

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 187/2024

AL

(‘l-Ilmentatriċi’)

vs

MAPFRE MSV Life p.l.c.

(C-15722)

(‘il-Fornitur tas-Servizz’)

Seduta tas-17 t’April 2025

L-Arbitru,

Wara li ra l-ilment magħmul kontra s-socjetà *MAPFRE MSV Life p.l.c.* (C-15722) dwar il-polza ta’ assikurazzjoni fuq il-ħajja (*Endowment With Profits*) bin-numru 51815 favur l-Ilmentatriċi.

Fis-sustanza tiegħu, l-ilment jittratta telf li l-Ilmentatriċi sofriet mill-polza ta’ assikurazzjoni fuq il-ħajja meta din immaturat b’ammont ferm inqas minn dak li hija tallega li kien imwiegħed lilha mill-istess Fornitur tas-Servizz.

L-Ilment¹

Fl-ilment tagħha, l-Ilmentatriċi ppremettiet u ssottomettiet is-segwenti:

1. Illi l-polza ta’ assikurazzjoni fuq il-ħajja mmaturat fil-valur ta’ €30,600.

¹ Formola tal-Ilment minn paġna (p.) 1 - 5, b’dokumentazzjoni addizzjonali minn P. 6 - P. 68

2. Illi originarjament meta kienet xtrat il-polza f'Awwissu tal-1999, il-ftehim kien li, meta timmatura l-polza, hi ser tircievi s-somma ta' Lm30,678 (€71,460).
3. Illi b'hekk, hija dizappuntata għaliex il-Fornitur tas-Servizz ma żammx kelmtu.

Rimedju mitlub

Għaldaqstant, l-Ilmentatrici qiegħda titlob li tingħata s-somma ta' €71,460, liema somma kienet għet imwiegħda lilha originarjament.

Ra t-tweġiba tal-Fornitur tas-Servizz²

“Reply of MAPFRE MSV Life p.l.c. in terms of Chapter 555 of the Laws of Malta

1. *MAPFRE MSV Life plc (“MMSV”) refers to the allegation made by the complainant that the maturity value of the Policy in question numbered 51815 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 complainant EUR71,460*

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. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotations that were presented by the complainant together with this complaint (a handwritten copy is presented as fol. 12 and a printed copy is presented as fol. 13). Therefore, none of the figures which were indicated in the quotation as “estimated” could be said to have been guaranteed.*

² P. 74 - P. 84

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.

*The Important Notes attached to the quotation, marked as DOC. MSV 1, states 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.**” At the time, the bonus rate was much higher than it is today, with a rate of 7% in 1999 which started to decrease as from 2000 onwards with minor fluctuations throughout. 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.

4. *The Important Notes (DOC. MSV 1) 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 annual Reversionary Bonuses declared from time to time ... The rates of Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured.”*

Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so.

Therefore, the amounts that were indicated in the quotations as “Estimated Maturity Value including Reversionary Bonus” were not guaranteed because one needed to wait 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 her 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.

5. *With regards to the “Terminal Bonus”, the same document showing the Important Notes also explains that **“Depending on its profits 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... 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 quotations (fol. 12 and fol.13) as “Estimated Maturity Value including Reversionary and Terminal Bonuses” of LM30,678, was likewise not guaranteed since it was highly volatile.

6. *In fact, the Life Policy Schedule (presented in the complaint as fol.20) provides that “In respect of each premium paid, LM342.50 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 above-mentioned notes 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.*
7. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.20) was the sum assured of LM7,714 and no amounts containing the word ‘Estimate’ were mentioned in 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 bonuses were never guaranteed.*
8. *The notes that formed part of the quotation (DOC. MSV 1) also provided that “Whilst the purpose of these notes is to **guide** policyholders and prospective policyholders, the **conditions applying to all the benefits provided by 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.

9. It is to be noted that the Assured in fact signed at the bottom of the Life Assurance Quotation (fol.12) and hence confirmed that:

“I/We 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.”

10. In addition, MMSV has observed what is contained in the Product Information Document (DOC. MSV 2 and 3) that **“The policy, on death or maturity, will pay out the basic Sum Assured or the Policy Account whichever is the greater”** since the maturity value is the Policy Account value, as it is greater than the sum assured.

