

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 181/2024

EA

(‘l-Ilmentatur’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta 21 ta’ Marzu 2025

L-Arbitru,

Ra l-ilment¹, fejn l-Ilmentatur issottometta li hu qed jogġezzjona għall-ammont li gie offrut lilu mal-maturità tal-polza tal-assikurazzjoni fuq il-ħajja li hu kellu f’isem it-tifel tiegħu mal-Fornitur tas-Servizz.

L-Ilmentatur stqarr li, minkejja l-ftehim li kien sar originarjament, il-valur stmat kellu jammonta għal Lm17,242.66, ekwivalenti għal €40,175.40, l-ammont li issa qed jiġi offrut lilu huwa biss ta’ €17,160.21. Hu insista li din id-diskrepanza ma tista’ qatt tiġi ġġustifikata anke minħabba l-fatt li, normalment, id-differenza fl-istima mogħtija tkun minima.

L-Ilmentatur iddikjara li jhoss li hu jixraq li jingħata ammont ogħla minn dak li qed jiġi offrut lilu u, għaldaqstant, jitlob is-somma ta’ €35,000 li hu jikkunsidra li hija aktar raġonevoli.

¹ P. 1 – p. 6 b’dokumentazzjoni addizzjonali p. 7 – p. 56

Ra t-twegiba² tal-Fornitur tas-Servizz

“

- 1. MAPFRE MSV Life plc ('MMSV') refers to the allegation made by the complainant that the maturity value of the policy in question numbered 52309 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 EUR 35,000.**

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 bancassurance copy is presented as fol. 12 and a Middle Sea Valletta copy is presented as fol. 14). Therefore, none of the figures which were indicated in the quotations as "estimated" could be said to have been guaranteed.**
- 3. The estimated maturity values shown in the quotation in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold. The estimated maturity values shown in the quotation were not guaranteed because they were based on the investment conditions and circumstances at the time. The Important Notes presented with the complaint (fol. 43), 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**

² P. 62 – P. 67 b'dokumentazzjoni addizzjonali p. 68 – p. 71

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 Middle Sea Valletta Life Assurance Company Limited’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 his Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.

- 5. With regards to the “Terminal Bonus”, the same document showing the Important Notes also explains that “Depending on its profit experience the Company may, after the end of the Policy’s TENTH year, and ten year’s full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared bonus ... 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. 12 and fol. 42) as “Estimated Maturity Value including Reversionary and Terminal Bonuses (if any)” of Lm17,242.66 and Lm17,243 respectively, were likewise not guaranteed since they were highly volatile.

6. ***In fact, the Life Policy Schedule (presented in the complaint as fol. 28) provides that “In respect of each premium paid, Lm192.47 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 when they were guaranteed to be paid to the policyholder.***
7. ***Furthermore, the only amount mentioned in the Life Policy Schedule (fol. 28) was the sum assured of Lm4,476 and no amounts containing the word ‘Estimate’ were mentioned on this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonus were never guaranteed.***
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, the conditions applying to all the benefits provided by the Policy are defined in the Policy document ... In case of conflict of meaning between this quotation and the Policy document, the Policy document shall prevail.” This meant that the complainant could not treat the quotation as a stand-alone document but had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the policy document.***
9. ***It is to be noted that the Assured in fact signed at the bottom of the said Important Notes and hence confirmed that:***

“I/We hereby confirm that I/We have read and understood the Important Notes to this quotation and that the Bancassurance Representative has fully explained the notes above to me/us and I/we are satisfied with the policy/ies illustrated and its explanation.”

10. *In addition, MMSV has observed what is contained in the Product Information Document (fol. 16 and 17) 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 performance of the Company and the investment market both locally and overseas*
- When presenting you with the Company’s official written quotation for the Estimated Maturity value we have based our calculations solely on current bonus rates*
- Please note that past performance is not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed”.*

12. *At the moment that the Policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment and what the eventual maturity value shall be made up of and how the said amount was calculated including that*

the bonus rates may go 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 which was given by the Company. Notwithstanding, the complainant is merely basing his claim on estimated maturity values without putting them in the context of all the documents provided to the complainant when the Policy was being sold to him and every year thereafter as shall be explained hereunder.

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 EUR 5,951.96 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 3.13% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.69%.

- 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 his return.*
- 16. During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending to him, on a yearly basis, a 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. 53-56).*

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 quotation 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 quotation 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 two Estimated Cash Surrender Value letters in 2005 and 2018 respectively (DOC. MSV 2 – 4), which is 6 and 19 years in the policy term. The 2005 letter (DOC. MSV 2) shows three different Estimated Maturity Values plus Reversionary Bonus*

of Lm6,966, Lm9,033 and Lm11,792 and Estimated Maturity Values plus Terminal Bonus of Lm8,533, Lm11,066 and Lm14,445 based on three different assumed bonus rates of 3%, 5% and 7% respectively. Moreover, the 2018 Illustrative Maturity Value letter (DOC. MSV 3) shows the Illustrative Maturity Value including Reversionary Bonuses and the Illustrative Maturity Value including Reversionary Bonuses and Final Bonuses at the assumed bonus rates of 3%, 3.5% and 4%.

