

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 087/2024

TL

(‘l-Ilmentatur’)

vs

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

(‘il-Provditur tas-servizz’)

Seduta 9 ta’ Dicembru 2024

L-Arbitru,

Ra l-ilment¹, fejn l-Ilmentatur issottometta li huwa mhux qed jaqbel mas-somma ta’ €23,572.47 offruta lilhom mill-Provditur tas-Servizz mal-maturità tal-polza numru 8928 li kienu ħarġu fil-25 ta’ Marzu 1994 għal 30 sena u dan minħabba li, fil-mument tal-bejgħ tal-istess polza, kienu ġew imwiegħda u aċċertati li s-somma ta’ €66,381 (Lm28,490) kienet garantita u dan mingħajr ma tiġi mnaqqsa l-ebda taxxa.

L-Ilmentatur insista li:

‘On receiving the maturity instructions for my life policy, which was taken out 30 years ago, I realised that the maturity value was far below the amount I had been promised by the company salesperson. I was promised Lm28,490 – equivalent to Euro 66,381 and the maturity value now being offered is Euro 25,372, way less than half of what was promised. I would like to point out that the amount of Lm28,490 was also clearly stated on the quotation issued by the company.

¹ Paġni (p) 1 - 6 u dokumenti annessi p. 7 - 63

*At no point, was I made aware by the company salesperson or anyone from the company that this amount can vary, and this was also not clear in the documentation provided to me by the company. The company's response to my complaint went into a lot of detail as to why the maturity value was so much lower than what was promised (market reasons, etc.) and why the investment return was still a good one (in their opinion), but failed to address my main issue, namely, that I was misled by their salesperson as to what to expect at maturity.'*²

Stqarr li huwa dejjem żamm mal-obbligi tiegħu billi ħallas il-pagamenti dovuti fil-ħin u, għaldaqstant, jippretendi li l-Provditur tas-Servizz jagħmel l-istess.

Bħala rimedju talab:

*'I am seeking compensation for the bad performance of the investment, and an adjustment to the maturity value to make it better reflect what was promised to me. Ideally, I feel I should be awarded the full amount promised, i.e. Euro 66,381.'*³

Ra t-twegiba⁴ tal-Provditur tas-Servizz:

1. *'MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the policy in question numbered 8928 of nature Endowment Assurance with Profits including Funeral Expenses ("the Policy") was not equivalent to the maturity value 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 the difference between the said figures by paying an amount in addition to the Maturity Value of the Policy which has amounted to Euro 25,372.37 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 compensation in addition to the maturity value as is going to be explained in further detail hereunder.

² P. 3

³ *Ibid.*

⁴ P. 69 - 73 u dokumenti annessi P. 74 - 86

2. *In the first place, the estimated maturity values are based on estimates shown in the quotation (fol. 14) which contained the words Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses. Therefore, none of the figures which were indicated in the quotation as “estimated” could be said to have been guaranteed.*
3. *The estimated maturity values shown in the quotation 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 quotation 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% for reversionary bonuses and 2% for terminal bonuses, which rates had remained constant until the year 1998 and then increased slightly in 1999 to 7% for reversionary bonuses and started to decrease from the year 2000. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.

In the light of the above, the quotations in question were in fact correct because they were issued according to the circumstances at the time and therefore MMSV had acted in good faith.

4. *Furthermore, it must be stated that in the quotation (fol.14) there was a distinction between reversionary bonuses and terminal bonuses the value of which are substantially far apart from each other. This further confirms that there was an investment element to the Policy and that the estimates 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 Lm18,993 (Euro 44,241.78) or at the higher value of Lm28,490 (Euro 66,363). It is clear that*

the complainant cannot claim that he was not informed that the amount he is claiming could have varied.

- 5. Besides the fact that the quotation indicates two maturity values as "estimated" and therefore, said figures could not have been guaranteed and the complainant needed to wait to 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.*
- 6. In fact, the Life Policy Schedule of the Policy (fol. 21), provides that "In respect of each premium paid, Lm197.02 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 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 13,767.99 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 11,604.38 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.*
- 7. Furthermore, the only amount mentioned in the Life Policy Schedule was the sum assured in the amount of Lm5,488 and the Accidental Death Cover for an additional Lm5,488, and no amounts containing the word 'Estimate' in the quotation were mentioned on this Schedule, which further shows that therefore according to the agreement between the parties the estimate maturity value including reversionary bonus and the estimate maturity value including reversionary bonus and terminal bonus were never guaranteed.*

8. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainant until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainant. Said Fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority.*

The performance of the said Fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. The investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future. Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.

