

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 013/2024

FG

(‘l-Ilmentatur’)

Vs

MAPFRE MSV Life p.l.c.

(C 15722) (‘MSV’ jew

‘il-Provditur tas-Servizz’)

Seduta tat-8 t’Awwissu 2024

L-Arbitru,

Wara li ra l-Ilment magħmul kontra s-socjetà MAPFRE MSV Life p.l.c. dwar l-polza t’assikurazzjoni fuq il-ħajja (*Comprehensive Flexi Plan*) bin-numru FP423080 favur l-Ilmentatur.

L-Ilment, fis-sustanza tiegħu, jittratta l-fatt li l-polza t’assikurazzjoni fuq il-ħajja favur tiegħu immaturat b’ammont ferm inqas minn dak li hu jallega li kien imwiegħed lilu meta xtara l-polza.

L-Ilment¹

Fl-Ilment tiegħu, l-Ilmentatur ippremetta u ssottometta s-segwenti:

1. Illi meta l-Provditur tas-Servizz offrieli l-polza, l-Ilmentatur iddeċieda li jaċcettaha għaliex fada lill-assikuratur tiegħu li l-eventwali valur ta’

¹ Formola tal-Ilment minn Paġna (P.) 1 - 6 b’dokumentazzjoni addizzjonali minn P. 7 - 54.

maturità kien ser ikun iżjed minn Lm10,000 (€25,000). Issa, però, l-Provditur tas-Servizz qed joffrilu ammont ħafna inqas minn dan (€16,053.85) u minkejja li huwa pprova jikkonvinċi lill-istess li jagħmlulu offerta raġjonevoli, il-Provditur tas-Servizz irrifjuta u żamm mal-istess ammont.

2. Illi meta l-Ilmentatur kien staqsa dwar l-ammont totali li jieħu meta timmatura l-polza, ir-rappreżentant ta' MSV kien qallu li se tkun żgur €25,000. Għalhekk, huwa jhossu ngannat għaliex fil-bidu meta aċċetta l-polza kien infurmat li ser jieħu ammont kbir meta din timmatura u issa li mmaturat qed joffru somma redikola.

Rimedju mitlub

L-Ilmentatur talab bħala rimedju li jingħata €23,000 għaliex hija dik is-somma li hu jippretendi wara 20 sena, u mhux dik ta' €16,053.85, u dan tenut kont li kien investa €12,671.80 fuq medda ta' 20 sena.

Ikkunsidra wkoll, fl-intier tagħha, ir-Risposta tal-Provditur tas-Servizz,²

Fejn il-Provditur tas-Servizz spjega u ssottometta kif ġej:

1. *"MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the policy in question numbered FP423080 of the nature Comprehensive Flexi Plan ("the Policy") was not equivalent to one of the estimated maturity values including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the complainant Euro 23,000 instead of the Maturity Value of the Policy which originally amounted to Euro 16,053.83 and which amount MMSV was in a position to pay upon the maturity of the Policy.*

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

² P. 60 - 66, b'annessi fuq P. 67 - 79.

compensation in addition to the maturity value as is going to be explained in further detail hereunder.

2. *In the first place, the amount being requested by the complainant is based on estimates shown in two quotations that were presented by the complainant together with his complaint (the quotations are marked as fol. 10 of the complaint **and a handwritten quotation is being presented with this reply and marked as Dok. MSV 1**). If one could take in consideration the amounts of the said estimate in order to determine the compensation allegedly due on the policy in question, then it means that the Estimated Maturity Value including Reversionary Bonus and the Estimated Maturity Value including Reversionary and Terminal Bonuses will now be given meanings very different from that of estimate (as they were used and understood by the normal meaning of the words) and take instead an incorrect meaning of guaranteed amounts, so that the complainant advances his unfounded claims. 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.*
3. **Furthermore, both quotations were calculated on three different scenarios, namely on the rate of 3%, 5% and 7% to calculate three different scenarios of the estimated maturity value including reversionary bonus.** *In fact, the estimated maturity value including reversionary bonus was indicated as Lm7,196 or Lm9,028 or Lm11,405. **The quotation calculated the estimated maturity value including reversionary and terminal bonus based on a 2% Terminal Bonus. In the quotation there were three Estimated Maturity Values including Reversionary and Terminal Bonuses totalling Lm8,276 or Lm10,383 or Lm13,116.***
4. *However, apart from the fact that there were **three scenarios** and therefore none of those three scenarios could have been guaranteed, the quotation presented with the complaint (fol. 10) expressly states that **“Projected Estimated Maturity Value if future rate of return is...”** 3%, 5% and 7% **and a Terminal Bonus of 2% and that is the Quotation made it clear that rates could change. Therefore, the Company forecasted***

that the rate could vary since it could either be 3% or 5% or 7% or any other rate if it were to be changed in the future.