The values for the Illustrative Maturity Value including Reversionary Bonuses are EUR17,253, EUR17,868 and EUR18,503, whilst the values for the Illustrative Maturity Value including Reversionary Bonuses and Final Bonuses are EUR17,253, EUR18,761 and EUR 20,353 respectively. When comparing both letters, it is noted that the assumed bonus rates decreased from 3%, 5% and 7% to 3%, 3.5% and 4%, which confirms that the company provides estimates based on the financial conditions at the time. In fact, both letters state that the investment returns can go down as well as up 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 letters, 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. 28) with an amount of Lm 4,476.*

Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR11,208.25 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 EUR5,951.96 which amount represents the bonuses that have been declared by MMSV during the term of the Policy.

Thus, despite the reduction in bonus rates over time, the policy in question was still a valuable investment because in addition to the tax-free “Maturity Value”, the policy in question was not only an investment but also provided cover on the complainant’s life.

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. 45) 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 “estimate” in the comment made by the complainant in the online complaint (fol. 4) stating that “In the original agreement, the estimate value after 25 years was amounting to €40,175.40 (Lm17,242.66)”

further confirms that the complainant was aware that he was being presented with estimated values.

Moreover, the complainant also stated that *“This is truly not justified because usually the discrepancy in the estimate of the value would be minimal. In my particular case they went wrong €23,015.19 which amount is far beyond acceptance.”* The adverse financial conditions over the years since 1999 have evidently affected the bonus rates by going down from 7% to a low of 0.9% in 2022, hence this comment has no basis as it’s not in any way a wrongful act of MMSV.

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 tas-16 ta’ Jannar 2025, xehed l-Ilmentatur, fejn stqarr li:

“Ngħid li fit-13 ta’ Settembru 1999, kont xtrajt policy f’isem it-tifel tiegħi, AAA, għal ħamsa u għoxrin sena. U dak iż-żmien kont inħallas Lm200 għal ħamsa u għoxrin sena sħaħ.

Dan jien kont għamiltu li jinqata' bid-Direct Debit mill-bank biex ma jkunx hemm problemi u meta tasal il-ġurnata, mingħalija, fl-1 t'Ottubru kienu jinqatgħu il-Lm200. Meta qlibna għall-euros kienu ġew xi €466.

L-ilment tiegħi beda ġimgħa qabel ma għalqet din il-policy. Irċevejt ittra mingħand I-MSV (Policy No. 52309, fejn dak iż-żmien kienu tawni quotation, stima, li kienu wegħduni li meta tagħlaq il-policy jagħtuni Lm17,242 li llum jigu €40,175) u f'din l-ittra hemm li I-MSV qed toffri l-ammont ta' €17,000. U bqajt daqsxejn skantat għax għidt kif kienu tawni stima ta' €40,000 u fuqhom u issa ġew €17,000, lanqas qbiżna nofs l-ammont li għandi?

U jiena bgħatt email lill-MSV fis-6 ta' Settembru 2024, fejn għidt li jien ma naqbilx ma' din l-istima li tawni ta' €17,000, u għidtilhom li m'inix kuntent bil-valur ta' din il-polza, u, għalhekk, tlabthom li jagħtuni risposta xierqa. Irċevejt imbagħad risposta mingħand I-MSV u, fost affarijiet oħra, tawni chart ta' kif ħallsuni sena, sena ir-rata li tawni biha. Bdew fl-1999 u tawna b'rata tajba, bis-7% u fit-2000 bil-5.75%. Rajt li bdew bit-tajjeb u dejjem neżlin 'l isfel, 'l isfel fejn spiċċaw b'dan l-ammont.

Hawnhekk nistaqsi lill-Arbitru jekk għandux kopja tal-kuntratt u l-Arbitru jinfurmani li għandu kollox.

Ngħid li jiena tħajjart biex nixtri din il-polza. Kont mort dak iż-żmien il-Bank of Valletta, South Street, u xtrajt din il-polza, jiġifieri jien ħadt l-inizjattiva.

Ngħid li kien sar meeting wieħed il-Bank of Valletta, South Street, biex xtrajt il-polza. Ngħid li spjegatli u tatni l-istimi u d-dokumenti. Ngħid li ma niftakarx eżatt kemm kien dam dan il-meeting għax inkun qed nigdeb. Ngħid forsi dam nofs siegħa. Ngħid li ma niftakarx min kienet il-persuna li kellmitni.

Ngħid li dak iż-żmien kont naħdem bħala Assistant Principal, it-Telemalta, South Street, Valletta.

Ngħid li spjegawli l-polza, iffirmajt il-karti u kienu jibgħatuli statements kull sena.”³

³ P. 72 – P. 73

Waqf il-kontroezami, l-Ilmentatur kompli:

“Qed jingħad li mix-xhieda tiegħi ma niftakarx kelma b’kelma l-ispjegazzjoni li tatni l-persuna li bieghetli l-polza. Ngħid qed issemmi ħamsa u għoxrin sena ilu u ma niftakarx.

Qed jingħad li ħin minnhom staqsejt lill-Arbitru għandux kopja tal-kuntratt u mistoqsi għal liema dokument qed nirreferi, ngħid li hija l-istima (paġna 12).

