

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 191/2024

OP u TP

(‘l-Ilmentaturi’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta tas-7 ta’ Marzu 2025

L-Arbitru,

Wara li ra l-ilment magħmul kontra s-soċjetà *MAPFRE MSV Life p.l.c.* (C-15722) dwar il-polza t’assikurazzjoni fuq il-ħajja (*Joint Endowment Assurance with Profits including Funeral Expenses Benefit*) bin-numru 51488N favur l-Ilmentaturi.

Fis-sustanza tiegħu, l-ilment jikkonċerna t-telf li l-Ilmentaturi jgħidu li sofrew fil-polza t’assikurazzjoni fuq il-ħajja meta din immaturat b’ammont ferm inqas minn dak li huma jallegaw li ġew imwiegħda mill-istess Fornitur tas-Servizz.

*L-Ilment*¹

Fl-ilment tagħhom, l-Ilmentaturi ppremettew u ssottomettew is-segwenti:

1. Illi l-polza t’assikurazzjoni tal-ħajja f’isem l-Ilmentaturi bdiet fl-1 t’Awwissu 2000,² għal perjodu ta’ ħamsa u għoxrin sena, u mmaturat wara fit-13 t’Awwissu 2024.

¹ Formola tal-Ilment minn paġna (p.) 1 - 5, bid-dokumentazzjoni addizzjonali minn p. 6 - 149

² Skont *Policy Schedule* (p. 61) il-polza bdiet fit-13 t’Awwissu 1999.

2. Illi l-polza mmaturat f'valur ta' €45,382.92 li huwa ferm inqas mill-€105,464.71 (Lm 45,276),³ liema ammont kien imnizzel fuq l-istima li kienu ngħataw fil-mument tal-bejgħ.
3. Illi d-differenza ta' €60,081.79 f'dawn l-ammonti referuti mhijiex aċċettabbli għall-Ilmentaturi.

Rimedju mitlub

Għaldaqstant, l-Ilmentaturi qegħdin jitolbu bħala rimedju l-ammont sħiħ li kien imnizzel fl-istima u, *cioè*, €105,464.71.

Ra t-twegiba tal-Fornitur tas-Servizz⁴

“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 complainants that the maturity value of the Policy in question numbered 51488 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 complainants. Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to pay the complainants EUR105,464.71.*

In this regard, MMSV is of the view that the claimants’ request is unfounded and therefore, the complainants are not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder.

2. *Firstly, the amount being requested by the complainants is based on estimates shown in the Increase Option Quotation which was provided to them one year into the Policy and is presented together with this complaint (fol.13), however, the complainants had also been provided*

³ P. 13 *Increase Option Quotation* datata 1 t’Awwissu 2000.

⁴ P. 154 - 162

with a Life Assurance Quotation at Policy application stage (marked as DOC. MSV 1). Therefore, none of the figures which were indicated in the quotations as "Estimated" could be said to have been guaranteed. It is also important to note that the Increase Option was exercised on the second premium payment due in the year 2000 and subsequently deactivated, with the premium remaining fixed at LM550 until policy maturity.

3. The estimated maturity values shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold.

The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.

The Important Notes attached to the quotation, presented as fol. 14, 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 (fol. 14) 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 complainants could have been certain how the value of the Policy Account of their 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 complainants.

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 amounts being indicated in the quotations (fol. 13 and DOC. MSV 1) as 'Estimated Maturity Value including Reversionary and Terminal Bonuses' of LM41,467 and LM45,276 were likewise not guaranteed since they were highly volatile.

6. In fact, the Life Policy Schedule (presented in the complaint as fol.61) provides that 'In respect of each premium paid, LM462.95 shall be credited to the Policy Account which will be increased by the bonuses which **may** be declared by the Company from time to time.' This continues to support what was provided for in the 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. 61) was the sum assured of LM10,113 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 (fol. 14) 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 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 complainants 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. *In addition, MMSV has observed what is contained in the Product Information Document (fol. 53 and 54) 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.*
10. *Furthermore, the complainants 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.'***

11. *At the moment that the Policy was being sold, MMSV had provided the complainants 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 complainants are merely basing their claim on estimated maturity values without putting them in the context of all the documents provided to the complainants when the Policy was being sold to them and every year thereafter as shall be explained hereunder.

12. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainants until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders including the complainants. 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.

13. *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 complainants made a gain in the amount of EUR15,804.90 after deducting the investment premium that was paid by the complainants from the maturity value, and this represents a rate of return-on-investment premium amounting to 3.16% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.72%.

14. *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 complainants would have been otherwise obliged to pay taxes from their return.*
15. *During the term of the Policy, MMSV always kept the complainants informed about the value of the Policy Account of their 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*

complainants by MMSV by sending to them, 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 complainants, every year, a Media Release (copies of the Policy Account statements are attached with the complaint and marked fol. 70-149).

Therefore, the complainants were 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.

- 16. In addition, the complainants were also provided with an Illustrative Maturity Value letter in 2013 (Doc. MSV 2 and 3), which is 14 years into the Policy term. The letter shows three different Illustrative Maturity Values including Reversionary Bonuses of €45,314, €47,429 and €49,641 and Illustrative Maturity Values including Reversionary Bonuses and Final Bonuses of €45,314, €49,800 and €54,605 based on three different assumed bonus rates of 3%, 3.5% and 4% respectively. 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 complainants were aware of the performance of the Policy and cannot rely solely on the estimates that were calculated at the early stages of the Policy.

