

Quddiem l-Arbitru għas-Servizzi Finanzjarji

Kaž ASF 199/2024

KZ

(‘l-Ilmentatur’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta tas-7 ta’ Marzu 2025

L-Arbitru,

Ra l-Ilment,¹ fejn l-Ilmentatur issottometta li lura f’Ottubru 1999, għamel polza tal-assigurazzjoni fuq il-ħajja għal perjodu ta’ ħamsa u għoxrin sena.

Qal li issa li l-polza immaturat, gie infurmat mill-Fornitur tas-Servizz li l-ammont dovut lilu huwa ta’ €26,012.52. Hu stqarr li dan huwa ferm ‘il bogħod mill-ekwivalenti ta’ Lm26,200 li kien indikat fl-istima mogħtija lilu fil-mument li giet infassla l-polza.

L-Ilmentatur indika li minħabba li kienet digà saret ingustizzja miegħu fir-rigward tad-data ta’ meta kellha tibda l-polza, ma jixtieqx li issa mal-maturità jerga’ jigril l-istess u, għalhekk, qed ifittex konferma li l-ammont li qed jigi offrut lilu huwa korrett.

Għaldaqstant, l-Ilmentatur jinsisti li jingħata rimedju finanzjarju ta’ €61,029.58, li huwa l-istess ammont indikat fl-istima meta giet mibjugħa l-polza lilu.

Ra t-twegiba² tal-Fornitur tas-Servizz

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¹ P. 1 – P. 5 b’dokumenti annessi p. 6 - 108

² P. 114 - P. 119 b’dokumenti annessi P. 120 – P. 122

1. **MAPFRE MSV Life plc ('MMSV')** refers to the allegation made by the complainant that the maturity value of the policy in question numbered 54900 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 61,029.58

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 details hereunder.

2. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotation that was presented by the complainant together with this complaint (fol. 42). 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 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 has acted in good faith.*

4. *The Important Notes (fol. 43) 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 amount that was indicated in the quotation as “Estimated Maturity Value including Reversionary Bonus” was 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 amount being indicated in the quotation (fol. 42) as “Estimated Maturity Value including Reversionary and Terminal Bonuses” of Lm26,200 was likewise not guaranteed since it was highly volatile.

6. *In fact, the Life Policy Schedule (fol. 16) provides that “In respect of each premium paid, Lm292.49 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. 16) was the sum assured of Lm6,802 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 (fol. 43) 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. *Furthermore, the complainant also signed the second page of the Product Information document (DOC. MSV 1 and 2) 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".***

10. 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 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.

11. 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.

12. ***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 8,979.52 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 3.12% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.67%.

13. ***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.***
14. ***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. 73-102). 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.

- 15. 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. 16) with an amount of Lm6,802.***

Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to EUR17,033 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 EUR8,979.52 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.

16. *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.*

17. *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. 33) 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.

18. *In the online complain, the complainant mentioned that he paid the premium of Lm300 in October 1999, however the 1st premium due was in January 2000. This was the case since the application form was signed on 10th January 2000 as shown in fol. 45. Therefore, the endorsement (fol. 47) was issued to amend the commencement date of the Policy which according to the complainant in the online complaint (fol. 3) was done at his request.*

19. *The word "stima" in the comment made by the complainant in the online complaint (fol. 3) stating that he wants a financial remedy as per the quote given of EUR 61,029.58, further confirms that the complainant was aware that he was being presented with estimated values. Furthermore, even though there is a difference between the estimated values provided at*

application stage and the values in the Maturity Notification letter, the Company always declared bonuses at its discretion, even when the investment returns were decreasing. In fact, as stated in the Important Notes (fol. 43)

“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 happened with other volatile investments, smoothing ensures that in period of low investment returns, MMSV may still be able to declare a positive Reversionary Bonus Rate.

- 20. MMSV maintains that the Policy was sold in accordance with the regulations that were applicable at the time when the Policy was being sold. In fact, the complainant was presented with the Statutory Notice that was issued in compliance with the provisions of the life insurance regulations, 1989, which was signed by the complainant himself (Doc. MSV 3). The Statutory Notice set out several warnings including the right of the complainant to withdraw from purchasing the Policy and the manner to do so.***

This notice was intended to give policyholders the right to withdraw from the transaction when the policyholder may have second thoughts about the policy or was allegedly pressured to purchase the policy. However, in this case, the complainant did not exercise any of the said rights set out in the statutory notice and consequently agreed to proceed with the Policy.