Qed jingħad li dik hija kwotazzjoni u mhux il-kuntratt, ngħid li iva; naf li hija bil-ligi li għandhom jagħtuni quotation. Ngħid li meta tawni din il-quotation, ħajjruni biex nagħmilha. Jien tħajjart l-aktar meta wiegħduni dik is-somma.

Qed jingħad li fuq il-Quotation, fuq l-Important Notes u fid-dokumenti li ngħatawli jgħidu ċar u tond li r-rati jistgħu jitilgħu jew jinżlu. Fil-Quotation jgħidlek li huma stimi. Hemm il-kliem ‘if any’ – allura, mhix garanzija. Fil-Product Information (paġna 17), hemm:

‘A Terminal Bonus if declared is payable on policies,’ – if declared – u jgħid:

‘The rate of bonus earned will depend upon the performance of the Company and the investment market both locally and overseas.’

Mistoqsi, allura, kif xorta qed ngħid li kont imwiegħed xi ħaġa mir-rappreżentanta tal-BOV, ngħid li l-kwotazzjoni li tawni dakinhar ħajjritni biex nixtri din il-policy.

Iva, naqbel li kienet kwotazzjoni, li kienet stima.

Qed jingħad li fil-laqgħa ngħatawli il-Quotation (paġna 12 tal-proċess), l-Important Notes (Dok. MSV 1 annessi mar-risposta), fejn hemm il-firma tiegħi, l-iStatement of Compliance, (paġna 24) iffirmata minni wkoll, il-Product Information (paġna 16 u 17) iffirmata minni u mir-rappreżentanta u l-iStatutory Notice (paġna 22).

Nikkonferma lli mal-ispjega li tatni r-rappreżentanta fuq il-polza, tatni dawn id-dokumenti, iffirmajthom u baqgħu għandi.

Qed niġi referut għall-iStatement of Compliance fejn paragrafu 4 jgħid:

4. ***'The quotation which I/we have received only contains estimates based on the continued attainment of the current performance by Middle Sea Valletta Life Assurance Company Limited and such estimates are not guaranteed by Middle Sea Valletta Life Assurance Company Limited, the Bank or any of its employees. i/we have also been warned that past performance is not a guide to future performance.'***

Qed jingħad li dan ċarament qed jgħidli li l-istimi mhumiex garantiti għax jiddependu mill-andament tas-suq.

Qed jingħad allura li bl-ispjegazzjoni tar-rappreżentanta tal-BOV tad-dokumenti li ngħatajt urew li ma stajtx nippretendi li nieħu dak l-Estimated Maturity Value.

Ngħid li din biss ser ngħidilkom: ibqa' żgur li kieku jiena kienu ser jagħtuni l-ammont li offrewli ta' €17,000, jien ma kontx nixtri dik il-policy.

Qed jingħad li mhux dik il-mistoqsija, ngħid li kieku kien hemm xi differenza 'l hemm u 'l hawn hija mod imma dan qed nitkellmu li morna wisq 'il bogħod mill-ammont li tawni.

Ngħid li meta tkun stima nippretendi li tkun jew ftit inqas jew ftit aktar minn dak l-ammont li tkunu tajtuni. Issa f'dan il-każ, mhux ftit imma ħafna 'l isfel minn dak l-ammont li tajtuni. Hemmhekk m'inix naqbel.

L-ilment tiegħi huwa li kont naf li kienu stimi imma li l-istima varjat wisq. Tant varjat li hija 58% inqas mill-ammont proprju.

Kont naf x'qalu d-dokumenti, imma mhux li tvarja b'dak l-ammont għax kieku l-polza ma kontx nixtriha żgur. Jiena inzertajt intiż fil-Borża ta' Malta u ibqa' żgur li ma kontx nidħol għal din il-policy. Kont naqbad u ninvestihom jien.

Mistoqsi nikkonferma jekk id-dokumenti qrajthomx u tajtx kashom qabel iffirmajthom, ngħid li dak iż-żmien ikolli ngħid li qrajthom.

Qed niġi referut għall-iStatutory Notice (paġna 22) u mistoqsi kontx naf li kelli ħmistax-il ġurnata cooling off period biex niddeċiedi niħux il-polza jew le, ngħid li għalkemm kienet miktuba, jista' jkun li dak iż-żmien ma kontx naf li kelli l-cooling off period.

Mistoqsi jekk meta xtrajt il-polza ridtx nagħmel investment riskjuż, jiġifieri kont lest li nitlef il-kapital li investajt jew ridtx ingemma', ngħid ingemma'. Kieku kont ninvestihom jiena għax intiż fil-Borża ta' Malta, nidhol u nara x'hemm fis-suq li jaqbel għalija u nirrangja jiena. Ngħid li kont intiż u għadni sal-lum.

Mistoqsi jekk spjegatlix fuq il-Life Cover, ngħid li spjegatli fuq ħafna affarijiet imma qed tistaqsini xi ħaġa li mpossibbli niftakar.

Qed jingħad li mar-risposta ġew annessi d-dokumenti MSV2 u MSV3 li huma r-Revised Illustrative Maturity Values; waħda datata 26 ta' Settembru 2005 u l-oħra datata 23 ta' Settembru 2018.

Qed jingħad li fuqhom hemm tliet rati revised fid-data li ntbagħtuli fis-snin 2005 u 2018.