- 17. Furthermore, it must 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 of the life assured, in fact it is referred to as the 'Basic Sum Assured' on the Policy Schedule (fol.61) with an amount of LM10,113.

Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR29,578.02 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 complainants by an additional EUR15,804.90 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 complainants' life.

- 18. 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.*
- 19. 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. 15) 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 complainants 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.

20. *The word ‘quoted’ in the comment presented in the formal complaint (fol.3) stating that ‘The difference in amount of Euro 60,081.79 from the assurance maturity value quoted on signed quotation by provider dated 1st August 2000 and balance of the maturity value stated in letter dated 14/07/2024 is not deemed acceptable by complainant’ shows that the complainants are aware that the maturity values were quoted (as used and understood by the normal meaning of the word) and no values were promised to them. Even though the investment returns were decreasing, the Company always declared bonuses at its discretion. In fact, as stated in the Important Notes (fol. 14) ‘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. The Company aims to achieve a fair and equitable distribution of these investment returns and profits between different generations and types of with-profits policies. In addition, 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.***
21. *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 tat-3 ta’ Dicembru 2024, (‘l-llmentatur’) xehed li:

“Jien għamilt investiment flimkien mal-mara tiegħi fuq ammont ta’ €1,281.16. Sa l-inqas ċenteżmu. Għamilt investiment bl-ammont li ser jagħtuni, għandi l-karti b’kollox imniżżel.

Kull meta mmur inħallas pagament, nara li l-investiment ma telax kif suppost wara ħmistax-il sena. U kont ngħidilhom lill-kaxxiera li mhux qed jimxi kif suppost il-pagament. U kienu jgħiduli, ‘Fl-aħħar ser jizdiedlek dak l-ammont. Toħroġx għax titef.’ Kull sena meta mmur inħallas il-pagament kont ngħidilhom.

Kif wasal fl-aħħar u l-pagamenti baqgħu ma jizdiedux jien għamilt ħilti kollha u ridt inkellem lil xi ħadd, xi Senior Manager jew Manager, u tawni numru ta’ Mr Victor Farrugia, li qiegħed magħna llum. Ċempiltu biex nurih li jien m’inx sodisfatt għax mhux qed jitlegħu.

Kien fit-2 ta’ Dicembru 2021, fil-11.15 a.m., li ċempilt lil Mr Farrugia u qalli, ‘Sur OP, sal-aħħar daww jizdiedu, ara ma jfettillekx tnaqqas mill-pagament.’ Tajtkom id-data u l-ħin.

Jien l-ammont li tawni fuq ħamsa u għoxrin sena, kwart ta’ seklu, tawni kwazi 7,375-il wieħed għax il-polza qiegħda fuq it-tnejn u l-mara tiegħi nofshom.

Ngħid li meta għamilna l-ftehim, (fejn għandna kollox bil-miktub), il-ftehim kien ma’ Mr Louis Schembri fit-13 t’Awwissu 1999. Għandi l-quotation hawn, għal waħda sitt darbiet biex nara liema jaqbilna u għazilt din għal ħamsa u għoxrin sena u nħallas dak l-ammont ta’ €1,281.16, sa l-anqas ċenteżmu.

Ngħid li baqgħtu għalija biex niġbor il-flus u jiena ma ffirmajtx għax ma qbiltx ma’ dik is-somma għax ma kinitx is-somma li għandi fuq il-quotation. Ngħid li jiena investejt – issa kif għamlu biex investewhom f’idejhom issa.

Ngħid li jien kont mort l-uffiċċju, il-Head Office, il-Furjana. U kont għamilt appuntament mas-Sur Louis Schembri. Ngħid li darba kellna meeting mas-Sur Louis Schembri imma peress li darba, jiena businessman, u għidtlu li jien irrid li jgħidli b’kollox. U fil-fatt, beda jurini quotation waħda wara l-oħra. Għidtlu biex lili jgħidli ezatt, m’hemmx logħob; jien il-flus ma nsibhomx barra. U qalli, ‘Ara li tħallashom, ma toħroġx minnha, għax titef.’

Ngħid li dakinhar tana diversi quotations, morna d-dar, tkellimna bejnietna biex naraw il-budget tagħna kif inhu u, imbagħad, sar meeting ieħor meta ddeċidejna u morna biex niffirmaw il-karti.

Ngħid li l-meeting dam, domna nitkellmu, fuq sagħtejn żgur. Ngħid li kien tana diversi quotations.”⁵

L-Arbitru hawn ġibed l-attenzjoni tal-Ilmentaturi rigward il-fatt li huma ssottomettew *quotation* waħda biss u, għalhekk, talab li jingħata kopja tal-*quotations* l-oħra, liema *quotations* ġew eventwalment ipprezentati mill-Ilmentaturi.

L-Arbitru daħhal fl-inkartament *quotation* li kienet għal għoxrin sena bil-Lm250; *quotation* għal għoxrin sena bil-Lm500 u *quotation* għal ħamsa u għoxrin sena bil-Lm200. Dawn kienu t-tliet *quotations* li ma kinux ġew aċċettati. Hemm ukoll il-*quotation* li ġiet eventwalment aċċettata u li għalhekk jammontaw għal erba' kwotazzjonijiet.

