

Quddiem I-Arbitru għas-Servizzi Finanzjarji

Kaž ASF 168/2024

SK

(‘I-Ilmentatur’)

vs

MAPFRE MSV Life p.l.c.

C-15722

(‘il-Fornitur tas-Servizz’)

Seduta 3 t’April 2025

L-Arbitru,

Wara li ra l-ilment magħmul kontra s-socijetà MAPFRE MSV Life p.l.c. (C-15722) rigward polza tal-assikurazzjoni fuq il-ħajja (*Comprehensive Flexi Plan*) bin-numru FP423769.

Fis-sustanza tiegħu, l-ilment jittratta telf li l-Ilmentatur allegatament sofra wara li l-polza tal-assikurazzjoni fuq il-ħajja favur tiegħu immaturat b'ammont ferm-inqas minn dak li huwa jallega li kien imwiegħed lilu mill-Fornitur tas-Servizz.

L-Ilment:¹

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

1. Rappreżentant tal-Fornitur tas-Servizz kien avviċina lill-Ilmentatur sabiex jixtri l-*Flexi Plan*, u kien ġie assigurat li jekk iħallas Lm225 fis-sena, mal-maturità, imbagħad, jirċievi s-somma ta’ Lm9,210 (€21,452.53).

¹ Formola tal-Ilment minn paġna (p.) 1 - 5, bid-dokumentazzjoni addizzjonali minn p. 6 - 67

2. L-Ilmentatur jisħaq li kienet proprju din is-somma li kkonvinċietu jixtri l-polza, għaliex kieku kien jinvesti f-xi ħaġa oħra, bħal pereżempju, f'polza simili mingħand Fornituri tas-Servizz oħra, bħal 'Eagle Star' u 'Sun Life of Canada', jew inkella kien jinvesti fil-proprietà.
3. Kuntrarjament għas-somma imwiegħda ta' €21,452.53, mal-maturità, l-Ilmentatur ġie offrut biss is-somma ta' €10,732.75 u, għalhekk, iħossu diżappuntat.

Rimedju mitlub

Għaldaqstant, l-Ilmentatur qed jitlob is-somma originali ta' €21,452.53.

Ra t-tweġiba tal-Fornitur tas-Servizz:²

"

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the policy in question numbered FP423769, of the nature Comprehensive Endowment Policy with Sum Assured ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the full amount that was quoted in the first quotation.*
2. *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.*
3. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotation that was presented by the complainant together with this complaint (marked as fol.20). Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*

² P. 73 - 78, bid-dokumentazzjoni addizzjonali minn p. 79 - 83

4. Furthermore, the quotation was calculated on three different scenarios, namely on the rate of 3%, 5% and 7% to calculate three different scenarios of the estimated maturity value including reversionary bonus.
In fact, the estimated maturity value including reversionary bonus was indicated as Lm4,841 or Lm6,211 or Lm8,008. The quotation calculated the estimated maturity value including reversionary and terminal bonus based on a 1.5% Terminal Bonus. In the quotation there were three Estimated Maturity Values including Reversionary and Terminal Bonuses totalling Lm5,568 or Lm7,143 or Lm9,210.
5. However, apart from the fact that there were three scenarios and therefore none of those three scenarios could have been guaranteed, the quotation presented with the complaint (fol.20) expressly states that "Projected Estimated Maturity Value if future rate of return is ..." 3%, 5% and 7% and a Terminal Bonus of 1.5%. Hence, the quotation made it clear that rates could change. Therefore, the Company forecasted that the rate could vary since it could either be 3% or 5% or 7 % or any other rate if it were to be changed in the future.
6. The quotation presented with the complaint (fol. 20) also expressly spoke about the high volatility of the terminal bonus which stated that:

"This quotation illustrates a level of Terminal Bonuses that would be consistent with the Bonus Policy currently being adopted by the Board of Directors. Policyholders should be aware however, that Terminal Bonuses rates are likely to be highly volatile and very dependent on the Company's investment performance."
7. In fact, the quotation annexed to the complaint (fol.20) clearly states that "figures may vary according to prevailing financial conditions". Besides the fact that the quotation itself presented three scenarios and provided that those scenarios could not materialize if the rates were to change and therefore said figures could not have been guaranteed, the complainant was also presented with notes together with the quotation (which shall be attached and marked as Doc. MSV 1). The quotation refers to the "important notes overleaf".

8. 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 quotation were not guaranteed because they were based on the investment conditions and circumstances at the time. The Important Notes marked as Doc. MSV 1, states that "The Estimated Maturity Values shown overleaf have been calculated using illustrations on different levels of bonus rates. **Depending on the performance of the company, bonus rates may go down as well as up**". "The Company's continued bonus policy is that bonus rates should reflect the returns actually earned on the underlying investments, supplemented by the value added from the profits of non-profit business." At the time, the bonus rate was higher than it is today, with a rate of 3.75% in 2004, which notwithstanding the fluctuations throughout, it now stands at a lower rate. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower. This shows that the quotation provided was indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.

9. The IMPORTANT NOTES (Doc. MSV 1) delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus". The said notes also explain that the "policies participate in the Company's distribution of its profits by means of an allocation of annual Reversionary Bonuses declared from time to time. These are usually expressed as a percentage of the **Policy Account which is made of all the investment premia paid plus bonuses (if any) which accrue on a daily basis.**" The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured." Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so. Therefore, the amounts that were indicated in the quotations as estimated maturity value including reversionary bonus were not guaranteed because one needed to wait until the finalisation of the bonus declaration process in order to confirm whether MMSV was going to declare a reversionary bonus for the previous year and if in the

affirmative at what rate, and it was only at that time that the complainant could have been certain how the value of the Policy Account of his Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.

