are likely to be highly volatile and very dependent on our own investment performance. The Final Bonus shown in this illustration is assumed at a rate of 0.5% for the assumed bonus rate of 3.5% and 1.0% for the assumed bonus rate of 4.5%.”

With regards to outstanding premiums it had informed the complainants the following:

“The above illustrative Maturity Values assume that all future premiums are paid on the due date. Any outstanding premium and Loans, plus interest accrue thereon, will be deducted from the maturity value.”

Thus MMSV continues to demonstrate and acclaim that it has supplied sufficient information to the complainants about the policy in question at all stages including after the issuance of the policy and in fact MMSV did not receive any request for withdrawal of the policy after these documents were provided to the complainants.

18. Apart from the investment element to the Policy, the same Policy also provided a guaranteed life cover over the complainant’s life, such that MMSV was obliged to pay the sum assured, in the amount of Lm8,905 (Euro 20,743.07) to the heirs of the complainants in the case of their demise at any time that the Policy was in force. The said life cover had a price and have been completely ignored by the complainant and not normally available under other forms of regular savings. In fact, the obligation of MMSV to pay the sum assured above-

mentioned is clearly reflected in the quotation (fol. 13) by the word “Guaranteed” as opposed to “estimated” in the case of the maturity value.

19. The Policy (presented with the claim) provides that “The **COMPANY HEREBY AGREES to pay the greater of either the Basic Sum Assured or Policy Account (if any)** (emphasis added) and/or the specified additional benefits (if any) to the Payee named in the Schedule on the happening of the Event Assured Against subject to the payment to the Company of the Premiums detailed in the Schedule in the manner specified therein and to the proper observance of the terms and conditions of this contract.”

Therefore, MMSV clearly adhered to its obligations under the Policy, as opposed to what is being alleged because it has offered the value of the Policy Account of the Policy as at the date of the maturity thereof because said value had by far exceeded the value of the Sum Assured. It was the complainants themselves and not MMSV that failed to honor their agreement because the complainants failed to make a number of premium payments which triggered the automatic premium loan in terms of the General Conditions of the Policy. As referred to in paragraph 2 above, MMSV, in good faith offered to reverse the interest accrued since it transpired the payment renewal notices were not sent by MMSV to the complainant (even though it ultimately was the complainants obligation to remember to pay the premiums).

20. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, before the Policy was issued and therefore simultaneously with filling in his proposal form, the complainant was presented with the Statutory Notice that was issued in accordance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989 and was in fact signed by the complainant himself (a copy of which is attached herewith and marked as “Doc. MSV 6”). The Statutory Notice set out several warnings including the right of the complainant to withdraw from purchasing the Policy and the manner to do so. This Notice was intended to give the policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was somehow pressurized to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy. Not only did they

proceed with the Policy but they bought three other policies whereby with effect from the 11th September 2008, they purchased another joint policy with policy number FP442588, in 2018 GH bought a single owner policy with policy number FP535666 (pension plan) which shall mature in 2028, and in 2019, HH bought a single owner policy with policy number FP540776 (pension plan) which shall mature in 2034.

Therefore, the policyholders still bought the aforementioned policies even though interest rates had decreased substantially since 1998 which was apparent both from the bonus statements (fol. 37-60) which were sent to the complainants, and from the quotations which were given to the complainants when they purchased the aforementioned policies in 2008, 2018, and 2019.

21. *Finally, MMSV maintains that it has always adhered to its obligations under the Policy and, therefore, it should not be ordered to pay any compensation other than the final maturity value or any other expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall be proved during the course of these proceedings.*

With reservations for any further pleas.'

Seduti

Fl-ewwel seduta tad-19 ta' Settembru 2023, xehed l-ilmentatur, GH, li qal:

'Nghid li 25 sena ilu, kien gie rapprezentant tal-Middlesea biex joffrilna investiment fil-Baby Bonds u ahna hadna interess. Qalilna kemm ninvestu u wara 25 sena kemm konna ser niehdu.

Nghid li din kienet sagrificcju kbir biex ghamilniha ghax kellna zewgt itfal zghar u anke ghamilt xi zmien kont bla xoghol u, minn hawn u minn hemm, irnexxielna naghmluha u kien tana xi estimates li dak iz-zmien kienu f'Liri. Nghid li thajjarna ghax rajna li kien investiment tajjeb, nahseb jien. Fil-fatt, 'il quddiem konna ftahna xi poloz ohrajn magghom ghax fdajna fihom.

Nghid li veru li kienu jibaghtulna statements fis-sena imma ahna ma nifhmux. Kont nghid li wara 25 sena kien ser ikolli dan l-ammont ta' flus u, kif ghidt, kien sagrificcju kbir biex ghamilnih u nghid li offrulna €50,000 inqas milli qalulna li ser ikollna wara 25 sena.

Nghid li jiena m'accettajt u ftaht l-ilment. Nghid li offrewlna Lm35,400 (€82,459.81) mentri l-offerta tal-Middlesea hija ta' xi €33,000. Nghid li ahna fdajna fihom u kieku kont naf li ser jigri hekk, kieku ma kontx ninvestihom ghax jekk qlajt xi €10,000 ma kienx daqshekk worth it, wara 25 sena, speċjalment kif faddalthom ghax kien verament sagrificcju speċjalment meta kien hemm zmien li spiccajt bla job. U ma kontx niftah aktar policies magghom.

Nghid li dak iz-zmien li gew ghandi fl-1998, jien kont nahdem bhala clerk il-Vodafone. Nghid li ghandi High School Diploma imma m'ghandix esperjenza fil-finanzi. Nghid li naf naqra u nikteb.

Is-Sinjura HH dak iz-zmien kienet mara tad-dar, ma kinitx tahdem. Kienet ghamlet l-iskola Sekondarja sa sittax-il sena u kienet f'tal-hjata.