Taħt kontroezami, l-Ilmentatur issottometta:

“Qed niġi referut għal Dok. MSV 1, il-Life Assurance Quotation, bid-data tat-13 t’Awwissu 1999, u qed niġi mitlub ngħid xi spjegali s-Sur Schembri, ngħid li spjegali li hemm investiment, hemm tant żmien, kemm tħallas bil-quddiem, u l importanti li ma toħroġhomx il-flus qabel ħamsa u għoxrin sena jekk niddeċiedu sa ħamsa u għoxrin sena.

Ngħid li għamilli quotations għal għoxrin sena, ta’ tant ammont, ta’ Lm200, ta’ Lm250. U għidtlu, ‘Mela issa niddeċiedi ħa nara l-budget tiegħi.’ Qalli, ‘Ara li tasal, ma toħroġhomx għax titef.’

U ffirmali wara li ddeċidejna u morna darb’oħra fuq l-ammont għal ħamsa u għoxrin sena. L-ewwel bdejtha b’Lm100 (għax qalli li nista’ nżidha) u bdejt ngħolli b’Lm50. Kellna l-option li ngħolluha. U jiena, ta’ businessman li jien, ikklikkja moħħi u għidt mela ħa nieqaf hawn żgur għax jiena l-budget tiegħi nafu żgur għax ma nagħmilx żewġ passi meta nista’ nagħmel pass. U ddeċidejna fuq dak l-ammont. Hu qalilna li l-importanti li nħalluhom sal-aħħar, biex ma noħroġhomx qabel għax fl-aħħar ser narawh ir-rizultat.

⁵ P. 163 - 164

Ergajt mistoqsi x'niftakar li spjegali s-Sur Schembri fuq il-figuri li hemm fuq il quotation, ngħid il-figura – li jien tajt ammont u l-ammont li ser nieħu.

Qed niġi mistoqsi xi spjegali s-Sur Schembri f'dawn is-sagħtejn fuq kull figura li hemm fuq il-quotation, u mistoqsi xi spjegali fuq il-figura ta' Lm10,113 li hi s-Sum Assured, ngħid li aħna bdejna nitkellmu li fl-aħħar ser jiġi dak l-ammont (l-Lm44,100) u kemm ser inħallas u tkellimna wkoll li jekk aċċidentalment immutu, jieħdu somma l-familjari.

Mistoqsi kemm hija din is-somma, ngħid ta' Lm30,000? Mistoqsi xi spjegalna dwar ir-Reversionary Bonus (fejn hemm figura ta' Lm30,000), ngħid li jien fuq din tal-aħħar, fuq l-ammont biss tkellimna, u fuq tal mewt.

Mistoqsi staqsejtx x'kienet dik il-figura ta' Lm30,000, ngħid li għaddew ħamsa u għoxrin sena, jiġifieri, ma nafux eżatt kelma b'kelma x'sar dakinhar. Fuq is-somma ta' Lm30,000 ma niftakarx għax aħna fuq is-somma tal-aħħar konna qed nitkellmu.

Qed jingħad li jiena qed nitlob l-ammont ta' €105,464. Qed niġi mistoqsi għalfejn qed nitlob dak l-ammont jekk id-dokumentazzjoni tgħid 'Estimated Maturity Value' u fejn hemm ukoll ċar fl-Important Notes (p. 14 tal-proċess) li l-quotations huma maħdumin skont ir-rata ta' dak iż-żmien li jistgħu jitolgħu u jinżlu.

Ngħid li l-pagamenti dejjem saru fil-ħin, fiż-żmien u kif suppost u ma nippretendix li f'ħamsa u għoxrin sena kulma ser nieħdu €15,000.

Mistoqsi x'kienet l-intenzjoni tagħna meta għamilna dan l-investment, jekk ridniex nagħmlu savings jew jekk konniex lesti li nitilfu l-flus, ngħid li le, ma ridniex nitilfu flus għax kieku ma kontx niffirma.”⁶

Il-Fornitur tas-Servizz ipprezenta l-Affidavit tas-Sur Victor Farrugia, li jokkupa l-kariga ta' Chief Operations Officer fi ħdan l-istess kumpanija, fejn essenzjalment ġew imtennija l-punti u l-argumenti li tqajmu permezz tar-risposta tal-istess Fornitur tas-Servizz.⁷

⁶ P. 164 – P. 165

⁷ P. 178 – P. 183

Fit-tieni u l-aħħar Seduta tat-8 ta' Jannar 2025, is-Sur Victor Farrugia ħalef bil-ġurament l-Affidavit li ġie ppreżentat.

Il-Fornitur tas-Servizz iddikjara li s-Sur Louis Schembri ilu erba' snin irtirat u jinsab marid. Peress li hu ma jiftakarx lill-Ilmentaturi, Dr Veronica Grixti, li qed tassisti lill-istess Fornitur tas-Servizz, talbet lill-Arbitru sabiex jistrieħ fuq ix-xhieda ġenerika mogħtija minn Louis Schembri, fir-rigward tal-mod kif kien jispjega l-prodott lill-konsumaturi meta kien ibieghilhom polza, f'Każ ASF 045/2023.