11. Furthermore, the complainant also signed the second page of the above-mentioned Product Information Document declaring to have received and understood a copy of the document, a quotation showing the estimated cash surrender values and estimated maturity values, and the statutory notice where applicable. The document stated the below:

*“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 the ten full years’ premium;*

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

- **The rate of bonus earned will depend upon the performances 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 the past performances are not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed."**

12. 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, what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation provided by the Company.

Notwithstanding, the complainant is merely basing her 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 her and every year thereafter as shall be explained hereunder.

13. 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.

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.

14. *Notwithstanding the fact that the maturity value could not be equivalent to 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 EUR10,655.55 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 3.15% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.71%.*
15. *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 her return.*
16. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of her Policy, how the 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 her, on a yearly basis, a Policy Account 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 Policy Account statements are attached with the complaint and marked Fol.37-60).*

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.

- 17. In addition, the complainant was also provided with an Illustrative Maturity Value letter in 2011 (Doc. MSV 4 and 5), which is 12 years into the Policy term. The letter shows three different Illustrative Maturity Values including Reversionary Bonuses of €29,603, €31,167 and €32,817 and Illustrative Maturity Values including Reversionary Bonuses and Final Bonuses of €29,603, €32,725 and €36,098 based on three different assumed bonus rates of 3%, 3.5% and 4% respectively. When comparing the letter to the quotation (fol. 13), it can be noted that the estimated maturity values decreased substantially, which confirms that the Company provides estimates based on the financial conditions at the time.*

In fact, the letter states that the investment returns can go up as well as down and therefore past performance is not necessarily a guide to the future, whilst also noting that the assumed bonus rates are not guaranteed. By being provided with the letter in addition to the annual Policy Account Statements, the complainant was aware of the performance of the Policy, and cannot rely solely on the estimates given prior to commencement of the Policy.

- 18. Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover during the duration of the Policy. This amount was guaranteed to be paid upon death, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol. 20) with an amount of LM7,714.*

Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR19,945.25 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 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 EUR10,655.55 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 also provided cover on the complainant's life.

19. *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.*

20. *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 Maturity Notification Letter issued one month in advance of the maturity date (fol. 62) states that*

'The Maturity Value shown here 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.'

This implies that 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.

21. *The word "**agreed**" in the comment made by the complainant in the online complaint (fol. 3) stating that 'I am asking for the full amount that we **agreed** in 1999, that is €71.460' has no basis, since the complainant signed the quotation (as used and understood by the normal meaning of the word) showing estimated values and not an agreement showing a promised maturity value.*

*On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion. This is because, the Company aims to provide policyholders with **some protection from fluctuations in the investment markets by smoothing** bonus rates from year to year.*

This implies that unlike what happens with other volatile investments, smoothing ensures that in periods of low investment returns, MMSV may still be able to declare a positive Reversionary Bonus Rate.

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, ta' nhar il-11 ta' Frar 2025, dehret l-Ilmentatriċi u ssottomettiet:

“Ngħid li ħamsa u għoxrin sena ilu għamilt din l-insurance. Ngħid li dak iż-żmien, Anthony Caruana, kien tani ammont u issa offrewli n-nofs tagħha kwazi.

Ngħid li għalhekk qed nitlob bħala rimedju xi ħaġa iżjed minn dak li offrewli.

Ngħid li t-talba tiegħi hi li ningħata s-somma ta' €71,460.

Ngħid li dak iż-żmien kien hemm persuna li għamlet din il-polza, u r-rappreżentant kien staqsa lili u lir-raġel t'oħti nithajjru nagħmluha u konna ftiehemna miegħu biex jiġi d-dar tagħna.

Ngħid li darba kien ġie d-dar fejn spjegahelna u ffirmajna kollox. Ngħid li kien ġab kollox miegħu dakinhar u kkonkludejna dakinhar stess. Ngħid li dan il meeting ma damx aktar minn siegħa żgur.

Ngħid li dak iż-żmien li għamilt il-polza kont naħdem bħala operator f'kumpanija.