10. *With regards to the “Terminal Bonus”, the same document showing the Important Notes (Doc MSV. 1) also explains that “Depending on its profit experience the Company may, after the end of the Policy’s TENTH year, and ten year’s full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared bonus ... A Terminal Bonus if declared is payable on policies that become claims by maturity or death, but not by surrender ... Terminal Bonus Rates are likely to be highly volatile and very dependent on the Company’s investment performance” Therefore, the three amounts being indicated in the quotations as “estimated maturity value including reversionary and terminal bonus” were likewise not guaranteed since they were highly volatile.*
11. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.24) was the sum assured of LM13,000 and no amounts containing the word ‘Estimate’ in the quotation were mentioned on this Schedule, which further shows that according to the agreement between the parties the Estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonus were never guaranteed.*
12. *The notes that formed part of the quotation (Doc. MSV 1) also provided that “Whilst the purpose of these notes is to guide the policyholders and prospective policyholders, **the conditions applying to all the benefits provided by the Policy are defined in the Policy document** ... In 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.*

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 including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation which was given by the Company. Notwithstanding, the complainant is merely basing his claim on estimated maturity values without putting them in the context of all the documents provided to the complainant when the Policy was being sold to him and every year thereafter as shall be explained hereunder. For instance, in the complaint email, the complainant referred to the quotation which was signed on 16th February 2004. It should also be noted that the quotation (fol. 20) clearly shows three projected estimated maturity values according to the different rates of return of 3%, 5% and 7% respectively, however, the complainant only referred to the highest estimate with a value of Lm9,210.*
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. In fact, the 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. In fact, "the company aims to provide policyholders with some protection from fluctuations in the investment markets by smoothing bonus rates from year to year." 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 quotation and the maturity value is merely reflective of the shift in the performance of the investment markets during the term 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 crises, 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 2,737.67 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a rate of return-on-investment premium amounting to 2.57% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.03%.*
16. *The complainant discussed the opportunity to invest in other forms of investment such as property. This policy was designed for a long-term investment, which also offered an element of protection in case of death of the policy owner prior to maturity, enabling the assured to invest smaller amounts annually over an extended period, which unlike property, alleviates the burden of a large upfront payment. Moreover, it also needs to be emphasised that the maturity value of the Policy is **tax free**, therefore, unlike property none of the gains are subject to tax.*
17. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV sending him, on a yearly basis, a Policy Account Statement together with the so-called Important Notes and a Media Release (copies of the Policy Account statements are attached with the complaint and marked Fol.50-59, 61-65). 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 term "Estimated" which*

was conditional in the quotations which is self-explanatory, the Important Notes forming part of the Policy Account Statements mentioned above 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.

18. *In addition, the complainant also requested revised Illustrative Maturity Values in 2014 (Doc. MSV 2), which is 10 years into the policy term. The values were estimated on three different scenarios being 3%, 3.5% and 4%. Such rates were lower than the rates shown in the quotation of 2004 (fol.20), which is indicative that the values are estimated on the investment performance at the moment. For instance, the Illustrative Maturity Values including Reversionary Bonuses and Final Bonuses were Eur11,012, Eur12,018 and Eur13,083, which is less than the estimated maturity values provided in the quotation (fol.20). This confirms that the investment performance has declined along the years. Moreover, it is clearly stated on the letter (Doc MSV. 2) that "The revised Illustrative Maturity Values have been calculated using three different levels of assumed bonus rates. The assumed bonus rates shown above are not guaranteed and they are not minimum or maximum rates or amounts. The most important factor that affects bonus rates is the underlying investment performance. Investment returns can go up as well as down and therefore past performance is not necessarily a guide to the future. It is not possible to predict what the bonus rates will be in the future and they may be higher or lower than what they are today." Together with the Policy Account Statements, this confirms that the complainant was aware of the investment value of the policy and its movements throughout and could not rely on the "promised" sum that was mentioned in the Online Complaint Form (fol.3).*

19. Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover during its duration. This amount was guaranteed to be paid upon death, and is referred to as the 'Sum Assured' on the Policy Schedule (fol.24). Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to Euro7,995.08 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 investment premium was not guaranteed to be paid upon maturity. 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 Euro2,737.67 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the policy in question was not only an investment but also provided cover on the complainant's life.
20. As explained, MMSV has met all its contractual obligations, because the quotation did not guarantee the estimated maturity values, but the estimated maturity values were only an indication of the potential performance of the policy which could vary in the future.
21. It is clear that the Policy does not guarantee payment of the estimated maturity values but guarantees that the **maturity value** is paid in the event that the life assured is still living when the policy matures. The maturity value according to the Estimated Maturity Letter (fol.67) "is illustrative and may be different if the bonus rates change or if the interest rate on premium / policy loans changes or if any outstanding premiums due remain unpaid." Therefore, no estimate could crystallise the value that would be paid to the complainant on the maturity date of the policy in question because that value could only be realised on the date of maturity of the policy. Therefore, naturally the figures indicated on the quotations could not be guaranteed because the maturity value continues

to change until the maturity date of the policy and therefore the Company observed its obligations according to the policy in question.

22. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, the complainant was presented with the Statutory Notice that was issued in compliance with the provisions of the insurance business (long term business contract statutory notice) regulations, 2000. It was signed by the complainant himself (Doc. MSV 4). 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 allegedly pressured to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the statutory notice and consequently agreed to proceed with the Policy. This is further supported in the attached document (Doc. MSV 5), whereby the cancellation notice has not been completed and signed.
23. Finally, MMSV maintains that it has always adhered to its obligations under the Policy and therefore, it should not be ordered to pay any compensation other than the final maturity value or any expenses that may be incurred in relation to this procedure because it has been instituted for no valid reason, as shall also be proved during the course of these proceedings.

With reservation for any further pleas."

Seduti

Waqt l-ewwel seduta tat-28 ta' Jannar 2025, l-Ilmentatur xehed is-segwenti:

"Ngħid li jien kont għamilt polza għal għoxrin sena, fl-2004, u kont imwiegħed li ser nieħu tant. Meta għalqet il-polza wara għoxrin sena, wara li dejjem ħallastha bla problemi ta' xejn kull sena, ġejt ser nieħu €248 differenza milli

*nkun ħriġt għal li nkun daħħalt f'għoxrin sena. Tad-daħħaq tgħidha din! Aħseb u ara!*³

Mart l-Ilmentatur, li kienet ukoll preżenti waqt il-bejgħ tal-polza, kompliet:

“Ngħid li din hi t-tielet polza li għamilna. Kellna diġà tnejn oħra. Bagħtilna karta s-Sur Degiorgio fejn qalilna noħorgu tant fis-sena, imbagħad, kif jasal għall-pensjoni r-raġel, qalilna li jkollna somma.