5. **As a matter of fact the quotation presented with the complaint also showed the complainant that the average reversionary bonuses decreased along the years since it showed the following examples:**

- a. Average Reversionary Bonus declared between 1994 to 2002 (9 years) – 6.10%
- b. Average Reversionary Bonus declared between 1998 to 2002 (5 years) – 5.60%.

This clearly informed the complainant about the trend that the bonuses decreased along the years and given that this policy was a long-term contract of 20 years, this meant that it was possible that the rate could vary during this term.

6. *The quotation presented with the complaint also expressly spoke about the high volatility of the terminal bonus which stated that:*

*“This quotation illustrates a level of Terminal bonuses that would be consistent with the Bonus Policy currently being adopted by the Board of Directors. Policyholders should be aware **however that Terminal Bonuses rates are likely to be highly volatile and very dependent on the Company's investment performance.**”*

7. **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 also gave multiple scenarios of different bonus rates clearly highlighting the fact that the rates can vary and therefore MMSV had acted in good faith.**

8. *Besides the fact that the quotation itself presented **three scenarios** and provided that those scenarios could not materialize if the rates were to change and therefore said figures could not have been guaranteed, the complainant was also presented with notes together with the quotation (which shall be attached and marked as **Dok. MSV 2**). In fact the quotation (Doc. MSV2) states that **“IMPORTANT NOTES OVERLEAF:***

Please read carefully these notes before accepting and signing this quotation". The complaint signed this quotation and with his signature he declared the following "I hereby confirm that I/we have read and understood the Important Notes to this quotation and that the Sub-Agent/our Representative has fully explained the notes overleaf to me/us and we are satisfied with the policy/s illustrated and its explanation."

9. The said IMPORTANT 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 amounts that were indicated in the quotations as estimated maturity value including reversionary bonus were 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 those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.

10. The same **IMPORTANT NOTES** also explain how the Company worked out the estimate and particularly how it arrived at the Estimated Maturity Value, and that the bonus rate which enables the Company to calculate the estimate could go up or down because it depends on the performance of the investments. In fact the Important Notes make it clear that: "**The Estimated Maturity Values shown overleaf have been calculated using illustrations on different levels of bonus rates. Depending on the performance of the company, bonus rates may go down as well as up.**"

11. *The IMPORTANT NOTES also distinguish between Reversionary Bonus and Terminal Bonus and explain that the Company was not obliged to declare a Terminal Bonus, and this depends on investment performance of the complainant's investment premium which was invested together with the investment premium of policyholders of the same nature. In fact, IMPORTANT NOTES provide that:- "Depending on its profits experience the Company **may** after the Policy's TENTH year and ten years' full premia have been paid, decide to allocate from time to time a Term Thai Bonus in addition to other declared bonuses A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not surrendered. Policyholders should be aware that Terminal Bonus Rates are likely to be highly volatile and very dependent on the Company's investment performance." Therefore, the amount being indicated in the Quotations as "estimated maturity value including reversionary and terminal bonus" was likewise not guaranteed since it was highly volatile.*
12. *IMPORTANT NOTES also emphasize that: "**The Company's (i.e. MSV) continued bonus policy is that bonus rates should reflect the returns actually earned on the underlying investments, supplemented by the value added from the profits of non-profit business ... Investment returns can go down well as up and therefore past performance is not necessarily a guide to the future.**" Therefore, the IMPORTANT NOTES made it clear more than once that the bonus rates were not guaranteed but can vary!*
13. *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 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).***

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 including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation which was given by the Company. **Notwithstanding, the complainant is merely basing his claim on estimated maturity values without putting them in the context of all the documents 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 of the three options 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 the 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 3,941.05 after deducting the maturity value from the investment premium that was paid by the complainant and this represents a rate of return-on-investment premium amounting to 2.61% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.07%.

- 17. 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.*
- 18. 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.39-46, and a further bonus statement including the most recent important notes, and copies of other Important Notes and Media Releases are being attached to this reply and marked as Document "MSV 3").*

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" and the three different bonus rates which were conditional 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 complainant sent a request to MMSV for the revised illustrative maturity value in the year 2012, where MMSV replied and supplied the information to the complainant (the document annexed and marked as **Doc. MSV 4**) giving him a picture of profit rates based on another 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 we!! 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 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 declares 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, 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 4.0%."

Thus MMSV continues to demonstrate and acclaim that it has supplied sufficient information to the complainant 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 complainant.

- 19. Furthermore, it needs to be noted that apart from the investment element, the Policy also had a small element of life cover during the duration of the Policy. In fact as indicated in the quotations (fol. 10 and Dok. MSV 1) next to 'Sum Assured' there is 101% indicated. This means that in the event of death, the Company was to pay 1% over and above the policy account balance at the time of death. Kindly note that this amount was guaranteed to be paid upon death in fact it is included in the 'Plan Details' part of the policy and is referred to as the 'Minimum Sum Assured' on the Policy Schedule (fol. 14). In fact the "Minimum Sum Assured" is defined in the policy document (fol. 24) as "Shall mean the lowest sum assured that can be selected by the Assured under this policy. For regular Premium Policies this shall be equivalent to 101% of the Policy Account". Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to Euro 12,112.80 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 3,941.05 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time the policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the policy in question was not only an investment but also provided cover on the complainant's life.