Nghid li meta gie s-Sur Borg id-dar konna t-tnejn prezenti. Nghidu li hu kien ikkuntattjana. Nghid li kien hemm meeting wiehed u xtrajna l-polza. Nghid li dam xi siegha. Kemm qalilna kemm ser inhallsu u kemm ser niehdu wara 25 sena.³

Waqt il-kontroezami li sarlu, GH kompli jixhed:

'Nghid li niftakar x'qalli s-Sur Borg meta gie ghandna biex ibieghilna l-polza; ma niftakarx kollox 100% ghax ghaddew 25 sena. Nghid li niftakar li kien gie hu, jigifieri ahna ma staqsejniex biex nixtru polza or whatever. Gie bhala Salesman, kellna t-tfal zghar dak iz-zmien u ghidt ninvestu ghalihom ukoll. Nghid li niftakar u ghandi l-karti li kitibli.

Qed jinghad li m'ghidt xejn xi spjegali u mistoqsi stajtix insejt xi affarijiet, nghid li qalilna li after 25 years, jien inkun faddalt Lm10,250; bir-Reversionary Bonuses jigu Lm25,700 u t-total jigi Lm35,400 – bir-Reversionary u Terminal Bonuses.

Kien qalilna wkoll li ghandna life insurance biex jekk jinqalalna xi haga, jekk Alla jhares qatt xi hadd minna jmut, ikollna din il-policy. Kellna wkoll if we change our mind. Kellna xi life policy li jekk jigri xi haga lil wiehed minna, il-policy tieqaf u niehdu somma u jithallas il-funeral ukoll. Dawk niftakarhom car u tond. Nghid li, allura, offerta bhal din ma titlifhiex; somma sabiha, imma ma

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tkunx taf jekk intix ser taghmilhom ghax 25 years ghax hadd ma jaf kemm ser idum jghix. Kien hemm il-life coverage, jigifieri, ghidt worth it hafna.

Imbaghad, ghalhekk ftaht zewg policies ohra mal-Middlesea ghax fdajt fihom. Ghidt dawn serji and it's a good investment. Imma kieku kont naf x'kien ser jigri ma kontx naghmilha ghax ghal €10,000, jien naf x'sagrificcju ghamilt specjalment meta kont bla xoghol.

Mistoqsi naqbilx li waqt il-hin tal-meeting jien kont konxju li parti mill-polza kienet investment, li l-MSV kienet ser tinvesti l-premium tieghi u kienet ser tghaddili l-qligh mill-investimenti, nghid li jiena fhimt dak li spjegajt issa; dak li fhimt.

Mistoqsi meta xtrajt il-polza ridtx naghmel investment riskjuz jew xtaqtx ingemma' u naghmel savings, nghid li jien ridt ingemma' u naghmel savings, ir-riskjuz ma joghgobnix.

Qed jinghad li mhux talli gemmajt, talli ghamilt gwadann ta' €10,549 u rate of return, gross withholding tax fuq l-investment ta' 3.32%, nghid li skont dak li qed toffruli hekk ghamilt, €10,549, kif qed jinghad.

Qed nigi referut ghall-Quotation (pagna 13) fejn qed jinghad li m'hemm l-ebda garanzija li l-Estimated Maturity Value kien garantit anzi kien innizzel bhala 'estimated' u l-uniku post fejn kien hemm 'Guaranteed Minimum amount payable' kien hdejn is-Sum Assured ta' Lm8,900. Nghid li dan imma jekk imut xi hadd. La qed jitkellem fuq mewt, jiena hadtha din kollha 'in case of death'. Nghid li veru hemm 'estimated' hdejn il-figuri l-ohra, imma jien qghadt fuq kliemu. Illum il-gurnata nghid li din kienet xi gimmick mela.

Qed jinghad li fil-laqgha li kelli mar-rapprezentant barra l-Quotation, inghatawli l-Important Notes (Dok. MSV 1), il-Product Information (Dok. MSV 3) u l-Statutory Notice (Dok. MSV 6). Nghid li jien ma qghadtx naqra; hu qaghad jitkellem u jghid, il-kliem ikun b'certu mod illi min ikollu edukazzjoni bhal tieghi mhux ser jifhem kollox 100%. Kien jidher ragel onest u trustworthy. L-MSV had a good reputation u ghidt qed naghmel investment tajjeb.

Qed jinghad li fl-Important Notes hemm 'Depending on the performance of the Company, these bonus rates may go up as well as down. Past performance is not a guide to future performance'. Hemm spjegat ukoll kemm fl-Important

Notes u kemm fil-Product Information li l-Estimated Value kien ikkalkolat bir-rati tal-bonuses u mistoqsi kif qed nippretendi li niehu dak l-ammont, fejn kelli l-cooling-off period, kelli d-dokumenti kollha u naf naqra bl-Ingiliz, nghid li ghax jiena fdajt lir-rapprezentant tal-Middlesea ghax meta staqsejtu kemm ser niehu wara 25 sena, qalli li ser niehu dan l-ammont u fdajt fil-Middlesea minhabba r-reputazzjoni li kellha. Illum il-gurnata qed nirrealizza li kienet gimmick. Vera li tibaghtu l-ittri, ecc., imma trid tkun avukat biex tifhimhom.

Qed jinghad li r-rapprezentant halla d-dokumenti ghandi u naf naqra bl-Ingiliz u, allura, mistoqsi tajtx kazhom, nghid li mhux ma tajtx kazhom; niftakar li grajthom 25 sena ilu – mhux ser noqghod naqrahom kuljum – imma fdajt lir-rapprezentant ghax fiehemhomli verbalment u kulma zammejt quddiem ghajnejja kienet il-pittura kemm ser naqla' wara 25 sena. Nghid li jien ghamilt il-polza ghax fdajthom u fdajt lir-rapprezentant li qalli li hekk ser niehu wara 25 sena.