Ngħid li kont spicċajt l-iskola sekondarja u kont nifhem bl-Ingliż.”³

Taħt kontroezami, l-Ilmentatriċi wiegħbet:

“Mistoqsija nikkonferma jekk niftakarx dak kollu li spjegali r-rappreżentant meta ġie għandi biex ibiegħeli l-polza, ngħid li hu kitibli kollox black on white. Hu kien qalli, ‘Agħmilha għal ħamsa u għoxrin sena ħalli tkun qrib il-pensjoni.’ Dak li spjegali, u qalli l-ammont li kont ser nieħu.

Mistoqsija jekk spjegalix il-karti li tani, ngħid li, le. Dan li spjegali: li ser nagħmlu din il-polza (jien għamiltha ftit aktar mir-raġel t’oħti), fejn inħallas Lm350 fis-sena, u li wara ħamsa u għoxrin sena nieħu dak l-ammont. Hu kien qalli biex nagħmilha għal ħamsa u għoxrin sena biex inkun viċin il-pensjoni; u jien tħajjart li nagħmilha għax kelli l-ġenituri kbar u għidt jekk jiġu biex jikbru u jien ma nkunx nista’ nkompli naħdem, għax jiena xebba, nieqaf mix-xogħol għax ma xtaqtx nibgħathom ġo home; xtaq li nzommhom id-dar. U għidt jekk jinqala’ xi ħaġa, serraħt rasi fuq il-polza.

U hekk ġara għax kelli nieqaf wara għaxar snin għax it-tnejn ġew bedridden. Missieri u ommi kienu żżewġu kbar u dan tistenna meta jkunu kbar. Imbagħad, meta ġejt issa għall-final tagħha, wara dawn il-ħamsa u għoxrin sena li għaddew, ma offrewlix is-somma li aħna ftiehemna.

Mistoqsi jekk fl-ispjega semmilix li għandi somma garantita bħala Life Cover, ngħid li, iva, dik semmihieli u kien semmieli xi funeral jekk jinqala’ xi ħaġa. Ngħid li tal-bonuses, dak li tieħu matul is-sena, bejn sena u oħra, u imgħaxijiet kien spjegalna imma ma spjegalna xejn iżjed. Dawk li niftakar. Qed niġi referuta għall-Quotation li ppreżentajt mal-ilment (paġna 12 tal proċess) u nikkonferma li hemm il-firma tiegħi u li kien tahieli waqt il-laqgħa.

Qed jingħad li fuq wara ta’ din il-Quotation, hemm l-Important Notes (li ġew ippreżentati mar-risposta tal-fornitur tas-servizz – Doc MSV 1) u l-Product Information (Dok. MSV2 mar-risposta) fejn hemm il-firma tiegħi.

Mistoqsija nikkonferma li dawn id-dokumenti tahomli u spjegahomli waqt il laqgħa, ngħid li, iva, tahomli waqt il-laqgħa.

³ P. 85.

Qed jingħad li minkejja li qed ngħid li r-rappreżentant qalli li ser nieħu din is-somma, meta naqraw il-quotation hemm miktub:

'The quotation provided is for illustration only and does not confer any rights.

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.'

Qed jingħad li jekk tħares lejn il-Product Information hemm li l-andament tal-polza jista' jitla' u jinżel jgħifieri dak l-ammont li hemm fl-istima mhuwiex imwiegħed. U, barra minn hekk, anke t-Terminal Bonus, li huwa l-ammont li qed ngħid li kien imwiegħed, jgħid li:

***'A Terminal Bonus ... may be reduced or even withdrawn altogether.'* (paġna 80 tal-proċess)**

Mistoqsija kif qed ngħid li dak l-ammont għie mwiegħed lili meta d-dokumenti li ffirmajt jien m'hemmx hekk, anzi hemm bil-kontra, li dawn mhumiex garantiti għaliex jistgħu ivarjaw ir-rati tal-kumpanija, ngħid li jien hekk daħħaltha f'moħħi.

Mistoqsija qrajtx id-dokumenti meta ffirmajt, ngħid li ma niftakarx, jista' jkun insejt.