In vista ta' dan u tal-fatt li jekk jitla' jixhed, ix-xhieda tiegħu ser tkun waħda ġenerika, l-Arbitru hu tal-fehma li m'għandux għalfejn iħarrek lis-Sur Schembri biex jagħti x-xhieda tiegħu f'dan il-każ.⁸

Waqt din l-istess seduta, taħt kontroezami, is-Sur Farrugia xehed is-segwenti:

“Ngħid li jien ma kontx involut fil-bejgħ ta’ din il-polza u lanqas biss kont impjegat mal-kumpanija ħamsa u għoxrin sena ilu. Ngħid li għamilt l-affidavit a bazi tal informazzjoni li għandna fis-sistemi tagħna u fir-records tagħna.

Mistoqsi kemm ili naħdem mal-kumpanija MAPFRE, ngħid li mill-2002.

Mistoqsi jekk waqt li kont impjegat kellix xi komunikazzjoni mas-Sinjuri u jekk għandix xi dokumentazzjoni relatata ma’ dan, ngħid li le; jinħarġu diversi ittri lill klijenti b’mod ġeneriku imma komunikazzjoni mal-klijenti fuq din il-polza esklussivament qatt ma kelli.

Qed niġi referut għall-quotation li kienet inħarġet lis-Sinjuri f’Awwissu 1999 u mistoqsi nistax nispjega x’kienet tkun is-sistema addottata mis-salespersons ta’ MAPFRE meta wieħed jiltaqa’ mal-klijent u joffrilu biex ibiegħlu din il-polza, ngħid li tajjeb ngħidu (għax anke kont ser ngħaddi kumment) li Louis Schembri ma kienx salesperson, u dan il-bejgħ sar mill-uffiċċju. Louis Schembri kien impjegat tal-kumpanija, kellu rwol ieħor imma meta kienu jiġu l-klijenti – għax klijent jista’ jingħata l-formola, jimliha, jingħata d-dokumenti u jipprezentahomlna – imma min jiġi l-uffiċċju kien ikun hemm min jgħinu biex jispjegalu l-affarijiet, jiġifieri tajjeb li niċċaraw dak il-każ.

Mistoqsi nafx ma’ min iltaqa’ s-Sinjur, min bieghhielu u jekk forsi hemmx xi firma ta’ xi ħadd, ngħid li mir-records jidher li kien għin lill-klijent biex jimla l-

⁸ P. 184

karti kien Louis Schembri għalhekk id-diskussjoni kienet fuq Louis Schembri, però, ma kienx hemm intermedjarju fin-nofs.

Ngħid li Louis Schembri kien tah l-informazzjoni imma l-illustration hija dokument li tipprovdli l-kumpanija; illi Louis Schembri ikun ħa d-dettalji tas Sinjuri, poġġihom fis-sistema u gġenera l-illustration. Imma kien bħala clerk aktar milli bħala salesman li kien tah din l-informazzjoni.

Qed jingħad li f'MAPFRE kien hu l-persuna responsabbli li kellu jfiehem lill-klijent x'tip ta' polza kien qiegħed jixtri, ngħid li iva.

Mistoqsi jekk il-kumpanija kellhiex xi tip ta' dokument li jiggwida lis-salespersons, f'dan il-każ lil Louis Schembri, ta' x'informazzjoni kellu jgħaddi lill-klijent dwar ix xiri tal-polza, ngħid li iva; jispjegalu l-polza, jagħtih id-dokumenti illi bil-liġi kienu marbutin li jingħatawlu, fosthom, il-cooling off notice, id-dokument li jispjega l-prodott imbagħad jgħinu biex timtela l-application form.

Qed jingħad li fil-quotation hemm diversi informazzjoni anke fuq wara tal quotation li din tiġi mfiehema lill-klijent. Ngħid li hekk hu.

Mistoqsi naqbilx li fuq l-Important Notes (li qegħdin fuq wara tal-quotation), m'hawn imkien miktub li l-Estimate Maturity Value mhuwiex wieħed garantit, ngħid li ma naqbilx għax jekk naraw paragrafu 3 tal-ewwel sett fejn hemm Reversionary and Terminal Bonuses, paragrafu 3 jgħid ċar u tond li 'Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the company at the previous year end,' jiġifieri qed jispjega fuq liema bażi l-Estimated Maturity Value kien maħdum.

'Depending on the performance of the company, bonus rates may go down as well as up.'

Qed jingħad li hawn qed jitkellem fuq il-Bonus Rates u mhux qed jitkellem dwar l-Estimated Maturity Values u jekk dak l-ammont indikat fil-quotation, b'mod partikolari l-Lm45,276 kienx wieħed garantit jew le.

Ngħid li ma tistax taqra wieħed mingħajr ma taqra l-ieħor. Fuq il-folja ta' quddiem, inti għandek Estimated Maturity Value including Reversionary Bonus u ta' taħtha Estimated Maturity Value including Reversionary and Terminal

Bonus, jiġifieri jekk fin-noti qed jispjegalek illi l-bonus kienu 1) tas-sena ta' qabel u 2) jistgħu jitlejgħu u jinżlu, il-konklużjoni hija waħda li mhumiex garantiti.

Qed jingħad li hija l-konklużjoni li qed tagħmel MAPFRE u li ma ġietx spjegata lill klijent dakinhar li l-polza ġiet mibjugħa.