- 20. As explained, MSV has met all its contractual obligations, and contrary to what the complainant alleges, it has not "cheated" the complainant or failed to meet its obligations because the quotation did not guarantee the estimated maturity values, but the estimated maturity values were only an indication of the performance of the policy which could vary in the*

future. In addition, it has always observed what is contained in the policy schedule (annexed to complaint fol. 14) and the terms and conditions of the policy (fol. 12 - 039). In fact the policy (fol. 13) in particular the second paragraph of the second page of the policy states that "The **COMPANY HEREBY AGREES to pay** either the Death Benefit or **the Maturity Value (as defined herein)** and other Benefits (if any) specified in the Schedule to the Payee on the death of the life assured or **the survival of the life assured**, whichever is the earlier 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."

21. It is clear that the Policy does not guarantee payment of the estimated maturity values but guarantees that the maturity value is paid in the event that the life assured is still living when the policy matures. The maturity value according to the policy was "the value of the Policy Account **calculated on the maturity date of this policy**". Therefore, no estimate could crystallise the value that would be paid to the complainant on the maturity date of the policy in question because that value could only be realised on the date of maturity of the policy. Therefore, naturally the figures indicated on the quotations could not be guaranteed because the maturity value continues to change until the maturity date of the policy and therefore the Company observed its obligations according to the policy in question.
22. 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 the complainant was presented with the Statutory Notice that was issued in accordance with the provisions of the Insurance Business (long term business contract statutory notices) regulations, 2000 and was in fact signed by the complainant himself (a copy of which is attached herewith and marked as "**Dok. MSV 5**"). 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 policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was somehow

pressured 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.

23. *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 expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.*

With reservation for any further pleas.

Seduti

Fl-ewwel seduta li saret nhar il-15 t'April 2024, xehed l-Ilmentatur li qal:

“Ngħid li din il-polza għamiltha għoxrin sena ilu.

Ngħid li jiena kont ħadt l-inizjattiva u mort fl-uffiċċju ta' Ħaż-Żabbar. Ngħid li min bieghieli, is-Sur Joe Borg, qatt ma ġie d-dar. Ngħid li mort darbtejn; darba mort biex inkellmu u darb'oħra mort biex għamilt il-polza.

Ngħid li jien kont staqsejtu kemm ser nieħu fl-aħħar tal-polza u kien qalli li ser nieħu bejn wieħed u ieħor €25,000. Ngħid li vera, bil-miktub m'għamilli xejn imma jien daħħalt f'moħħi li ser tkun oġġla minn €16,000 u, allura, ġejt diżappuntat.

Ngħid li jien ikkalkolajt li tajthom 'il fuq minn €12,000 f'dawn l-għoxrin sena. Kieku qbadt nofshom u għamilthom il-bank għal għaxar snin ukoll kienu jagħtuni aktar. Issa, għal għoxrin sena, toqgħod taħdimha naqra, tippretendi li jiġu naqra aktar milli tawni. Jien ngħid li almenu s-somma kellha tkun aktar raġonevoli. Ngħid li għall-bidu qisu bdiet sejra tajjeb; imbagħad, fl-aħħar naqra tmur ħażin hekk?

Ngħid li l-perċentaġġ kif ħadmuh, seta' kien aktar. Naħseb seta' ġie aħjar.

Ngħid li tlabthom biex jagħmluli offerta aħjar imma ma laqgħulix din il-proposta.

Ngħid li meta mort inkellem lis-Sur Borg, ma domtx ħafna. Mort kellimtu u għidtlu li xtaqt nagħmel il-polza għal għoxrin sena. U, mbagħad, kont ftiehemt miegħu biex immur ħalli niffirma l-affarijiet”.³

Fil-kontroeżami kompli jgħid:

“Mistoqsi niftakarx xi spjegali s-Sur Borg meta mort inkellmu, ngħid li jiena staqsejtu kemm ser tkun il-Maturity Value u mija fil-mija qalli li ser nieħu dak l-ammont.

Qed niġi referut għall-Flexi Plan Quotation (paġna 010 tal-proċess), fejn hemm tliet rati differenti, dawk ta’ 3%, 5% u 7%. Mistoqsi s-Sur Borg spjegalix fuq dawn it-tliet rati, ngħid li tawni l-aġar waħda.

Qed niġi referut għall-Important Notes li jkunu fuq wara tal-Life Assurance Quotation (Dok. MSV 2 – paġna 68) fejn fihom hemm ħafna spjegazzjonijiet. Mistoqsi qrajtx dawn id-dokumenti li ngħatawli, ngħid li fiehemhomli Joe Borg.

Qed niġi mistoqsi la fiehemhomli Joe Borg, għalfejn qed nippretendi t-€23,000, ngħid li lili qalli li tista’ timmatura anke għal €25,000. Ngħid li nifhem li ħadd ma jmaqdar dak li jrid ibiegħ.