Mistoqsi jekk tajtx kas dawn id-dokumenti, ngħid li jiena dawn ma rċevejthomx.”⁴

Fit-tieni seduta tal-10 ta' Marzu 2025, Victor Farrugia, f'isem il-Fornitur tas-Servizz, iddikjara⁵ li x-xhieda tiegħu hija r-risposta għall-ilment sottomessa minn dan tal-aħħar. Dan filwaqt li ddikjara wkoll li m'għandu xejn xi jżid ma' din l-istess risposta.

Fl-istess seduta, xehdet Lorraine Zammit, ir-rappreżentanta tal-Fornitur tas-Servizz, li bieġhet il-polza ilmentata. Hi xehdet li:

“Ngħid li f'Settembru 1999 kont naħdem il-Bancassurance Office tal-Bank of Valletta, South Street, Valletta. Dak iż-żmien kont Lorraine Azzopardi. Ngħid li kont ili tliet snin naħdem hemmhekk.

Ngħid li parti mix-xogħol tiegħi kien li nbiegħ poloz tal-assikurazzjoni tal-MSV, I-Endowment Assurance With Profits.

Ngħid li kont liċenzjata biex inbiegħ dawn il-poloż. Kien ikollna training u qabel ma tkun liċenzjata ma kontx tista' tbiegħ dawn il-poloż. Ngħid li t-training kien ikun ongoing.

⁴ P. 73 – P. 75

⁵ P. 76

Nikkonferma li kont bieġhejt polza tal-MSV, l-Endowment Assurance With Profits lis-Sur EA.

Ngħid li aħna ma konna nieħdu l-ebda commissions fuq il-bejgħ ta' dawn il-poloż. Aħna konna nagħtu servizz. Jiena, bħala rappreżentanta tal-bank, dejjem kelli l-paga u għadni hekk sal-ġurnata tal-lum.

Ngħid li ma ppersistejtx mas-Sur EA sabiex jixtri l-polza. Aħna qatt ma konna nagħmlu hekk. Aħna dejjem nispejgawhom il-product features; nispejgawhom l-affarijiet kif inhuma u, mbagħad, id-deċiżjoni finalment hija f'idejn il-klijent.

Ngħid li dan ma kienx branch imma uffiċċju speċifikament li jagħmel l-assurance. U l-klijenti kienu jidhlu huma minn rajhom biex jixtru l-affarijiet, jiġifieri bħalma kienu jmorru fil-branches, aħna kellna qisu dan il-hub li kien jagħmel purament xogħol ta' policies biss. Ngħid li l-klijenti kienu jiġu u mhux aħna nċemplulhom.

Ngħid li meta ġie l-Ilmentatur jistaqina, konna staqsejnih x'għandu bżonn bħalma nagħmlu ma' kull klijent. Inkunu spjegajnilu l-polza li tgħodd għalih fil-kuntest ta' dak li jkollu bżonn. Qiegħda nifhem li jien kont spjegajtlu child policy għax kien talabni xi haġa biex iġemma' lit-tifel tiegħu at that time. Inkunu spjegajnilu l-product features pass b'pass. U ma niftakarx eżatt eżatt għax għaddew ħamsa u għoxrin sena, imma, as a general rule, il-klijent jekk ikun deċiż, u jkun irid jagħmilha dakinhar, jagħmilha dak il-ħin. Jekk le, jerga' jiġi u nagħmlu a second u anke a third meeting.

Ngħid li x'kien ġara eżatt f'dan il-każ ma niftakarx. Però, għalkemm l-applikazzjoniet kollha qed juru data waħda, ma jfissirx li ma kienx ġie qabel u tajnih xi quotations oħrajn.

Ngħid li d-dokumenti jkollhom data waħda ta' meta nkunu iffinalizzajna l-polza.

Ngħid li nkunu spjegajnilu kif taħdem il-polza. F'dan il-każ il-polza kienet għal terminu ta' ħamsa u għoxrin sena li jkun ġie deċiż dakinhar. Spjegajnilu li kull sena jrid iħallas il-premium tiegħu u wara li titnaqqas il-Policy Fee, dan il-premium ser imur ġo policy account. Kull sena l-MSV Life tħabbar rata ta' bonus. Ir-rata tal-bonus ma nafuhiex.

Once li tiġi ddikjarata din ir-rata ta' bonus, inżiduhel mal-kont. U kull sena jkun qed jagħmel dak li aħna ngħidulu compound interest u jieħu l-imgħax fuq dak li jkollu diġà fl-account plus il-bonus li jkun żdied. U hemmhekk ikun qed jakkumula somma. Jekk wara ħamsa u għoxrin sena, f'dik is-sena li tagħlaqlu l-polza jiddikjaraw Terminal Bonus, hu ser jieħu an additional bonus.

Ġeneralment, hekk nimxu bħala poloz.

Nispjegaw ukoll li l-Estimate dejjem tkun ibbażata fuq is-sena ta' qabel li tkun iddikjarata l-polza.

Dak iż-żmien ukoll kien ikollhom somma assigurata fuq il-ħajja. Konna nispjegaw il-benefiċċju tas-somma assigurata li jekk ikun ħallas premium wieħed biss, jew tnejn jew tlieta, u l-assigurat jiġi nieqes, il-polza mhijiex ser tħallas biss dak li hemm fil-policy account imma ser tħallas is-somma assigurata.