Ngħid li ma naħsibx li jista' jkollok konklużjoni oħra differenti; m'aħniex qed naqblu fuq dak li hemm iswed fuq l-abjad. Bl-iswed fuq l-abjad hemm li hemm spjega ta' kif ġew ikkalkolati u hemm spjega li jistgħu jinbidlu.

Mistoqsi jekk fil-mument tal-bejgħ għandix konferma li dan ġie spjegat li meta kien ser isir dan l-investment fl-aħħar tal-ħamsa u għoxrin sena, l-klijent m'għandux jistenna dam ir-return ta' Lm45,000, ngħid li jekk għandek 'estimated', imkien m'għandek 'guaranteed'.

Ngħid li jekk qed nitkellmu fuq il-kliem li hemm miktub, taħt il-paragrafu ta' benefiċċji, hemm 'Basic Sum Assured' li għalija din il-kelma 'Sum Assured' hija somma assikurata mentri fid-deskrizzjoni ta' 'Estimated Maturity Value' m'hemm imkien li hu assigurat jew garantit. Ngħid li mkien m'għandek li hu garantit.

Qed jingħad li l-klijenti ta' kull sena kien jintbagħtilhom statement u mistoqsi naqbilx li dan l-istatement juri l-investment fiex wasal. Ngħid li korrett.

Qed jingħad li jien kont ċempilt lill-klijent fit-2 ta' Dicembru 2021, fil-11.15 a.m., wara li ried ikellem lil xi ħadd uffiċjali peress li fi tnax-il sena ma bediex jarahom jiżdiedu l-ammonti u tawni n-numru tiegħu biex inċempillu jien.

Ngħid li jien ma niftakarx li ċempilt lis-Sinjur għax inċempel ħafna nies.

Qed niġi mistoqsi meta klijent wara tnax-il sena, jiġifieri half way through the policy, jagħmilli ilment li l-investment tiegħu ma kienx qed jogħla kif kont inwiegħbu, ngħid li kif qal is-Sur OP, kien ikun hemm min irid iwaqqafha, imma jekk twaqqafha żgur li ma jistax ikollok entitlement għat-Terminal Bonus għax it Terminal Bonus, jekk jithallas, jithallas biss jekk titħalla to maturity. U f'dan il-każ kien hemm Terminal Bonus ta' €2,809, jiġifieri l-ewwel risposta kienet tkun li jekk ser twaqqafha żgur li ma jkollokx entitlement għall-final bonus.

Apparti minn hekk, l-istatement ikun qed juri dak li jiġi dikjarat fis-sena skont l aħħar declaration u l-Estimated Maturity Value ma kienx hemm garanzija fuqu għaliex il-polza tiggarrantixxi l-bonus li jiġi ddikjarat normalment f'Marzu għas sena ta' qabel u dak, once declared, is guaranteed. Imma dak li jkun diġà ddikjarat huwa garantit u mhux il-futur.

Sa fejn naf jien, l-istatement jgħid ukoll illi huwa garantit u anke hemm fl Important Notes (paġna 14, Nru. 2) ukoll li 'the rates of the reversionary bonus once declared are guaranteed to be paid on maturity or on the death of the life assured.'

Qed jingħad li l-bonus li qed ngħid li hu garantit jirreferi għall-€2,809 u mhux qed jirreferi għall-Estimated Maturity Value indikat fil-quotation li kienet inbiegħet lill-klijenti fl-1999.

Ngħid li, le. Kull sena jkun hemm dikjarazzjoni tal-bonus. Id-dikjarazzjoni tal bonus tagħmel żewġ dikjarazzjonijiet: dak li jissejjaħ Reversionary Bonus, jiġifieri dak il-bonus li jiżdied fl-investment tal-polza fuq is-sena ta' qabel u Terminal Bonus. Terminal Bonus japplika biss għall-poloż li jkunu ser jagħlqu f'dik is-sena partikolari. Ġieli kien hemm snin fejn Terminal Bonus ma ngħata xejn għaliex dak volatile ħafna u jiddependi skont il-portafoll kif ikun dak iż-żmien u mill investment tas-sena ta' qabel.

Il-final bonus fuq din il-polza tat-€2,809 kien ikkristallizzat fil-polza once li l-polza immaturat, jiġifieri matul is-snin qatt ma seta' kien hemm garanzija fuqu għax dak jiddependi skont id-dikjarazzjoni tal-bonus li tapplika meta tagħlaq il-polza.

Il-garanzija fuq il-bonus li jiġi ddikjarat kull sena, ir-Reversionary, dak jiżdied mal polza u dak hu garantit.

Mistoqsi dwar l-Estimated Maturity Value, b'mod partikolari ta' dan il-każ in kwistjoni, ta' Lm45,000 nafx x'kienet ir-raġuni li ġie miktub fuq il-quotation, ngħid li dak hu obbligu tal-kumpanija li nagħmlu dan. Jekk ma nagħtux dik l informazzjoni tiġi l-MFSA fuqna u tgħidilna li qed niksru l-liġi, li qed niksru kundizzjoni tal-liċenzja tagħna, li lil kull klijent li jidhol f'polza bħal din, trid tagħtih quotation li, fost affarijiet oħra, trid tagħti wkoll Estimated Maturity Value. Dan kien obbligu bil-liġi.