Nikkonferma li Joe Borg kien spjegali li kelli ħmistax-il ġurnata żmien biex nikkancella jekk ma naqbilx.

Mistoqsi jekk meta għamilt il-polza ridtx inġemma’ jew jekk ridtx nagħmel investiment riskjuż, ngħid li ridt inġemma’ imma anke li nagħmel ftit flus għax għoxrin sena ara kemm trid tistenna biex tasal dik il-ġurnata wara li tagħmel għoxrin sena tagħmel sagrificcji u tħallas. Ngħid li int ma jkollokx din biss.

Mistoqsi x’kien ir-risk appetite tiegħi meta għamilt il-polza, ngħid li jien ridt niġbor aktar milli ser ninvesti.

³ P. 80 - 81

Qed jingħad li jien għamilt gwadann ta' €3,941.05, jiġifieri, rate of return (gross of 15% withholding tax) ta' 3.07%, ngħid li għal għoxrin sena ma jagħmlux sens.

Qed jingħad li l-kumpanija tat stima, mhux b'rata waħda imma bi tlieta. Qed jingħad la jien ikkonfermajt li s-Sur Borg kien spjegahomli, ma jistgħux jifhmu kif qed nippretendi dan l-ammont. Ngħid li jien imxejt ma' dan l-ammont. Ngħid li jien ħriġt diżappuntat li wara dawn l-għoxrin sena jagħtuni din is-somma.

Qed jingħad li aħna ma nistgħux inqabblu dak li ġara f'dawn l-aħħar għoxrin sena maċ-ċirkostanzi tal-lum; u qed niġi referut fejn għidt li kieku poġġejt il-flus il-bank kont immur aħjar. Mistoqsi jekk għamilt xi kalkolu jew jekk inix qed inqabbel ma' issa, ngħid li dak iż-żmien kien hawn rati tajbin kif jaf kulhadd. U, issa, reċentement ukoll hawn rati tajbin.

Qed jingħad li kieku jien poġġejt il-flus il-bank fis-savings (għax dan huwa prodott li titfa' ftit kull sena meta tħallas il-premium u l-paragun irid ikun mas-savings) f'dawn l-aħħar għaxar snin/għoxrin sena, ma kont nieħu xejn mill-bank.

Għal dak li għidt li kelli aspettattiva li niġbor aktar milli investejt, qed jingħad li, fil-fatt, jien ġbart aktar milli investejt. Inwieġeb li mhux kif kien imlieli rasi, ħa ngħid hekk.

Qed jingħad li dan kien prodott mhux ta' investiment biss imma t'assicurazzjoni fejn li kieku meta ħallast l-ewwel premium, ġejt nieqes l-għada, kont nieħu s-somma assicurata. Fil-verità, qed jingħad li kien pakkett ta' beneficiċċji oħrajn.

L-Arbitru qed jagħmel referenza għad-dokument f'paġna 77 tal-proċess, (MSV 4) datat 5 ta' Novembru 2012, fejn jidher li dak iż-żmien jien kont tlabt stima mill-ġdid ta' kemm kont ser nieħu meta tagħlaq il-polza.

Qed jingħad li f'din l-istima l-ġdida hemm tliet somom li ġew maħduma bir-rati ta' 3.0%, 3.5% u 4.0%, u f'din l-ittra tal-2012, qed jgħidu li l-massimu li stajt nieħu meta tagħlaq din il-polza kien ivarja bejn €16,927.00 sa massimu ta' €20,278.00.

Mistoqsi niftakarx din l-ittra, ngħid li issa li qed tgħidli, niftakar li kont staqsejt. Mistoqsi għamilx xi haġa fuqha peress li jidher ċar li l-istima li tawni fl-2012 naqset minn dik oriġinali, ngħid li, le, m'għamilt xejn. Ngħid li kont staqsejt għall-kurżità; imma xorta trid tibqa' tħallas."⁴

Fit-tieni seduta li nżammet fid-29 ta' Lulju 2024, Victor Farrugia kkonferma bil-gurament id-dokument li kien bagħat fis-6 ta' Mejju 2024.⁵ Dan b'mod ġenerali isostni dak li kien intqal fir-Risposta tal-MSV.

L-Ilmentatur ma għamilx kontroezami ta' Victor Farrugia.

Instemgħet ix-xhieda ta' Joe Borg li kien ir-rappreżentant tal-MSV li kien biegħ il-polza ilmentata. Huwa xehed:

"Nikkonferma li biegħejt il-polza FP423080 Comprehensive Flexi Plan tal-MSV lis-Sur FG.

Ngħid li f'dan il-każ partikolari kien ġie l-uffiċċju, inzertajt kont xogħol jien u rajtu jiena. Ngħid li spjegajtlu l-polza li kien interessat fiha.