9. *Notwithstanding the fact that the maturity value could not be equivalent to any one of the estimated maturity values indicated in the quotation 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 11,604.38 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 3.7% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 4.35%.*
10. *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.*

11. *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 (fol. 39 – 61), and a further bonus statement, together with copies of some Important Notes and Media Releases are being attached to this reply and marked as **Dok. MSV 1**). Therefore, the complainant was fully aware of what bonuses were being declared and of the value of the Policy over the years.*

Apart from the use of the terms “Estimated” and “illustration” used in the quotations which are self-explanatory, the Important Notes forming part of the Bonus Statements above-mentioned as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy.

*Apart from the annual statements, upon his request, the complainant was provided with revised illustrative maturity values on the 26th March 2015, which estimated maturity value ranged between Euro 24,366 and Euro 29,035 and then on the 2nd April 2019, which estimated maturity value ranged between Euro 23,661 and Euro 28,558 and the third time on the 30th August 2019 which estimated maturity value ranged between Euro 23, 640 and Euro 28,323. Therefore, it may not be correct that the complainant was surprised when he was informed about the actual maturity value because he was being informed over the years that the estimated maturity value was going to vary. MMSV is attaching herewith a copy of all 3 said letters marked as **Dok. MSV2**.*

12. *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 Lm5,488 (Euro 12,783.60) to the heirs of the complainant in the case of their demise at any time that the Policy was in force. The Policy also provided an additional guaranteed sum in the amount of Lm5,488 (Euro 12,783.60) which would have also been payable to the heirs in the event that the complainant died as a result of an accident. The said life cover and benefit had a price and have been completely ignored by the complainant and not normally available under other forms of regular savings.

13. *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.

14. *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 Life Insurance (Statutory Notice) Regulations, 1989 and was in fact signed by it (a copy of which is being attached herewith and marked as Dok. MSV 3). The Statutory Notice sets 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.

15. 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.⁵

Seduti

Fl-ewwel seduta tat-30 ta' Lulju 2024, l-Ilmentatur xehed li:

'Ngħid li 30 sena ilu għamilt insurance għand is-Sur Teddy Calleja. Għandi kollox miktub hawnhekk. Għandi l-ammont li kien ħajjarni u kont ser nagħmilha għal 25 sena imma qalli li meta nispiċċa bil-pensjoni, infatti jien pensjonant, aħjar nagħmel ħames snin oħra għax nieħu l-extra bonus.

Issa kien wasal iż-żmien u rċevejt l-ammont u ħadt xokk kbir għax lanqas li kelli nieħu ma ħadt – il-kwart – għax minn €64,842 huma kienu ser jagħtuni €25,372 li kien xokk tremend għalija.

Ngħid li veru forsi ma nistax nieħu kollox, imma mhux talli ma ħadtx in-nofs imma l-kwart u għalija dan kien xokk kbir.

Nikkoreġi ruħi li s-somma kienet iżjed minn kwart imma lanqas kienet in-nofs; kienet 40%.

Ngħid li meta kitbuli qaluli li ser jagħtuni xi ħaġa fuq it-€28,405 u meta ġejna għal dak l-ammont reġgħu niżżluhuli għal 25,372. Aħna ġejna hawnhekk nagħmlu l-ilment.

Jiena nixtieq li s-somma ma tibqax baxxa daqshekk. Jien għalhekk bqajt għaddej biha l-biċċa xogħol. Mhux qed nippretendi s-somma kollha avolja għaliha ħallasna għax meta ħallasna sagrificċju kbir għamilna jiena u l-mara għax aħna m'aħniex sinjuri. Biex inħallsu Lm500 fis-sena għalina kienet żejda imma ħallejniha għaddejja. Allura, fi tletin sena misshom qaluli li m'għandix inħallas is-somma full; setgħu qaluli nħallas inqas.