- 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 provided during the course of these proceedings.

With reservation for any further pleas.”

Seduti

Fl-ewwel seduta tat-28 ta' Jannar 2025, xehed l-Ilmentatur, fejn stqarr li:

“Ngħid li kont għamilt life assurance għal ħamsa u għoxrin sena u mmaturat dan l-aħħar.

Irċevejt l-ammont li għandi nieħu u ngħid li hemm differenza mhux ħażin bejn l-istima li kienet ġiet proposta meta għamilt il-polza u kemm ser nieħu. Prattikament, ngħid li bejn l-istima u x'ser nieħu huwa inqas min-nofs li kien ġie stmat.

Din qed naraha baxxa ħafna. Ngħid li fl-insurances ma nifhimx u rrid inkun ċert li dan li ser nieħu huwa vera dan.

Ngħid li kienu qed jagħmlu l-irreklamar tal-insurances u kont avviċinajt sub-contractor u għamilt il-polza hemmhekk. Ngħid li mort għandu fl-uffiċċju u dejjem iltqajt miegħu fl-uffiċċju. Ngħid li dan kien Adrian Bonnici u jekk m'inix sejjer żball il-kumpanija kienet Secucare u kellu uffiċċju Ħaż-Żebbuġ.

Ngħid li fil-bidu tal-polza, kelli daqsxejn ta' issue meta bdiet il-polza, u kont mort għand England Insurance. Ngħid li lil Adrian Bonnici kont iltqajt miegħu f'uffiċċju jismu Secucare, Ħaż-Żebbuġ, imma, mbagħad, fuq l-issue li kelli meta kienet ser tibda l-polza, imbagħad, għajjtuli England Insurance, l-Imsida.

Ngħid li l-karti imlejthom għand Secucare, Ħaż-Żebbuġ. Għaddew ħamsa u għoxrin sena imma ma jidhirlix li ffirmajt xi karti għand England Insurance. Għand England ressaqt l-ilment tiegħi minħabba li l-insurance kienu ser jibdewhieli bejn wieħed u ieħor xi tliet xhur wara. Imma jidhirli li dak iż-żmien ma kont iffirmajt xejn għand England. Ngħid li ma' England iltqajt magħhom fuq din il-kwistjoni biss ta' meta tibda l-policy. Ma ddiskutejniex il-policy kollha.

Ngħid li ma nafx kemm-il darba ltqajt ma' din il-persuna li ddiskutejt il-polza magħha. Li naf żgur hu li minn meta ddecidejt li nagħmilha u ħallastu, kwazi

kont nitla' kull ġimagħtejn, imbagħad, kull ġimgħa nistaqsih il-polza fejn kienet waslet. U dejjem jgħidli ser issir, ser issir u ...

Ngħid li ma niftakarx jekk iltqajtx darba jew darbtejn biex niddiskutu u jispjegali l-polza. Ngħid li kien ħa madwar kwarta jew nofs siegħa sakemm fiehemni l-polza. Ngħid li ma niftakarx.

Ngħid ma niftakarx jekk hux kwarta jew nofs siegħa imma mhux aktar minn darbtejn żgur.

Dak iż-żmien li għamilt il-polza jidhirli li kont għadni student, Ma niftakarx ezatt. Dak iż-żmien kont qed nistudja għal Draughtsman. Ngħid li iva, kont naqra bl-Ingliż.”³

Fil-kontroezami, l-Ilmentatur kompli li:

“Mistoqsi jekk kienx ġie maqbul bejni u bejn is-Sur Bonnici kemm kienet ser tkun il-varjazzjoni bejn dak li kien hemm fl-istima u dak li eventwalment stajt nieħu, ngħid li, le, dik qatt ma ssemmiet. Ngħid li dejjem bqajna fuq l-istima, qatt ma kien hemm xi ħadd li qalli li din tista' tkun in-nofs jew tista' tkun il-kwart biss.