Ngħid li s-Sur Degiorgio huwa aġent tagħhom, jibagħtu huma, bħalma kienu t-tnejn l-oħra. Ngħid li ġie għandna d-dar u beda jispjegalna. Ngħid li ma kienx hu li biegħelna ż-żewġ poloz l-oħra. It-tnejn l-oħra kienu tat-tfal ta’ MAPFRE stess fejn waħda kien biegħilna Simon u l-oħra Rachel. Ngħid li aħna għamilna ilment fuqhom dawn ukoll. Dan hu t-tielet ilment; dan hu t-tielet darba li ma onorawx dak li wiegħeduna.

Ngħid li mhux aħna ikkuntattajjnihom biex nagħmlu t-tielet polza. Aħna rċezejna u għidit lir-raġel li aħna qegħdin nikbru u hija ħaġa sabiħa li tagħmel life assurance. U qalli, ‘Le, ma nagħmluhiex, għandna t-tnejn l-oħra.’

Ngħid li reġa’ čemplilna hu u għidnilu, ‘Iva, ejja.’

Ġie u fiehemna; tana l-quotations u beda jispjegalna li rridu nħallsu tant fis-sena u eżatt kif jagħlaq 61 sena, ser jieħu din is-somma. Qalilna li dejjem irridu nonoraw kull sena billi nitfgħu il-flus. Ngħid li aħna hekk għamilna. U qalilna, ‘Ha tħallsu fee żgħira.’ Ma qalilniex li din il-fee żgħira €559 għax ma kontx nagħmilha jien. Il-fee żgħira €559.”⁴

Mitluba mill-Arbitru biex tispjega x'inhi din il-fee żgħira referuta, mart l-Ilmentatur wiegħbet:

“Hu qalilna li jkollna fee żgħira tal-karti li jibagħtulna fl-aħħar. Issa bagħtulna li aħna mhux €245/€250 ħadna; aħna ħadna €2,500. Dawk tal-insurance tar-raġel u ħaduhom mill-flus li ħriġna aħna. Għoxrin sena ilu din ma qalilniex għax kieku jien ma kontx nagħmilha. U ħadulna €559 tal-paperwork.” (paġna 14 tal-proċess)

³ P. 84

⁴ P. 84 - 85

Ngħid li din hi l-karta li bagħtulna huma, kemm ħallasna. Aħna ħallasna €10,482 tul il-perjodu u issa qed joffrulna madwar €10,600 li tispjega d-differenza ta' €248.

Ngħid li ħadd ma jinvesti għal għoxrin sena biex idaħħal kemm ħareġ. Kieku kieni ċari u qaluli, kont ngħidlu, ‘Le, grazzi.’ Dan tgħidlu investiment xieraq?

Ngħid li hawn, fuq il-karta, Degiorgio għamlilna roughly il-Flexi Plan. Dik il-karta li tana u li spjegalna. Dik l-ewwel waħda meta ġie d-dar. U din ma mortx jien; bagħtulna karta d-dar.

Ngħid li jien xtaqt ninvesti. Kieku m'hemmx flus, nagħliqu ħalqna. Imma hawn għandna karta datata 2020 kemm il-miljuni u biljuni għamlu. U kemm huma tajbin! Allura, m'hemmx ftit eluf għalina? Ngħid li anke fil-COVID għamlu l-flus.

Lili qalli li jekk nonora dawk l-għoxrin sena, kif jagħlaq 61 sena ser jieħu din is-somma.”⁵

B'referenza għall-kwotazzjoni ppreżentata, li ġiet iffirmata kemm mill-Ilmentatur kif ukoll mis-Sur Degiorgio li bigħhielu, l-Arbitru stqarr li din fil-fatt tinkludi tliet quotations li jagħtu diversi figuri iż-żda l-ogħla figura taħbi kull xenarju, ta' 3% hija Lm5,568 u l-ogħla figura hija ta' Lm9,210 u li l-Ilmentatur u martu qeqħdin jibbażaw il-claim tagħhom fuq id-Lm9,210.

Mart l-Ilmentatur wieġbet li:

“Ngħid li l-ebda waħda ma tawna.

Ngħid li jiena nippretendi li meta xtrajtha għoxrin sena ilu, ma kontx nagħmilha kieku qalli l-aħħar waħda.”⁶

Taħbi kontroeżami, l-Ilmentatur xehed li:

“Mistoqsi nikkonfermax li niftakar kelma b'kelma dak kollu li kien spjegali s-Sur Degiorgio meta biegħli l-polza għoxrin sena ilu, ngħid li ma niftakarx kelma b'kelma, però, dak li hemm miktub u ffirmat miż-żewġ naħħat m'hemmx għalfejn niftakar la jien u lanqas l-ieħor.

⁵ P. 85

⁶ P. 85 - 86

Mistoqsi niftakarx kollox jew qed nibbaža fuq id-dokumenti biss, ngħid li bilfors trid tibbaža fuq id-dokumenti. Imma fuq affarijiet oħra niftakar meta beda jgħidli li meta nispiċċa ser nieħu dik is-somma.

Qed jingħad li l-istima kienet maħduma fuq tliet xenarji li juru kemm ir-Reversionary Bonus u kemm it-Terminal Bonus u naqblu li hemm tliet xenarji.

Qed jingħad li fuq il-quotation hemm miktub:

'Projected Estimated Maturity Value if future rate of return is: ...' u hemm 3.00%, 5.00% jew 7.00%.

