

AK u KK

(‘l-Ilmentaturi’)

vs

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

(‘il-Fornitur tas-Servizz’)

Seduta tat-13 ta’ Marzu 2026

L-Arbitru,

Ra l-Ilment,¹ fejn l-Ilmentaturi ssottomettew li huma ma jaqblux mas-somma li giet offruta lilhom mal-maturità tal-polza li kellhom mal-Fornitur tas-Servizz. Dan għaliex huma jsostnu li dejjem ħallsu l-premium għal ħamsa u għoxrin sena skont kif kien mitlub minnhom fil-ftehim li kellhom mal-istess Fornitur tas-Servizz.

Iżda, min-naħa l-oħra, skont l-Ilmentaturi, l-Fornitur tas-Servizz ma żammx kelmtu għaliex is-somma offruta issa (ta’ €25,063.52) hija ferm inqas mill-iżgħar somma li kienet imnizzla fl-istima li kienet ingħatatilhom inizjalment.

L-Ilmentaturi spjegaw li r-rappreżentant tal-Fornitur tas-Servizz kien aċcertahom qabel ma ffirmaw il-kuntratt li, jiġri x’jiġri, żgur li mad-data tal-maturità ser jiċievu minn tal-inqas is-somma ta’ Lm 19,450 (ekwivalenti għal €45,306.31). L-ammonti l-oħra kienu ikbar u, cioè, Lm 22,587 (ekwivalenti għal €52,613.55) u Lm 24,365 (ekwivalenti għal €56,755.18).

Barra minn hekk, l-Ilmentaturi jiftakru li qabel ma ffirmaw il-kuntratt kienu staqsew lir-rappreżentant kemm-il darba u dan ikkonfermalhom dak kollu li kien qalilhom. B’hekk, ikkonvinċihom li jixtru l-polza.

¹ P. 1 - 6 b’dokumentazzjoni p. 7 - 68

L-Ilmentaturi jhossu li s-somma ta' €25,063.52 mhijiex waħda ġusta għax huma dejjem ħallsu l-ammont kollu u fil-ħin. Ikomplu jgħidu li mhuwiex sew li b'polza bħal din wieħed ikun jaf kemm għandu jhallas u għal kemm-il sena, iżda l-ammont finali ma jkunx jafu. Isostnu li r-raġunijiet li ngħataw mill-Fornitur tas-Servizz huma biss skużi li huma mhumiex ser jaċċettaw għaliex "kuntratt huwa kuntratt".

Għaldaqstant, l-Ilmentaturi qegħdin jitolbu s-somma sħiħa li kienu ffirmaw għaliha u li r-rappreżentant tal-Fornitur tas-Servizz kien aċċertahom li ser jirċievu mal-maturità tal-istess polza u, cioè, €56,755.18 (l-ekwivalenti ta' Lm 24,000).

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

'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 FP402409 of nature 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 provide them with compensation in the amount of €56,755.18.*
- 2. 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.*
- 3. In the first place, the amount being requested by the complainants is based on estimates shown in the quotation, provided by the complainants (fol.013) together with this complaint and another signed copy along with the Important Notes, presented as MSV DOC 1 and 2. Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*

² P. 76 – 81 b'dokumentazzjoni p. 82 - 86

4. **Furthermore, the quotation in question shows three different rates, calculated namely on the rates of 5.25%, 6.25% and 6.75% showing three different scenarios of the estimated maturity value including reversionary bonus. In fact, the estimated maturity value including reversionary bonus was indicated as Lm 14,962 or Lm 18,742 or Lm 18,742. The quotation calculated the estimated maturity value including reversionary and terminal bonus based on a 2% Terminal Bonus. Therefore, the quotation clearly shows three Estimated Maturity Values including Reversionary and Terminal Bonuses, with values of Lm 19,450, Lm 22,587 and Lm 24,365.**
5. However, apart from the fact that there were **three scenarios** and therefore none of those three scenarios could have been guaranteed, it was made clear in that these rates **could fluctuate. Such values were only projected amounts and not promised amounts.**
6. 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.** At the time, the bonus rate was much higher than it is today, with a rate of 5.75% in 2000 which started to decrease as from 2001 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.**
7. It has also been stated that such rates, including the terminal bonuses are highly volatile, besides the fact that the quotation itself presented **three scenarios** and provided that those scenarios could not materialise if the rates were to change and therefore said figures could not have been guaranteed. The complainants were also presented with notes together with the quotation (DOC MSV 2).