Mistoqsi naqbilx li kien hemm xi xhur li ma hallastx il-premium, nghid li I was not aware because they failed to send me the notice. Nghid li jien imbaghad hallasthom u meta ghamilt il-calculation kemm ser niehu wara li ghalaqli ... Nghid li kont between jobs at the time, kelli hafna stress u hafna affarijiet ghaddejjin u ghadhom sal-gurnata tal-lum qed ihawwdu ghax il-policy tal-mara gieli ma jibghatuhielhiex u kemm-il darba cemptet. Hemm hafna griefex, to be blunt; ma jibaghtux ir-Renewal, ir-Reminder.

Nghid li meta kont nara xi nuqqas, I queried it. Kienu gibduli l-attenzjoni li kien hemm xi zewg pagamenti, l-ahhar tnejn, li jiena ma hallastx because they failed to send the Renewal Notice. U jien aljenajt rasi, ghax jiena dejjem hallast, ghax kieku daww imhallsin ukoll.

Nikkonferma li dawn iz-zewg pagamenti tnaqqsu mill-ammont offrut mill-Middlesea ghax jien ma rcevejtx ir-Renewal Notice, aljenajt rasi u ma hallasthomx. Wara li ccekkjajt il-files ta' dan il-pakkett, irrealizzajt li veru ma kontx hallasthom.

Mitlub nikkonferma li kont nircievi l-Policy Account Statements li juru l-bonus rates tal-kumpanija tul is-snin, nghid li sometime during the year nircievi wahda – mhux dejjem hadtha ghax ghandi neqsin – u gieli kelli ncempel biex jibaghtuhomli ghax mhux dejjem hadthom. Perezempju, ghandi tal-1998; tal-

1999 qatt ma tawhieli. Ghandi tal-2001, 2002, 2003, 2004, 2005, 2008, 2009, 2010 – 2021. Hemm xi tnejn neqsin. Gieli ma kinux jibghatuhomli u kont incempel jien ghalihom bhalma kont incempel minhabba r-receipts ghax mhux dejjem jibaghtuhomli.

Mistoqsi ghalfejn minkejja li kont nircievi l-Bonus Statements u kont nistaqsi ghalihom biex nara kif inhi sejra l-polza tieghi hadna poloz ohra (hadna polza ohra fl-2008 li kienet ukoll Joint Policy) meta qed nara carament li bonus rate stmata kienet nizlet sal-2008, nghid li jien digà spjegajt ghalfejn hadt zewg poloz ohra: ghax rajt li l-Middlesea hija serja, ghallinqas dak iz-zmien, u dakinhar hsibt li ghamilt investment tajjed u nghid li jiena ma nifhimx, m'inix a financial person. Dawn l-istatements kont nitlobhom biex ikolli kopja imma ma kontx nifhimhom. U kont inhalli kollox ghaddej, fis-sens li ghidt li they know what they're doing. Nghid li fdajt fihom.

Mistoqsi jekk ma fhimthomx cempiltx lill-kumpanija biex nistaqsi fuq l-andament, nghid li din ma jidhirlix li qatt ghamiltha. Jien ma kontx naf minn fejn naqbad nikkalkula fuq percentages, ecc.

Mistoqsi kieku m'ghamiltx din il-polza x'kont ser naghmel bil-flus, nghid li kont inhallihom il-bank, inkella ma kontx infaddal jew kont ninvesti xi mkien iehor U meta gieli ma stajtx inhallashom u kont nissallab biex inhallashom, peress li kont narah bhala kont, ma kontx inhallas dak il-kont. Biex niftiehm, ma kontx inhallas dak ix-xahar u nuzahom ghall-ispejjez tal-hajja.

Qed jinghad li ma kontx nidhol f'dixxiplina li r-rizultat taghha kien li faddalt €10,000, nghid li iva.

Nghid li stajt naghmilhom fixed il-bank.

Mistoqsi ghandix idea x'rata average kont niehu matul dawn il-25 sena, nghid li ma niftakarx x'joffru u ma joffrux il-bank.

Qed jinghad li minn dan l-investment jien ghamilt medja ta' 3.3% bit-taxxa maqtugha, fejn ghal hafna snin ir-rata tal-interessi fuq is-savings kienet 0, u fuq il-fixed kienu aktar baxxi, jigifieri, fir-realtà kien ikolli presso poco l-istess qligh kieku hallejthom il-bank milli ghamilt dan il-prodott bid-differenza li hawn hadt id-dixxiplina fuqi u faddalt madwar €10,500, li forsi kieku ma hadtx din id-dixxiplina fuqi ma kontx infaddalhom.

Nghid li kieku ma kontx infaddalhom u kieku ghamilthom 'fixed' kont inkun naf x'ser niehu mhux minghalija ha niehu certu ammont u ma hadtux. U haga ohra, gieli kelli niddejjen biex ghaddejt ghax b'paga wahda, tfal zghar, spejjez tal-iskola, biex inkun nista' nhallas din il-polza. U kieku ma kont niddejjen xejn minghand il-genituri, avolja kienu jahfruhomli, imma ma kontx nidhol f'dik is-sitwazzjoni. Ghalija kien kont li ried jithallas.

L-Arbitru jghid li hemm dokument fil-file (MSV 5, pagna 91) li fl-2015, kitbulna l-MSV Life f'ittra tat-23 ta' Lulju 2015, fejn jghidu, 'We refer to your recent request for a revised Illustrative Maturity Value' fejn tawna tlett illustrations, u mistoqsi jekk jien kontx tlabtha, nghid li ma niftakarx li tlabt ghaliha. U nghid li lanqas ghandi kopja taghha ghax kieku qieghda hawn fil-file.'⁴

Wara din is-seduta gie pprezentat l-Affidavit⁵ ta' Victor Farrugia li, tista' tghid li, fir-rigward tal-kontenut, ftit li xejn ivarja mit-twegiba ghall-ilment sottomessa mill-provditur tas-servizz.