⁵ P. 69 -73

Ngħid li s-Sur Teddy Calleja kien hu li avvicinani. Ngħid li aħna konna ħbieb. Hu kien jaħdem ma' din il-kumpanija, kienet għamlitha oħti u tħajjart nagħmilha jien ukoll.

Kont ġibtu d-dar biex jispjegali u ħajjarna. Riedni nagħmilha iżjed imma għidtlu li ma kontx niflaħ inħallas aktar. Għidtlu anke din sagriċċju għaliġa għax dak iż-żmien konna XXX XXX XXX u kont dahri mal-ħajt għax ħriġna kulma kellna jien u l-mara.

U ħajjarna għax qalli li jekk nagħmilha għal ħames snin oħra jien inkun ħriġt bil-pensjoni u jkolli moħħi mistrieħ b'din is-somma taħt rasi.

Ngħid li kkuntattjani u ġie d-dar u għamel meeting magħna fejn aħna konna t-tnejn preżenti. Ngħid li l-meeting dam xi siegħa u nofs. Ngħid li għall-ewwel aħna ma ridniex għax konna daharna mal-ħajt. Ngħid li fehemna tant li ħajjarni nagħmel ħames snin oħra. Anzi hu riedna nagħmlu din imma jien għidtlu li ma kontx niflaħ inħallasha.

Ngħid li aħna ma ddeċidejniex dak il-ħin, qagħdna naħsbuha, imbagħad, ikkuntattjajnih u tajtu l-go ahead. Ma niftakarx jekk ġiex id-dar; naf li tajtu l-go ahead wara li domna xi erbat ijiem naħsbuha jien u l-mara. Ngħid li t-tieni meeting forsi dam tliet kwarti għax kemm qalilna xi rridu nagħmlu, niffirmaw ma niffirmawx.

Ngħid li dak iż-żmien jien kont XXX ma' kumpanija.

Bħala edukazzjoni ngħid li għandi O Levels. Naf bl-Ingliż u bit-Taljan.⁶

Fil-kontoeżami kompli jixhed:

'Qed jingħad li l-polza nbiegħet tletin sena ilu u mistoqsi jekk niftakarx dak kollu li qalli Teddy Calleja kelma b'kelma; mistoqsi inix neskludi li fl-ispjega qalli affarijiet oħra kif taħdem il-polza, ngħid li s'issa l-memorja tajba, ma ninsiex.

Ngħid li kien qalli biex nisma' minnu u nżid ħames snin oħra ħalli nieħu bonus fuqha għax dak iż-żmien inkun ser nispiċċa bil-pensjoni – kien hemm il-mara ħdejja xhud – u jkolli somma sabiħa taħt rasi.

⁶ P. 87 - 88

Ngħid li la qalli li ser nieħu anqas – li żgur ma qallix – u iżjed ma nippretendix. Jien inħossni ddispjacut għax jekk twiegħedni oġġett inkun irridu.

Mistoqsi kienx spjegali li b'din il-polza kien ser ikolli Life Cover, fejn jien ukoll ħadt Accidental Death Benefit Cover, ngħid li tal-Accidental nafha, anke meta mmut kien qalli għall-funeral. Iva, dawn kien spjegahomli.

Qed jingħad li mill-ispjega li tani Teddy Calleja kont konxju li parti mill-polza tiegħi kienet investment u li kien spjegali illi l-MSV kienet ser tinvesti parti mill-premium tiegħi u dan kien jiddependi minn kif imorru l-investimenti.

Mistoqsi naqbilx li spjegali dan, ngħid li naqbel; ma nistax inkompli fuqha l-mistoqsija.

Qed jingħad li fl-ilment tiegħi għidt li qed nippretendi li nieħu s-somma ta' €66,000, imbagħad, issa ppretendejt is-€64,000 u għadni kemm għidt li m'hemmx għalfejn is-€64,000 u, allura, qiegħed naqbel li dan huwa investment u li s-somma mhix garantita għax l-affarijiet jistgħu ivarjaw.

Mistoqsi naqbilx fuq hekk, ngħid iva.

Mistoqsi meta għamilt il-polza xtaqtx nagħmel investment riskjuż jew inkella nfaddal, ngħid li jien kont lest li nfaddal fih, moħħi mistrieħ li qed infaddal u jkolli benefiċċju mit-tfaddil tiegħi kif kien wiegħedni Teddy Calleja. Qalli, 'Inti ser tkun qed tfaddal u ser tiehu dik is-somma'.