Is-somma assigurata ma tibqax tingħata meta l-policy account jaqbez b'dak il-valur għax il-klijent dejjem jieħu whichever is the greatest.

Konna nispjegaw ukoll li l-polza ma jkollhiex valur qabel iħallas l-ewwel tliet premiums u jekk joħroġ minnha qabel jeħel il-penali. U konna nispjegaw ukoll li skont l-iStatutory Notice huwa kellu żmien ħmistax-il ġurnata biex jerga' jaħsibha u jieħu l-ewwel premium lura.

Qed niġi murija l-quotation (paġna 12 tal-proċess) u nikkonferma li din tkun ingħatat lill-Ilmentatur. Nikkonferma l-firma tiegħi fuq Doc. MSV1, l-Important Notes, li kienu jkunu fuq wara tal-quotation.

Qed niġi murija wkoll il-Product Information (paġni 16 u 17 tal-proċess) u nikkonferma li hemm il-firma tiegħi u nikkonferma li tkun ingħatat waqt il-meeting.

Qed niġi murija wkoll l-iStatement of Compliance (paġna 24) u nikkonferma li dik hi l-firma tiegħi u nkun tajtulu dakinhar.

Qed niġi murija l-iStatutory Notice (paġna 22 tal-proċess) u nikkonferma li dik hi l-firma tiegħi u nkun tajtulu dakinhar.

Ngħid li jien meta nkun qed nispjega l-polza, inħobb nimxi mal-Product Knowledge; u li nagħmel ukoll, meta klijent jiġi biex jiffirmali, ngħidli xi jkun qed jiffirma. Inħobb nagħmilha ħafna dik. Ngħidli, 'Hawnhekk qed tiffirma l-quotation. Din hija stima li mhux bilfors ser tiegħu dan imma qed nagħtihielek bħala guidelines.'

Rigward l-iStatement of Compliance ngħidli, 'Isma', hawnhekk qed tivverifika li spjegajtlek l-affarijiet skont il-liġi kif inhi llum.'

Ngħid li ma nkunx qrajtha miegħu, però, nkun spjegajtli karta, karta x'qed jiffirma.

Qed niġi referuta għall-iStatement of Compliance fejn paragrafu 4 jaqra:

- 4. 'The quotation which I/we have received only contains estimates based on the continued attainment of the current performance by Middle Sea Valletta Life Assurance Company Limited and such estimates are not guaranteed by Middle Sea Valletta Life Assurance Company Limited, the Bank or any of its employees. I/we have also been warned that past performance is not a guide to future performance.'***

Ngħid li din inkun spjegajthielu. Aħna nkunu għidnilu li l-unika garanzija li għandu meta jiġu declared u li kull sena hu ser jirċievi statement u dawk li jkun irċieva huma x'għandu fil-verità bħalissa fil-policy li jkunu garantiti u mhuwiex l-estimate."⁶

L-Ilmentatur iddikjara li ma kellux mistoqsijiet għax-xhud u, mbagħad, ipprezenta wkoll is-sottomissjonijiet finali tiegħu b'mod verbali:

"Kif tkellimt digà fl-ewwel seduta, jien li ma qbiltx huwa mal-ammont tal-istima li tajtuni fejn filli tajtuni over €40,000 filli f'daqqa ġejtu bis-€17,000.

Jien hemmhekk ma naqbilx għax mhu ser naċċetta qatt li l-affarijiet marru daqshekk ħazin. Kien hemm snin ma kinux daqshekk tajbin speċjalment l-2008 u f'ċerti snin oħra li bħalissa ma nistax niftakar, però, kien hemm snin li kienu marru tajbin. Ngħid li l-karta li kontu bgħattuli ta' kemm għaddejtuli kull sena ma qbiltx magħha.

⁶ P. 76 – P. 79

Jien ma' dik ma qbiltx. Għidt lis-Sur Farrugia mill-bidunett u bqajt insostniha sal-lum. Fuq dik biss m'aħniex naqblu.”⁷

Il-Fornitur tas-Servizz ukoll għamel is-sottomissjonijiet finali tiegħu b'mod verbali, fejn qal:

“Aħna smajna dak li qal l-Ilmentatur anke issa. Aħna nikkontestaw li saret wegħda ta' xi stima partikolari li hemm fuq id-dokument u ngħidu li ma kienx hemm garanzija kif spjegat ukoll is-Sinjura Lorraine Zammit li spjegat id-dokumenti kollha li ngħataw u tikkontesta l-wegħda. U, allura, l-unika garanzija li kien hemm dejjem kienet 'the greater of the sum assured or the policy account whichever is greater.'

Dan juri wkoll mill-quotations li ngħataw, kemm mill-Product Information, kemm mill-iStatement of Compliance, kemm mill-Important Notes, jiġifieri dan kien ċar mid-dokumentazzjoni u anke mill-verżjoni tas-sales representative li ġiet illum ukoll.