Ngħid li ltqajna aktar minn darba għax għalkemm kien ġie hu l-uffiċċju, jiena spjegajt, tajtu l-karti kollha illi kien dovut li nagħtih jien mal-ispjega. Imbagħad, tlabtu biex ikollu żmien biex jara l-affarijiet, jaħsibha u nerġgħu niltaqgħu for another meeting.

Ngħid li l-ewwel laqgħa, meta nkun qed nispjega, dejjem tieħu tliet kwarti, siegħa. It-tieni laqgħa, once li wieħed ikun iddeċieda, tieħu ftit inqas għax tkun filling in of forms and signatures.

Ngħid li bejn meeting u ieħor, dejjem kont inħalli erba'/ħamest ijiem, ġimgħa.

Qed niġi referut għal Dok. MSV 1 li hija l-Life Assurance Quotation (paġna 67 tal-proċess), għal Dok. MSV 2 li huma l-Important Notes (p. 68) u għall-Avviż Statutorju, Dok. MSV 5 (p. 79).

Ngħid li dawn id-dokumenti msemmija kont tajthom lis-Sur FG. Hemm il-kitba tiegħi u hemm il-firma tiegħi ukoll. Ngħid li dawn id-dokumenti nkun spjegajthom; mhux ser taqrahom kelma b'kelma, però, nkun qed nispjega l-

⁴ P. 81 - 82

⁵ P. 85 - 90

ġist tagħhom, x'inhuma l-affarijiet importanti li jridu joqgħodu attenti għalihom.

Il-Quotation kienet xi ħaġa relattivament ġdida dak iż-żmien mhux bħal qabel is-sena 2000, fejn konna noħorġu tliet ċifri ta' imgħaxijiet li setgħu ikunu, xenarji differenti.

L-iStatutory Notice kienet titkellem fuq il-fatt li għandu dritt illi għandu l-cooling off period ta' ġimagħtejn.

Ngħid li dwar il-polza nkun spjegajt li din hija polza t'investment, mhux bħal qabel. Il-polza konna ngħidulha 'a pure investment'. Kien hemm just 1% insurance cover illi din kienet qiegħda hemm biex jekk jiġri xi ħaġa u jiġi nieqes il-werrieta jieħdu kollox tax free.

Ma kinitx somma ta' insurance bħalma kienet tingħata qabel. Dik kienet inbidlet. Il-policy kienet differenti. Kien ikollok il-Policy Account, jiġifieri għandek il-premium li qed tpoġġi, tnaqqas il-Policy Fee u, mbaġħad, takkumula bonuses. Dak jiġi l-Policy Account; dak jakkumula maż-żmien u jekk il-klijent ġie nieqes, ser ikun hemm 1% extra Life Cover. Dik kienet qiegħda hemm biex tagħmel il-polza tax free fuq Death Claim. Bazikament dik hekk kienet. Ukoll li tibqa' tax free meta tasal għall-maturity.

Konna nispijegaw li kien hemm il-benefits tal-funeral expenses; other options ma kontx nersaq lejhom.

Rigward l-ispjega tal-Estimated Maturity Value, ngħid li hawnhekk ix-scenario inbidel minn dak li konna ngħidulu Second Series Policies ta' qabel is-sena 2000 u post l-2000. F'dawn konna nikkwotaw scenarios ta' maturity figures skont ir-rati kemm jistgħu ikunu u kellna tliet scenarios. Kien evidenti li hawnhekk kien hemm shift importanti li ma konniex nitkellmu, 'Isma', jekk ikunu fuq din ir-rata,' u noħorġu b'rata waħda bħala quote. Meta qed toħroġ tliet rati qed turi li l-affarijiet ivarjaw u jinbidlu. B'hekk kont nispijega fuq tliet rati, ma stajmiet nitkellmu fuq rata waħda imma fuq tlieta.

Ngħid li r-Reversionary Bonus kien xi ħaġa li l-klijent, f'dan il-każ, is-Sur FG, kont ngħidli li ser jirċievi statement kull sena fejn ikollok informazzjoni fuq il-bonuses li jkunu ġew iddikjarati s-sena ta' qabel. U dawk, once quoted fuq l-istatement huma guaranteed to be paid, jiġifieri, jekk il-klijent ser iżomm il-

polza sal-maturità jew jekk allaħares qatt jiġi nieqes qabel, is-somma li hemm fuq l-istatement hija garantita. Once quoted, it is guaranteed.

It-Terminal Bonus kien xi ħaġa differenti fejn kont nispjega l-fatt li l-kumpanija tista' tagħti bonus extra fl-aħħar sena skont kif tkun marret tul iż-żmien. Imma dak ma kien hemm xejn quoted and guaranteed. Il-quoted and guaranteed huwa r-Reversionary Bonus.

Ma stajtx ngħid li r-rati kienu fissi. Lanqas stajna ngħidu li qed nitkellmu f'scenario li r-rati ma jinbidlux. Ir-rati kienu qed jinbidlu.