8. *The Important Notes (MSV DOC 2), 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 ...** 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 mentioned in point 4, indicated in the quotation 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 of 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.

9. *With regards to the “Terminal Bonus”, the same document showing the Important Notes also explains that **“Depending on its profits experience Middle Sea Valletta Life Assurance 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 bonuses ... Policyholders should be aware that Terminal Bonus Rates are likely to be highly volatile and very dependent on the Company’s investment performance.”***

Therefore, the three amounts mentioned in point 4 being indicated in the quotation as “Estimated Maturity Value including Reversionary and Terminal Bonuses” were likewise not guaranteed since the terminal bonus was highly volatile.

10. Furthermore, the only amount mentioned in the Life Policy Schedule (fol.020) was the sum assured of Lm3,000 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.
11. The notes that formed part of the quotation (MSV DOC 2) 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 it 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.**
12. In addition, MMSV has observed what is contained in the Product Information Document (MSV DOC 3 and 4) 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.
13. 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 out calculations solely on current bonus rates***
- ***Please note that past performances are not necessarily a guide to future performance. Once Reversionary Bonuses are declared they are guaranteed.***

14. *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 value without putting them in the context of all the documents provided to them when the Policy was being sold to them and every year thereafter as shall be explained hereunder.

15. *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 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.

16. *Although the value of the maturity could not match the estimated figures in the quotation due to shifts in market performance, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the Policy term, despite the challenges posed by three financial crises. Moreover, in 2018, asset classes worldwide recorded negative returns, and by the time the policy matured, investment markets had been significantly impacted by COVID-19. Nonetheless, the complainants made a gain of €8,292.02 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 2.96% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.49%.*
17. *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 their return.*
18. *During the term of the Policy, MMSV always kept the complainant 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 complainant 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 also started sending to the complainants, every year, a Media Release (copies of the Policy Account Statements are presented as fol. 045-060). 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 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.

- 19. Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover for 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. 020) with an amount of LM3,000. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to €16,771.50 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 unit-linked policies where no amounts were guaranteed.*
- 20. 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 €8,292.02 which 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.*
- 21. 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.

22. *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. 062) 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.

23. *The comment made by the complainants in the online complaint (fol. 004), stating that “... wish to receive the full amount sum of LM24,000 (€56,755.18) which we signed for and were assured by MAPFRE MSVLIFE plc representative that we will receive ...” has no basis, since the complainants signed the quotation, showing estimated values and not an agreement showing a promised maturity value. The Company has always managed the MMSV With Profits fund in the best interest of its policyholders as explained earlier in point number 13.*

Moreover, the company provided the complainants with yearly statements, keeping them informed on the performance of this investment. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion.

24. *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 complainants were presented with the Statutory Notice (MSV DOC 5) that was issued in compliance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989.

The Statutory Notice set out several warnings including the right of the complainants 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 complainants did not exercise any of the said rights set out in the Notice and consequently agreed to proceed with the Policy.

25. *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, ta' nhar it-3 ta' Diċembru 2025, deheru l-Ilmentaturi, fejn xehed l-Ilmentatur:

"Ngħid li lili ħajruni biex nixtri din il-polza. Kien rappreżentant tal-BOV. Lili kienu offrewli tliet brackets.

Id-diskors kien, kelma b'kelma, jekk immorru tajjeb nieħu din. Jekk immorru inqas tajjeb nieħu din u jekk immorru ħażin, nieħu din.

Qbiżt jien u ngħid li mort fuq l-inqas u mhux fuq l-iżjed u għidtlu, 'Imma dawn neħodhom?' Qalli, 'Teħodhom żgur; jiġri x'jiġri dawk teħodhom żgur!'

U ffirmajna bir-rappreżentant b'kollox. Hawn għandi d-dokumenti kollha.

Issa huma qed jgħidu li s-somma hija din li offrewli huma, €25,063 li, fl-opinjoni tiegħi, hija ħafna 'l bogħod milli wegħduni. Allura jiena ġejt ingannat. Daħqu bija.