Għandna wkoll xi punti vis-a-vis x'intqal mill-Ilmentatur ukoll waqt ix-xhieda tiegħu. Fix-xhieda tiegħu, aħna rajna element ta' 'ma niftakarx' ħafna drabi. Rajt il-verbal:

'Ngħid li ma niftakarx eżatt kemm kien dam il-meeting ... Ngħid li ma niftakarx min kienet il-persuna li kellmitni ... Ngħid qed issemmi ħamsa u għoxrin sena ... Ngħid li spjegatli fuq ħafna affarijiet imma qed tistaqsini xi ħaġa li mpossibbli niftakar.'

Jiena qiegħda nikkwota u, allura, kif jista' jkun l-Ilmentatur jippretendi l-ogħla stima mill-kwotazzjoni? Jgħid li kien imħajjar mill-istima u hu mhux qed jiftakar lanqas min kien bieghielu.

Dan il-punt inaqqas ftit, fl-opinjoni tal-kumpanija, il-memorja tal-Ilmentatur li qiegħed hawnhekk.

Jgħid ukoll, mill-verbal, li kien konxju li l-kwotazzjoni kienet stima imma, mbagħad, isemmi li l-kwotazzjoni li kienu tawh dakinhar ħajjritu biex jixtri l-polza u 'jien tħajjart meta wiegħduni dik is-somma,' jiġifieri hawnhekk ġieli ngħidu stima u ġieli ngħidu mwiegħed. Nifhem li ma kienx ċar għax għaddew

⁷ P. 79

ħamsa u għoxrin sena u forsi l-affarijiet ma jkunux ċari imma l had to highlight this għax qed juri li l-verzjoni ma kinitx daqshekk konsistenti.

Fuq id-dokumenti jgħid, 'dak iż-żmien ikolli ngħid li qrajthom,' jiġifieri ma jinnegax li d-dokumenti li ngħataw lil mir-rappreżentant qraham. Fl-opinjoni tagħna, kienet negligenza min-naħa tiegħu jekk hu qara d-dokumenti u hemm ċarament miktub li l-ammonti mhumiex garantiti iżda huma stimi u hu jibqa' jippretendi li dik hija garanzija.

U, b'hekk, nirreferi wkoll għal dik il-kwotazzjoni li jien ikkwotajt lis-Sinjura Zammit li qiegħda f'paġna 4 tal-iStatement of Compliance.

Minkejja dan kollu, xorta qed jippretendi dan l-ammont.

Barra minn hekk, l-Ilmentatur kien Assistant Principal tat-Telemalta, jiġifieri raġel li għandu edukazzjoni, li jaf jaqra, li kien intiz fil-Borża ta' Malta, kif qalilna fis-seduta l-oħra, jiġifieri kellu ċertu għarfien ta' kif jaħdmu l-investimenti u, allura, jaf li ma setgħetx tkun fissa r-rata li giet iddikjarata dak iż-żmien fost dawk il-ħamsa u għoxrin sena.

Barra minn hekk, kif qalet ukoll is-Sinjura, l-Ilmentatur ħa l-inizjattiva hu, mar il-Bancassurance tal-BOV hu u allura dan juri l-interess ġenwin li kellu hu bla ma ġie ppuxxjat biex jixtri l-prodott.

Barra minn hekk, Lorraine Zammit kienet taħdem mal-bank, ma kinitx tiegħu commissions jiġifieri dan juri min-naħa tagħha li hi kellha l-formula ta' kif tbiegħ il-polza, taf li fid-dokumenti ma kienx hemm miktub li kien hemm garanzija udan spjegatu lis-Sinjur.

Kien hemm ukoll il-benefiċċju tal-Life Cover; kien hemm benefiċċji tat-taxxa; u li għamel gwadann ta' 3.3% bħala rate of return u wkoll gross of 15% of withholding tax ta' 3.69%.

Fl-opinjoni tagħna ma kien hemm l-ebda nuqqas mill-kumpanija; li kien hemm miktub fid-dokumenti ġie spjegat lilu u ma kellu l-ebda expectation legittima li jirċievi dik l-istima li kien hemm fuq il-quotation."⁸

⁸ P. 79 – P. 81

L-Arbitru

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, gust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.⁹

Il-punt kruċjali f'dan l-ilment jittratta l-ammont offrut lill-Ilmentatur mal-maturità tal-polza li huwa ferm inqas minn dak indikat lilu meta xtara l-polza.

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

L-Ilmentatur xehed li hu kien tħajjar biex jixtri polza, ħa l-inizjattiva, u mar il-fergħa tal-*Bank of Valletta* sabiex jagħmel dan. Dan gie kkonfermat minn Lorraine Zammit, ir-rappreżentanta li bieghet il-polza ilmentata lill-Ilmentatur. Hi xehdet li:

***"... dan ma kienx branch imma ufficċju speċifikament li jagħmel l-assurance. U l-klijenti kienu jidħlu huma minn rajhom sabiex jixtru l-affarijiet, jġigifieri bħalma kienu jmorru fil-branches, aħna kellna qisu dan il-hub li kien jagħmel purament xogħol ta' polices biss. Ngħid li l-klijenti kienu jiġu u mhux aħna nċemplulhom."*¹⁰**

L-Ilmentatur kompli li, sabiex inxtrat din il-polza, saret lagħqa waħda; ir-rappreżentanta spjegatlu kollox, tagħtu l-istimi u d-dokumenti, iffirma l-karti u, mbaġħad, kienu jibagħtulu l-*statements* kull sena.