Ngħid li jien f'dawn il-laqqgħat li kelli mas-Sur FG qatt ma ggarantejt jew wiegħedt somom deskritti b'ħala 'estimated'. La ma kontx niggarantixxi qabel, mhux ser niggarantixxi issa żgur f'dan iż-żmien.

Rigward id-dokument MSV 5 – l-Avviz Statutorju – ngħid li dak huwa dokument fejn il-klijent qed jiġi infurmat illi minkejja li qed jiffirma u jħallas il-premium u jkun iddeċieda li ser jagħmel il-polza, xorta jibqalu ż-żmien, ħmistax-il ġurnata minn meta jirċievi d-dokument (li dak iż-żmien kienu għadhom jirċevuhom b'posta reġistrata) illi jekk ibiddel il-fehma jista' jirtira, jagħmel il-cancellation, jieħu l-flus lura u l-kuntratt jaqa'.

Nikkonferma li d-Death Benefit huwa 101% of Policy Account. Il-Policy Account huwa l-premiums li tpoġġew, jitnaqqsu l-Policy Fees u jakkumulaw il-bonuses kull sena, jiġifieri kull sena għandu accumulation. F'każ li jiġi nieqes, il-werrieta kienu jieħdu 101% of total accumulation, 1% extra Life Cover.⁶

Saru sottomissjonijiet verbali fi tmiem it-tieni seduta.

L-Ilmentatur issottometta:

“Ngħid li qabel ħallejna lil xulxin, jien kont staqsejt lis-Sur Joe Borg kemm bejn wieħed u ieħor kont ser nieħu meta timmatura din il-polza, u s-Sur Borg kien qalli li tista' timmatura sa €25,000.

Jiena dik li niftakar.

⁶ P. 91 - 93

U ngħid li forsi mhux kif qed jgħid li domna siegħa; għaddew ħamsa u għoxrin sena imma ma domniex siegħa żgur meta ltaqajna l-ewwel darba.”⁷

Il-Provditur tas-Servizz issottometta:

“Fl-ewwel lok, nixtiequ nirrimarkaw li l-MSV tixtieq tistrieħ fuq l-eċċezzjonijiet fir-risposta u l-affidavit ta’ Victor Farrugia.

L-MSV tixtieq tagħmel numru ta’ osservazzjonijiet:

Fl-ilment tiegħu, l-Ilmentatur qed jallega li l-MSV m’onoratx il-kuntratt tal-polza meta minflok kienet disposta tħallas il-Maturity Value ta’ €16,053.85 u jirriżulta wkoll li l-ammont li qed jippretendi l-Ilmentatur huwa ta’ €23,000.

Dan l-ammont mhuwiex espressament imniżżel fuq il-Quotation uffiċjali iżda huwa ammont qrib tal-istimi b’rati varji li ingħata l-Ilmentatur fuq il-Quotations.

L-MSV dejjem agixxiet in buona fede u qabel ma l-Ilmentatur iddeċieda li jixtri l-polza, iprovdietu b’numru ta’ dokumenti bi specific disclaimer bħalma għadu kif qal is-Sur Joe Borg hawnhekk. U biex taċċerta ruħha, biex turu li ma kinux garantiti l-ammonti ħadmet il-Quotation abbażi ta’ rati ta’ 3%, 5% u 7%. Fuq il-Quotation ukoll hemm miktub li:

‘Projected Estimated Maturity Value if future rate of return is:

3%, 5% or 7%’.

u Terminal Bonus ta’ 1.5%, jiġifieri l-Quotation għamiltha ċara li dawk ir-rati setgħu jinbidlu.

Ukoll, il-Quotation li pprezenta l-Ilmentatur turi li r-rati tal-bonus naqsu meta jiġi ikkomparat il-perjodu bejn l-1994 u l-2002 u bejn l-1998 u l-2002, jiġifieri fuq il-Quotation li ħarġet mill-MSV juri li r-rati kienu naqsu.

Il-fatt li l-Quotation inħadmet fuq tliet scenarios differenti minflok fuq rata waħda juri wkoll li l-MSV kienet aktar kawta fil-kwotazzjonijiet li ħarġet. U dan jirrifletti wkoll il-ħsibijiet tal-Onor. Arbitru f’xi kawzi li ġew deċiżi m’ilux, jiġifieri, ASF 034/2023; ASF 049/2023 u ASF 016/2022 li jittrattaw il-poloż li

⁷ P. 93

nbiegħu fis-snin 90 fejn hawn sar aċċenn mill-Onor. Arbitru fejn inħass li f'dawk iż-żminijiet flok rata waħda, l-MSV messha ħarget spectrum ta' kwotazzjonijiet maħduma b'rati differenti għax f'perjodu t'aktar minn ħamsa u għoxrin sena xejn ma jibqa' stabbli.