Fit-tieni seduta tas-27 ta' Novembru 2023, l-ilmentaturi iddikjaraw li ma kellhom l-ebda mistoqsija x'jaghmlu lil Victor Farrugia fuq l-Affidavit li hu pprezenta.

F'din l-istess seduta, xehed ukoll Joe Borg, ir-rapprezentant tal-provditur tas-servizz li biegh il-polza ilmentata. Hu xehed li:

'Nikkonferma li jien bieghajt il-Polza Nru. 41738, Endowment Assurance with Profits tal-MSV lis-Sinjuri H.

Nghid li jien niftakarhom lis-Sinjuri H.

Nghid li kien inghata appuntament mill-ufficcju u kont intbghatt jiena mill-ufficcju. L-appuntament kienu jaghmluh is-segretarji u kienu baghtu lili.

Kont iltqajt mas-Sinjuri H u kont spjegajtilhom li l-polza hija mezz ta' tfaddil u ta' life cover ukoll. Spjegajtilhom li l-polza tibda b'Life Cover, li jekk Alla jhares qatt jigi nieqes xi hadd minnhom hemm dik is-somma garantita. Imbaghad, l-account jibda tiela' tul iz-zmien. Fl-ahhar, kemm f'kaz ta' mewt u kemm f'kaz ta' maturità jithallas jew il-Policy Account jew il-Life Cover, whichever is the highest.

⁴ P. 95 - 99

⁵ P. 103 - 108

Nghid li generalment biex nispyega l-laqgha kienet iddum madwar siegha.

Nghid li l-ispyega li kont naghti in generali kienet illi l-polza kienet investment tajjeb dak iz-zmien; li l-qligh kollu li jsir minnha huwa tax free, anke f'kaz ta' mewt. Ma kinitx suggetta ghas-successjoni u ghall-ebda forma ta' taxxa kif kienet il-ligi.

Kont nispyega li din titla' matul iz-zmien, li l-Middlesea jaghtu rendikont tal-imghaxijiet, tal-bonuses, li jkunu qed johorgu sena, sena.

Qed nigi referut ghal-Life Assurance Quotation (fol. 13, handwritten), ghall-MSV Quotation (fol. 14, typewritten), ghall-Important Notes li kienu fuq wara ta' fol. 13 (Dok. MSV 1), li fil-verità, dawn kienu fuq dokument wiehed fuq wara ta' fol. 13, u l-Product Information (Dok. MSV 3).

Nghid li mal-Application, inkun hallejt kopja ta' kollox biex il-klijenti jkunu jistghu jaghtu daqqa t'ghajn. Dejjem kont insostni ma' kulhadd biex jaghtuhom daqqa t'ghajn biex jaraw li dak li ghidtilhom qieghed hemm. U biex jekk ikollhom xi mistoqsijiet, jimmarkawhom u jkellmuni.

Nghid li hawnhekk qed ninnota li l-Application u l-Quotation ghandhom l-istess data, jigifieri, s-Sinjuri H kienu iddecidew dakinhar fl-ewwel meeting illi jiehdum l-polza. Nghid li ma kinitx xi haga normali ghalija ghax il-bicca l-kbira kien ikun hemm gimgha span bejn meta mmur nispyega ghal meta nimla l-Application. Però, f'dan il-kaz, fil-15 t'April mort u mlejna l-Application mill-ewwel. Nghid li l-Quotation tal-Middlesea harget fis-6 ta' Mejju u ntbaghtet lill-klijenti dakinhar b'posta registrata.

Kont navzahom ukoll li ghandhom gimaghtejn, skont l-iStatutory Notice, minn meta jircievu d-dokumenti li dak huwa l-cooling-off period li jekk jaraw li hemm xi haga li ma taqbilx ma' dak li ghidtilhom jew jekk ghal xi raguni jew ohra jkunu jridu jirtiraw, ikunu jistghu jirtiraw. U dik kienet il-procedura normali kif konna nahdmu dak iz-zmien.

Nghid li jiena kont inhalli card bin-numbers tieghi u kont inkun dejjem available. I still am.

Nghid li nkunu hallejnilhom il-karti, jigifieri il-Product Information u l-Important Notes qeghdin hemm mal-Application qabel ikunu ircevev id-

dokumenti, imbaghad ikollhom il-Policy Document u jkollhom zmien hmistax ohra biex jaraw id-dokument biex jekk ikun hemm xi haga li mhux qed jaqblu magħha jew xi haga li nkun spjegajt jiena ma jaqbilx, ikunu jistghu jirtiraw mill-investment.

L-Estimated Maturity Values kienu jkunu quotations li konna nohorgu fuq ir-rati ta' dak iz-zmien attwali. Ma konniex nghidu li garantiti u ma jiccaqalqux. Fil-fatt, konna nghidu li l-Middlesea tohrog statements kull sena li fuqhom kien ikun hemm il-bonuses u dawn, once quoted, are guaranteed. Ma nistax nghid li ggarantejt li r-rati ma jiccaqalqux. Qatt m'ghidt li r-rati huma fissi.

Nghid li mhix fin-natura tieghi li nagħmel pressjoni biex inbiegh polza.

