

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 004/2024

DT u ZT ('l-Ilmentaturi')

vs

MAPFRE MSV Life p.l.c. (C-15722)

('il-Provditur tas-Servizz' jew 'MAPFRE' jew
'MSV')

Seduta tal-21 ta' Ġunju 2024

L-Arbitru,

Wara li ra l-Ilment magħmul kontra s-socjetà MAPFRE MSV Life p.l.c. (C-15722) ('il-Provditur tas-Servizz) dwar il-polza ta' assikurazzjoni fuq il-ħajja (*endowment assurance with profits*) bin-numru 45905 favur l-Ilmentaturi.

L-Ilment, fis-sustanza tiegħu, jittratta telf li l-Ilmentaturi allegaw li sofrew fil-polza ta' assikurazzjoni fuq il-ħajja favur tagħhom meta din immaturat b'ammont ferm inqas minn dik li huma allegaw li kien imwiegħed lilhom tramite l-intermedjarju ta' MAPFRE.

*L-Ilment*¹

Fl-Ilment tagħhom l-Ilmentaturi ppremettew u ssottomettew is-segwenti:

1. Illi huma kienu ftiehemu kuntrattwalment mal-intermedjarju tal-Provditur tas-Servizz, li wara 25 sena meta timmatura l-polza in kwistjoni, il-valur tagħha tkun ta' madwar €51,000, u mhux ta' €21,850.31, *bonus finali* inkluż, kif inhu indikat li hu bħalissa.

¹ Formola tal-Ilment minn Paġna (P.) 1 – P. 6 b'dokumentazzjoni addizzjonali minn P. 7 – P. 60.

2. Illi dan l-ammont huwa absurd in vista ta' dak miftiehem bejn il-partijiet, u għalhekk mhux qed jaċċettaw l-ammont offrut lilhom mill-Provditur tas-Servizz fuq eġġluq il-polza għax imur kontra dak miftiehem.

Rimedju mitlub

L-Ilmentatur talab bħala rimedju li huwa jġi mħallas is-somma miftiehema ta' €51,000.

Ra t-tweġiba² 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 45905 of the nature Joint Endowment Assurance with Profits including Funeral Expenses (Baby Bond) ("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 complainants the difference between the said figures by paying an amount in addition to the Maturity Value of the Policy which amounted to Euro 21,850.31 and which amount MMSV was in a position to pay upon the maturity of the Policy.*
2. *Without prejudice to the foregoing, it should also be noted that on the second page of the complaint, "**Section 4 – Complaint Details**", (marked as fol. 002), the complainants declared that they first had knowledge of the complaint on the 1st December 2019. In this respect it should be noted that Article 21(1)(c) of Chapter 555 of the Laws of Malta 'The Arbiter for Financial Services Act' states the following:*

*'The Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, **if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of**.'*

² P. 66 – P. 73

The complaint was submitted in writing before MSV more than two years after the date the complainants first had knowledge of the matters they were complaining of since they submitted their complaint with MSV for the first time on the 16th November 2023 (vide fol. 007). In this connection, I invite the complainants to explain why they indicated the 1st December 2019 as the date they first had knowledge about the matters they were complaining of, since in this connection the Company is of the opinion that when taking into consideration the date indicated by the complainants it results that the Arbiter does not have competence to hear the complaint on the policy in question, since it is time-barred.

- 3. Without prejudice to the foregoing, 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 20th November 2023 (a copy of which was presented with the complaint marked as Fol. 008 and Fol. 058-060) and as is going to be explained in further detail hereunder.*
- 4. 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 provided 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 "We had contractually agreed with ROCS (the Insurer's Intermediary) that after twenty-five years, the Maturity Value of our policy would be around Euro 51,000."*
- 5. The estimated maturity values 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 investments 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. **These fluctuations were also indicated on the Baby Bond Advertising literature attached with the complaint (fol. 10 and fol. 11) and in fact on fol. 11 there are different handwritten percentage rates together with a corresponding year which show that the complainants were informed and clearly made aware of different bonus rate fluctuations. In light of the above, it is clear that 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.**

The fact that the quotations indicate two estimated maturity values, the value 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 Lm16,153 (Euro 37,626.37) or at the higher value of Lm22,210 (Euro 51,735.39). It results that the complainants based their complaints 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 complainants were also presented with notes together with the quotations (a copy of the notes attached to the quotation are being attached and marked as Dok. MSV1). In fact, the quotation (fol. 13) states that “IMPORTANT NOTES OVERLEAF: Please read carefully these notes before accepting and signing this quotation”. The complainants signed the quotation (fol. 13) and with their signature they declared the following “I hereby

confirm that I/we have read and understood the Important Notes to this quotation and that the Representative has fully explained the notes overleaf to me/us and we are satisfied with the policy/s illustrated and its explanation.” 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 Lm16,153 (Euro 37,626.37) 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 those 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, Lm247.95 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 14,439.25 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 7,411.06 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 in 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 Lm22,210 (Euro 51,735.39) was likewise not guaranteed because MMSV had the discretion not to pay a terminal bonus.

11. Furthermore, on 1st December 1998, the complainants also signed a document known as "Product Information" (a copy of which is attached herewith and marked as "**Doc. MSV 2**") which explained among many other 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 year's 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 solely 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.

12. As referred to in paragraph 5 of this reply, the complainants also attached 'The Baby Bond Literature' to their complaint (fol. 11-12). If one reads said literature, the document makes it clear that **the product being sold is meant to be a 'Savings Plan' and in fact the savings element is evident because the complainants not only saved the investment premium that they invested but they also made a profit amounting to Euro 7,411.06.** The Advertising material must also 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 advertising material 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. **However, as referred in paragraph 2, the handwritten notes marked on the 'Baby Bond Literature' show that the complainants were informed and clearly made aware about possible fluctuations of the bonus rates. 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.***

- 13. 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 complainants are merely basing their 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 them and every year thereafter as shall be explained hereunder.***
- 14. 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 terms of the Policy.*
- 15. 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 has been substantially negatively impacted as a result of the COVID 19. **In fact, the complainant made a gain in the amount of Euro 7,411.06 after deducting the maturity value from the investment premium that was paid by the complainant which results in a rate of return on the investment premium of 3.05% and a rate of return (gross of 15% withholding tax) on investment premium of 3.59%.** 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.*

16. *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. 37-51 and copies more bonus statements which were sent to the complainants, 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" 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 depend 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.

17. *Furthermore, the complainants sent a request to MMSV for the revised illustrative maturity value on the 13th May 2014, where MMSV replied and supplied the information to the complainant (the document annexed was attached with the complaint Fol. 53) 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 difference 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 4.0%.”