Mistoqsija meta għamilt din il-polza ridtx nagħmel investment riskjuż jew ridtx inġemma'; mistoqsija jekk kontx lesta li nitlef il-kapital, ngħid li l-kapital qatt ma kien ser jintilef. Ngħid li ridt inġemma' għal li jista' jinqala', kif għidt fil-bidu, jekk ikolli bżonn li nieqaf mix-xogħol u naqa' fuq dawn."⁴

L-Arbitru għamel referenza għal ittra (p. 83 tal-proċess) mibgħuta lill-Ilmentatriċi mill-Fornitur tas-Servizz fit-22 t'Awwissu 2011, jgħifieri f'nofs triq tal-polza, fejn fiha jidher li l-Ilmentatriċi b'xi mod kienet talbet li jispjegawha jekk kinitx ser tieħu l-ammonti li kienu indikati fil-bidu u, hemmhekk, ingħatawha tliet xenarji ta' *Revised Illustrative Maturity Values* fid-data tal-maturità tal-polza li jvarjaw

⁴ P. 86 - P. 87

minn €29,603.00 sa €36,098. Meta l-Arbitru staqsiha jekk tafx b'din l-ittra, l-Ilmentatriċi wiegħbet: “... **iva, kont irċevejtha din l-ittra.**”⁵

Meta mistoqsija mill-Arbitru dwar x'fehmet minnha din l-ittra, fejn fl-2011 qed jingħad lilha b'mod ċar li meta tagħlaq din il-polza, minħabba li nbidlu l-affarijiet, ma kinitx ser tiegħu l-ammont li kien ġie spjegat lilha fil-bidu, hi qalet li, “... **ma naħsibx li fhimt.**”⁶

Fit-tieni seduta, ta' nhar l-24 ta' Marzu 2025, deher is-Sur Victor Farrugia f'isem il-Fornitur tas-Servizz, fejn dan informa⁷ lill-Arbitru li ppruvaw itellgħu jixhed lir-rappreżentant li biegh il-polza lill-Ilmentatriċi, iżda, sabu li qiegħed f'*home* u mhux f'pożizzjoni li jitla' jixhed.

Ir-rappreżentanti tal-Fornitur tas-Servizz iddikjaraw li m'għandhomx aktar provi xi jzidu mar-risposta tagħhom għall-ilment, li ttieħdet bħala l-*affidavit* tas-Sur Victor Farrugia, ħlief li jibagħtu kopja tal-*Statutory Notice* li ma ġietx ippreżentata fil-każ.

Hawn l-Arbitru ta l-opportunità liż-żewġ partijiet biex jekk iridu jagħmlu s-sottomissjonijiet finali tagħhom. L-Ilmentatriċi iddikjarat⁸ li m'għandhiex aktar xi żżid u tixtieq toqgħod fuq ix-xhieda li tat fl-aħħar seduta, filwaqt li l-Fornitur tas-Servizz stqarr li:

“Huwa allegat mill-Ilmentatriċi li l-MSV wegħdet il-ħlas tal-Estimated Maturity Value including Reversionary and Terminal Bonus minflok dak li hu indikat bħala l-Maturity Value.

L-MSV qed tikkontesta dan għaliex fil-polza huwa ċar li l-wegħda kienet ‘the greater of either the Basic Sum Assured or the Policy Account, if any, and all the specified additional benefits, if any.’

Fil-fatt, il-Policy Account eċċeda l-valur tas-Sum Assured, allura, l-MSV kienet disposta li tħallas il-Policy Account.

⁵ P. 87

⁶ *Ibid.*

⁷ P. 88

⁸ *Ibid.*

Barra minn hekk, meta wieħed iħares lejn id-dokumenti li ngħataw lis-Sinjura, speċjalment il-Quotation (p. 12 u 13), jiddistingwu b'mod ċar is-Sum Assured li kien garantit u l-Maturity Value li kien stima.

Ovvjament, hawnhekk juri li ma hemm l-ebda opportunità ta' garanzija. U kienet informata b'dan kollu permezz tal-Quotation, l-Important Notes (Doc. MSV1), il-Product Information (Doc. MSV2 u MSV3) u l-Bonus Statements.