F'din il-polza, kif jidher ċar mid-dokumenti u anke wara s-sena 2000, hekk sar u dan kif sostna l-Onor. Arbitru fid-deċizzjonijiet tiegħu li l-klijent induna u fuq kollox jifhem li ma kien hemm xejn garantit matul it-terminu tal-polza. U, għalhekk, l-informazzjoni li ngħatat lill-Ilmentatur turi li din id-dokumentazzjoni setgħet għenitu jifhem li ma kien hemm xejn garantit, jiġifieri, mill-Estimated Maturity Values li kienu mnizzlin.

Punt ieħor li xtaqt nagħmel hu li l-Ilmentatur ħa l-inizjattiva hu meta mar l-uffiċċju ta' Joe Borg. Fil-fatt, indika hu stess u anke gie ikkorroborat minn Joe Borg li mar hu jixtri l-polza li turi ċerta intenzjoni u motivazzjoni biex jesplora u possibilment jakkwista l-polza. Din turi inizjattiva bid-deċizzjoni tiegħu stess.

Fix-xhieda tiegħu, FG sostna li:

'jien daħħalt f'moħħi li ser tkun ogħla minn €16,000'.

Dan jindika perċezzjoni li l-valur tal-maturità seta' jkun ogħla minn €16,000. Giet stabbilita minn FG stess u, fil-fatt, l-Ilmentatur iddikjara esplicitament li ħoloq din l-idea li jieħu din iċ-ċifra mix-xewqa tiegħu stess u dan jemfasizza li Joe Borg ma għamilx xi tip ta' enfasi jew influwenza żejda li jifforma l-aspettattiva finali. Dan jista' jkun li kien hemm impressjoni żbaljata ta' x'fehem l-Ilmentatur imma hu stess daħħal f'moħħu, kif qal hu stess.

Barra minn hekk, FG qal:

'Ngħid li vera, bil-miktub m'għamilli xejn,' fir-rigward tal-garanzija li qed jallega. Allura, mela FG stess qed jikkonferma li m'hemm l-ebda prova li jista' jgħid li ggarantilu xi ammont li qed jippretendi hu. Anzi hemm provi bil-kontra li juru dokumentazzjoni li dawn setgħu ivarjaw.

Fix-xhieda tiegħu, l-Ilmentatur sostna li Joe Borg qallu li mija fil-mija kien ser jieħu dak l-ammont. Madanakollu, aktar tard semma' li 'qalli li tista' timmatura anke għal €25,000.'

Din turi ċerta inkonsistenza għax l-ewwel qal li Joe Borg qallu li l-valur tal-maturità kien garantit imma mbagħad sostna li Joe Borg issuġġerixxa li l-oġġla ammont seta' kien possibbli. Naturalment, l-ammont ta' €25,000 seta' kien possibbli kieku r-rati tal-bonus tbiddu b'mod li jippermetti li tingħata dan il-maturity value. Għalhekk, din iċ-ċerta inkonsistenza tqajjem dubji dwar l-eżattezza u l-affidabilità tad-dikjarazzjonijiet tal-Ilmentatur dwar x'għara snin ilu.

Fix-xhieda tiegħu, ukoll ikkonferma Joe Borg li fiehemhomlu l-Important Notes u dan ġie ikkorroborat minn FG li qal li Joe Borg fiehemhomlu l-Important Notes li dawn kien fihom disclaimers bħalma dejjem semmejna li l-'bonuses are likely to be highly volatile ... depending on the performance of the company ... the bonus rates may go up as well as go down,' jiġifieri dawn ġew spjegati minn Joe Borg, allura, hu ingħata l-informazzjoni kollha.

Barra minn hekk, ingħata l-Avviż Statutorju, ingħata l-Bonus Statements matul is-snin u anke għamel gwadann ta' €3,941 li jiġu gross of 15% withholding tax on investment premium ta' 3.07%, jiġifieri, fl-opinjoni tagħna, meta tagħmel sommarju ta' dawn l-affarijiet kollha żgur li l-kumpanija ma kienx hemm lok li tat aspettattiva leġittima illi l-Ilmentatur jista' jieħu dak li qed jallega li ġie ggarantit li jieħu".⁸

L-Arbitru

Ra l-atti kollha tal-każ

Jikkunsidra:

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.⁹

Il-punt kruċjali f'dan l-ilment jittratta l-informazzjoni mogħtija lill-Ilmentatur fil-mument tal-bejgħ tal-polza in kwistjoni u l-allegati wegħdiet li sarulu fir-rigward

⁸ P. 94 - 96

⁹ Kap. 555, Art. 19(3)(b)

tal-ammont li hu kellu jirċievi mal-maturità tal-polza, liema wegħdiet hu jistqarr li kienu l-fattur ewlieni li kkonvinċewh jixtri l-polza.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'gie mwiegħed lill-Ilmentatur u x'eventwalment gie mogħti jew offrut lilu mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx l-aspettattivi raġonevoli u legittimi tal-konsumatur u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.