With regards to the 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 accrued 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 Lm5,557 (Euro 12,944.33) 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 honour their agreement because from the Company's file it turns out that the complainants failed to make premium payments which resulted in the policy lapsing, and the attached revival application (marked as **Doc. MSV4**) was completed by the complainants together with the payment of all the missed premiums for the policy to be revived.*
- 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 complainants were 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 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 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. In addition, the **Product Information (also attached with this reply as Doc. MSV 2)** also informed the complainants that **"The Life Insurance (Statutory Notice) Regulations 1989, give you the right to cancel your policy (with a full refund of the premium paid) within 15 days from the issuance of your policy."** Therefore, this shows that the Company extended the 15-day timeframe indicated in the Statutory notice as provided by law to apply from the issuance of the Policy rather than the date of the Statutory Notice. In this connection, not only did the complainants proceed with the Policy but Mr DT bought another policy in 2004 with Policy number FP423769 a comprehensive flexi plan of the same nature of the policy in question) which shall mature on the 17th February 2024. 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. 37-50) which were sent to the complainants, and the Baby Bond literature (fol. 10-11) which they received which also showed the hand written rates which decreased, and from the quotations which were given to the complainants when they purchased the aforementioned policies.*

21. *We would also like to point out that the complainants had bought another joint endowment assurance with profits policy in 1995 with policy number 26616 and said policy had matured 4 years ago on the 19th December 2020. It should be noted that the complainants had also submitted a complaint to the Office of the Arbiter for Financial Services in connection to said complaint with case reference number ASF 142/2020 which was decided by the Arbiter*

for Financial Services on the 9th November 2021. It is interesting to note that in their complaint relating to the policy number 26616, they had stated that in 1995 they had understood that bonus rates can go up or go down along the years. However, now they fail to state the same in this complaint which they have submitted in connection with the policy in question which they had bought in 1998, which is 3 years after policy number 26616.

22. *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 tal-4 ta' Marzu 2024, l-Ilmentatrici xehdet li:

“Ngħid li 25 sena ilu, iddeċidejt li nagħmel polza wara li domt naħsibha. Kien hemm Rachel u Simon (l-intermedjarji li bieghuli l-polza) u kienu bdew jispjegawlna. Jiena ma kontx iffirmajt mill-ewwel għax kont qed nistaqsi u nistaqsi.

Ngħid li irċevejt karta li fis-sena nista' nagħmel tant. Għandi karta li tgħid li fl-ewwel sentejn ma tieħu xejn; fit-tielet sena tieħu Lm679 (p. 13) fejn dawn dejjem jogħlew sakemm jaslu għal Lm22,210.

Ngħid li kellna nħallsu Lm263 fis-sena li kienu jiġu xahrejn paga ta' raġel. Imma aħna ddeċidejna li ninvestu għaliex qaltli li kien investment tajjeb. Meta staqsejtha jekk daww it-Lm22,210 jistgħux jinżlu, qaltli, 'Le, qatt ma jistgħu jinżlu; dejjem ikunu aktar. Qatt mhu ser jinżlu.' U Lm263 għal dak iż-żmien, 25 sena ilu, kienu jiswew il-flus imma għamilna sagrificċju. Jiena dejjem onorajt tul dawn il-25 sena avolja ma kellix. Jien dejjem tajthom, rajt minn fejn ġibthom ħalli l-policy dejjem nagħmilha.

Issa jiena qed nippretendi li jagħtuhomli u mhux b'1ċ anqas għax lili kienu qaluli li kif tagħlaqli fl-10 ta' Diċembru 2023, fuq il-kuntratt, hawnhekk, qaltli li l-għada joħorguli ċ-ċekk tagħhom u qatt ma jista' jkun inqas.

U jiena issa onorajt, mela jiena, jekk jogħġobkom, irrid dak – la 1ċ inqas u lanqas 1ċ aktar. Anzi lili qaltli li ser ikun aktar. Jiena lill-MSV dejjem tajthomlhom. Issa aħna ma nistgħux nagħmlu kuntratt, imbagħhad, wara 14-il sena (jew 16-il sena) tiġi tibgħatli karta li ser jonqsu. Jekk għamilt kuntratt, onorah bħalma jiena onorajt tiegħi.

U, bir-rispett kollu, mela aħna qed nidhku bin-nies? Li kieku qaltli li ser jinżluli Lm10, Lm50, ma kontx ninvesti. Dan ma tistax, l-ewwel iddaħħal il-polza, imbagħhad, taħseb li mhux ser jgħaddu dawn il-25 sena? Mela l-familji ma jagħmlux is-sagrificċji tagħhom?

Jien nippretendi li niehu s-somma. Lili hekk offrewli u kieku ma kontx nagħmilha.”³

Fil-kontroezami, l-Ilmentatrici qalet li:

“Mistoqsija għalfejn jiena nizzilt li kont konxja l-ewwel darba tal-ilment tiegħi fl-1 ta’ Diċembru 2019, meta jiena bgħatt l-ilment formali tiegħi lill-MSV b’email fis-16 ta’ Novembru 2023, ngħid għaliex l-MSV bagħtitli xi karta u bdejt nisma’ xi garr mingħand in-nies. Jiena qatt ma kont niċċekkja. Jien għax smajt mingħand in-nies, ‘Ara x’għamluli! Ara, wegħduni hekk u hekk!’ Għidtilhom, ‘Le, ta. La għandna l-kuntratt hekk ikun.’

Jiena ngħid il-verità lanqas bdejt nemminhom għax kienu jgħidu jekk tfalli l-Middlesea, tfalli d-dinja.

Ngħid li jiena kont konxja li bagħtuli xi karta imma jiena ma nistax wara tmintax-il sena nibgħat karta lil min qed jinvesti miegħi u ngħidlu li ser ikunu lanqas in-nofs.

Jien kont smajt xi tgergir fuq ir-radju fl-2019. Imma sirt naf bil-problema fl-2023 meta rċevejt mingħand l-MSV bl-offerta tagħhom.”⁴

Eventwalment, l-Ilmentatrici rtirat id-data tal-1 ta’ Diċembru 2019 bħala d-data li l-ewwel li saret taf bil-problema, u wara li l-Arbitru sema’ l-ispjegazzjoni mogħtija, warrab il-preskrizzjoni.⁵

³ P. 90 – P. 91

⁴ P. 91

⁵ P. 92

L-Ilmentatriċi kompliet li:

“Qed niġi mistoqsija ngħidx sew li peress li għaddew 25 sena, jiena ma niftakarx kelma b’kelma x’għie spjegat lili waqt il-bejgħ tal-polza. Ngħid li meta inti ser toħroġ dawk il-flus u għandi miktub quddiem, ma tantx tista’ tinsa għax kitbithomli.

Qed jingħad li fuq id-dokumenti li pprezentajt jiena stess, hemm il-firem ta’ Simon Vella u mistoqsija għalfejn dejjem qed insemmi lis-Sinjura Rachel Vella meta qed nispjega fl-ilment tiegħi, ngħid li Simon kien; Rachel f’din m’għandhiex x’taqsam. Ngħid li għax semmihieli Simon lil oħtu. Qalli għandek kollox hawnhekk eżatti bħal tat-tifla li kellha qabel bl-istess li kif tagħlaq din joħroġ ċekk l-għada. Qalli l-istess affarijiet.