Dwar ir-rati li ntuzaw, (hekk kif spjegat fin-noti, il-ligi ma tgħidlekx liema rati tuza), il-kumpanija użat ir-rati li kienu qed jitħallsu f'dawk iż-żminijiet.

Nikkonferma li r-rata li fuqha kienet maħduma din il-polza partikolari kienet fuq tas-sena ta' qabel.

Mistoqsi nafx x'kienet ir-rata ta' dak iż-żmien, ngħid li fl-ittra li kont bgħatt fil-21 t'Awwissu 2024, (paġna 10), hemm tabella ta' kemm kienu r-rati meta bdiet il-polza. Il-polza bdiet fl-1999 u fis-sena ta' qabel, l-1998 u anke għal erba' snin qabel l-1999, ir-rata kienet ta' 6.75% u li fil-fatt kienet ir-rata li ntuzat biex tagħmel il-projections tal-Estimated Maturity Values.

Mistoqsi naqbilx li wara dik ir-rata nizlet, ngħid li dik hi l-problema. Imma l-kumpanija ma kinitx taf kif f'dawn il-ħamsa u għoxrin sena kienu ser jizviluppaw l-affarijiet avolja kellha l-obbligu li tagħti l-Estimated Maturity Value imma ħadd m'għandu l-ballun tal-kristall u kif issa ma nafux x'ser jigrri ħamsa u għoxrin sena oħra, l-kumpanija ma kinitx taf fl-1999 x'ser jigrri fil-ħamsa u għoxrin sena li jmiss.

Mistoqsi jekk infurmajniex lill-klijenti matul is-snin li r-rata li abbażi tagħha ħarġet quotation m'għadhiex l-istess anzi nizlet u, għalhekk, ma setgħux jistennew dak l-Estimated Maturity Value fl-aħħar tal-polza, ngħid li kien jaf il-klijent għax għadu kif qal li kien jgħidilna li ma kinitx qed tizdied skont kif kienet l-istima, jiggifieri żgur li kien jaf.

U aħna konna nagħmlu l-bonus declaration fl-istatement.

Mistoqsi s-Sinjur jekk l-investment li għamel ma' MAPFRE ma kienx sejjer tajjeb kellux l-alternattiva li seta' joħroġ minnu, ngħid li jekk hux sejjer tajjeb jew le hija sugġettiva. F'każ li ried joħroġ mill-polza, dejjem għandek il-Cash Surrender Value li tista' twaqqafha qabel iż-żmien u, naturalment, jekk ser tikser il-kuntratt, ser ikun hemm xi penali. Imma kien hemm l-għażla, iva.

Mistoqsi x'kien jieħu lura, ngħid jiddependi kull sena għax kienu skaletta. Is Surrender Values aktar ma kienu jkunu kmieni aktar ikunu għoljin u aktar kemm jersaq għall-aħħar aktar jitbaxxew imma kienu skaletta.

Mistoqsi x'tip ta' advice fuq jekk il-klijent għandux joħroġ minn din il-polza meta ċempiltlu, ngħid li ma niftakarx. Naturalment, il-klijent semma' d-data u

L-ħin imma jien onestament ma niftakarx li kellna din il-konverżazzjoni – mhux qed ngħid li ma kellniex – imma ma niftakarx għax ikolli ħafna konverżazzjonijiet ma’ klijenti.”⁹

Eventwalment, kemm l-Ilmentaturi¹⁰ kif ukoll il-Fornitur tas-Servizz,¹¹ ipprezentaw is-sottomissjonijiet finali tagħhom.

Sema’ lill-partijiet

Ra l-atti kollha tal-każ

Jikkunsidra:

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b’referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.¹²

Il-punt kruċjali f’dan l-ilment jittratta l-allegat telf sostnut minn polza tal-assigurazzjoni fuq il-ħajja meta l-ammont offrut mal-maturità tal-istess polza kien ferm inqas minn dak indikat lilhom fil-kwotazzjoni pprezentata fil-mument tal-bejgħ.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x’gie mwiegħed lill-Ilmentaturi u x’eventwalment gie mogħti jew offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *‘l-aspettattivi raġonevoli u legittimi tal-konsumaturi u dan b’referenza għaž-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.*¹³

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-Ilmentaturi minħabba li r-rappreżentant tal-Fornitur tas-Servizz li biegh din l-istess polza, sfortunatament, huwa marid u minħabba li dan ma jiftakarx lill-Ilmentaturi nfushom, gie deċiż li ma tintalabx ix-xhieda tiegħu.

⁹ P. 185 – P. 189

¹⁰ P. 192 – P. 200

¹¹ P. 202 – P. 211

¹² Kap. 555, Artiklu 19(3)(b)

¹³ Kap. 555, Artiklu 19(3)(c)

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

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

Fis-sottomissjonijiet finali ppreżentati, l-Ilmentaturi ddikjaraw li kienu huma li marru għand il-Fornitur tas-Servizz sabiex jingħataw l-għajnuna, inkluż pariri, fuq xi investimenti li setgħu jagħmlu. L-istess xehed l-Ilmentatur fejn stqarr li kien żar l-uffiċċju tal-Fornitur tas-Servizz fil-Furjana u eventwalment għamel appuntament mar-rappreżentant. L-Ilmentatur iddikjara li '*... I-meeting dam, donna nitkellmu, fuq sagħtejn żgur. Ngħid li kien tana diversi quotations.*'¹⁴

Qal li kienu mbagħad marru d-dar, tkellmu bejniethom biex jaraw il-*budget* tagħhom x'inhu u, eventwalment, meta ddecidew x'ser jagħmlu, sar *meeting* ieħor sabiex jiffirmaw id-dokumenti neċessarji.