"Mistoqsi naqbilx li kont konxju meta xtrajt il-polza li r-rati setgħu ivarjaw jekk hemm il-kliem 'if the future return is 3.00%, 5.00%, 7.00%.' U f'din il-polza partikolari li xtrajna din id-darba hemm tliet perċentaġġi differenti. Qed niġi mistoqsi naqbilx li d-dokument jurini li r-rati setgħu ivarjaw u, allura, ma kinux garantiti l-figuri li kienu fuq il-quotation, ngħid li jiena kont dejjem imwiegħed fuq l-aktar waħda għolja.

Qed niġi mistoqsi xi ngħid fuq dak li hemm miktub fuq il-quotation taħt il-figuri tat-tliet xenarji:

*'Average Reversionary Bonus declared between 1994 – 2002 (9 years) - 6.10%
Average Reversionary Bonus declared between 1998 – 2002 (5 years) - 5.60%'.*

Ngħid li dawn ma ndunajtx bihom.

Mistoqsi nafux naqraw bl-Ingliz, ngħid li iva.

Qed niġi riferut għall-Important Notes (Dok., MSV 1) u għall-Avviż Statutorju (Dok. MSV 4). Qed jingħad li l-quotation tgħid,

'Policyholders should be aware however that Terminal Bonuses rates are likely to be highly volatile and very dependent on the Company's investment performance,' filwaqt li l-Important Notes jgħidu: 'Depending on the performance of the Company, bonus rates may go down as well as up ... Investment rates can go down as well as up and therefore past performance is not necessarily a guide to the future.'

Mistoqsi allura jekk qed nibbażaw fuq id-dokumenti wkoll, kif għidt aktar kmieni mix-xhieda tiegħi, kif qed nippretendi l-ammont ta' taħt is-7% jekk id-

dokumenti kollha qed jgħidu li m'għandniex dan l-ammont garantit, u meta jien ikkonfermajt li naqra d-dokumenti u li d-dokumenti kienu għandna għal ħmistax-il ġurnata biex jekk ridna stajna nikkanċellaw skont l-Avviż Statutorju, ngħid li għax dejjem nisma' u naqra li l-MSV għamel il-profitti. Ngħid li jiena dejjem ġejt imwiegħed dak l-ammont.

Mistoqsi naqbilx li, allura, d-dokumenti ma tajtx kashom għax jgħidu mod ieħor, ngħid li le, ma tajtx kashom għax jien dejjem imxejt fuq li qalli, li wegħdn.

Qed jingħad li konna rċevejna r-revised Illustrated Maturity Values (Dok. MSV2, paġna 80) u mistoqsi rajtux, ngħid iva, rajtu.

Mistoqsi allura kontx konxju dak iż-żmien li r-rati kienu tbiddlu u niżlu kif dejjem intqal fid-dokumenti li dawn setgħu ivarjaw, ngħid li le, ma kontx konxju.

Ngħid li matul dan iż-żmien, darba minnhom ġbidt l-attenzjoni u qaluli li, ‘Le, dawk issa fl-aħħar jimmaturaw kollha.’ U kieku għamiltu l-minus, ma kontx niġi ngħidilkom.”⁷

L-Ilmentatur ippreżenta żewġ dokumenti li ser jidħlu fil-process u li ser jiġu nnotifikati lill-Fornitur tas-Servizz.

Waqt it-tieni seduta tal-10 ta’ Marzu 2025, is-Sur Victor Farrugia, f’isem il-Fornitur tas-Servizz, iddikjara li r-risposta tal-Fornitur tas-Servizz hija x-xhieda tiegħu u m'għandux aktar xi jżid.⁸

Xehed ukoll John Degiorgio, il-persuna li biegħi il-polza in kwistjoni lill-Ilmentatur. Hu qal li:

“Jiena Tied Insurance Intermediary li għoxrin sena ilu biegħejt il-polza numru FPXXX769, il-Comprehensive Flexi Plan, lill-(Ilmentatur) fejn kien hemm ukoll preżenti l-mara tiegħu.

Ngħid li fi Frar 2004, kelli appuntament mas-Sinjuri u č-ċans kien li jew kienu gew referuti lili minn xi ħaddieħor jew inkella ċempilt jiena għaliex fid-diary

⁷ P. 86 - P. 87

⁸ P. 91

tiegħi li għadu hawnhekk tal-2004, għandi li fit-2 ta' Frar 2024, kelli nċemplilhom fuq 21xxxx35.

Ngħid li l-proċedura ta' kif biegħejt il-polza hija l-proċedura li għadni nuża sal-lum il-ġurnata. Ili nbiegħ dawn it-tip ta' poloz mill-1992 u naħseb li llum il-ġurnata jien l-aktar wieħed antik mir-rappreżentanti tal-MSV Life. Ngħid li jew kont inċemplilhom jew kienu jirċievu xi karta. Dak iż-żmien normalment kont naħdem ħafna fuq il-Kalkara u kelli telephone list u nċempel il-Kalkara. Fil-fatt, għandi ħafna mill-klijenti tiegħi mill-Kalkara.

Kont qbadt mal-Kalkara; dak iż-żmien kien villaġġ għadu qed jiżviluppa, kien hemm ħafna koppji żgħar jew ħafna minnhom kienu jkunu referenzi. Inkun għamilt polza ma' xi ħadd u kif nispicċa, nistaqsi jekk jafx lil xi ħadd li jkun interessat, u jagħtini n-numru ta' dak li jkun.

Ngħid li normalment il-laqqha dejjem kienet tieħu siegħa. Jekk niftakar sew il-klijenti kellhom xi żewġ policies oħra. Kellhom digħà idea bażika ta' kif taħdem il-polza.

Ngħid li normalment kont immur darbtejn għand il-klijent. Rari kont nagħlaq sale mill-ewwel għax ħafna drabi kont inħalli ħafna ħin lill-klijent biex jiddeċiedi imma f'dan il-każ, għamilniha mill-ewwel.

Ngħid li għamilniha mill-ewwel għax jekk niftakar sew kellhom żewġ poloz oħra għax meta nimla l-Proposal Form inkun staqsejt – jekk għandhomx policies oħrajn, issues ta' mard fil-familja, ecc.