Qed niġi referuta għal ilment li kont ftaħt jien fl-2020 għal polza li kont għamilt fl-1995 li kien ASF 142/2020. U qed jingħad li fl-ilment fuq polza li nbiegħet qabel din il-polza, kont għidt li kont naf li kien hemm tluġh u nżul; kont naf dak li jista’ jitla’ u jinżel, u li ffirmajt li jistgħu jinbidlu. Ngħid li m’għidtx eżatti hekk. Ngħid li hi kienet qaltli li jistgħu jitilgħu u jinżlu u qaltli li dejjem aktar ser ikunu. Jien għalhekk iffirmajt għal 25 sena.

Qed jingħad li jien kont konxja li dawn ir-rati jistgħu jitilgħu u jinżlu. Ngħid li jitilgħu u jinżlu, meta hi qed tgħidlek li dawn jekk jinżlu tikka żgħira, tikka mhux eluf; kieku qaltli li ser jinżlu Lm1,000, inti mhux biex tbiegħ biss inti trid tara li wara 25 sena ser jgħaddu. U jiena tal-Arbitru qalli li fuq din nista’ nitkellem; ma nistax nitkellem fuq l-ieħor. Jiena m’inix avukata u mhux sewwa qed issemmi l-oħra. Jiena ma kontx naf ċertu affarijiet.

Qed niġi referuta għall-Quotation (p. 13), għall-Important Notes (Dok. MSV 1 – p.74), għall-Product Information (Dok. MSV 2 - p. 75) u hemm karta warajha fejn hemm il-firma tiegħi, u l-iStatutory Notice (Dok. MSV 5 – p. 89).

Qed jingħad li fuq l-Important Notes hemm ‘bonus rates may go down as well as up ... past performance is not necessarily a guide to future performance.’

Fuq Dok. MSV 2 hemm miktub, ‘the rate of bonus earned will depend upon the performance of the Company and the investment market ... calculations are based on the current bonus rates ... past performance is not necessarily a guide to future performance.’

Fuq l-Important Notes, hemm ukoll, 'they depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether.'

Mistoqsija tajtx każ dawn id-dokumenti u jekk staqsejtx dwar dawn id-dokumenti, ngħid li jiena staqsejt u qaluli kemm intom tajbin u vera tajbin għax kull sena għamiltu l-miljuni. Anke fi żmien il-Covid għamiltu.

Ngħid li iva, qrajthom id-dokumenti dak iż-żmien. Imma jiena, qabel ma ffirmajt, ergajt staqsejtha u qaltli li tant huma tajbin li jekk tfalli l-Middlesea, tfalli d-dinja. B'hekk iffirmajt jien.

Mistoqsija staqsejtx lil Simon Vella fuq dawn id-dokumenti, ngħid li qalli kollox tajjeb. Staqsejtu biex jibgħatli din il-karta u bagħathieli, mill-ewwel sentejn u tliet snin.

Jiena ġejt ittraduta għax kieku jiena ma kontx niffirma.

Ngħid li qrajthom id-dokumenti imma tant pingejtuhieli tajba; mela intom tpinguha li hi tajba, imbagħad, tippruvaw toħorgu minn hemm u min hawn?

Qed jingħad li fuq id-dokumenti hemm kollox black on white – dak li hu garantit, dak li hu stima, u qed jingħad kif, allura, jien nibqa' ngħid li kienu garantiti, ngħid li fuq din il-karta (Life Assurance Quotation, p. 13) hemm Simon Vella.

Nikkonferma li fuq il-karti hemm il-firem tiegħi u tar-raġel. Ngħid li qrajthom, u rajt il-kelma 'estimate' u staqsejt xi tfisser u qaltli, 'bejn wieħed u ieħor'. U kont staqsejtha kemm bejn wieħed u ieħor jistgħu jinżlu u din is-sentenza kienu qaluli, anke Simon, 'Qatt ma jista' jinżel minn hekk daqskemm aħna tajbin!'

Ngħid li jiena m'inix avukata; daww fhimthom imma mhux ser nifhimhom bħalkom.

Qed jingħad kif allura ma staqsejtx. Jien ngħid li staqsejt x'inhi 'estimate'. Kieku qaluli li jistgħu jinżlu b'€1,000, ma kontx nagħmilha l-polza. Ġejt ittraduta u għalhekk għamilt il-polza.

Ngħid li jien ridt ingemma', biex ingemma' għal uliedi biex, ngħidu aħna, ser jibnu dar u nagħtihom xi haġa.

Mitluba nikkonferma li għamilt gwadann ta' €7,411.06 li jiġi għal gross of 15% withholding tax u rate of return ta' 3.59%, ngħid dak gwadann f'25 sena? Gwadann kieku xtrajt garaxx u qlajt €50,000 minnu. Dan bis-serjetà? Dan gwadann? Dan daħk fil-wiċċ.

Nikkonferma li s-Sur Vella spjegali li l-polza kellha Life Cover, u għoġbitna wkoll dik biex jekk Alla jħares qatt niġi nieqsa jien jew ir-raġel, għoġbitna wkoll.

Qed jingħad li jien irċevejt l-iStatutory Notice u ffirmajtu u mistoqsija nikkonferma li jien kelli ġimagħtejn minn mindu irċevejt il-polza biex niddeċiedi jekk naqbilx mad-dokumenti msemmija u mal-ispjega li tani Simon Vella, ngħid li iva, ffirmajtu, imma jiena ffirmajtu, u ser nerġa' ngħidha, għax għamluli l-pakkett sabiħ li qatt ma jista' jinżel.

Ngħid li jiena ma kont nafx biha din tal-ġimagħtejn tal-iStatutory Notice. U ngħid li meta għamilt din it-tieni polza, tant kelli fiduċja fihom li ffirmajtha mill-ewwel.

Qed jingħad li fl-ewwel polza kont naf x'inhu Statutory Notice. Ngħid li fl-ewwel polza kienu għaddew tliet ġimgħat u kienu ċempluli huma, imma mbagħad qaltli li ma jistgħux jinżlu aktar imma ta' Simon iffirmajtha mill-ewwel meta ġie għax qalli li l-conditions l-istess tajbin bħall-oħra. Ngħid li kieku jiena ma kontx nidhol f'dan il-hassle wara 25 sena.

Qed niġi referuta għad-dokument (p. 53) li huwa a revised Illustrative Maturity Value li juri li jien irċevejt spjegazzjoni b'korrispondenza kif ir-rati ġew revised. U li dan ir-revised Illustrative Maturity Value kont jien li tlabtu. Mistoqsija kontx qrajtu, ngħid li dak kont tlabtu meta bdejt nisma' dak iż-żmien fuq it-Twin Towers, li n-nies bdew joħorġu l-flus minnhom, u jien bdejt nibza' u tlabtu. Qalli 'Bħalissa hawn ħafna għagħa hawnhekk,' u qalli li ma jaqbillix nieħu l-flus, għax kien hemm ħafna bdew joħorġuhom. Imma ma jfissirx li wara tmintax-il sena meta bgħattuli dik jien għandi naċċetta.