Mix-xhieda ħareġ ċar li kien l-Ilmentatur li għamel l-ewwel kuntatt mal-MSV. Ħareġ ċar ukoll mid-dokumenti u mix-xhieda li ma kien hemm ebda garanzija li meta timmatura l-polza kien ser ikollha valur ta' Lm10,000. Il-fatt li l-*quotation* kien fiha tliet '*Projected Maturity Values*' ibbażati fuq tliet '*future rates*' differenti huwa aktar minn indikattiv li dawn kienu stimi u mhux garanziji.

L-ammont li bih immaturat il-polza huwa €16.053.85,¹⁰ filwaqt li l-aktar stima baxxa fil-kwotazzjoni kienet Lm8,276 ekwivalenti għal €19, 278.11.¹¹

L-Ilmentatur ammetta li

“vera, bil-miktub m’għamilli xejn imma jien dahħalt f’moħħi li ser tkun oġħla minn €16,000 u, allura, ġejt dizappuntat.”¹²

Dan ivarja sew minn dak li qal fl-ilment li Joe Borg qallu li żgur ser jieħu €25,000.

Ammetta wkoll li Joe Borg fiehemhielu l-kwatozzjoni u li kien jaf li kellu gimagħtejn biex jerġa' jibdielu u jħassar il-polza.¹³

Huwa jgħid li Joe Borg qallu li l-polza tista' timmatura anke għal €25,000. Din ma tistax titqies bħala xi garanzija meta iffirma dokumenti u suppost fehem li dawn kienu biss stimi li fuq medda twila ta' snin (20 sena) ħadd ma jista' jipprevedi. Fil-fatt, sa mill-2012 kienet intalbet reviżjoni tal-stima originali, li 11 il-sena qabel ma mmaturat il-polza, ġa kienet qed tindika li l-ammont li tista' timmatura l-polza jista' jkun baxx daqs €16,927.¹⁴

¹⁰ P. 48

¹¹ P. 10

¹² P. 80

¹³ P. 81

¹⁴ P. 77

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza ilmentata, ra li r-rendiment tagħha kienet ta' madwar 3%¹⁵ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin, u għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment u l-qliġ dikjarat kienu sostanzjalment garantiti, u dan, appartni l-benefiċċju ta' kopertura fuq ħajjet l-ilmentatur mill-ewwel ġurnata tal-polza.

L-Ilmentatur ma ppreżenta l-ebda prova li dak iż-żmien, kellu xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentatur lanqas ippreżenta xi tip ta' prova li minħabba li huwa ddecieda li jieħu l-polza offruta a bażi tal-informazzjoni mogħtija, huwa ġarrab xi tip ta' *opportunity loss*.

F'każi oħra simili, l-Arbitru ikkritika lill-Provditur tas-Servizz li kien joħroġ stima waħda fil-kwotazzjoni u dan, minkejja dak kollu li jkun iffirma l-Ilmentatur li l-istima ma kienetx garanzija, seta' nissel aspettativa differenti f'moħħ l-Ilmentatur. B'hekk, l-Arbitru f'dawk il-każi kien ta' xi kumpens limitat għal fatt li l-Provditur tas-Servizz kien naqas meta ma tax stimi bbażati fuq rati differenti, biex il-klijent jifhem li fuq medda twila ta' snin xejn m'hu garantit u l-istimi jistgħu ivarjaw sew.

F'dan il-każ, iżda l-kwotazzjoni kient ibbażata fuq tliet stimi ta' xenarji differenti u l-Ilmentatur ma kellux inissel pretensjonijiet li bilfors ser jieħu l-ogħla stima. Anzi suppost kellu jifhem li l-fatt li ħarġu diversi stimi fuq xenarji differenti, allura, xejn ma kien garantit, lanqas l-istima l-aktar baxxa.

Deciżjoni

Għar-raġunijiet hawn fuq spjegati, l-Arbitru jhoss li dan l-Ilmentatur mhuwiex ekwu u raġonevoli, u mhux ser jiġi milqugħ.

Kull parti iġġorr l-ispejjeż tagħha.

¹⁵ P. 90

Alfred Mifsud

Arbitru għas-Servizzi Finanzjarji

Nota ta' Informazzjoni relatata mad-Deciżjoni tal-Arbitru

Dritt ta' Appell

Id-Deciżjoni tal-Arbitru legalment torbot lill-partijiet, salv id-dritt ta' appell regolat bl-artikolu 27 tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), magħmul quddiem il-Qorti tal-Appell (Kompetenza Inferjuri) fi żmien għoxrin (20) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont l-artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taħt l-artikolu 27(3) tal-Att.

Kull talba għal kjarifika tal-kumpens jew talba għall-korrezzjoni ta' xi żbalji fil-komputazzjoni jew klerikali jew żbalji tipografiċi jew żbalji simili mitluba skont l-artikolu 26(4) tal-Att, għandhom isiru lill-Arbitru, b'notifika lill-parti l-oħra, fi żmien ħmistax (15)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deciżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji wara li jiskadi l-perjodu tal-appell. Dettalji personali tal-ilmentatur/i jkunu anonimizzati skont l-artikolu 11(1)(f) tal-Att.