Qed jingħad li jien mhux talli ġemmajt talli għamilt gwadann ta' €11,604 li jirrappreżenta rate of return ta' 3.07% u rate of return gross of withholding tax ta' 4.35%.

Ngħid li jiena konxju ta' dan il-fatt.

Qed jingħad li jien ingħatajt żmien biex nistaqsi u naqra l-quotation u t-Terms and Conditions tal-polza sabiex naħsibha u jekk ridt stajt nikkancella l-polza (Dok. MSV 3 l-Avviż Statutorju), fejn qalli li minn meta nircievi l-polza kelli ħmistax-il ġurnata biex jekk irrid nikkancellaha, ngħid li iva.

Qed jingħad li matul is-snin jien ircevejt Revised Illustrative Maturity Value documents. Qed jingħad li ircevejt wieħed fis-sena 2015 u tnejn fis-sena 2019, fejn dawn juruni kif sejra l-polza b'dawk ir-rati li kien hemm.

Ngħid li dawn irċevejthom u rajthom. Kemm hu veru, kont immur l-uffiċċju biex inwaqqafha u kienet tgħidli li ma jaqbillix inwaqqafha u bqajt għaddej biha.

Qed jingħad mill-Arbitru li jien tlabt stima fl-2015 ta' kemm kienet ser tkun is-somma meta tagħlaq fejn dawn l-istimi kienu differenti ħafna mill-ammont originali li kien hemm u, allura, ma kellix għalfejn nieħu xokk meta kienu diġà qaluli fl-2015 u fl-2019 li bejn wieħed u ieħor il-polza ser tillandja dakinhar.

Mistoqsi fhimthiex, ngħid li fhimtha. Ngħid iva dakinhar kont ħadt xokk imma issa ħadtu akbar għax ġie realtà.⁷

Waqf l-istess kontroezami, l-Arbitru staqsa dwar l-istima li kien talab fl-2015 u li kien jaf minn dakinhar li kien ser jieħu ħafna anqas milli qed jippretendi fl-ilment u għalhekk ma kellux għalfejn jieħu xokk. Mistoqsi jekk kienx fehem l-stima tal-2015, l-ilmentatur qal li kien fehemha iżda xorta ħa xokk meta issa ġie għar-realta'.

Ġie eventwalment ipprezentat l-Affidavit⁸ ta' Victor Farrugia bħala *Chief Operations Officer* tal-MSV, li dan iżda sostanzjalment jirrepeti dak li kien diġà intqal fir-risposta originali sottomessa.

Fit-tieni u l-aħħar seduta tal-15 t'Ottubru 2024, sar il-kontroezami lil Victor Farrugia li xehed billi qal:

'Qed jingħad li fi żmien il-COVID, f'erba' snin, l-ilmentatur ma rċieva xejn mingħandna.

Ngħid li fi żmien il-COVID aħna bqajna naħdmu. Kien hemm min ħadem remotely, imma l-business baqa' għaddej normali jiġifieri l-istatements ħarġu.

Wara li ġie ċċekkjat il-case file, instabu dawn l-istatements ħlief tas-sena 2023, ngħid li l-polza għalqet f'Marzu 2024, però, l-istatement joħroġ wara li jiġi ddikjarat il-bonus li jkun wara Marzu u fuq il-policies li jkunu għadhom in force.

Illum kellu jitla' jixhed f'din is-seduta, r-rappreżentant, Teddy Calleja, iżda l-provditur tas-servizz infurmaw lill-Arbitru li ma rnexxielhomx jikkuntattjawh

⁷ P. 89 - 90

⁸ P. 92 - 95

minhabba li ma sabu l-ebda dettalji tas-Sur Teddy Calleja fir-records tagħhom biex ikunu jistgħu jintraċċawh.

Is-Sur Victor Farrugia jgħid li s-Sur Teddy Calleja m'għadux fis-sistema tagħhom u m'għandhom l-ebda dettalji tiegħu minhabba li kien għamel xi ftit snin u ilu li waqaf. Jgħid ukoll li għamlu riċerka fuq informazzjoni pubblika u hemm il-possibilità li qiegħed iċ-Ċina imma aktar minn hekk ma sabux.⁹

Il-partijiet iddikjaraw li ma għandhomx aktar provi xi jressqu u li dak li qal l-Ilmentatur ser jittieħed bħala sottomissjonijiet finali dejjem jekk il-Provdituri tas-Servizz ma jirnexxilux jintraċċa lir-rappreżentant li biegh il-polza u jtellgħu jixhed.