Mistoqsija inix ċerta li dan iż-żmien li qed insemmi jien kienx dak iż-żmien tat-Twin Towers peress li din l-ittra intbagħtet fl-2014 u t-Twin Towers kienu fl-2001, ngħid li kien dak iż-żmien meta bdejt nisma' ħafna nies igorru u kien hawn ħafna għagħa, 'Oħorġuhom! Oħorġuhom!' U jien meta ċempiltu u

għidtlu li ser noħroġhom, baġhatli din. Imma qalli li kien baqa' ż-żmien, u sa dak iż-żmien, (2014 u għaddew għaxar snin oħra), jilħqu jirkupraw. U jien dejjem emmint fikom.

Qed jingħad mill-Arbitru li dan hu dokument datat 13 ta' Mejju 2014, sittax-il sena wara li jien għamilt il-polza fl-1998. U dan id-dokument jagħti stima mhux ta' kemm tiswa l-polza issa imma li qed jagħtuni stima fuq il-kundizzjonijiet li kien hemm fl-2014, l-istima meta tagħlaq fl-2023 kienu figuri li huma kompletament differenti mill-istima li kien hemm fl-1998.

Mistoqsija fhimtx li dan id-dokument qed jgħid hekk, ngħid iva, imma meta jiena ċempilt għax kien hemm differenza kbira għax għidt aħjar noħroġhom, qaluli, 'Baqa', baqa'".⁶

Ġie pprezentat l-Affidavit⁷ ta' Victor Farrugia bħala *Chief Operations Officer* tal-MSV, li dan sostanzjalment jirrepeti dak li kien diġà ntqal fir-risposta originali sottomessa. Barra minn hekk, Victor Farrugia irrefera għal polza oħra li l-Ilmentaturi kellhom u li kienet ukoll sugġett ta' ilment quddiem l-Arbitru. Enfasizza⁸ l-fatt li minkejja li fl-aħħar seduta ta' dan l-ilment referut, l-Ilmentaturi kienu indikaw li fl-1995 kienu fehemu li r-rati tal-*bonus* jistgħu jitilgħu jew jinżlu matul is-snin, issa huma stess naqsu milli jiddikjaraw dan b'rabta mal-polza in kwistjoni, jiġifieri dik mixtrija fl-1998.

Fit-tieni seduta tal-15 t'April 2024 deher Simon Vella, il-persuna li bieġh il-polza in kwistjoni lill-Ilmentaturi. Hu xehed li:

"Ngħid li jiena kont naħdem mar-ROCS. Ngħid li kont inbiegħ poloz tal-assikurazzjoni tal-MSV Endowment Assurance with Profits. Ngħid li kont għamilt l-Induction Course tal-MITC fl-Insurance. Imbagħad, kont għamilt l-Induction Course tal-Middlesea Valletta dak iż-żmien, illum, MAPFRE. U, fl-istess ħin, kont qed nistudja l-Ingilterra taħt ic-Chartered Insurance Institute, jiġifieri, it-training kien ongoing.

Nikkonferma li jien bieġhejt il-polza numru 45905 ta' Endowment Assurance with Profits tal-MSV lis-Sinjuri DT & ZT u ngħid li niftakarhom.

⁶ P. 92 – P. 95

⁷ P. 98 – P. 103

⁸ P. 103

Qed niġi referut għall-Quotation (paġna 13), il-Proposal Form (paġni 16 u 17), l-Important Notes (Dok. MSV 1 – paġna 74), il-Product Information (Dok. MSV 2 – paġni 75 – 76) u l-Avviż Statutorju (Dok. MSV 5 – paġna 89). Nikkonferma li l-firem fuq dawn id-dokumenti huma tiegħi. Nikkonferma wkoll li dawn id-dokumenti tajthom lis-Sinjuri DT & ZT waqt il-laqgħa minbarra l-Proposal Form li kienet parti mill-kuntratt. Ngħid li dik kont imlejtha u ħadtha jien u l-oħrajn kont imlejthom u ħallejthom għand il-klijenti.

Ngħid li l-proċess tal-bejgħ tal-polza in kwistjoni huwa sempliċi ħafna għax huwa proċess li kont insegwi ma' kull klijent. Dak iż-żmien kien ikollna l-leaflets, il-pamphlets, u kienu apposta in point form biex aħna nimxu pass pass biex ma nimmissjaw xejn. Kont spjegajtilhom li l-polza kienet Endowment with Profits li illum il-ġurnata n-nies jgħidulha life assurance.

Ngħid li l-Endowment hija polza li għandha żewġ elementi. Għandek l-element tas-Sum Assured u l-element tas-savings, investment. Ngħid li l-focus tagħna dak iż-żmien kien il-Baby Bond u konna ngħidu, 'Isma', importanti li tagħmel Baby Bond għax jekk jiġi xi ħadd nieqes mill-ġenituri, ikun hemm somma garantita li tingħata immedjatament f'każ ta' mewt,' li hija s-Sum Assured.

Il-parti l-oħra tal-polza kienu jmorru f'dak li aħna ngħidulu With Profits Fund fejn il-flus qed jiġu investiti mal-MSV Life. L-MSV Life, minn sena għall-oħra, tagħti r-Reversionary Bonus u, fil-fatt, dak kien kif jikber is-savings plan tiegħek. Għal min kien joqgħod bil-għaqaq, min kien iżommha sal-aħħar, kien jista' jkun intitolat għat-Terminal Bonus (għax dak jingħata biss lil min iżommha sal-aħħar or in case of death). Ngħid li dan kien very volatile skont il-profitt tal-kumpanija ta' dak iż-żmien.

Konna nispejgaw ukoll li l-polza tista' tintuża bħala garanzija mal-bank minħabba s-Sum Assured; għada pitgħada jekk ikollok Cash Surrender Value tista' wkoll tużaha bħala Cash Guarantee, u konna nagħlqu billi ngħidu li l-flus huma tax free jekk ma tinbidilx il-liġi li kienet xi ħaġa li togħgob lill-klijenti.

Ngħid li meta konna nagħtu l-Quotation, ir-Reversionary u t-Terminal Bonuses, kwalunkwe bonus, kienu joħorġu mis-sistema. Kellna l-laptop, konna ndaħħlu l-premium u l-etajiet u kienu joħorġu awtomatikament, jiġifieri, dawn kienu figuri li kienu jingħataw lilna through r-rate book. U qabel ma kellna l-laptops, konna naħdmuhom manually fil-verità.

L-Estimated Maturity Values kienu skont ir-rati tal-imgħax li kienu qed jagħtu dak iż-żmien il-Middlesea Valletta. Dak iż-żmien, ir-rata tar-Reversionary Bonus tas-sentejn ta' qabel kienet ta' 6.75% u, ovvjament, il-quotations joħorġu fuq dawk il-figuri.

Ngħid li jien ma stajt niggarrantixxi xejn; jien ma nistax ngħid x'ser jiġri għada. Kif qatt nista' ngħid x'ser jiġri għada, għaxar snin oħra jew għoxrin sena oħra, impossibbli.