B'referenza għall-*Bancassurance Quotation*, waqt il-kontroezami, l-Ilmentatur stqarr ukoll li:

⁹ Kap. 555, Art. 19(3)(b)

¹⁰ P. 77

“Qed jingħad li dik hija kwotazzjoni u mhux il-kuntratt, ngħid li iva; naf li hija bil-liġi li għandhom jagħtuni quotation. Ngħid li meta tawni din il-quotation, hajjrni biex nagħmilha. Jien tħajjart l-aktar meta wegħduni dik is-somma.”¹¹

L-Ilmentatur tenna għal diversi drabi li kien konxju tal-fatt li fil-mument tal-bejgħ tal-polza, dak li ngħatalu kienet kwotazzjoni/stima, filwaqt li kkonferma li kienu ġew mogħtija lilu ċertu dokumenti u li hu eventwalment iffirma. Hu xehed li:

‘Kont naf x’qalu d-dokumenti, imma mhux li tvarja b’dak l-ammont għax kieku l-polza ma kontx nixtriha żgur. Jiena inzertajt intiż fil-Borża ta’ Malta u ibqa’ żgur li ma kontx nidħol għal din il-policy. Kont naqbad u ninvestihom jien.’¹²

Fost id-dokumenti pprezentati, l-Arbitru ma jistax ma jirreferix għal dokumenti indirizzati lill-Ilmentatur u li juru *‘Revised Illustrative Maturity Values’*, partikolarment għad-dokument datat 26 ta’ Settembru 2005,¹³ fejn ġew ikkwotati *estimated maturity values*, jekk ir-rata tal-*bonus* tkun ta’ 3%, 5% jew 7% rispettivament. Meta mistoqsi dwar dawn id-dokumenti u jekk kienx ta kashom, l-Ilmentatur xehed li:

“... ngħid li jiena dawn ma rċevejthomx.”¹⁴

Minkejja dan, l-istess dokument jinkludi nota miktuba bl-idejn, datata u iffirmata, u li tgħid, *“client phoned and said that he was not interested in doing the alteration.”¹⁵* Minn dan jidher li, fil-fatt, l-Ilmentatur kien irċieva l-ittra referuta hawn fuq.

L-Arbitru m’għandux informazzjoni dwar x’għażliet kellu l-Ilmentatur dak iż-żmien. Iżda jifhem li, minkejja li dawn setgħu kienu limitati, tikkonsidra li kif iddikjara hu stess kien u għadu intiż fil-Borża ta’ Malta, qed jiġi prezunt li ma tantx kellu għażliet oħra x’jagħmel, partikolarment meta r-rata tal-*bonus* kienet anke laħqet it-3.6% fl-2003¹⁶ mis-7% fl-1999. U dan għaliex, fuq kollox, l-Ilmentatur għażel li ma jagħmel xejn u, għalhekk, kompli għaddej bil-polza skont il-ftehim oriġinali.

¹¹ P. 73

¹² P. 74

¹³ P. 69

¹⁴ P. 75

¹⁵ P. 69

¹⁶ P. 9

Huwa ċar li l-Ilmentatur kien konxju ta' diversi aspetti tal-polza. Għaldaqstant, huwa evidenti u ammess li l-Ilmentatur qed iressaq dan l-ilment minhabba l-fatt li l-ammont offrut lilu mal-maturità huwa ferm inqas minn dak li kien qed jistenna li jirċievi. Fil-fatt, hu stess xehed li:

“L-ilment tiegħi huwa li kont naf li kienu stimi imma li l-istima varjat wisq.”¹⁷

Kif diġà intqal aktar kmieni, ix-xhieda mogħtija mir-rappreżentanta tal-Fornitur tas-Servizz dwar l-ispjega mogħtija fil-mument tal-bejgħ hija waħda kredibbli, iżda ikkomparata mad-dikjarazzjonijiet tal-Ilmentatur, huwa evidenti li l-aspettattivi ta' dan tal-aħħar kienu tali u dawn ma ġewx milfuqa.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-1999, ma kinitx xi haġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ. Għaldaqstant, mill-banda l-oħra, kruċjali li jiġi ikkonsidrat il-fatt li anke persuna mhux tant intiża fil-finanzi tifhem li mhux floku tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal 25 sena speċjalment peress li l-kontribuzzjonijiet tiegħu 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 apparti li dak iż-żmien *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu, filwaqt li, fuq kollox, l-Ilmentatur innifsu ddikjara aktar minn darba li kien intiż fil-Borża ta' Malta u, għaldaqstant, seta' kien f'pożizzjoni li jifhem ċertu aspetti ta' investment.

Il-punt kruċjali fl-ilment mhux li l-Fornitur tas-Servizz naqas milli jhallas xi ammont li kien garantit skont il-kwotazzjoni u l-polza, iżda li l-ammont offrut mal-maturità tal-polza varja wisq mill-ammont oriġinarjament stimat; għalkemm ġie ammess li ma kien hemm l-ebda wegħda li l-varjazzjoni kellha xi livell pre-definit.