Fis-sottomissjonijiet finali tiegħu, il-Provditur tas-Servizz irrepeta dak li kien diġà qal fir-Risposta u waqt is-seduti.

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.¹⁰

Il-punt kruċjali f'dan l-ilment jittratta l-allegati wegħdiet u aċċertazzjonijiet mogħtija lill-Ilmentatur meta l-polza giet mibjugħa lilu, u dan fir-rigward tal-ammont li huwa kellu jirċievi mal-maturità.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'għie mwiegħed lill-Ilmentatur u x'eventwalment għie 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*

⁹ P. 96 - 97

¹⁰ Kap. 555, Artiklu 19(3)(b)

*b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.*¹¹

Hawn l-Arbitru għandu sitwazzjoni fejn, fir-rigward tal-mod kif sar il-bejgħ tal-polza in kwistjoni, għandu biss f'idejgħ il-verżjoni tal-Ilmentatur, minħabba li, sfortunatament, ir-rappreżentant tal-Provditur tas-Servizz li biegh din l-istess polza, ma grex intraċċat u huwa allegatment ma għadux jgħix f'pajjiżna. Għalhekk dan il-każ jippreżenta ċirkostanzi ta' żbilanċ li ma jippermettux lill-Arbitru jkollu wkoll il-verżjoni tar-rappreżentant li kien preżenti fil-mument tal-bejgħ u, għalhekk, l-Arbitru sema' biss qanpiena waħda. Minħabba f'hekk, huwa iktar diffiċli għall-Arbitru sabiex jasal għall-konklużjoni jekk dan kienx każ ta' *mis-selling* min-naħa tar-rappreżentant tal-Provditur tas-Servizz jew xi forma ta' memorja selettiva min-naħa tal-Ilmentatur li jiftakar biss dak li jaqbillu.

Għaldaqstant, fid-deher ta' dan kollu, l-Arbitru ser jiffoka fuq id-dokumenti ppreżentati flimkien mad-dikjarazzjonijiet tal-Ilmentatur stess sabiex ikun jista' jasal għal din id-deċiżjoni.

Fl-ilment tiegħu, l-Ilmentatur sostna li r-rappreżentant kien spjegalu ċar u tond l-ammont li riedu jħallsu kull sena u kemm eventwalment kien ser ikun l-ammont finali li kellhom jirċievu mal-maturità, jiġifieri wara tletin sena.

Stqarr li wara l-ewwel laqgħa li damet xi nofs siegħa qagħdu jaħsbuha u wara erbat ijiem iddeċieda flimkien ma' martu li jmexxu bil-polza. Fit-tieni laqgħa li damet tliet kwarti huma iffirraw il-karti. Ammetta li spjegalhom il-*life cover* u l-*Accidental Death Benefit* iżda ma qalilhomx li jistgħu jieħdu anqas. Iżda qabel li spjegalhom li parti mill-polza kienet investiment u kien jiddependi minn kif immorru l-investimenti.

Kif diġà intqal aktar kmieni, l-Arbitru jsib ċertu diffikultà biex jifhem jekk dan kienx każ fejn is-*salesperson* li b'mod imprudenti emfasizza s-sabiħ u ma kienx kawt biżżejjed biex jispjega sew id-differenza bejn dak li kien garantit u dak li kien stmat, jew inkella kienx każ fejn l-Ilmentatur fehem dak li ried jifhem u ma kienx insidjuż biżżejjed biex jagħti importanza anke l-aspetti mhux garantiti tal-*quotation*, avolja dawn ġew spjegati.

¹¹ Kap. 555, Artiklu 19(3)(c)

Fl-istess waqt, l-Arbitru ma jistax ma jinnotax li spjegazzjoni dwar il-mod kif taħdem il-polza, partikolarment dwar il-*bonuses* u kif dawn jigu allokat, giet anke mogħtija lill-Ilmentaturi f'dokumenti oħra, partikolarment f'dokument titolat '*Product Information*', li kopja tiegħu giet sottomessa mill-Provditur tas-Servizz, u li dan gie anke pprezentat lill-Ilmentaturi infushom u iffirmit minnhom stess.