Qed jingħad li kont naf li tista' tvarja imma ma qallix b'kemm tista' tvarja, ngħid li kont naf bl-istima. Ngħid li jiena, personalment, kull meta nagħti stima – issa ma nafx fil-każ tal-insurances – dejjem jekk ma jkunx l-ammont, ikun viċin tal-ammont imma qatt ma għaddieli minn moħħi li kienet ser tkun in-nofs għax kienet tkun storja differenti, inqas min-nofs.

Qed jingħad li jien kont naf li tista' tvarja u qiegħed hawn nilmenta għax varjat wisq u qed nitlob lill-Arbitru biex jgħidli kinitx maħduma tajba jew le, ngħid iva.

Qed jingħad li fl-istima (paġna 42 tal-proċess) hemm tliet figuri u mistoqsi xi spjegazzjoni tani r-rappreżentant fuq dawn il-figuri, ngħid li niftakar huwa li kienu l-aħħar żewġ bonuses u li kien inxurjat huwa s-Lm6,800. Ngħid li fuq il-figura tad-Lm19,000 ma niftakarx. Ngħid li fiehemni imma ma niftakarx.

³ P. 123 - P. 124

Ngħid li meta ħadt il-polza aċċertajt ruħi biex inkun żgur u għidtlu li ma ridtx nitlef dak li ħriġt.

Qed jingħad li jien ikkonfermajt li l-ammont ta' Lm26,200 seta' jinbidel, ngħid li kont konxju li hija stima.

Qed jingħad li mill-Proposal Form joħroġ li dak iż-żmien jien kont Land Surveyor, ngħid li dak kien l-apprendistat tiegħi waqt li kont student. Ngħid li le, ma kienx lest il-course. Parti mill-iskola kienet li naħdmu waqt li nistudjaw.

Mistoqsi la mlejt il-karti mas-Sur Bonnici x'kienet ir-raġuni għalfejn mort għand England, ngħid li, jekk m'inix sejjer żball, meta kont ser nagħmel il-polza kien għajjatli Adrian biex naraw kif ser insolvuha u kien hu stess li dderiġieni biex immur għand England nitkellem magħhom. Ngħid li meta rċevejt il-polza, ma qbiltx mad-data ta' din il-polza u b'xi mod spiċċajt għand England meta bdejt nipprotesta fuq din id-data. Jien ma' England tkellimt biss fuq id-data ta' din il-polza li ġiet riżolta.”⁴

L-Arbitru ġibed l-attenzjoni għal paġna 49 fejn hemm biċċa karta *blank* iffirmata minn xi ħadd Bonnici bil-kliem:

'Secucare Service Ltd

46 Gate Avenue Żebbuġ.

Endowment with Profits

25 yrs 300.00'

(li għalkemm m'hawnx li huma Liri Maltin, dak iż-żmien konna għadna bil-Liri Maltin).

Dan sabiex wieħed jipprova jintraċċa lil Adrian Bonnici fejn hu qiegħed għax jidher li hu kien il-persuna li fiehem il-polza lis-Sur KZ għax is-Sur KZ meta mar għand *England Insurance*, il-konverżazzjoni ma' *England* kienet biss fuq meta tibda l-polza.

⁴ P. 124 - P. 125

L-Arbitru ġibed ukoll l-attenzjoni⁵ dwar il-fatt li hemm dokumenti, fosthom, il-*Product Information* u l-*Statutory Notice*, li m'humiex iffirmati mir-rappreżentant li biegh il-polza.

F'din is-seduta, s-Sur Victor Farrugia, għall-Fornitur tas-Servizz, qal⁶ li l-*Affidavit* li s-soltu jippreżenta huwa simili għar-risposta tal-Fornitur tas-Servizz u ma jhossx il-ħtieġa li jibqa' jippreżentah sakemm ma jkunx hemm affarijiet ġodda. Għaldaqstant, f'dan il-każ, Victor Farrugia iddikjara li m'għandu xejn xi jżid mar-risposta.

Fit-tieni seduta tal-24 ta' Frar 2025, Victor Farrugia ikkonferma⁷ li r-risposta mibgħuta mill-Fornitur tas-Servizz għall-Ilment hija x-xhieda tiegħu u tenna li m'għandu xejn aktar xi jżid.