Nghid li jiena mhux ser nitkellem mill-memorja, ser nitkellem fuq id-dati kif inhuma fuq id-dokumenti. Nghid li fil-15 t'April iltqajt mal-klijenti. Dakinhar spjegajtilhom u dakinhar iddecidew li jagħmlu l-polza. L-ghada, nkun dahhalt ix-xogħol u l-Middlesea hadet mill-15 April sas-6 May biex iproduciat il-karti. Fis-6 May lestiet id-dokumentazzjoni kollha, intbagħtet lill-klijent b'posta registrata u fuq l-iStatutory Notice ma kienx ikollhom li kellhom 2 weeks imma ahna konna nghidulhom li skont il-procedura l-Middlesea kienet tagħtihom 2 weeks minn mindu jircievu d-dokumenti b'posta registrata li jekk ibiddu l-fehma jistghu jirtiraw minnha.⁶

Sottomissjonijiet Finali

L-ilmentaturi għamlu dawn is-sottomissjonijiet verbalment:

'Nghid li 25 sena ilu kienet harget din l-iskema tal-Baby Bond. Kellna zewgt itfal zghar u ridna xi haga fiex ninvestu. Kien hawn din tal-Baby Bond. Gie Mr Borg għandna u spjegalna u l-estimate li tana dehret tajba hafna.

Il-Middlesea, safejn naf jien, kellha reputazzjoni tajba u ddecidejna li ninvestu fejn nistghu. Nixtieq nghid li rajt id-dokumenti li bagħtuli u ssemmiet hafna l-'estimate'. 'Estimate' tfisser bejn wiehed u iehor; jew ftit aktar jew ftit anqas. Imma mhux €50,000 inqas milli qed joffrulna. L-estimate huwa a little bit more or a little bit less imma mhux €50,000 less li hi daqsxejn outrageous. Jien naf kemm batejt biex faddalthom dawn. Kien pagament ta' Lm410 fis-sena u ma

⁶ P. 109 - 111

stajtx naghmilha u, kif jafu huma sew, kont biddilt il-pagament li jithallsu kull tliet xhur for me to make it.

Kien hemm zmien kont unemployed, b'income wiehed u bi tfal zghar u ma ppretendejniex li wara 25 sena ser insib €50,000 neqsin mill-estimate li offrulna u ddizappuntajt hafna fuqha din.⁷

Il-Provditur tas-Servizz ghamel dawn is-sottomissjonijiet verbalment:

'Nghid li ahna ser nistrieħu fuq l-eccezzjonijiet li nizzilna fir-risposta u fuq l-affidavit tas-Sur Victor Farrugia.

Nghid li l-ewwel osservazzjoni li xtaqt naghmel hija li l-MSV ma kisret l-ebda obbligu fil-konfront tal-ilmentaturi ghaliex il-ftehim carament jghid li:

'The Company hereby agrees to pay the greater of either the basic sum assured or the policy account if any.'

U l-MSV disposta li thallas il-valur tal-Policy Account.

Kif qal is-Sur Borg, hu fl-ebda hin ma ggarantixxa l-figuri mnizzlin bhala Estimated Maturity Value including Reversionary Bonus u Terminal Bonus fl-istima. Fil-fatt, huwa qal b'mod car li l-unika garanzija li ta kien fuq is-Sum Assured li kien guaranteed on death u kien l-ammont minimu li setghu jiehdu on maturity.

Huwa carament qalilna li spjegalhom ukoll li kienu garantiti l-ammonti li kienu iddikjarati bhala bonuses. Hu qalilhom li r-rati tal-investment ma kinux fissi u ma ggarantilhomx il-figuri estimated li kien hemm miktubin fuq il-Quotation.

Dan jikkollabora carament mal-kliem li hemm fl-Important Notes u fil-Product Information li fosthom hemm li l-Quotation hija mahduma b'rata ta' dak iz-zmien izda li tinbidel u 'The past performance is not necessarily a guide to future performance.'

Fil-mori tal-kawza, fl-ahhar seduta, l-ilmentaturi ammettew ukoll li kienu konxji li kienu qed jaghmlu investment u li l-ghan tagghom kienu li jgemmgħu, li jaghmlu savings, u li r-riskjuz ma joghgobhomx.

⁷ P. 111

Hu qal ukoll li peress li kellha l-Life Cover hu raha worth it. L-ilmentatur ma gab l-ebda prova li kellu xi ghazla ta' polza ohra differenti jew inkella kont bankarju b'rati differenti. L-ilmentatur ma pprovax li garrab xi tip ta' opportunity loss u ghamel gwadann ta' €10,549 u rate of return gross withholding tax fuq l-investment ta' average 3.32%.

Il-Quotation inghatat minhabba li l-MSV kienet obbligata li taghmel dan mir-regolatur taghha. U wkoll, id-dokumenti li nghataw lill-ilmentaturi: il-Product Information, l-Important Notes spjegaw li l-Quotation kienet mahduma fuq rati tas-sena ta' qabel li jistghu jinbidlu.

Is-Sur GH jaqra u jikteb bl-Ingiliz tajjeb hafna. Fil-fatt, l-ilment lill-Arbitru miktub b'Ingiliz tajjeb hafna. Fix-xhieda tieghu qal li jaf jaqra u jikteb u li kellu High School Diploma u, allura, kienet negligenza da parti tal-ilmentatur il-fatt li ma tax importanza lid-dokumenti li kienu ghandu ghal zmien twil kif spjega s-Sur Borg. Fil-fatt, kien hemm l-iStatutory Notice b'15 days cooling off period. Dawn il-karti kienu ilhom ghandhom xi erba' gimghat u setghu jikkancellaw kieku riedu.

L-ilmentaturi kull sena nghataw bonus statements u anke revised illustrative values. Inghataw ukoll Quotations ohra ta' policies ohra li hadu fl-2008, fl-2018 u 2019, fejn ir-rati kienu digà tbaxxew u xorta l-ilmentaturi kienu ferhanin li jinvestu bir-rati baxxi.