Qed jingħad li jien l-ilment għamiltu fuq l-Lm24,000 meta, skont kliemi, iggarantewli d-Lm19,000. Ngħid li hekk hu.

Ngħid li l-bank kien ikkuntattjani biex nagħmel din il-polza. U kont mort il-bank. Ngħid li kellna biss laqgħa waħda fejn irrangajna kollox.

Ngħid li kont mort il-bank tal-Balluta għax kelli silfi jaħdem magħhom – hu kien ħajjarni għax jien ma ridtx nagħmilha – u kien qalli li qed jiggerantili biex inserraħ moħħi.

Ngħid li konna morna jien u l-mara u f'laqgħa waħda ffirmajna u ssetiljajna kollox. Naħseb li ħadet nofs siegħa din il-laqgħa.

Ngħid li dak iż-żmien kont it-Tarzna. Ngħid li kelli xi technical certificates u bl-Ingliż naqra u nifhem.

Ngħid li l-mara kienet taħdem ukoll u tifhem bl-Ingliż ukoll.

Ngħid mela jiena kemm inħallas kont naf għax qaluli; għal kemm-il sena kont naf u kemm ser nieħu ma nafx. Mela trid tkun miġnun biex tagħmel dawn l-affarijiet. Ħa nħallas il-flus u ma nafx kemm ser nieħu?! Ma kontx nagħmilha naħseb.”³

Taħt kontroezami, huwa wieġeb is-segwenti:

“Mistoqsi inix qed ngħid li ċempilli rappreżentant tal-BOV biex nixtri l-polza, ngħid li hekk jidhirli.

Mistoqsi jistax ikun li l-memorja mhux qed iservini fuq dan il-punt għax mhux normali li l-BOV iċemplu biex ibigħu polza, jien ngħid, ma jċemplux?! X'ma jċemplux!! Anke l-MSV jċemplu!

Peress li għidt li silfi kien qalli fuqha, qed niġi mistoqsi jekk kontx diġà smajt fuqha din il-polza qabel ma ċempluli tal-BOV. Ngħid li ma kellmunix fuqha, tħajjart. Kien ħajjarni Alan Cassar, kien jaħdem il-BOV.

³ P. 87 - 88

Qed niġi referut għal Dok. MSV1, il-kwotazzjoni fejn hemm tliet rati: 5.25%, 6.25% 6.75%, u fejn il-kwotazzjoni tgħid:

'The projected estimated maturity value if future rate of return is ...' u jgħidlek dawn it-tliet rati.

Allura qed jingħad li jien kont konxju li r-rati setgħu ivarjaw u ma kinux garantiti; fejn il-quotation qed turini tliet rati differenti u mhux rata waħda.

Ngħid li le, ma kontx konxju għax kieku ma kontx nagħmilha, naħseb jiena. Kieku ma kontx ċert li ser neħodhom kieku ma kontx nagħmilha.

Lili qaluli li jiġri x'jiġri, l-inqas rata neħodha żgur.

Qed niġi mistoqsi li la naf naqra bl-Ingliż, meta d-dokument jgħid 'if future return', u jekk qed jgħidli li hi 'estimated' li mhix garantita, kif xorta qed nippretendi li dawn l-ammonti huma garantiti meta dawn l-ammonti huma 'estimated', ngħid li 'estimated' hi bejn wieħed u ieħor. U, f'dan il-każ, id differenza hija ħafna mhux naqra. Dan anke tixtri oġġett, jew ser tagħmel xi ħaġa, jagħtik stima u jista' jiġik naqra aktar u jista' jiġix naqra anqas imma f'dan il-każ, il-qabza hija kbira ħafna għax ġiet inqas min-nofs.

Qed niġi referut għad-dokument MSV 2, l-Important Notes, li jkunu fuq wara tal-quotation.

Mistoqsi nikkonferma li din tawhielna fil-laqgħa, ngħid li naħseb kollox tawna. Imma inti taħseb li jekk qed joffrulek dan, inti ser taqra kollox? Inkunu rġiel ta! Meta tmur il-bank u jagħtuk il-karti, kollox taqra?