Fil-kontroezami, meta mitlub jindika dak li r-rappreżentant tal-Fornitur tas-Servizz kien spjegalhom, l-Ilmentatur stqarr li kien ġie spjegat lilhom li hemm investiment, għal kemm żmien kien ser isir dan l-istess investiment, l-ammont li kienu ser iħallsu kull sena, u li huwa importanti li l-polza ma tigix imwaqqfa qabel it-terminu taż-żmien stipulat. Minkejja li hu insista li fil-laqqgħa tagħhom mar-rappreżentant ġie diskuss biss l-ammont li kellhom iħallsu, u kemm eventwalment kellhom jieħdu mal-maturità, meta reġa' ġie mistoqsi dwar dan, l-Ilmentatur, imbagħad, zied li, '*... tkellimna wkoll li jekk aċċidentalment immutu, jieħdu s-somma l-familjari. Mistoqsi kemm hija din is-somma, ngħid ta' Lm30,000?*'¹⁵

Primarjament, l-Arbitru jsibha ferm diffiċli jifhem li f'laqqgħa mar-rappreżentant li tieħu '*... fuq sagħtejn żgur*', kulma jingħad huwa l-ammont li kellu jithallas kull

¹⁴ P. 164

¹⁵ P. 165

sena, il-perjodu taż-żmien li l-polza kellha ddum fis-seħħ, l-ammont li kellu jingħata f'każ ta' mewt, u s-somma li eventwalment kellhom jirċievu mal-maturità. Dan meta, fuq kollox, kienu l-Ilmentaturi nfushom li avviċinaw lill-Fornitur tas-Servizz, u din hija indikazzjoni li l-istess Ilmentaturi kellhom diġà idea tal-prodotti li l-istess Fornitur tas-Servizz kien joffri.

Barra minn hekk, huma ngħataw diversi għażliet u li dawn huma riflessi fid-diversi kwotazzjonijiet ipprezentati. L-Arbitru jinnota wkoll li dawn l-istess kwotazzjonijiet jinkludu wkoll xi kitba, partikolarment, figuri bl-idejn.

L-Arbitru m'għandux informazzjoni dwar jekk din il-kitba hix tar-rappreżentant tal-Fornitur tas-Servizz jew inkella tal-Ilmentaturi nfushom, iżda jikkonkludi li l-fatt li kwotazzjoni minnhom tinkludi s-simbolu tal-mistoqsija (?),¹⁶ huwa indikazzjoni li din hija kitba tal-Ilmentaturi, li wara analiżi tad-diversi kwotazzjonijiet li huma għamlu, kien hemm ukoll xi fattur li huma ma fehemux jew li riedu jistaqsu iktar dwaru.

Dan apparti l-fatt ukoll li l-Ilmentaturi nfushom iddikjaraw li wara d-diskussjoni li kellhom mar-rappreżentant tal-Fornitur tas-Servizz, marru d-dar, tkellmu bejniethom u anke saħansitra raw il-*budget* tagħhom. Evidentement, id-deċiżjoni li huma jixtru l-polza hekk kif offruta lilhom, ċertament ma kinitx waħda mgħaġġla.

Kif diġà ntqal aktar kmieni, l-Arbitru jsib ċertu diffikultà biex jifhem jekk dan kienx każ fejn ir-rappreżentant, b'mod imprudenti, emfasizza s-sabiħ u ma kienx kawt biżżejjed sabiex jispjega sew id-differenza bejn dak li kien garantit u dak li kien stmat, jew inkella kienx każ fejn l-Ilmentaturi fehemu dak li riedu jifhem u ma kinux insidjużi biżżejjed biex jagħtu 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, giet anke mogħtija lill-Ilmentaturi f'dokumenti oħra, partikolarment f'dokument titolat '*Product Information*',¹⁷ liema dokument huwa iffirmit mill-Ilmentaturi u li kopja tiegħu giet sottomessa minnhom stess.

¹⁶ P. 175

¹⁷ P. 53 - P. 54

Similarjament għall-kwotazzjonijiet ipprezentati, il-*Product Information* ukoll jinkludi xi marki tal-kitba bl-idejn u li, għaldaqstant, jiġi konkluz li dan ma kienx dokument li ġie pprezentat lill-Ilmentaturi biex sempliċiment jiġu akkwistati l-firem neċessarji, iżda, huwa dokument li ġie moqri u analizzat.

Kif diġà ntqal aktar kmieni, l-Arbitru jagħti wkoll konsiderazzjoni għall-fatt li, minkejja li kif qal l-Ilmentatur innifsu '*... darba kellna meeting mas-Sur Louis Schembri ...*', sabiex sar il-bejgħ ta' din il-polza ilmentata, l-Ilmentaturi nfushom ammettew li analizzaw il-kwotazzjonijiet mogħtija lilhom, ħasbuha u tkellmuha bejniethom id-dar. Dan appartni l-fatt ukoll li huma kellhom *cooling off period* ta' ġimagħtejn oħra wara li sar il-kuntratt tal-polza biex jerggħu jaħsbu.