Rigward il-Flexi Plan Quotation (paġna 20 tal-proċess), ngħid li dik għandi hard copy tagħha għax marbutin li nżommu d-dokumenti. Ngħid li kopja tal-Important Notes (Doc. MSV1, paġna 79) m'għandix għax inkun tajtha lill-klijenti. Ngħid li għandi kopja tal-Proposal Form ukoll bil-firma tiegħi u bin-numru tiegħi, 85.”⁹

Qed niġi riferut għall-iStatutory Notice (Dok. MSV 4, paġna 82 tal-proċess) u nikkonferma li fuq dan id-dokument hemm il-firma tiegħi.

⁹ P. 91 - P. 92

Nikkonferma li dawn id-dokumenti inkun spiegajthomlhom u nkun tajthomlhom.

Ngħid li I-Flexi Plan kellha u għadha sal-lum il-ġurnata, beneficiċju importanti ħafna li huwa I-Life Cover. Jien kont nišhaq ħafna fuq l-importanza li jekk int għandek familja, ikollok Life Cover. U meta konna qed nagħmlu l-quotation konna għamilna Life Cover ta' Lm13,000.

Normalment konna naħdmu bejn wieħed u ieħor kemm ikollu salarju dak li jkun, kelliż żewġ poloz oħra wkoll. U jien kont nišhaq fuqu biex dak li jkun ikollu Life Cover, ovvjalment, tħallas għali u kien ikun imniżżeq fuq il-quotation. Kont nispjega li jekk inti tiġi nieqes anke l-ghada li ħarġet il-polza, dak l-ammont ta' Lm13,000 huwa garantit. Dak huwa wieħed mill-affarijiet l-aktar importanti li kont nispjega.

Kont nibda billi nispjega anke s-set-up tal-kumpanija għax dak iż-żmien konna għaddejna minn certu changes f'dak li hu shareholding u, jekk m'inix sejjer żball, f'waħda mill-karti jien kont spiegajt sew kif inhuwa x-shareholding tal-MSV, Middlesea Insurance, tal-Bank of Valletta dak iż-żmien. Kont nispjega dawn l-elementi kollha.

Imbagħad kont nara l-klijent kemm jista' jaffordja, u kont tajt konsiderazzjoni li għandu żewġ policies oħra, il-Life Cover Cost u, eventwalment, noħorġu l-quotation; però, kont nišhaq ħafna fejn iridu joqgħodu attent matul iż-żmien tal-polza. L-ewwel haġa, l-ewwel tliet snin għax jekk int twaqqaq il-polza fl-ewwel tliet snin, ma tieħu xejn lura. Is-Surrender Value huwa zero. U li l-klijent jibqa' jħallas il-premium għaliex jekk iwaqqaf milli jħallas il-premium, dejjem ser jtitlef minn dak li għandu fl-account. U dak iż-żmien mat-tenth year kien jiġi at par ma' dak li jkun ħallas.

F'dan il-każ kien hemm il-Life Cover Cost, il-Policy Fee li dawn huma nkluži fil-cost imma l-quotation tagħmel tajjeb għal dawn iċ-charges.

Ngħid li dawn kont nispiegahomlhom kollha. Id-dokument kien bil-Malti u bl-Ingliz. Ngħid li appart i-quotation formal li kont nispiċċa biha d-diskussjoni mal-klijenti, kont naqbad biċċa karta (li jekk m'inix sejjer żball hija ppreżentata ma' wieħed mid-dokumenti u hemm il-kitba tiegħi) u kont nispjega.

Qed jingħad li l-klijenti qalu li jien wiegħdtilhom din iċ-ċifra biss u li ma spjegajt xejn fuq iċ-ċifri l-oħra.

Ngħid li jien ma wegħedt xejn minn dan. Ngħid li kont inwiegħed żewġ affarijiet: li l-Life Cover huwa garantit (li jekk tiġi nieqes, dak ser tieħdu żgur) u l-bonuses li jiġu ddikjarati – ir-Reversionary Bonuses – huma garantiti.

Fil-quotation għandek tliet rati li jistgħu ikunu aktar u li jistgħu ikunu anqas, però, jien ukoll tajthom indikazzjoni kemm kien l-bonuses tas-snin ta' qabel u dak iż-żmien kien diġà bdew jonqsu r-rati tal-bonuses.

Kont nispjega li r-Reversionary Bonus kien il-bonus li kien jiġi ddikjarat kull sena mill-kumpanija skont l-investiment tagħha u kont nispjega lil kulħadd li dak li hu garantit, jirċievi karta bil-miktub kemm kien il-bonus u dak jiżdied awtomatikament mal-polza. Jekk ikun hemm sena ħażina, u l-kumpanija ma tagħtix bonus, il-bonus tas-sena ta' qabel jibqa' hemmhekk. Hadd mhu ser jeħodlok il-bonus li jkun iddiċċarat.

Fuq it-Terminal Bonus kont nispjega li hu bonus addizzjonali li jista' jiġi ddikjarat mill-kumpanija u mhuwiex garantit. Jiddependi ħafna mal-luck; ma' dik is-sena li inti tispiċċa l-polza.

Jista' jkun hemm sena li l-kumpanija ma tiddikjarahx u jista' jkun li jkun hemm snin li l-kumpanija tiddikjarah u jiżdiedlek mal-benefiċċju tal-aħħar jew mal-Maturity Sum.

Ngħid li fil-quotation hawn tabella li turi jekk twaqqa' il-polza kemm ser tieħu bejn wieħed u ieħor fejn tirrifletti dak li għidt ftit ilu li l-ewwel tliet snin m'għandek xejn, imbagħad, tiġi qisu at par mat-tenth year u llum il-ġurnata għandek anke 15 years. Għandek il-mortality charges li fl-ewwel sena kien Lm14. U jien kont nispjega wkoll fuq il-mortality li dik tinħad - il-Life Cover Cost - u tiddependi minn kemm jikber l-account, mill-età tiegħek u hemm diversi fatturi u elementi fil-formula tar-risk cover.