Barra minn hekk, Dr Veronica Grixti, f'isem il-Fornitur tas-Servizz, infurmat lill-Arbitru li Adrian Bonnici, ir-rappreżentant li kien biegh il-polza lill-Ilmentatur, ma nstabx u, għaldaqstant, tiddikjara li m'għandhomx aktar provi xi jressqu.⁸

Hawn l-Arbitru ta l-opportunità liż-żewġ partijiet biex jekk iridu jagħmlu sommarju tal-każ tagħhom bil-miktub, jew inkella verbalment. L-Ilmentatur iddikjara li m'għandux aktar xi jżid, filwaqt li l-Fornitur tas-Servizz għamel is-sottomissjonijiet tiegħu b'mod verbali, fejn stqarr li:

“Fl-umli fehma tagħna, l-ilment ta’ dan il-każ hu biex jiġi aċċertat jekk il-Maturity Value kienx maħdum sew jew le u mhux minħabba li kien hemm xi allegazzjoni li kien hemm is-somma mwiegħeda tal-Estimated Maturity Value minħabba li l-ilmentatur ammetta li fehem li l-ammont kien estimated u seta’ jvarja.

Fil-fatt, fix-xhieda tiegħu jgħid:

‘Qed jingħad li jien kont naf li tista’ tvarja u qiegħed hawn nilmenta għax varjat wisq u qed nitlob lill-Arbitru biex jgħidli kinitx maħduma tajba jew le, ngħid iva.’

⁵ P. 125

⁶ P. 125 - P. 126

⁷ P. 127

⁸ *Ibid.*

U qal ukoll:

‘Qed jingħad li jien ikkonfermajt li l-ammont ta’ Lm26,200 seta’ jinbidel, ngħid li kont konxju li hija stima.’

Qatt ma kien hemm qbil bejn l-ilmentatur u s-salesperson ta’ kemm setgħet tvarja. Fil-fatt qalilna:

‘Mistoqsi jekk kienx ġie maqbul bejni u bejn is-Sur Bonnici kemm kienet ser tkun il-varjazzjoni bejn dak li kien hemm fl-istima u dak li eventwalment stajt nieħu, ngħid li le, dik qatt ma ssemmiet. Ngħid li dejjem bqajna fuq l-istima, qatt ma kien hemm xi ħadd li qalli li din tista’ tkun in-nofs jew tista’ tkun il-kwart biss.’

Għalhekk, l-ilmentatur ma ngħatax x’jifhem li setgħet tvarja bi ftit biss, u jekk dik kienet l-opinjoni tal-ilmentatur, allura, kienet opinjoni żbaljata għax investiment għal ħamsa u għoxrin sena, fejn isiru pagamenti żgħar fis-sena, ma jistax wieħed jippretendi li jkun hemm varjazzjoni bi ftit ħafna.

L-ilmentatur mar fuq l-inizjattiva tiegħu stess u mar l-uffiċċju tas-salesperson u ma kien hemm l-ebda pressjoni. Huwa persuna edukata u jaf jaqra bl-Ingliż u d-dokumenti li ġew ippreżenati, fosthom, l-Important Notes (p. 43), il-Product Information (Doc. MSV1 u Doc. MSV2), l-iStatutory Notice (Dok. MSV3) u l-polza imkien ma jgħidu li kien imwiegħed li jithallas l-Estimated Maturity Value, iżda l-obbligu hu ‘to pay the greater of the Sum Assured or Policy Account (if any)’ li fil-fatt avvera ruħu.

Huwa ekwu u ġust li nistrieħu fuq id-dokumenti speċjalment minħabba li l-ilmentatur għar-raġunijiet naturali li għadda daqshekk żmien ma jiftakarx kemm-il darba iltaqa’ mas-salesman, kemm damet il-laqgħa u lanqas dwar l-isjegazzjoni ta’ x’kienu l-figuri.

Fil-fatt, qalilna:

‘Ngħid li ma nafx kemm-il darba ltaqajt ma’ dik il-persuna li ddiskutejt il-polza magħha.’

Ma jiftakarx jekk hux nofs siegħa jew kwarta, jew jekk iltaqax darbtejn.

Mistoqsi fuq il-figura tad-Lm19,000 li hemm fl-istima, qal:

‘Ngħid li fuq il-figura tad-Lm19,000 ma niftakarx. Ngħid li fiehemni imma ma niftakarx.’ ngħid li ma nafx. Kien fiehemni imma ma niftakarx.’