It-Terminal Bonus, kif diġà semmejt, huwa highly volatile u maħdum skont il-profitt ta' dik is-sena and it is up to their discretion. U jingħata biss in the case of death or in the case of keeping it till maturity.

Qed niġi referut għall-Quotation fejn hemm il-Cash Value Estimates (paġna 13) fejn hemm On surrender before the policy term. Ngħid li dawn in-numri fil-kaxxi huma l-Cash Surrender Values; huma stimi fuq kieku kellek twaqqaf il-polza qabel iż-żmien, jiġifieri, kieku jien għamilt kuntratt għal għoxrin sena u ddecidejt li wara għaxar snin, għal kwalunkwe raġuni, nixtieq inwaqqfu. Ovvjament, ser ikun hemm il-penali u wara l-penali ser ikun hemm xi ħaġa tal-flus. Dawk huma l-istimi li wieħed jista' jgħid, 'Isma', forsi jekk jien niġbidhom wara għaxar snin hemm qisu Lm3,000'. Dawn imma huma suġġetti għall-profitti li jkunu għamli l-MSV dak iż-żmien.

Ngħid li jien kont spjegajt l-Important Notes u l-Product Information lill-klijenti waqt il-laqgħa, però, mhux ser indurhom kelma b'kelma, biex inkun ċar. Imma, bħalma qed ngħidu, nkun spjegajt x'inhi l-Maturity Value, x'inhu r-Reversionary Bonus, x'inhu t-Terminal Bonus u nkun spjegajt x'inhi s-Sum Assured. Nispjega xi affarijiet li jkunu hemmhekk bħal din tat-taxxa li huma tax free sakemm ma tinbidilx il-liġi.

Qed jingħad li s-Sinjuri DT & ZT kienu xtraw polza qabel din in kwistjoni fl-1995 u qed niġi mistoqsi jekk waqt il-laqgħa tiegħi kontx spjegajt xorta din il-polza allavolja Rachel Vella kellha din il-laqgħa fl-1995. Ngħid li hija Prattika tiegħi li jien nerga' nispjega. L-ewwelnett, ma nkunx naf xi jkun qal ħaddieħor. U insa dik, jien anke l-klijenti tiegħi stess li nkun diġà mort għandhom diversi drabi minħabba li jkunu għamli poloz għal kull wild tagħhom, nerga' nirrepeti. Forsi l-ispjegazzjoni tkun eħfef għax jifhmuni malajr fejn is-soltu nkun irrid nidhol f'aktar dettall. Iva, nerga' nispjega kollox għax 1) l-affarijiet jafu jinbidlu matul

is-snin; 2) hawn nies li jkunu nsew xi jkun intqal. Jiena għandi klijenti li mhux qed nesagera, għandhom tlieta jew erbgħa Single Premiums, per eżempju, u xorta nerga' nispejalhom. Jistaqsu meta jistgħu jiġbduhom, meta timmatura l-polza, allura, nerga' nispejga kollox.

Qed niġi referut għad-dokument MSV 5 (l-Avviż Statutorju) fejn hemm il-firma tiegħi. Ngħid li ma tantx hemm x'tispejga; kont nispejga li għandhom 15 days' cooling off period, jiġifieri, dakinhar li jirċievu l-kuntratt għandhom 15-il ġurnata biex jiċċekkjaw li għandhom id-dettalji kollha tajbin, li l-affarijiet ikunu daww li spjegajnilhom u, jekk le, jistgħu iħassru kollox u jieħdu flushom lura qisu qatt ma ġara xejn.

Importanti li ngħidu wkoll li dak iż-żmien il-kuntratt kien idum qisu ġimgħa, ġimagħtejn biex joħroġ, jiġifieri, minbarra l-15 days' cooling off period, kellhom 15-il ġurnata oħra biex jiċċekkjaw l-affarijiet.

L-Ilmentatriċi fix-xhieda tagħha qalet li jiena għidtilha li żgur ser tieħu l-Lm22,000 u dan jirreferi għall-Estimated Maturity Value including Reversionary and Terminal Bonus u li għidtilha, 'Qatt ma jista' jinzel minn hekk daqskemm aħna tajbin!' Mistoqsi dan il-kliem għidtu, ngħid li le. Tant mhuwiex hekk li meta xi ħadd jistaqsini – u għadni sal-lum ngħid l-istess ħaġa u ili tletin sena ngħid l-istess ħaġa – jekk is-somma tal-aħħar hijiex garantita, jiena nistaqsihom, 'Intom tiggarrantuli li ser tgħixu ħamsa u għoxrin sena? Għax biex jiena nagħtikom din is-somma tal-aħħar, inti trid tagħtini l-premia kollha ta' dak iż-żmien. U bħalma inti ma tistax tiggarrantili li ser tgħix ħamsa u għoxrin sena, tista' tiggarrantili li l-kumpanija ser tgħix ħamsa u għoxrin sena oħra? Għax xi ħaġa importanti hija li jekk il-kumpanija tfalli għaxar snin mill-lum, jien hemmhekk ser nasal. Ma nistax nagħtik ta' ħamsa u għoxrin sena oħra.'

Li ngħidulhom hija li l-flus li jkunu qed iġemmgħu u l-imgħax ladarba jiġi ddikjarat minn sena għal sena, ir-Reversionary Bonuses, ikunu iggarantiti li jithallsu mal-maturity jew death. Dawn ngħiduhom meta nkunu qed induru l-Important Notes.

Jien l-unika ħaġa li ngħidilhom hija li l-flus li qed titfa' u r-Reversionary li qed jiġi ddikjarat huwa garantit anke jekk tasal li tfalli l-kumpanija. Inti s'hemmhekk ser nasal, imma ser nasal s'hemmhekk. Li aħna ngħidu hija li flusek

huma siguri. Ngħid li jien ma stajtx ngħidilhom li l-ogħla figura fil-quotation tat-Lm22,000 hija garantita.”⁹

Fil-kontroezami, kompli li:

“Mistoqsi la l-Ilmentaturi żammu l-polza sal-aħħar għal ħamsa u għoxrin sena, x’ser jġgri, ngħid li l-Ilmentaturi ser jieħdu flushom kollha lura flimkien mal-imgħax li ġie iddikjarat.

Qed jingħad li meta mort jiena għand l-Ilmentaturi, kellhom diġà tat-tifla u riedu jagħmlu polza lit-tifel u li irċevew dokument mingħandi li tlabt biex juruhuli.

Ngħid li l-handwriting fuq dan id-dokument mhijiex tiegħi. Mhux talli mhijiex il-handwriting tiegħi, talli din saret fl-2003, jġgifieri, wara ħafna. (Dan id-dokument ma jappartjenix għal din il-polza imma għal polza oħra li għandu l-ilmentatur)

Qed jingħad li meta jien mort għand l-Ilmentaturi, jiena għidtilhom li diġà għandhom polza u qed jingħad ukoll li dak kollu li għidt li spjegajtilhom, ma spjegajtulhomx u għidtilhom li m’għandix għalfejn nispegahulhom għax ezatti kif spjegajtilhom oħti XX għall-ewwel waħda bl-istess kundizzjonijiet. L-Ilmentatrici qed tgħid ukoll li jien ma tajthiex il-quotation dakinhar tal-laqqgħa imma bġatthielha wara.