Allura, ahna, fil-fehma umli taghna, l-ilmentaturi ma jistax ikollhom aspettattiva legittima u ragonevoli ghax huma stess ammettew li nghataw dawn id-dokumenti kollha li semmejna u rridu nistriehu fuq daww il-karti li nghataw lill-ilmentaturi li huma pprezentati fil-process.⁸

Sema' lill-partijiet

Ra l-atti kollha tal-kaz

Jikkunsidra:

FIL-MERTU

⁸ P. 112 - 113

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-kaz.⁹

Il-punt kruċjali f'dan l-ilment jittratta l-informazzjoni mogħtija lill-ilmentaturi fil-mument tal-bejgh tal-polza in kwistjoni u l-allegati wegħdiet li sarulhom fir-rigward tal-ammont li huma kellhom jircievu mal-maturità tal-polza.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegh il-polza ilmentata, x'gie mwieghed lill-ilmentaturi u x'eventwalment gie mogħti jew offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgh tal-prodott ilmentat u, fuq kollox, jekk dan lahaqx *'l-aspettattivi ragonevoli u legittimi tal-konsumaturi u dan b'referenza għaz-zmien meta jkun allegat li jkunu sehhew il-fatti li jkunu taw lok għall-ilment.'*¹⁰

L-Arbitru għandu quddiemu sitwazzjoni fejn l-ilmentaturi qed jallegaw li huma gew imhajra jixtru l-polza offruta lilhom a bazi ta' *estimates* mogħtija lilhom u li, permezz t'hekk, ikkunsidraw din il-polza bhala investment tajjeb. Allegaw li l-ammont ikkwotat li huma kellhom jircievu mal-maturità flimkien mal-kopertura fuq il-hajja li taqa' taht l-istess polza, rawh bhala xi haga *'worth it hafna'*.

L-ilmentatur ammetta li hu kien jaf li kellhom l-għazla f'kaz li jbiddu l-hsieb tagħhom, u kien jaf ukoll li f'kaz li jinqalahom xi haga u xi hadd minnhom jigi nieqes, din il-polza kienet ser tagħmel tajjeb filwaqt li jigu mhallsa wkoll l-ispejjez tal-funeral. Fl-istess waqt indika li r-riskju ma joghgbux u l-ghan tieghu meta xtara l-polza kien li jgemma'.

L-ilmentatur insista li hu qagħad fuq kliem ir-rapprezentant tal-provditur tas-servizz u dejjem kellu l-impressjoni li l-istess provdatur tas-servizz kellu reputazzjoni tajba hafna, kien ta' min jafdah u, għalhekk, l-offerta li saret lillu ikkunsidraha bhala investment tajjeb.

L-Arbitru jinnota li mid-dikjarazzjoni tieghu, l-ilmentatur qed jagħti l-impressjoni li hu qagħad biss fuq dak li r-rapprezentant tal-provditur tas-servizz qallu, li ma kienx jifhem il-kliem kollu li ntqal u li minkejja li gieli rcieva xi dokumenti relatati mal-polza, dawn kienu jkunu tali li, kif qal hu stess, trid tkun avukat biex tifhimhom.

⁹ Kap. 555, Artiklu 19(3)(b)

¹⁰ Kap. 555, Artiklu 19(3)(c)

Meta mistoqsi dwar l-*Important Notes* u l-*Product Information*, zewg dokumenti li kienu gew moghtija lilu, l-ilmentatur qal

“Nghid li jien ma qghadtx naqra; hu qaghad jitkellem u jghid, ...”¹¹

Izda, aktar tard fix-xhieda tieghu, ammetta li, *“... mistoqsi tajtx kazhom, nghid li mhux ma tajtx kazhom; niftakar li qrajthom 25 sena ilu – mhux ser noqghod naqrahom kuljum - ... imma fdajt lir-rapprezentant ghax fiehemhomli verbalment u kulma zammejt quddiem ghajnejja kienet il-pittura kemm ser naqla wara 25 sena”¹².*

L-ilmentatur mhuwiex daqstant konsistenti fl-argumenti tieghu. Hawn hu qed jammetti li d-dokumenti li jirrigwardjaw il-mod kif tahdem il-polza kienu fil-fatt gew moghtija lilu, u iktar minn hekk, kien qara dawn l-istess dokumenti.

Wiehed mid-dokumenti sottomessi hu l-*Product Information*¹³, datat 15 t’April 1998, u ffirmat mill-ilmentaturi, li jaghti informazzjoni dettaljata dwar il-polza in kwistjoni. Krucjali li wiehed jinnota li f’dan id-dokument hemm spjegat li f’polza bhal dik ilmentata, *‘A proportion of the premium, which depends upon the age of the life assured at the commencement of the policy (i.e. the Investment Premium) will be put into a Policy Account and will accumulate reversionary bonuses on a daily basis.’¹⁴*

Ikompili, imbaghad, jigi spjegat illi,

‘Reversionary Bonuses are calculated daily as a percentage of the Investment Premium whilst Terminal Bonues, if declared at the option of the Company, are normally expressed as a percentage of the Policy Account or as a nominal amount after payment of ten full years’ premium.

...

The rate of bonus earned will depend on the performance of the Company and the investment market both locally and overseas.

¹¹ P. 96

¹² P. 97

¹³ P. 83 - 84

¹⁴ P. 83

When presenting you with the Company's official written quotation for the Estimated Maturity value, we have based our calculations solely on current bonus rates.

...¹⁵

Hawn l-Arbitru jhoss li, minkejja li l-ilmentatur qed jipprova jaghti l-impressjoni li hu qaghad biss fuq dak li gie spjegat lilu mir-rapprezentant tal-provditur tas-servizz, huwa evidenti li kienet fil-fatt giet moghtija lilu informazzjoni dwar il-mod kif tahdem il-polza, dan anke bil-miktub u cara b'tali mod li facli tinftiehem, u li l-istess ilmentatur ammetta li anke qara.

Certament li mhix kwistjoni li dan huwa dokument, jew ahjar din hija spjegazzjoni li kif anke stqarr l-ilmentatur, *'mhux ser noqghod naqrahom kuljum'*, izda, zgur li fil-mument tal-bejgh din kienet informazzjoni importanti li ngihatlu kemm verbalment kif ukoll bil-miktub u li hu stess iffirma ghalha u rikonoxxa li anke qara.