L-objettiv tal-ilmentatur kien li ma riedx jitlef il-kapital u, fil-fatt, hekk ġara; u mhux talli hekk talli għamel gwadann ta’ €8,979 li hija gross ta’ 3.67%.”⁹

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, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.¹⁰

Il-punt kruċjali f’dan l-ilment jittratta l-ammont offrut lill-ilmentatur mal-maturità tal-polza li meta dan jiġi ikkomparat mal-ammont indikat fl-istima mogħtija lilu fil-mument tal-bejgħ tal-istess polza, huwa ferm inqas.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x’ġie mwiegħed lill-ilmentatur u x’eventwalment ġie mogħti jew offrut lilu mal-maturità.

Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq 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-Arbitru għandu biss f’idejh il-verżjoni tal-ilmentatur minħabba li, għal xi raġuni jew oħra, hekk kif anke ddikjarat mill-Fornitur tas-Servizz, ir-rappreżentant li biegħ il-polza ilmentata ma nstabx. Izda, ta’ min jinnota li l-ilment sottomess ma jittrattax speċifikament il-bejgħ ta’ din il-polza in kwistjoni, izda, kif anke stqarr l-ilmentatur innifsu fl-ilment originarjament sottomess, u anke waqt il-kontroeżami, hija li:

⁹ P. 127 - P. 129

¹⁰ Kap. 555, Art. 19(3)(b)

‘... qiegħed hawn nilmenta għax varjat wisq u qed nitlob lill-Arbitru jekk kinitx maħduma tajba jew le, ngħid iva.’¹¹

Fix-xhieda tiegħu, l-Ilmentatur stqarr li hu kien avvicina rappreżentant tal-Fornitur tas-Servizz sabiex jagħmel din il-polza in kwistjoni wara li kien ra diversi reklami. Minkejja li ma jiftakarx kemm-il darba kien iltaqa’ mar-rappreżentant, l-Ilmentatur sostna li l-polza kienet giet spjegata lilu, kien konxju tal-fatt li kien qed jiġi pprezentat bi stima, filwaqt li b’referenza għall-kwotazzjoni mogħtija lilu, ingħad li:

‘... fl-istima (paġna 42 tal-proċess) hemm tliet figuri u mistoqsi xi spjegazzjoni tani r-rappreżentant fuq dawn il-figuri, ngħid li niftakar huwa li kienu l-aħħar żewġ bonuses u li kien inxurjat huwa s-Lm6,800. Ngħid li fuq il-figura tad-Lm19,000 ma niftakarx. Ngħid li fiehemni imma ma niftakarx.’¹²

Huwa ċar li l-Ilmentatur kien konxju ta’ diversi aspetti tal-polza. Għaldaqstant huwa evidenti li l-Ilmentatur qed iressaq dan l-Ilment minħabba l-fatt li l-ammont offrut lilu mal-maturità huwa ferm inqas minn dak li kien qed jistenna li jirċievi. Hu stqarr li meta fil-professjoni tiegħu jagħti stima, jekk ma jitlobx ħlas tal-ammont li kien preċiżament ikkwotat, ikun fil-verità viċin u, għalhekk, qatt m’għaddielu minn moħħu li s-somma li kien ser ikun intitolat għaliha kienet ser tkun inqas min-nofs dik ikkwotata fl-istima mogħtija lilu.

Hu tenna li minkejja li qatt ma gie maqbul bejnu u bejn ir-rappreżentant kemm kellha tkun il-varjazzjoni bejn dak li kien hemm fl-istima u dak li eventwalment seta’ jieħu, ammetta li dan il-fattur qatt ma ssemma’, iżda *‘... dejjem bqajna fuq l-istima, qatt ma kien hemm xi ħadd li qalli li din tista’ tkun in-nofs jew tista’ tkun kwart biss.’¹³*

Kif diġà intqal aktar kmieni, l-Ilmentatur qed iressaq dan l-Ilment minħabba l-fatt li l-ammont offrut lilu mal-maturità huwa inqas minn dak li kien qed jistenna li jirċievi.

¹¹ P. 124

¹² *Ibid.*

¹³ *Ibid.*

L-Arbitru m'għandux informazzjoni dwar x'intqal waqt il-laqgħa bejn l-Ilmentatur u r-rappreżentant, u x'informazzjoni ngħatat, iżda huwa evidenti li l-aspettattivi tal-Ilmentatur kienu tali u dawn ma ġewx milħuqa.