Ngħid li jiena ma nistax u ngħid għalfejn ma nistax. Jien ma’ dik ikolli waħda roża u waħda ħadra: ir-roża nagħtiha lil Middlesea, lil MAPFRE, u l-ħadra kont inżommha jien fil-files. Dik il-quotation, biex jien u kwalunkwe salesman, TII, eċċ., ma nqarrqux bil-klijenti, meta nimlew dik - biex ħadd ma jgħidlek ser tieħu miljun fl-aħħar u l-figuri nkun ivvintajthom jien u, fil-verità, l-computer jgħidli li ser tieħu Lm10,000 - dik qiegħda triple carbon copy u int ser tiffirma fuqha u jien ser niffirma fuqha. Lilek tajtek l-originali, jien żammejt kopja u lil MAPFRE tajthom kopja biex huma jiċċekkjaw il-figuri tiegħi ma’ daww il-computer tagħhom. U dawn iridu jaqblu. Fejn ma kinux jaqblu, kienu jgħiduli li mhux ser jagħtuha din il-polza.

⁹ P. 117 – P. 121

L-Ilmentatriċi qed tgħid li l-meeting li kellna dwar din il-polza dam biss kwarta għax jien għidtilha l-istess eżatt bħall-polza li kienet ħadet mingħand oħti, Rachel. Qed tgħid ukoll li jien għidtilha li mill-għada li tagħlaq il-polza kienet ser tieġu din is-somma.

Ngħid li meeting qatt ma jdum kwarta biss. Biss, biss biex nimla l-karti ukoll nieġu aktar. Nerga' nirrepeti, li jiena żgur li ergajt għaddejti il-punti kollha, forsi ma qgħadtx nidhol fid-dettall bħalma qagħdet tidhol oħti, għax la digà għandek polza, jien kemm infakkrek l-affarijiet. Ngħidlek, 'Isma', dik hekk, dik hekk u dik hekk', imma xorta, xorta xi ftit jew wisq spjegajthomliha l-affarijiet lill-Ilmentatriċi, mhux xejn. Ma jistax ikun xejn, xejn, xejn għax fi tliet snin jistgħu jinbidlu l-affarijiet. Li għidtilha li ma nbidel xejn naqbel magħha mija fil-mija għax il-polza tal-1995 u l-polza tal-1998, huma l-istess; ir-regoli baqgħu l-istess u baqgħu l-istess.

Biex infakkarha: dawn ma jidhrux, mhux taxxabli, għandek Sum Assured f'każ li jiġu neqsin ta' tant, tant u tant. Fil-fatt, għalhekk il-premium qiegħed 'falz' ngħidlu jien. X'jiġifieri falz? Għax is-soltu ngħidu għaliex ma nġemmax Lira kuljum li tiġi Lm365 fis-sena jew Lm200 fis-sena. Il-premium tas-Sinjuri kien Lm263.10, ma kienx round, u nifhem li għamilna hekk biex taqbel mal-oħra. Jien s'hemmhekk naqbel mal-Ilmentaturi li qabbiltihom waħda mal-oħra. U għidtilhom li iva, huma l-istess u jaħdmu l-istess u ser naqrahomlok biex ikunu l-istess. Jiena għandi żewġt itfal u l-istess ħaġa nagħmel, jekk tajt lil wieħed oġġett, lill-ieħor nagħtih oġġett.

Qed niġi mistoqsi jekk kellix moħħi biex inbiegħ din il-polza u ħsibt li ħamsa u għoxrin sena mhux ser jgħaddu għax kieku ma kontx nagħmilha din il-polza. Ngħid li jien ili tletin sena f'dan ix-xogħol u waħda mill-affarijiet li I pride myself on – issa ħudha kif trid – hija li jien ili għaxar snin naħdem biss fuq il-poloż l-antiki li jkunu qed jimmaturow u n-nies jerggħu jinvestu miegħi għax inkun tajthom xi ħaġa tajba.”¹⁰

F'din l-istess seduta, l-Ilmentatriċi rreferiet¹¹ għad-dokument f'pagna 51 datat Ġunju 2023 fejn hemm tliet *scenarios* differenti tal-*Estimated Maturity Values* fejn qalet li minn €26,000, is-somma baqgħet dejjem niezla, fejn Victor Farrugia

¹⁰ P. 121 – P. 122

¹¹ P. 122

wieġeb li din kienet fuq rakkomandazzjoni li għamlilhom l-awditur ta' qabel biex mal-*istatement* jagħmlu l-istimi wkoll.

L-Ilmentaturi rċevew kopja tad-Dikjarazzjoni Solenni ta' Victor Farrugia, għamli d-dikjarazzjonijiet u l-mistoqsijiet¹² tagħhom lill-istess Victor Farrugia, fejn dan tal-aħħar issottometta wkoll it-tweġibiet¹³ tiegħu.

Ġew ipprezentati wkoll is-Sottomissjonijiet Finali¹⁴ min-naħa tal-Provditur tas-Servizz.

Sema' lill-partijiet

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 fic-ċirkostanzi partikolari u merti sostantivi tal-każ.¹⁵

Il-punt kruċjali f'dan l-ilment jittratta l-allegat aċcertazzjoni mogħtija lill-Ilmentaturi meta l-polza giet mibjugħa lilhom, u dan fir-rigward tal-ammont li huma kellhom jirċievu mal-maturità.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'għie mwiegħed lill-Ilmentaturi u x'eventwalment għie mogħti jew offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan lahaqx *'l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.*¹⁶

L-Arbitru għandu quddiemu żewġ pożizzjonijiet estremi dwar dak li verament ġara u x'intqal waqt il-laqgħa tal-bejgħ. Primarjament, l-Arbitru ma jistax ma jinnotax kemm il-verżjoni mogħtija mir-rappreżentant tal-Provditur tas-Servizz dwar il-mod kif sar il-bejgħ tal-polza in kwistjoni hija dettaljata u, fuq kollox,

¹² P. 125 – P. 127

¹³ P. 129 – P. 133

¹⁴ P. 137 – P. 141

¹⁵ Kap. 555, Artiklu 19(3)(b)

¹⁶ Kap. 555, Artiklu 19(3)(c)

iħoss li din hija waħda kredibbli. Mill-banda l-oħra, kruċjali li janalizzà l-fatt jekk din hix kwistjoni fejn hemm xi forma ta' memorja selettiva min-naħa tal-Ilmentaturi li jiftakru dak li jridu jew li jaqblilhom.