Filwaqt li stimi dwar affarijiet li jkollhom skadenza qasira jkollhom aspettativa li ma jvarjawx wisq, mhux l-istess jista' jingħad għal stimi bi skadenza ta' 25 sena. F'dan it-tul ta' żmien, l-affarijiet jafu jinbidlu sew u m'hawn haġġ li prudentement jista' jbassar kemm tvarja.

¹⁷ P. 74

L-Arbitru jifhem li polza b'hal din ilmentata ta'ndem hekk kif spjegat mill-Fornitur tas-Servizz fit-twegiba g'hal-ilment u mhu fl-ebda ħin jiddeciedi mod ieħor. Iżda, min-naħa l-oħra, jhoss li l-Fornitur tas-Servizz messu kien aktar kawt fil-kwotazzjonijiet li joħroġ u flok waħda messu ħareġ *spectrum* ta' kwotazzjonijiet ma'hduma b'rati differenti g'ħax fuq perjodu ta' 25 sena xejn ma' jibqa' stabbli.

Fil-fatt, ingħad li wara s-sena 2000, bdew joħroġu tliet kwotazzjonijiet u mhux waħda, u dan jgħin biex il-klijent jifhem li ma kien hemm xejn garantit g'hal 25 sena.

Għalhekk, għar-raġunijiet kollha mogħtija aktar 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeciedi 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-Ilmentatur, sal-limitu ta' fejn kienu legittimi, ma ġewx mil'huqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €40,175.40,¹⁸ li iżda fid-data tal-maturità ġie offrut ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament legittimi.

L-Arbitru jrid jasal g'hal 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 min'habba li hemm diversi fatturi li jridu jiġu ikkonsidrati.

Minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentatur ma kien xejn viċin dak originarjament ikkwotat lilu, ma ġiet ipprezentata l-ebda prova li dak iż-żmien, hu kellu xi għażliet oħrajn ta' investiment jew tfaddil u li minnhom seta' jkollu ritorn daqs dak ikkwotat jew aktar u, għalhekk, ifisser li ma ġiet ipprezentata l-ebda prova ta' xi *opportunity loss* imġarrab mill-Ilmentatur innifsu.

¹⁸ P. 4

Minkejja li kemm-il darba stqarr li hu kien u għadu intiż fil-Borża ta' Malta, u kien jara x'opportunitajiet ta' investment kien hemm u li hu seta' jieħu, ma għet ipprezentata l-ebda prova fattwali li kieku minflok għamel din il-polza, kien hemm investment eżistenti dak iż-żmien li hu seta' għamel minflok u li kien ser irendilu aktar milli fil-fatt rendietlu din il-polza.

Dan minbarra l-fatt ukoll li permezz ta' din il-polza, l-Ilmentatur żgur li ma kellu xejn x'jitlef. Apparti l-element ta' kopertura fuq il-ħajja, l-Ilmentatur kellu ċ-ċans li jikkontribwixxi għat-tfaddil permezz ta' din l-istess polza u dan billi jhallas ammont żgħir kull sena għal ħamsa u għoxrin sena sħaħ.

Investiment alternattiv fil-Borża ta' Malta, kif hu qal li seta' jagħmel, ma kienx ikun possibbli li jhallas ammont żgħir kull sena, iżda ried ikollu f'idejh *'lump sum'*.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn 3.6%,¹⁹ li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, għalhekk, dan għandu jiġi wkoll ikkonsidrat fi sfond fejn il-kapital tal-investment kien sostanzjalment garantit, fattur li l-Ilmentatur innifsu ikkonferma meta qal:

*"Mistoqsi jekk meta xtrajt il-polza ridtx nagħmel investment riskjuż, jiġifieri kont lest li nitlef il-kapital li nvestejt jew ridtx ingemma', ngħid ingemma'."*²⁰

Għalhekk, l-Arbitru jiddeċiedi li s-somma xierqa li għandha tingħata lill-Ilmentatur bħala kumpens hija dik ta' **€2,574 (elfejn, ħames mija u erbgħa u sebgħin ewro)**.

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kap. 555 tal-Ligijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' elfejn, ħames mija u erbgħa u sebgħin ewro (€2,574) b'żieda mas-somma diġà offruta, cioè, mas-somma ta' €17,160.21²¹ u, għalhekk, iħallsu s-somma kumplessiva ta' €19,734.21 (dsatax-il elf, seba' mija u erbgħa u tletin ewro u wieħed u għoxrin ċenteżmu).

¹⁹ P. 65

²⁰ P. 75

²¹ P. 8

Bl-imghax ta' 2.65%²² minn hamest ijiem tax-xoghol 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 tipografiċi 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.

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

L-Ispejjeż tal-Proċeduri

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

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

L-ammont ta' tariffi u spejjeż rigward servizzi professjonali jew ta' konsultazzjoni mogħtija lill-konsumaturi relatati mat-talbiet jew proċeduri taħt l-Att, li jistgħu legalment u raġonevolment jintalbu bħala parti mill-ispejjeż tal-proċeduri, mhumiex speċifikati fid-dispożizzjonijiet preżenti tal-Att.

L-Arbitru jistenna iżda li tali tariffi u spejjeż għandhom jirriflettu t-tariffi u spejjeż hekk kif stipulati u applikabbli għal proċeduri magħmula fil-Qorti Ċivili ta' Malta fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.