Biex tintlaħaq il-figura kkwotata jrid isir '*compunding*' b'rata għolja li għalkemm kienet fattibbli fl-1999, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal 25 sena sħaħ.

Għaldaqstant, mill-banda l-oħra, kruċjali li jiġi ikkunsidrat il-fatt li anke persuna mhux tant intiza 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 appartni li dak iż-żmien *bonds* għal terminu twil fil-Lira Maltija ma kinux jeżistu.

L-Arbitru jifhem li polza b'hal din ilmentata taħdem hekk kif spjegat mill-Fornitur tas-Servizz fit-tweġiba għall-Ilment u mhu fl-ebda ħin jiddeċiedi mod ieħor. Iżda, min-naħa l-oħra, iħoss 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' jibqgħu' 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.

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-Ilmentatur, sal-limitu ta' fejn kienu leġittimi, ma ġewx milħuqa. L-aspettattivi tiegħu kienu li mal-maturità tal-polza kien ser jirċievi s-somma ta' €61,029.58,¹⁴ li iżda fid-data tal-maturità ġie offrut ferm inqas. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu kompletament leġittimi.

¹⁴ P. 3

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

Minkejja li mal-maturità tal-polza, l-ammont offrut lill-Ilmentatur ma kien xejn viċin dak oriġinarjament ikkwotat lilu, ma għet ippreżentata 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 għet ippreżentata l-ebda prova ta' xi *opportunity loss* imġarrab mill-Ilmentatur innifsu.

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.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza, ra li r-rendiment tagħha kien ta' aktar minn 3.6%,¹⁵ li fiċ-ċirkostanzi kollha, ma kienx wieħed ħazin u, għalhekk, dan għandu jiġi wkoll ikkunsidrat fi sfond fejn il-kapital tal-investiment kien sostanzjalment garantit u l-Ilmentatur innifsu ammetta¹⁶ li meta xtara l-polza ilmentata, kien aċċerta ruħu li ma jitlifx dak li jkun ħallas tul iż-żmien.

Fuq kollox, kif saret ukoll referenza aktar kmieni, l-Ilmentatur stqarr li meta fil-professjoni tiegħu jagħti stima, jekk ma jitlobx ħlas tal-ammont li kien preċiżament ikkwotat, il-varjazzjoni f'dan l-istess ammont tkun żgħira. Iżda, kruċjali li jiġi ikkunsidrat il-fatt, li meta tingħata stima għal affarijiet li jseħħu fi żmien qasir, bħal dak li qed jirreferi għalih l-Ilmentatur, huwa raġonevoli li wieħed jistenna li l-varjazzjoni tar-realtà mill-istima tkun żgħira.

Iżda, stima għal żmien 25 sena ma tistax raġonevolment tistenna li l-varjazzjoni tkun żgħira, għax 25 sena huwa żmien twil u kollox jaf jinbidel, u m'hawn ħadd li jista' ibassar x'ser jiġri mill-investimenti fi żmien daqstant twil.

¹⁵ P. 117

¹⁶ P. 125

Għalhekk l-Arbitru jiddeciedi li s-somma xierqa li għandha tingħata lill-Ilmentatur bħala kumpens hija dik ta' **€3,902 (tlett elef, disa' mija u tnejn 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-Ilmentatur is-somma ta' tlett elef, disa' mija u tnejn ewro (€3,902) b'zieda mas-somma digà offruta, cioè, mas-somma ta' €26,012.52¹⁷ u, għalhekk, iħallsu s-somma kumplessiva ta' €29,914.52 (disgħa u għoxrin elf, disa' mija u erbatax-il ewro, u tnejn u ħamsin centezmu).

Bl-imgħax ta' 2.9%¹⁸ minn ħamest 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.

¹⁷ P. 10

¹⁸ Rata kurrenti MRO (Main Refinancing Operations) tal-Bank Ċentrali Ewropew

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 gurnata min-notifika tad-Deciżjoni skont l-artikolu msemmi.

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

L-Ispejjeż tal-Proċeduri

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

L-ispejjeż tal-proċeduri mhumiex limitati għall-pagament tal-ispejjeż applikabbli fuq ilment magħmul mal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji (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.