L-Ilmentaturi xehedu li huma aċċettaw il-polza hekk kif offruta lilhom minħabba li din kienet tant impingija tajba, li anke wara diversi mistoqsijiet li huma għamliu lir-rappreżentant tal-Provditur tas-Servizz, ġew aċċertati li l-kumpanija hija waħda tajba u jekk '*... tfalli l-Middlesea, tfalli d-dinja*',¹⁷ filwaqt li b'referenza għat-terminu '*estimate*' u kemm dan jista' bejn wieħed u ieħor jinżel, l-istess rappreżentant qalilhom li '*Qatt ma jista' jinżel minn hekk daqskemm aħna tajbin*'.¹⁸

Fix-xhieda tagħha, l-Ilmentatrici qalet ukoll li kieku kienet taf li l-figuri kkwotati lilhom jistgħu jinżlu b'€1,000, ma kinux jaċċettaw li jagħmlu din il-polza.

Tajjeb li wieħed isemmi l-fatt li din il-polza in kwistjoni ma kinitx l-ewwel waħda ta' dan it-tip li l-Ilmentaturi għamliu. Fil-fatt, l-Ilmentatrici xehdet li '*... meta għamilt din it-tieni polza, tant kelli fiduċja fihom li ffirmajtha mill-ewwel*'.¹⁹ Referenza għal dan saret ukoll minn Victor Farrugia, rappreżentant tal-Provditur tas-Servizz fejn, fl-*Affidavit* sottomess iddikjara li:

*'... fis-sena 1995 l-Ilmentaturi xtraw polza numru 26616 tal-istess natura li mmaturat madwar erba' snin ilu fid-19 ta' Diċembru 2020 ... L-Ilmentaturi fis-sena 2020 kienu ressqi ilment quddiem l-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji b'rabta ma' din il-polza bin-numru 26616 bin-numru ta' referenza tal-każ ASF 142/2020 li ġie deċiż mill-Arbitru tas-Servizzi Finanzjarji fid-9 ta' Novembru 2021. Kif intqal fl-aħħar seduta ta' dan il-każ in kwistjoni, huwa interessanti li wieħed jinnota li fl-ilment tagħhom relatat man-numru tal-polza 26616 l-Ilmentaturi kienu ddikjaraw li fl-1995 kienu fehmu li r-rati tal-bonus jistgħu jitilgħu jew jinżlu matul is-snin. Madankollu, issa jonqsu milli jiddikjaraw l-istess f'dan l-ilment li huma ssottomettew b'rabta mal-polza in kwistjoni li kienu xtraw fl-1998, li hija 3 snin wara li xtraw il-polza 26616 ...'*²⁰

¹⁷ P. 93

¹⁸ *Ibid.*

¹⁹ P. 94

²⁰ P. 103

Victor Farrugia kkwota wkoll dak li ntqal mill-Ilmentaturi dak iż-żmien, fejn qalu li:

‘Aħna m’ahniex qed nistennew €51,000 għaliex nafu u nifhmu li r-rata tal-bonus telgħet u nizlet matul is-snin.’²¹

L-Arbitru ma jistax ma jikkunsidrax dan il-fattur. Huwa minnu li kull każ irid jitqies fil-merti tiegħu, iżda dawn huma dikjarazzjonijiet tal-istess Ilmentaturi. L-Arbitru jinnota li dawn tal-aħħar qed ikunu selettivi ta’ x’dikjarazzjonijiet jagħmlu.

Fil-każ preċedenti sottomess lill-istess Arbitru, ġie b’mod ċar iddikjarat li jifhmu li r-rata tal-*bonus* telgħet u nizlet matul is-snin, iżda f’dan il-każ l-Ilmentatriċi ddikjarat li kieku kienet taf li l-figura kkwotata bħala *‘estimate’* kienet ser tinżel imqar b’Lm1,000 ma kinux jaċċettaw li jagħmlu din il-polza. Ċertament li mhux iktar li, għal xi raġuni jew oħra, ilmentatur jagħżel li jkun selettiv f’dak li jiddikjara, forsi anke bl-għan jew bl-intenzjoni li jiggwadanja xi haġa iktar.

Dan għalhekk ifisser li l-Ilmentaturi kienu konxji tal-fatt li l-polza kien fiha element ta’ investiment filwaqt li, kif anke iddikjaraw²² huma stess, kienu wkoll konxji tal-element tal-kopertura fuq il-ħajja taħt din l-istess polza.

L-Arbitru jirrikonoxxi wkoll li l-Ilmentaturi kienu konvinti minn dak li kienu qed jagħmlu minħabba li anke kif iddikjarat l-Ilmentatriċi stess, *‘... meta għamilt din it-tieni polza, tant kelli fiduċja fihom li ffirmajtha mill-ewwel.’²³*

F’dan ir-rigward, hemm il-fatt referut mill-Provditur tas-Servizz li l-Ilmentaturi kellhom żewġ poloz oħra ma’ dan tal-aħħar u li huma simili għal din ilmentata, b’waħda li diġà immaturat u li anke kienet sugġett ta’ ilment, u oħra (it-tielet polza) li mmaturat aktar kmieni din is-sena, iżda wara li ġie sottomess dan l-ilment. L-Arbitru jifhem li minkejja li l-polza ilmentata kienet it-tieni waħda li huma għamlu, fil-mument tal-bejgħ kien għadhom ma kinux f’sitwazzjoni li jindunaw li seta’ jkun hemm xi problema. Dan fis-sens li l-ewwel polza kienet għadha ma mmaturatx u li, għaldaqstant, ma setgħux jissoponu li mit-tieni polza ser jirċievu inqas minn dak allegatament imwiegħed lilhom.

²¹ *Ibid.*

²² P. 94

²³ *Ibid.*

Fl-istess waqt, huwa diffiċli li jiġi aċċettat li kulma fehmu minn dak li qalilhom ir-rappreżentant tal-Provditur tas-Servizz kien biss li l-ammont ta' €51,000 jingħata lilhom mal-maturità hekk kif maqbul permezz tal-kuntratt.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-1998, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ. Għaldaqstant, mill-banda l-oħra, kruċjali li jiġi ikkunsidrat il-fatt li anke persuna mhux tant intiża fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 25 sena speċjalment peress li l-kontribuzzjonijiet tagħhom kienu mifruxa fuq 25 sena u mhux xi '*lump sum*' *investment* li tista' tiġi investita mal-ewwel biex torbot ir-rati tal-imgħax għal żmien twil. Dan appartni li dak iż-żmien *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

L-Arbitru jifhem li polza bħal din ilmentata taħdem hekk kif spjegat mill-Provditur tas-Servizz fit-tweġiba għall-ilment u anke minn Victor Farrugia fl-*Affidavit* tiegħu, u mhu fl-ebda ħin jiddeċiedi mod ieħor.

Iżda, tikkunsidra l-fatt li l-ilmentaturi kienu konxji li r-rata tal-*bonus* titla' jew tinżel tul is-snin, u l-fatt li hemm avarija kbira bejn l-ammont indikat lilhom fil-mument tal-bejgħ u l-ammont offrut mal-maturità, huwa wkoll riflessjoni tal-ottimizzmu żejjed u n-nuqqas ta' kawtela mill-Provditur tas-Servizz dak iż-żmien meta d-data tal-maturità kienet ferm 'il bogħod. Il-Provditur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax, kif intqal, fuq perjodu ta' ħamsa u għoxrin sena xejn ma jibqa' stabbli. Fil-fatt, ingħad li wara s-sena 2000 bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal ħamsa u għoxrin sena.