Barra minn hekk, tikkunsidra li l-Ilmentatur iddikjara li huwa *businessman*,¹⁸ l-Arbitru ma jistenniex li huwa kien tali li joqgħod biss b'dak li jingħad lilu u jaċċetta dak li kien qed jiġi offrut mingħajr ma jagħmel l-analiżi neċessarja u jakkwista iktar informazzjoni għal xi mistoqsijiet jew dubji li seta' kellu. Fuq kollox, l-Ilmentaturi infushom iddikjaraw li permezz ta' din il-polza kienu qed jagħmlu investiment, li jfisser li kienu konxji ta' dan l-element tal-polza.

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 ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ. Anke persuna mhux tant intiża fil-finanzi tifhem li mhux floku tassumi 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 appartni 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 jibqqa' stabbli. Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit għal 25 sena.

¹⁸ P. 164

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 limitatament sakemm dan huwa kompatibbli ma' din id-deċiżjoni.

Kumpens

F'dan il-każ, l-Arbitru qed jagħti rimedju għaliex iħoss li l-aspettattivi tal-Ilmentaturi, sal-limitu ta' fejn kienu legittimi, ma ġewx milħuqa. L-aspettattivi tagħhom kienu li mal-maturità tal-polza kienu ser jirċievu s-somma ta' €105,464.71 li, iżda, fid-data tal-maturità, ġew offruti ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentaturi kienu kompletament legittimi.

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

L-Ilmentaturi ma pprezentaw l-ebda prova li dak iż-żmien kellhom xi għażla għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Għaldaqstant, l-Ilmentaturi lanqas ipprezentaw xi tip ta' prova li minħabba li huma ddeċidew li jjeħdu l-polza offruta lilhom, huma ġarrbu xi tip ta' *opportunity loss*. Fuq kollox, mingħajr preġudizzju għal dak iddikjarat hawn fuq, l-Arbitru ma jħossx li permezz ta' din il-polza, wieħed għandu x'jitlef.

Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentaturi kellhom iċ-ċans li jikkontribwixxu għat-tfaddil permezz ta' din l-istess polza u dan billi jħallsu ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn 3.7%¹⁹ li fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu wkoll jiġi ikkunsidrat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit u fejn l-Ilmentaturi ammettew li ma ridux jirriskjaw il-kapital investit. Anke kellhom benefiċċju ta' kopertura fuq ħajjithom li beda mill-ewwel ġurnata tal-polza.

¹⁹ P. 157

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għad-deċiżjoni li mhux ekwu li jilqa' t-talba sħiħa tal-Ilmentaturi. Dan għal raġunijiet diġà mfissra hawn fuq u anke għaliex:

- L-Ilmentaturi ma kinux ġustifikati jassumu li r-rati prevalenti fl-1999 kienu ser jibqgħu applikabbli għal 25 sena sħaħ għal darbha l-investment tagħhom ma kienx fuq bażi *lump sum*.
- Il-kundizzjonijiet tal-*quotation* kienu għand l-Ilmentaturi għal żmien biżżejjed qabel ma gie ffinalizzat l-impenn għall-polza ilmentata, u kellhom kull ċans jifhmu dak li kien garantit u dak li kien stimat. L-Ilmentaturi nfushom ammettew li hasbuha u għamlu l-analiżi tagħhom qabel aċċettaw li jixtru l-polza.
- Meta tingħata stima għal affarijiet li jseħhu fi żmien qasir, huwa raġonevoli li wiehed jistenna li l-varjazzjoni tar-realtà mill-istima tkun żgħira. Iżda stima għal żmien ta' 25 sena ma tistax raġonevolment tistenna li l-varjazzjoni tkun żgħira, għax 25 sena huwa żmien twil u kolloxx jaf jinbidel, u ma hawn hadd li jista' jbassar x'ser jiġri mill-investimenti fi żmien daqstant twil.

Għalhekk, l-Arbitru jiddeċiedi li s-somma xierqa li għandha tingħata lill-Ilmentaturi bħala kumpens hija dik ta' **€6,807 (sitt elef, tmien mija u seba' ewro)**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentaturi s-somma ta' sitt elef, tmien mija u seba' ewro (€6,807) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €45,382.92²⁰ u, għalhekk, iħallashom is-somma kumplessiva ta' €52,189.92 (tnejn u hamsin elf, mija u disgħa u tmenin punt disgħa tnejn ewro).

Din is-somma hija fil-fatt viċin l-oġġla stima li kienet ingħatat lill-Ilmentaturi fl-2013²¹ meta talbu li jiġu infurmati kemm huwa stmat li jieħdu meta tagħlaq il-polza fl-2024 u ingħataw firxa ta' stimi bejn €45,314 sa €54,605.00.

²⁰ P. 9

²¹ P. 161

Bl-imghax ta' 2.9%²² minn hamest ijiem tax-xogħol wara d-data ta' din id-deċiżjoni 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.

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

²² Rata kurrenti MRO (Main Refinancing Operations) tal-Bank Ċentrali Ewropew

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

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