Qed niġi muri dokument li l-Ilmentatur ippreżenta bħala evidenza fl-aħħar seduta u nikkonferma li dik hija l-kitba tiegħi (paġna 88 tal-proċess).

Ngħid li dan id-dokument jirrifletti dak li kont qed ngħid. Hawn fuq hawn kif kienet ix-shareholding tal-kumpanija dak iż-żmien: 51% MSI; 39% BOV u 10% Munich Re.

Hawnhekk hawn kif kienu r-rati tas-snin ta' qabel: mill-1994 sal-1998 kienu bis-6.75%; fl-1999 kienet 7%, imbagħad, mill-2000 bdew neżlin 'l isfel. Ngħid li dawk kienu r-rati li jiena spjegajt.

Rigward id-dokument MSV4 – I-Avviż Statutorju – ngħid li l-klijenti diġà kellhom żewġ policies oħra u kienu jafu li huma kellhom 15 days' cooling off period.

Ngħid li ma jidħirlixi li l-klijenti xi darba ċempluli fuq il-polza. Jiena nżomm kollo u ħafna drabi jkoll klijenti li jistaqsuni u nispjegalhom fuq il-polza, nispjegalhom l-i-statement li jkunu rċevew imma ma naħsibx li l-klijenti qatt ċemplu.”¹⁰

Taħt kontroeżami, is-Sur Degiorgio xehed illi:

“Mistoqsi meta mort noffrīlhom il-Flexi Plan, jien għidtilhomx li jekk ir-raġel imut biss, ngħid li any type of death basta ma jkunx suwiċidju fl-ewwel sentejn tal-polza.

Mistoqsi kontx għidtilhom ukoll li huma b'dak li qed jitfghu kull sena kienu qed jinvestu wkoll, ngħid li mela, qed jinvestu wkoll. Qed iġġemma' u qed tkopri l-ħajja tal-assigurat. Ngħid li f'din il-polza l-Life Cover konna għamilniha għolja għax għamilna emfasi, jekk niftakar sew, fuq il-Life Cover, li jkollu Life Cover tajba.

Mistoqsi meta mort inbiegħilhom il-polza jekk għidtilhomx li ser idaħħlu lura l-flus li ħarġu biss, ngħid li ma nistax ngħid x'kienu ser ikunu l-bonuses minn għoxrin sena 'l quddiem. Li kont għidtilhom żgur li kellhom żewġ garanziji li huma l-bonuses iddikjarati u l-Life Cover u li dak li ser joħorġu ser jeħdu lura.

Mistoqsi niftakarx li jien għidtilhom li, ‘Meta r-raġel jagħlaq 61 sena (għax il-polza kienet tagħlaq eżatt fl-istess sena), dik is-sena stess ser isir pensjonant u

¹⁰ P. 91 - P. 94

ser ikollkom dik is-somma.’ Qed jingħad li jien għidtilhom li tant konna tajbin li ser jieħdu Lm9,200.

Ngħid li jien m’għidtilhomx hekk. Ma nistax ngħid eżatt, u ngħid li hemm tliet rati. Mela jien ser norbot lili nnifsi.

Ngħid li kif spjegajt, u kif għadni nagħmel sal-ġurnata tal-lum, ma nista’ qatt ngħid li hemm somma waħda garantita. Lanqas meta kien hemm quotations li kienu joħorġu b'figura waħda.

Qed jingħad li l-klijent għamilha fuq dik is-somma li wegħdту jiena. Ngħid li jien għidtilhom li kull sena ser jirċievu statement ta’ kemm tela’ I-With Profits Fund.

Qed jingħad li jien ħajjarthom biex jixtruha. Ngħid li jien ħajjarthom biex jixtruha għax ir-rati kienu tajbin.

Qed jingħad li jien għidtilhom li kien ser ikun hemm fee żgħira fis-sena u li kieku għidtilhom li l-fee żgħira kienet €524 ma kinux jagħmluha l-polza. Qed jingħad li jien għidtilhom li kienet čuċata u li għal dik biss ma kinux jagħmluha l-polza.

Ngħid li hemm miktub fil-quotation stess. Policy fee titħallas kull sena u għandhom ukoll u spjegajtilhom ukoll il-mortality fee tal-Life Cover.

Qed jingħad li l-klijenti għamlu din il-polza għal għoxrin sena u lilhom għidtilhom li ser jieħdu €250 biss.

Ngħid li jien ma nista’ qatt ngħid eżatt il-figura li ser jieħdu. Li għidtilhom, u ser nerġa’ nirrepetih għar-raba’ darba – li kull sena what is declared is guaranteed.

U żgur li dan għidtulhom.

Qed niġi mistoqsi għidtilhomx meta staqsewni li ‘Tant aħna tajbin li kif tagħlaq l-għoxrin sena ser tieħdu din.’ U li l-klijenti għalhekk għamlu l-polza.

Ngħid li jiena spjegajt il-bonuses kif qiegħdin. U kienu jafu li diġà bdew jinżlu. Jien ma nista’ qatt noffri figura kollha.”¹¹

¹¹ P. 94 - 95

Għall-mistoqsjiet indirizzati lilu, is-Sur Victor Farrugia wieġeb:

"Mistoqsi għalfejn f'din it-tielet insurance ma tajna xejn u l-klijenti jieħdu l-ftit biss mingħand l-Arbitru u mistoqsi din hijiex ġusta, ngħid li kif dejjem jgħid l-Arbitru, mhux kull każ huwa l-istess jiġifieri każiċċiet ta' qabel ma jorbtux fuq ta' wara. Iż-żewġ każiċċiet qabel din kienu differenti.