F'deċiżjonijiet preċedenti mogħtija mill-Arbitru, intqal diversi drabi li tintuża l-kelma '*estimated*' fi kwotazzjoni mogħtija lil klijent prospettiv ma kienx biżżejjed. Iżda, barra minn hekk, l-Arbitru huwa tal-fehma wkoll li l-argument li l-użu tal-kelma '*estimated*' tista' tfisser li filwaqt li l-ammont ma kienx garantit, kellu jkun bejn wieħed u ieħor viċin is-somma kkwotata, għandu validità limitata. Kieku qed nitkellmu fuq kuntratt ta' ftit xhur, wieħed jifhem li l-'*estimated*' tkun madwar ftit perċentwali 'l hawn jew 'l hemm. Iżda, f'kuntratt ta' ħamsa u għoxrin sena, il-kelma '*estimated*' tiegħu tifsira ferm differenti minħabba li t-tul ta' żmien

idaħħal element ta' incertezza. Għalhekk, għall-benefiċċju taż-żewġ partijiet, kien ikun aħjar li kieku f'kuntratt ta' tul ta' żmien, flok '*estimated*', jiġi użat terminu aktar ċar, bħal '*amount projected but not guaranteed based on current return*'.

Permezz t'hekk, flimkien mal-fattur imsemmi aktar 'il fuq f'din id-deċiżjoni li jirrigwardja l-kwotazzjonijiet b'rati tal-imgħax differenti, il-kwotazzjoni mogħtija lil klijent prospettiv tkun qed tinkorpora żewġ punti prinċipali – il-fatt li l-polza mhix sempliċiment tali li jithallas ċertu *premium* annwali u mal-maturità wieħed ikun intitolat għal somma partikolari, u li l-ammont li qed jiġi pproġettat mhuwiex garantit minħabba li dan jiddependi fuq ir-rata tal-imgħax fil-mument li ġiet maħruġa l-kwotazzjoni u li, fuq kollox, din ir-rata tista' tvarja.

Għalhekk, l-Arbitru jasal għall-konklużjoni li filwaqt li ma hemmx aspettattiva legittima min-naħa tal-Ilmentaturi li jithallsu l-ammont sħiħ mitlub bħala xi ħaġa li kienet garantita irrispettivament mill-andament tal-investimenti marbutin mal-polza, xorta hemm każ li jithallsu ftit iżjed minn dak offrut lilhom għax il-Provditur tas-Servizz seta' ħa miżuri oħra biex ma jkunx hemm aspettattivi irreali anke jekk mhux legittimi.

Għalhekk, għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeċiedi li l-ilment huwa wieħed ġust, ekwu u raġonevoli, u ser jilqgħu limitament sakemm dan huwa kompatibbli ma' din id-deċiżjoni.

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentaturi, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tagħhom kienu li mal-maturità tal-polza kienu ser jirċievu s-somma ta' €51,000, li iżda fid-data tal-maturità ġew offruti ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentaturi kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens li jrid ikun ibbażat fuq ġustizzja ekwitattiva kif huwa dovut li jagħmel espressament permezz tal-Artikoli 19(3)(b) u 26 tal-Kap. 555 tal-Liġijiet ta' Malta. Filwaqt li jara wkoll li dan l-ammont ikun raġonevoli, dan ma jistax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu kkunsidrati.

Primarjament, minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentaturi ma kien xejn viċin dak oriġinarjament ikkwotat lilhom, ma ġiet ippreżentata l-

ebda prova li hamsa u għoxrin sena ilu huma kellhom xi għażliet oħrajn ta' investiment jew tfaddil u li minnhom seta' jkollhom ritorn daqs dak ikkwotat jew iktar u, għalhekk, ifisser li ma giet ipprezentata l-ebda prova ta' xi *opportunity loss* imgarrab mill-Ilmentaturi infushom.

Dan minbarra l-fatt ukoll li permezz ta' din il-polza, l-Ilmentaturi żgur li ma kellhom xejn x'jitilfu. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentaturi kellhom iċ-ċans li jikkontribwixxu għat-tfaddil permezz ta' din l-istess polza u dan billi jhallsu ammont żgħir kull sena għal hamsa u għoxrin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn tlieta fil-mija²⁴ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit.

Għalhekk, l-Arbitru jiddeċiedi li s-somma xierqa li għandha tingħata lill-Ilmentaturi bħala kumpens hija dik ta' **€3,278**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV LIFE p.l.c tħallas lill-Ilmentaturi s-somma ta' tlett elef, mitejn u tmienja u sebghin ewro (€3,278) b'żieda mas-somma digà offruta, cioè, mas-somma ta' €21,850.31²⁵ u, għalhekk, iħallashom is-somma kumplessiva ta' €25,128.31.

Il-kumpens għandu jithallas fi żmien ħamest ijiem ta' xogħol mid-data ta' din id-deċiżjoni. Jekk dan ma jsirx, il-ħlas għandu mbagħad isir bl-imgħax ta' 4.25%²⁶ fis-sena mill-iskadenza tal-ħamest ijiem sad-data tal-ħlas effettiv.²⁷

L-ispejjeż ta' dan il-każ huma għall-Provditur tas-Servizz.

²⁴ P. 103

²⁵ P. 58

²⁶ Ekwivalenti għal *Main Refinancing Operations (MRO) interest rate* tal-Bank Centrali Ewropew.

²⁷ Fil-każ t'appell, jekk din id-deċiżjoni tiġi kkonfermata, l-imgħax jiġi kkalkolat mid-data ta' din id-deċiżjoni.

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, hliet għad-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 20 (għoxrin) ġurnata mid-data tan-notifika tad-Deciżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deciżjoni skont artikolu 26(4) tal-Att, mid-data tan-notifika ta' dik l-interpretazzjoni jew il-kjarifika jew il-korrezzjoni hekk kif provdut taht 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 tipografici jew żbalji simili mitluba skont artikolu 26(4) tal-Att, għandhom ikunu magħmula mal-Arbitru, b'notifika lill-parti l-oħra, fi żmien 15 (ħmistax)-il ġurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, d-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 anonimizati skont artikolu 11(1)(f) tal-Att.

L-Ispejjeż tal-Proċeduri

Skont l-artikolu 26(3)(d) tal-Att dwar l-Arbitru għas-Servizzi Finanzjarji (Kap. 555) ('l-Att'), l-Arbitru ddecieda min għandu jhallas l-ispejjeż tal-proċeduri u f'liema proporzjon, skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri mhumiex limitati għall-pagament tal-ispejjeż applikabbli fuq ilment magħmul mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji (preżentament Ewro25), imma jistgħu ukoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għal atti pprezentati matul il-każ. Tali spejjeż

professionali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontingenti magħmula barra l-proċeduri tal-każ.

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taħt l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att. L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.