Barra minn hekk, għandna xi punti fuq ix-xhieda li ngħatat mis-Sinjura waqt dawn is-seduti li kellna.

L-Ilmentatriċi, waqt il-kontroezami, giet mistoqsija tikkonferma tiftakarx dak kollu li spjegalha r-rappreżentant waqt il-laqgħa u hi qalet: 'Hu kitibli kollox black on white.'

Allura, dan juri ċar li s-Sinjura stess qed tistrieħ fuq dak li hemm fid-dokumenti mogħtija lilha mir-rappreżentant. Izda, minkejja dan, is-Sinjura xorta qed tippretendi l-ammont tal-€71,000 li huwa l-Estimated Maturity Value including Reversionary and Terminal Bonus.

Barra minn hekk, hemm xi inkonsistenzi oħra fix-xhieda tagħha.

L-Ilmentatriċi l-ewwel qalet li r-rappreżentant spjegalha biss it-terminu tal-polza u l-allegat ammont li kienet ser tieħu fl-aħħar tat-terminu filwaqt li wara kkonfermat li milli tiftakar spjegalha wkoll dwar il-bonuses differenti kif ukoll dwar l-imgħaxijiet. Allura, hawn kontradizzjoni ċara għax jew spjegalek fuq it-terminu jew inkella spjega fuq il-bonuses u, allura, dan juri li wara ħamsa u għoxrin sena jista' jkun li affettwa l-memorja li ma tkunx daqshekk konsistenti fuq dak li ġara dakinhar.

Fir-rigward tad-dokumenti li ngħataw – il-Quotation, l-Important Notes u l-Product Information – meta s-Sinjura giet mistoqsija dwarhom waqt il-laqgħa, u jekk kinitx qrahom, qalet, 'Ma niftakarx, jista' jkun insejt.' Dan jerġa' juri li l-memorja tas-Sinjura tnaqqas l-affidabilità tax-xhieda tagħha waqt dawn is-seduti.

Barra minn hekk, hija qalet li lestiet l-iSkola Sekondarja u kienet tifhem bl-Ingliż u, għalhekk, kienet negligenza da parti tagħha li kellha fehma biżżejjed li taf taqra din id-dokumentazzjoni li hija ħadet dak l-ammont bħala garantit. U

kellha kull opportunità li tistaqsi lill-MSV jekk ma qabltx ma' dak li qrat permezz tal-ħmistax-il ġurnata cooling-off period li hu fid-dokument tal-iStatutory Notice li ser jiġi pprezentat, u wkoll fil-Product Information hemm ukoll li hemm il ħmistax-il ġurnata cooling off period li diġà huwa pprezentat.

L-aħħar punt fuq il-kontroezami tax-xhieda tas-Sinjura, hija ġiet mistoqsija kif qed tallega li l-ammont ta' €71,460 ġie mwiegħed lilha meta d-dokumenti li ngħatat jgħidu l-kontra u hi qalet, 'Jien hekk daħħaltha f'moħħi.'

Allura, din mhix bazi raġonevoli fuq iex wieħed jista' jibni aspettattiva legittima; u kienet il-perċezzjoni tagħha li daħħlet din iċ-ċifra f'moħħha. U ċara li ma kinitx wegħda li ħarġet mill-MSV.

Barra minn hekk, is-Sinjura ma ġabet l-ebda prova li dak iż-żmien kellha opportunity loss u, fil-fatt, fix-xhieda tagħha qalet li kienet konxja li l-kapital ma kienx ser jintilef u li hi riedet iġġemma' għal li jista' jinqala', allura, ma kien hemm l-ebda telf ta' opportunità f'investimenti oħrajn.

L-aħħar punt huwa li s-Sinjura kienet tirċievi l-Bonus Statements u wkoll ir Revised Illustrative Maturity Document (anness mar-risposta bħala Doc. MSV4 u MSV5) u b'hekk kienet ilha tnax-il sena qabel il-maturità tal-polza li l-Ilmentatrici kienet diġà ingħatat indikazzjoni ċara mill-MSV li abbażi tal-andament tad-dinja tal-investimenti hi qatt ma seta' jkollha l-aspettattiva li fl-aħħar tal-polza kienet ser tirċievi €71,460.