Kif digà saret referenza aktar kmieni, l-ilmentatur stqarr li minkejja li kienu jintbaghtu xi ittri minghand il-provditur tas-servizz, trid tkun avukat biex dawn tifhimhom. Mill-banda l-oħra, qal li *'... meta kont nara xi nuqqas, I queried it.'*¹⁶ Ma ndikax x'tip ta' nuqqasijiet qed jirreferi ghalihom, izda din id-dikjarazzjoni tikkonferma l-hsieb tal-Arbitru li l-ilmentatur kien jaf x'qed jigri bil-polza u, fuq kollox, kien qed izomm kont tal-andament tagħha. Tajjeb ukoll li wiehed isemmi li minkejja li kien jistaqsi meta jara xi nuqqas min-naha tal-provditur tas-servizz, kien hu stess li naqas billi ma hallasx xi pagamenti li kienu dovuti.

Il-fatt li l-ilmentatur kien gustament konxju ta' x'kien qed jigri mill-polza u kien anke jzomm *record* ta' dan kollu, gie korroborat minn dikjarazzjoni oħra tieghu stess meta mistoqsi jikkonferma jekk kienx jircievi l-*Policy Account Statements* mibghuta mill-provditur tas-servizz. Hawn l-ilmentatur qal, *'... ngħid li sometime during the year nircievi wahda – mhux dejjem hadtha ghax għandi neqsin – u gieli kelli ntempel biex jibghatuhomli ghax mhux dejjem hadthom.'*¹⁷

¹⁵ P. 84

¹⁶ P. 97

¹⁷ *Ibid.*

L-Arbitru huwa tal-fehma li la l-ilmentatur kien anke jiehu l-inkarigu li jitlob għall-*Bonus Statements* huwa stess, certament li kien qed jara dawn l-istess *statements* u, fuq kollox, isewgi l-andament tal-polza permezz tal-kontenut tagħhom.

L-Arbitru mhuwiex daqstant konvint mid-dikjarazzjoni tal-ilmentatur meta qal li, *'Dawn l-istatements kont nitlobhom biex ikolli kopja imma ma kontx nifhimhom. U kont inhalli kollox għaddej, fis-sens li għidt li they know what they're doing. Nghid li fdajt fihom.'*¹⁸

Fix-xhieda tieghu, l-ilmentatur għamel referenza għal xi polza ohra li martu għandha mal-provditur tas-servizz. Kemm fit-twegiba għall-ilment sottomessa kif ukoll fl-*Affidavit* ta' Victor Farrugia, il-provditur tas-servizz spjega kif fis-snin 2008, 2018, u 2019, l-ilmentaturi xtraw tliet poloz ohra u li dawn għadhom fis-sehh.

L-Arbitru jinnota li fis-sena 2008, ir-rata tal-*bonus* applikata kienet digà lahqet it-3.65% meta ikkomparata mas-6.75%¹⁹ fl-1998 u anke s-7%²⁰ fl-1999. Iktar minn hekk, fis-sena 2018, jigifieri meta l-ilmentatur xtara polza ohra f'ismu, ir-rata tal-*bonus* kienet anke nizlet għal 2.25%.²¹ L-ilmentatur kien konxju ta' dan kollu mill-*Bonus Statements* mibghuta, li minkejja li stqarr li kellu minnhom neqsin, dawn gew kollha pprezentati²² mal-ilment għajr dak tas-sena 1999, li tista' tghid, ma kienx ser jibdel id-decizjonijiet li hu u martu hadu sabiex jagħmlu poloz ohrajn. Fuq kollox, permezz ta' dawn l-istess *statements*, kien jaf il-valur tal-polza tieghu kemm kien dak iz-zmien.

Il-fatt li l-ilmentaturi għazlu li jixtru poloz ohra mal-provditur tas-servizz anke meta l-*bonus rates* kienu digà nezlin, ikompli jikkonferma l-hsieb tal-Arbitru li l-għan principali għalfejn l-ilmentaturi għazlu li jressqu dan l-ilment m'huwiex għax huma jhossu li, b'xi mod jew iehor, il-provditur tas-servizz jew ir-rapprezentant tieghu naqas fil-konfront tagħhom, izda, bl-għan li jagħmlu tentattiv sabiex jakkwistaw xi haga iktar minn dak li digà gew offruti. Barra minn

¹⁸ P. 98

¹⁹ P. 66

²⁰ *Ibid.*

²¹ *Ibid.*

²² P. 38 - 60

hekk, l-ilmentaturi fl-ebda hin ma ndikaw x'seta' sar differenti jew, iktar minn hekk, fejn ihossu li sar il-hazin min-naha tal-provditur tas-servizz.

Fuq kollox, l-Arbitru ma jistax ma jinnutax li r-ritorn li l-ilmentaturi ghamlu minn din il-polza ilmentata ma kienx wiehed daqstant hazin meta, fuq kollox, l-ghan principali taghhom li kien dak ta' *savings* gie milhuq. Minkejja li l-Arbitru jifhem ukoll li l-ilmentaturi seta' kellhom perjodi fejn sabuha diffiċli sabiex jaghmlu l-pagamenti mehtiega, din il-polza serviethom bhala mezz ta' tfaddil billi kienu jhallsu ammont zghir kull tliet xhur, u li kieku ma kinitx fis-sehh din l-istess polza, ma kinux probabilment ifaddlu l-ammont li huma faddlu, u jaghmlu ukoll qligh fuqu.