Id-differenza essenzjali bejn it-tnejn ta' qabel u din kienet li fit-tnejn ta' qabel, kif kienet il-prattika dak iż-żmien, il-late 90s, kienet qed tintuża rata waħda biex issir l-istima. Fil-każ li għandna quddiemna – għax il-prattika nbidlet u l-liġi nbidlet u aħna rridu nimxu mal-liġi – mis-sena 2000 'il quddiem (u din bdiet fl-2004), l-istimi saru fuq tliet rati. U f'dawn iċ-ċirkostanzi aħna jidhrilna li huma sostanzjalment differenti miż-żewġ każiċċiet l-oħra li kien hemm qabel.

Qed niġi mistoqsi huwiex tajjeb li wara li l-klijenti dejjem onoraw il-pagamenti għal għoxrin sena jieħdu biss €250, ngħid li għandhom żball jgħidu li €250 biss. Jekk inti ma tpoġġi l-ebda valur fuq id-Death Benefit, valur ta' Lm13,000 li għandek taħt il-polza, għandek raġun titkellem hekk.

Dan huwa pakkett ta' assigurazzjoni fuq il-ħajja u investiment. L-assigurazzjoni fuq il-ħajja kien ta' Lm13,000 li kien ifisser li kieku ġie nieqes l-assiguratur wara li ħallas l-ewwel premium, konna noffru dik il-garanzija u nħallsu Lm13,000. Għall-grazzja t'Alla, illum qed nitkellmu fuq il-parti l-oħra tal-pakkett, l-investiment. Imma, fir-realtà, mill-premium li ħallas kien hemm dak li semma s-Sur Degiorgio – il-Cost of Life Cover – li kien jiġi iċċarġat skont l-età tal-individwu u dak li ġie investit kien madwar €8,000, fejn il-klijenti għamlu qliegħ ta' madwar €2,700 u mhux €250.¹²

Iż-żewġ partijiet ressqu ukoll is-sottomissjonijiet finali¹³ tagħħom għal dan il-każ.

L-Arbitru

Ra l-atti kollha tal-każ

Jikkunsidra:

¹² P. 96

¹³ P. 96 u P. 104 – P. 107

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.¹⁴

Il-punt kruċjali f'dan l-Ilment jittratta l-allegati wegħdiet li saru lill-Ilmentatur fil-mument tal-bejgħ tal-polza u dan fir-rigward tal-ammont li kellu jircievi mal-maturità tal-polza, liema ammont hu stqarr kien il-punt ewlieni li wasslu jaċċetta dak offrut lilu.

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

L-Ilmentatur u martu xehedu kif rappreżentant tal-Fornitur tas-Servizz kien għamel kuntatt magħhom, mar id-dar tagħhom, u spjegalhom dak li kien qed jiġi offrut lilhom. Xehedu li:

“Gie u fiehemna; tana l-quotations u beda jispjegħalna li rridu nħallsu tant fissa u eżatt kif jagħlaq 61 sena, ser jieħu din is-somma. Qalilna li dejjem irridu nonoraw kull sena billi nitfġħu l-flus. Ngħid li aħna hekk għamilna.”¹⁵

Fix-xhieda tagħhom, l-Ilmentatur u martu xehedu wkoll li kieku ma kienx ġie kkwotat lilhom l-ammont allegatament imwiegħed, ma kinux jaċċettaw li jagħmlu din il-polza.

Tajjeb li wieħed isemmi l-fatt li, kif ammettew huma stess, din il-polza in kwistjoni ma kinitx l-ewwel waħda ta' dan it-tip li l-Ilmentatur u martu għamlu. Mart l-Ilmentatur stqarret li, ‘... ***din hi t-tielet polza li għamilna. Kellna digħà tnejn oħra.***¹⁶

Hawn l-Arbitru jirrikonoxxi li l-Ilmentatur u martu kienu konxji ta' dak li kien qed jagħmlu, u dan minħabba dak dikjarat mir-rappreżentant tal-Fornitur tas-Servizz, u li ma ġie fl-ebda ħin ikkontestat mill-Ilmentatur u martu infushom.

¹⁴ Kap. 555, Art. 19(3)(b)

¹⁵ P. 85

¹⁶ P. 84

Ir-rappreżentant tal-Fornitur tas-Servizz stqarr li:

'Ngħid li normalment il-laqqha dejjem kienet tieħu siegħa. Jekk niftakar sew il-klijenti kellhom xi żewġ policies oħra. Kellhom diġà idea bażika ta' kif taħdem il-polza.

Ngħid li normalment kont immur darbejn għand il-klijent. Rari kont nagħlaq sale mill-ewwel għax ħafna drabi kont inħalli ħafna ħin lill-klijent biex jiddeċiedi imma f'dan il-każ, għamilniha mill-ewwel.¹⁷

Kif digħà saret referenza aktar kmieni, l-Ilmentatur u martu xehedu li meta huma għamlu din il-polza, kienu tal-impressjoni li ser iħallsu tant fis-sena, u mal-maturità, kien eventwalment jirċievu s-somma kkwotata. L-Arbitru jiddubita kif dan seta' kien ir-raġunar tagħhom meta, fuq kollo, din kienet it-tielet polza li huma kienu qed jagħmlu.

Barra minn hekk, mid-dokumenti sottomessi jirriżulta li ma kien hemm l-ebda garanzija li meta timmatura l-polza, din kien ser ikollha valur ta' Lm9,210. Primarjament, il-quotation¹⁸ kien fiha tliet 'Projected Estimated Maturity Values' ibbażati fuq tliet 'future rates' differenti, jiġifieri fuq 3%, 5% u 7%. Dan huwa indikazzjoni čara li l-figuri kkwotati lilhom kienu stimi u mhux garanziji. L-istess quotation tagħmel ukoll referenza għall-'Average Reversionary Bonus declared between 1994 to 2002 (9 years)' u l-'Average Reversionary Bonus declared between 1998 to 2002 (5 years)' li huma ta' 6.10% u 5.6% rispettivament. Dawn il-figuri huma wkoll evidenza li r-rata tal-bonus kienet naqset, iżda meta mistoqsi dwar dan, l-Ilmentatur stqarr li '... ***dawn ma ndunajtx bihom.***¹⁹

L-Ilmentatur xehed ukoll li:

'Ngħid li hawn, fuq il-karta, Degiorgio għamlilna roughly il-Flexi Plan. Dik il-karta li tana u li spjegalna. Dik l-ewwel waħda meta ġie d-dar ...²⁰

Dan b'referenza għal dokument,²¹li ġie anke ppreżentat lill-Arbitru, fejn jinkludi kitba bl-idejn tar-rappreżentant tal-Fornitur tas-Servizz. Dan tal-aħħar xehed li:

¹⁷ P. 92

¹⁸ P. 20

¹⁹ P. 86

²⁰ P. 85

²¹ P. 88

'Ngħid li appart i-quotation formali li kont nispicċċa biha d-diskussjoni mal-klijenti, kont naqbad biċċa karta (li jekk m'inix sejjer żball hija pprezentata ma' wieħed mid-dokumenti u hemm il-kitba tiegħi) u kont nispjega.'²²

Dan id-dokument jinkludi, fost oħra, referenza għar-Reversionary Bonus u kemm dan kien iddikjarat fis-snin preċedenti, fejn partikolarment jinkludi li għal perjodu ta' ħames snin, jiġifieri bejn is-sena 1994 u s-sena 1998, ir-rata applikabbi kienet dik ta' 6.75%, liema rata telgħet għal 7% fis-sena 1999, u niżlet għal 5.75%, 4.75%, u 3.75% fis-snini 2000, 2001, u 2002 rispettivament.

Hawn I-Arbitru jikkonkludi li din hija evidenza čara oħra li fil-mument li l-polza in kwistjoni ġiet mibjugħha lilhom, huma kienu f'pożizzjoni li jifhmu li l-figura li huma kienu ser ikunu intitolati għaliha mal-maturitā setgħet tvarja minħabba li din hija dipendenti fuq ir-rata tar-Reversionary Bonus li evidentement kienet naqset tul iż-żmien.

Tikkunsidra din l-evidenza, flimkien mal-fatt li din kienet it-tielet polza li l-Ilmentatur u martu kienu qed jagħmlu mal-Fornitur tas-Servizz, I-Arbitru jsibha diffiċċi jifhem li l-Ilmentatur u martu kien mingħalihom li din kienet sempliċiment polza fejn iħallsu l-premium dovut minnhom u, eventwalment, jirċievu l-ogħla somma kkwotata.

Il-qligħ li l-Ilmentatur u martu għamlu minn din il-polza ma kienx wieħed sodisfaċenti għalihom u għaldaqstant wieħed jifhem ir-raġuni għalfejn sar dan l-Ilment.

Fl-Ilment orīginarjament sottomess, l-Ilmentatur indika li kieku kien jaf li r-ritorn kien ser ikun daqstant baxx, kien jagħżel li ma jinvestix flusu b'dan il-mod. Minkejja li għamel referenza għall-fatt li kieku kien jinvesti f'poloz oħrajn maħruġa minn fornitur tas-servizzi differenti, l-Ilmentatur naqas milli jippreżenta xi tip ta' prova li minħabba li huwa ddeċieda li jieħu l-polza offruta a baži tal-informazzjoni mogħtija, huwa ġarrab xi tip ta' *opportunity loss*.

Barra minn hekk, sabiex jinvesti flusu fil-proprietà, dan kien jirrikjedi '*lump sum*' u mhux kontribut żgħir kull sena bħalma kien jagħmel f'din il-polza.

²² P. 93

Ta' min isemmi l-fatt li, f'kaži oħra simili, l-Arbitru kkritika lill-Fornitur tas-Servizz li kien joħroġ stima waħda fil-kwotazzjoni u dan, minkejja dak kollu li jkun iffirma l-Ilmentatur li l-istima ma kinitx garanzija, seta' nissel aspettattiva differenti f'moħħ l-Ilmentatur. B'hekk, l-Arbitru f'dawk il-kaži kien ta xi kumpens limitat għall-fatt li l-Fornitur tas-Servizz kien naqas meta ma tax stimi ibbażati fuq rati differenti, biex b'hekk il-klijent jifhem li fuq medda twila ta' snin xejn m'hu garantit u l-istimi jistgħu ivarjaw sew.²³

F'dan il-kaži, iżda, l-kwotazzjoni kienet ibbażata fuq tliet stimi ta' xenarji differenti, kienet tinkludi l-average rate fuq perjodu ta' snin u li din kienet naqset, filwaqt li l-klijent kellu wkoll f'idejh dokument li juri r-rati ta' *Reversionary Bonus* li kienew ġew applikati f'perjodu ta' snin partikolari, li juru wkoll li din l-istess rata kienet naqset tul is-snini.

Dan ifisser li l-Ilmentatur kellu bieżej jed informazzjoni u li għalhekk ma kellux inissel pretensjonijiet li bilfors ser jieħu l-ogħla stima minn dawk ikkwotati. Anzi, suppost kellu jifhem li l-fatt li ħargu diversi stimi fuq xenarji differenti, allura, xejn ma kien garantit, lanqas l-istima l-iktar baxxa.

Apparti minn dan, mhux ġust li l-Ilmentatur jgħid li kulma gawda minn din il-polza kien qligħi miżeru ta' €248. Il-polza, b'għażla tal-Ilmentatur, kien fiha kopertura fuq il-ħajja ta' Lm13,000 (kważi d-doppju tal-ogħla stima medjana fil-kwotazzjoni). Dan kien ukoll beneficiċju li ma jiġix b'xejn.

Deċiżjoni

Għar-ragunijiet hawn fuq spjegati, l-Arbitru jħoss li dan l-Ilment m'hux ekwu u raġonevoli, u mhux ser jiġi milquġħ.

Kull parti ġġorr l-ispejjeż tagħha.

**Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji**

²³ Dan anke ġara fir-rigward ta' żewġ każijiet (Każ ASF 004/2024 u Każ ASF 168/2024) li l-Ilmentatur innifsu, anke flimkien ma' martu, ressqu lill-Arbitru fis-sena 2024.

Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru

Dritt ta' Appell

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

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

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