Minkejja li fl-ilment tiegħu, l-Ilmentatur stqarr li qatt ma kien intqal lilu li s-somma oriġinarjament kwotata setgħet tonqos, l-Ilmentatur fix-xhieda tiegħu, wara li gie mistoqsi għalfejn fl-ilment talab rimedju ta' €66,000 u issa qal €64,000 qal li jaqbel li m'hemmx għalfejn €64,000 u li jaqbel li dan huwa investment u li s-somma mhix garantita għax l-affarijiet jistgħu jvarjaw.¹²

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fis-sena ta' qabel is-sena 1994, ma kinitx xi haġa li setgħet tigi sostnuta u garantita għal 30 sena sħaħ. Anke persuna mhux tant intiża fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 30 sena speċjalment peress li l-kontribuzzjonijiet tagħhom kienu mifruxa fuq 30 sena u mhux xi '*lump sum investment*' li tista' tigi investita mill-ewwel biex torbot ir-rati tal-imgħax għal żmien twil. Dan apparti li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Min-naħa l-oħra, l-Arbitru jhoss li l-Provditur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu haġeġ *spectrum* ta' kwotazzjonijiet maħduma b'rati differenti għax fuq perjodu ta' 30 sena xejn ma jibqa' stabbli. Fil-fatt, ingħad li wara s-sena 2000, bdew joħorġu tliet kwotazzjonijiet u mhux waħda, u dan kien jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 30 sena.

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.

¹² p. 89

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentatur, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €66,381, li iżda fid-data tal-maturità ġie offrut ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament legittimi.

L-Arbitru jrid jasal għal kumpens li jrid ikun ibbażat fuq ġustizzja ekwitattiva kif huwa sanzjonat 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, ma jistax ikun preċiż minħabba li hemm diversi fatturi li jridu jiġu ikkunsidrati. Ma ġiet ipprezentata l-ebda prova li dak iż-żmien l-Ilmentatur kellu xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentatur lanqas ipprezenta xi tip ta' prova li minħabba li ddecieda li jieħu l-polza offruta a bażi tal-informazzjoni mogħtija lilu, huwa ġarrab xi tip ta' *opportunity loss*.

Fuq kollox, mingħajr preġudizzju għal dak dikjarat hawn fuq, l-Arbitru ma jħossx li permezz ta' din il-polza wieħed għandu x'jitlef. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentatur kellu ċ-ċans li jikkontribwixxi għat-tfaddil permezz ta' din l-istess polza u dan billi jhallas ammont zgħir kull sena għal tletin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' madwar erbgħa fil-mija¹³ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellu benefiċċju ta' kopertura fuq ħajtu li beda mill-ewwel ġurnata tal-polza.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatur, u jiddeciedi li s-somma xierqa li għanda tingħatalu bħala kumpens hija dik ta' **€3,805.63**

Għaldaqstant, *ai termini* tal-Artikolu 26(3)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV LIFE p.l.c. tħallas lill-Ilmentatur is-somma ta' tlett elef, tmien mija u ħames ewro punt sitta tlieta (€3,805.63)

¹³ P. 95. Kontribuzzjonijiet fuq perjodu ta' 30 sena kienu madwar €14,679 filwaqt li l-offerta ta' MSV kienet €25,372

b'zieda mas-somma digà offruta, cioè, mas-somma ta' €25,372.37,¹⁴ u għalhekk, iħallashom is-somma kumplessiva ta' €29,178 (disgħa w'għoxrin elf, mija u tmienja u sebgħin ewro).

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' 3.40%¹⁵ fis-sena mill-iskadenza tal-ħamest ijiem sad-data tal-ħlas effettiv.

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

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, ħlief 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 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 tipografici jew żbalji simili mitluba skont artikolu 26(4) tal-Att, għandhom ikunu magħmula mal-Arbitru, b'notifika lill-

¹⁴ P. 8

¹⁵ Ekwivalent għal MRO *rate* tal-Bank Ċentrali Ewropew

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 wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għal atti pprezentati matul il-każ. Tali spejjeż professjonali 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.