Għalhekk, l-MSV tiċhad din l-allegazzjoni u li ma kien hemm l-ebda aspettattiva li tieħu dak li qed jiġi allegat mis-Sinjura.”⁹

Sema' lill-partijiet

Ra l-atti kollha tal-każ

Jikkunsidra:

⁹ P. 89 – P. 90

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.¹⁰

Il-punt kruċjali f'dan l-ilment jitratta l-allegat informazzjoni mogħtija lill-Ilmentatriċi fil-mument li l-polza ġiet mibjugħa lilha, u dan fir-rigward tal-ammont li hi kellha tirċievi mal-maturità, li iżda li attwalment immaturat il-polza, ġiet offruta ammont ferm inqas.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-Ilmentatriċi u x'eventwalment ġie mogħti jew offrut lilha mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *'l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaž-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'idejh il-verżjoni tal-Ilmentatriċi minħabba li r-rappreżentant tal-Fornitur tas-Servizz li biegh din l-istess polza, illum huwa residenti f'*home* u mhuwiex f'pożizzjoni li jitla' jixhed.

Għalhekk dan il-każ jippreżenta ċirkostanzi ta' żbilanċ li ma jippermettux lill-Arbitru jkollu l-verżjoni tar-rappreżentant li kien preżenti fil-mument tal-bejgħ u, għalhekk, l-Arbitru sema' biss qanpiena waħda. Minħabba f'hekk, huwa aktar diffiċli għall-Arbitru sabiex jasal għal konklużjoni jekk dan kienx każ ta' *mis-selling* min-naħa tar-rappreżentant tal-Fornitur tas-Servizz jew xi forma ta' memorja selettiva min-naħa tal-Ilmentatriċi li tiftakar biss dak li trid.

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

Fl-ilment oriġinarjament sottomess, l-Ilmentatriċi indikat li lura għas-sena 1999, kien sar ftehim bejnha u l-Fornitur tas-Servizz li meta timmatura l-polza, hi kellha tiegħu s-somma ta' Lm30,678. Eventwalment, xehdet¹² kif meta r-rappreżentant

¹⁰ Kap. 555, Artiklu 19(3)(b)

¹¹ Kap. 555, Artiklu 19(3)(c)

¹² P. 85

tal-istess Fornitur tas-Servizz kien mar id-dar tagħha, kien spjegalha kollox u ffirmat id-dokumenti li kien ħa miegħu dakinhar stess u b'hekk gie konkluz il-kuntratt.

L-Ilmentatriċi saħqet li dak iż-żmien, ir-rappreżentant kien qalilha biex tagħmel il-polza għal ħamsa u għoxrin sena ħalli l-maturità tkun qrib l-età tal-pensjoni. Qalet li kien kitbilha kollox *black on White*; u tenniet li dak kien kollox li kien spjegalha filwaqt li qalilha l-ammont li kienet ser tieġu. Meta mistoqsija dwar jekk id-dokumenti mogħtija kinux fil-fatt ġew spjegati lilha, hi irrispondiet fin-negattiv, filwaqt li insistiet li:

“Dan li spjegali: li ser nagħmlu din il-polza [...], fejn inħallas Lm350 fis-sena, u li wara ħamsa u għoxrin sena nieġu dak l-ammont.”¹³

Iżda, l-Arbitru jinnotta li, minkejja l-Ilmentatriċi insistiet li l-unika spjegazzjoni li kienet ġiet mogħtija lilha, kienet biss dwar l-ammont li kienet ser tħallas bħala *premium* annwali, u l-ammont li eventwalment kellu jingħatalha mal-maturità, fil-kontroezami, stqarret mod ieħor. Hi xehdet li:

“Mistoqsi jekk fl-ispjega semmilix li għandi somma garantita bħala Life Cover, ngħid li, iva, dik semmihieli u kien semmieli xi funeral jekk jinqala’ xi ħaġa.