L-ilmentatur xehed li dawn il-flus seta' minflok jaghmilhom depozitu fiss il-bank, izda kieku sar hekk, dan ma kienx ser joffrilhom kopertura fuq hajjithom, filwaqt li lanqas kellhom il-beneficcju li jhallsu ammont zghir kultant zmien, izda, riedu bilfors ihallsu somma kbira f'darba meta jaghmlu dan l-istess depozitu.

Biex tintlahaq il-figura li l-ilmentaturi qed jipretendu bilfors irid isir '*compounding*' b'rata gholja li ghalkemm kienet fattibbli fl-1998, ma kinetx xi haga li setghet tigi sostnuta u garantita ghal 25 sena shah. Anke persuna mhux tant intiza fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqghu f'dak il-livell ghal 25 sena, speċjalment peress li l-kontribuzzjonijiet taghhom kienu mifruxa fuq 25 sena u mhux xi '*lump sum*' investment li tista' tigi investita mal-ewwel biex torbot ir-rati tal-imghax ghal zmien twil. Dan apparti li dak iz-zmien *bonds* ghal terminu twil fil-Lira Maltija ma kinux jezistu.

Min-naha l-ohra, l-Arbitru jhoss li l-provditur tas-servizz messu kien aktar kawt fil-kwotazzjonijiet li johrog u flok wahda messu hareg *spectrum* ta' kwotazzjonijiet mahduma b'rati differenti ghax fuq perjodu ta' 25 sena xejn ma jibqa' stabbli. Fil-fatt, inghad li wara s-sena 2000 bdew johorgu tliet kwotazzjonijiet u mhux wahda, u dan kien jghin biex il-klijent jifhem li ma kien hemm xejn garantit ghal 25 sena.

Ghalhekk, ghar-ragunijiet kollha moghtija aktar 'il fuq f'din id-decizjoni, l-Arbitru jiddeciedi li l-ilment huwa wiehed gust, ekwu u ragonevoli, u ser jilqghu limitament sakemm dan huwa kompatibbli ma' din id-decizjoni.

Kumpens

F'dan il-kaz, l-Arbitru qed jaghti rimedju ghaliex ihoss li l-aspettattivi tal-ilmentaturi, sal-limitu ta' fejn kienu legittimi, ma gewx milhuqa. L-aspettattivi taghhom kienu li mal-maturità tal-polza kienu ser jircievu s-somma ta' €82,259.81 li, izda, fid-data tal-maturità gew offruti ferm inqas. Izda ma jistax jinghad li l-aspettattivi tal-ilmentaturi kienu kompletament legittimi.

L-Arbitru jrid jasal ghal kumpens li jrid ikun ibbazat fuq gustizzja ekwitattiva kif huwa sanzjonat li jaghmel espressament permezz tal-Artikoli 19(3)(b) u 26 tal-Kap. 555 tal-Ligijiet ta' Malta. Filwaqt li jara wkoll li dan l-ammont ikun ragonevoli, dan ma jistax ikun preciz minhabba li hemm diversi fatturi li jridu jigu ikkunsidrati.

L-ilmentaturi ma pprezentaw l-ebda prova li dak iz-zmien kellhom xi ghazla ghajr polza bhal dik ilmentata jew inkella kont bankarju b'rati inqas. Ghaldaqstant, l-ilmentaturi lanqas ipprezentaw xi tip ta' prova li minhabba li huma ddecidew li jiehd u l-polza offruta a bazi tal-informazzjoni moghtija, huma garrbu xi tip ta' *opportunity loss*.

Barra minn hekk, meta l-Arbitru hares lejn l-andament kumplessiv tal-polza, ra li r-rendiment taghha kien ta' aktar minn tlieta fil-mija²³ li, fic-cirkostanzi kollha, ma kienx wiehed hazin u, ghalhekk, dan ghandu wkoll jigi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellhom beneficcju ta' kopertura fuq hajjithom li beda mill-ewwel gurnata tal-polza.

Ghalhekk, meta qies ic-cirkostanzi kollha tal-kaz, l-Arbitru wasal ghad-decizjoni li mhux ekwu li jilqa' t-talba shiha tal-ilmentaturi. Dan ghal ragunijiet digà mfissra hawn fuq u anke ghaliex:

- L-ilmentaturi ma kinux gustifikati jassumu li r-rati prevalenti fl-1998 kienu ser jibqghu applikabbli ghal 25 sena shah galadarba l-investment taghhom ma kienx fuq bazi *lump sum*.

²³ P. 108

- Il-kundizzjonijiet tal-*quotation* kienu ghand l-ilmentaturi ghal zmien bizzejjed qabel ma gie ffinalizzat l-impenn ghall-polza ilmentata, u kellhom kull cans jifhmu dak li kien garantit u dak li kien stimat.

Ghalhekk, l-Arbitru jiddeciedi li s-somma xierqa li ghandha tinghata lill-ilmentaturi bhala kumpens hija dik ta' **€3,357**.

Ghaldaqstant, *ai termini* tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Ligijiet ta' Malta, l-Arbitru qed jordna lil *MAPFRE MSV Life p.l.c* thallas lill-ilmentaturi s-somma ta' tlett elef, tliet mija u sebgha u hamsin ewro (€3,357) b'zieda mas-somma digà offruta, cioè, mas-somma ta' €33,567.83,²⁴ u, ghalhekk, ihallashom is-somma kumplessiva ta' €36,924.83.²⁵

Il-kumpens ghandu jithallas fi zmien hamest ijiem ta' xoghol mid-data ta' din id-decizjoni. Jekk dan ma jsirx, il-hlas ghandu mbaghad isir bl-imghax legali mill-iskadenza tal-hamest ijiem sad-data tal-hlas effettiv.

L-ispejjez ta' dan il-kaz huma ghall-provditur tas-servizz.

Alfred Mifsud

Arbitru ghas-Servizzi Finanzjarji

²⁴ P. 65; 73

²⁵ Li minnha jitnaqqsu xi *premiums* mhux imhallsa (p. 65)