Ngħid li tal-bonuses, dak li tieġu matul is-sena, bejn sena u oħra, u imgħaxijiet kien spjegalna imma ma spjegalna xejn iżjed. Dawk li niftakar.”¹⁴

Dan għalhekk ifisser li, minn stqarrija li l-ispjega mogħtija lilha kienet sempliċiment restritta għall-ammont li kellha tħallas u dak li imbagħad tieġu, issa l-Ilmentatriċi ammettiet li ġew anke spjegati lilha karatteristiċi oħrajn, bħall-kopertura fuq il-ħajja, *bonuses* annwali u anke spejjeż tal-funeral.

Barra minn hekk, meta mistoqsija dwar il-*Quotation*, l-*Important Notes*, u l-*Product Information*, liema dokumenti ġew anke iffirmati minnha stess, l-Ilmentatriċi stqarret li:

‘Mistoqsija nikkonferma li dawn id-dokumenti tahomli u spjegahomli waqt il-laqgħa, ngħid li iva, tahomli waqt il-laqgħa.’¹⁵

¹³ P. 86

¹⁴ *Ibid.*

¹⁵ *Ibid.*

La hi stess ikkonfermat li dawn id-dokumenti ġew mogħtija lilha waqt il-laqgħa li hi kellha mar-rappreżentant tal-Fornitur tas-Servizz, u kif intqal aktar kmieni, hi qalet li f'din l-istess laqgħa kienet saret l-ispjegazzjoni tal-polza, allura, jiġi konkluz li dawn id-dokumenti kienu fil-fatt parti mill-ispjega mogħtija lilha.

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-Ilmentatriċi fehmet dak li riedet tifhem u ma kinitx insidjuża biżżejjed biex tagħti importanza anke l-aspetti mhux garantiti tal-*quotation*, avolja dawn ġew spjegati.

Fl-istess waqt, l-Arbitru ma jistax ma jinnotax li l-ispjegazzjoni addizzjonali dwar il-mod kif taħdem il-polza, partikolarment dwar il-*bonuses* u kif dawn jiġu allokat, ġiet fil-fatt mogħtija lill-Ilmentatriċi fid-diversi dokumenti li l-Ilmentatriċi nnifisha kkonfermat li ġew mogħtija u spjegati lilha, partikolarment fid-dokumenti titolat '*Product Information*'.¹⁶

B'referenza għall-kontenut ta' dan l-istess dokument, meta mistoqsija dwar il-fatt kif hi qed tallega li l-ammont dovut mal-maturità ġie mwiegħed lilha, meta fil-fatt fid-dokumenti iffirmati minnha stess jingħad bil-kontra minħabba li r-rati tal-kumpanija jistgħu ivarjaw, l-Ilmentatriċi stqarret li '*... jien hekk daħħaltha f'moħħi*'.¹⁷

L-Arbitru jinnota wkoll id-diversi verżjonijiet mogħtija mill-Ilmentatriċi f'dan ir-rigward u, għaldaqstant, jikkonkludi li hija kienet fil-fatt konxja tal-mod kif taħdem il-polza offruta lilha, jiġifieri, li din tinkludi l-element ta' kopertura fuq il-ħajja, l-ispejjeż tal-funeral, ir-rati tal-*bonus* li jiġu applikati kull sena u, fuq kollox, kienet ukoll konxja tal-garanzija fuq il-kapital, u dan meta qalet:

'Mistoqsija meta għamilt din il-polza ridtx nagħmel investment riskjuż jew ridtx ingemma'; mistoqsija jekk kontx lesta li nitlef il-kapital, ngħid li l-kapital qatt ma kien ser jintilef.'¹⁸

¹⁶ P. 81 – P. 82

¹⁷ P. 87

¹⁸ *Ibid.*

Fuq kollox, il-fatt li, kif stqarret hi stess, ‘... *hekk daħħaltha f’moħħi ...*’ ma jiġġustifikax il-fatt li l-informazzjoni dwar il-mod kif taħdem il-polza ma ġiet mogħtija lilha, għax id-dikjarazzjonijiet tagħha stess juru mod ieħor. Ċertament li, a bażi tal-evidenza pprezentata, dan ma kienx każ fejn klient prospettiv kien sempliciment ser iħallas ammont partikolari fis-sena u mal-maturità, imbagħad, jieħu dak ikkwotat.

Barra minn hekk, l-Ilmentatrici, bħall kull klient ieħor, kellha *cooling off period* ta’ ġimagħtejn oħra wara li sar il-kuntratt tal-polza biex terġa’ taħsibha f’każ li ma kinitx konvinta minn dak li allegatament intqal lilha meta ikkomparat mad-dokumenti pprezentati, spjegati, u iffirmati.

Biex tintlaħaq il-figura kkwotata jrid isir ‘*compounding*’ b’rata għolja li għalkemm kienet fattibbli fis-sena ta’ qabel is-sena 1999, ma kinitx xi haġa li setgħet tiġi sostnuta u garantita għal 25 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 25 sena speċjalment peress li l-kontribuzzjonijiet tagħhom kienu mifruxa fuq 25 sena u mhux xi ‘*lump sum investment*’ li tista’ tiġi investita mill-ewwel biex torbot ir-rati tal-imgħax għal żmien twil. Dan appartli li dak iż-żmien, *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

Min-naħa l-oħra, l-Arbitru jhoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta’ kwotazzjonijiet maħduma b’rati differenti għax fuq perjodu ta’ 25 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 25 sena.

Barra minn hekk, meta tingħata stima għal affarijiet li jseħħu fi żmien qasir huwa raġonevoli li wieħed jistenna li l-varjazzjoni tar-realtà mill-istima tkun żgħira. Iżda stima għal żmien 25 sena ma tistax raġonevolment tistenna li l-varjazzjoni tkun żgħira, għax 25 sena huwa żmien twil u kollox jaf jinbidel, u ma hawn ħadd li jista’ jbassar x’ser jiġri mill-investimenti fi żmien daqstant twil.

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-Ilmentatriċi, sal-limitu ta' fejn kienu legittimi, ma ġewx milfuqa. L-aspettattivi tagħha kienu li mal-maturità tal-polza kienet ser tirċievi s-somma ta' €71,460 (l-ekwivalenti ta' Lm30,678), li iżda fid-data tal-maturità, ġiet offruta ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatriċi 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 minhabba li hemm diversi fatturi li jridu jiġu ikkonsidrati.

Minkejja li l-Ilmentatriċi ma ġietx offruta l-ammont allegatament imwiegħed lilha, hi naqset milli tipprezenta xi tip ta' prova li minhabba li hi ddeċidiet li tiegħu l-polza offruta a bażi tal-informazzjoni mogħtija lilha, hi garrbet 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, fattur li l-Ilmentatriċi kienet konxja tiegħu, hi kellha ċ-ċans li tikkontribwixxi għat-tfaddil permezz ta' din l-istess polza u dan billi tħallas ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ. Fil-fatt, l-Ilmentatriċi innifisha iddikjarat li '*... ridt inġemma' għal li jista' jinqala' ...*'¹⁹ u, għaldaqstant, din il-polza serviet għal dan il-għan.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' ftit inqas minn erbgħa fil-mija²⁰ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħazin u, għalhekk, dan għandu wkoll jiġi ikkonsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit. Anke kellha l-benefiċċju ta' kopertura fuq ħajjitha li beda mill-ewwel ġurnata tal-polza.

¹⁹ p. 87

²⁰ p. 77

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentatriċi, u jiddeċiedi li s-somma xierqa li għandha tingħatalha bħala kumpens hija dik ta' **€4,590**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lill-MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatriċi s-somma ta' erbat elef, ħames mija u disgħin ewro (€4,590) b'żieda mas-somma diġà offruta, cioè mas-somma ta' €30,600.80²¹u, għalhekk, tħallasha s-somma kumplessiva ta' €35,190.80.

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' 2.65% fis-sena mill-iskadenza tal-ħamest ijiem sad-data tal-ħlas effettiv.

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

²¹ P. 8

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-Deciżjoni skont l-artikolu msemmi.

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

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 (f'dan il-kaz 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.