Nikkonferma li Doc. MSV 3 u Doc. MSV 4, il-Product Information, u Doc. MSV 5, l-Istatutory Notice, tawhomlna u nikkonferma li l-firem fuqhom huma tiegħi u tal-mara."⁴

Dr Jeanine Mallia Schembri li kienet qed tassisti l-Fornitur tas-Servizz informat lill-Arbitru li ser tibgħat l-iStatement of Compliance fejn fuqu hemm il-firem tal-

⁴ P. 88 – 90

Ilmentaturi peress li ma kienx ġie pprezentat mar-risposta tal-Fornitur tas-Servizz.⁵ Ingħad li f'dawn id-dokumenti hemm *disclaimers* varji, fosthom:⁶

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

Jiġifieri li r-rati li hemm imniżżla fuq il-quotation ma kinux fissi imma li setgħu jitlegħu u setgħu jinżlu.

"Qed jingħad ukoll li rigward it-Terminal Bonus, li qed nippretendih ukoll, hemm miktub:

'It may be reduced or even withdrawn altogether.'

U fuq l-Istatement of Compliance (li ser jintbagħat wara din is-seduta), nista' nara li hemm miktub:

'The quotation which we have received only contains estimates based on the continued attainment of the current performance by Middlesea. And such estimates are not guaranteed by Middlesea Valletta, the bank or any of its employees. We have also been warned that past performance is not a guide to future performance.'

Mistoqsi meta naqra dawn id-dokumenti kollha li ngħatawli mal-ispjegazzjoni, kif qed nibqa' nsostni li huma garantiti, u mistoqsi qrajtx dawn id-dokumenti, ngħid inti taħseb li tista' taqra ruxxmata karti u jgħidlek tiffirma? Ma naħsibx li qrajnihom kollha. U għalfejn ċertu affarijiet tagħmluhom kliem żgħar, u dak li jkun ma jindunax?

Ngħid li żgur m'intix ser taqra kollox qabel tiffirma d-dokumenti. Ma jgħidlekx mur aqrahom id-dar, imbagħad, iddeċiedi.

Qed niġi referut għal Dok. MSV 5 li hu l-Istatutory Notice li fuqu hemm il-firem tagħna u qed jingħad li dan id-dokument jagħtina 15-il ġurnata biex naqraw id-dokumenti u naħsbuha u, jekk ma naqblux ma' dawn id-dokumenti, nistgħu nikkancellaw.

⁵ P. 93

⁶ P. 89

Mistoqsi kontx konxju minn dan id-dokument, ngħid li jista' jkun li ma qrajtux sew. La ħajjrni u wegħduni, għamiltha jien. La wegħduk?! Nerga' ngħid, Lm19,000 wegħduhomli. Mela jien mort għal dik it-target.

Nikkonferma li kont nirċievi l-Policy Account Statements u, fil-fatt, kont ċempilt lill-MFSA imma qalulna li ma stajna nagħmlu xejn għalissa u qalulna biex inħalluha timmatura u, imbagħad, jidħlu huma. Lil min kellimna llum naħseb spicċa għax kellu ż-żmien.

Ngħid naħseb giet spjegata li parti mill-polza kienet Life Cover li kienet tkoprini jekk niġi nieqes.

Ngħid li meta għamilt il-polza qatt ma ridt nagħmel investment riskjuż. Ridt li wara 25 sena jagħtuna dak li kienu wegħduna. Jien ma nirriskjax għax anke l-bank fixed nagħmilhom jiena, qatt ma nagħmilhom affarijiet oħra, la shares, la bonds, xejn!"⁷

Fit-tieni seduta ta' nhar it-13 ta' Jannar 2026, l-Arbitru staqsa lil Dr Jeanine Mallia Schembri, li assistiet lill-Fornitur tas-Servizz, għalfejn il-persuna li bieghet il-polza lill-Ilmentaturi ma dehritx biex tixhed f'din is-seduta.

Hija wiegħbet li kkuntattjaw lil Bank of Valletta p.l.c. iżda ġew informati li l-impjegat tal-bank ilu aktar minn għaxar snin li waqaf jaħdem mal-bank.

Għaldaqstant, minħabba l-liġi tal-GPDR, neħhew il-*contact details* tiegħu mis-sistema tagħhom u r-rappreżentanti tal-MSV ma kellhom l-ebda mod kif setgħu jikkuntattjaw lil din il-persuna. U, allura, l-MSV ma setgħetx ittellgħu għall-evidenza tagħha.⁸

Bħala evidenza, Dr Jeanine Mallia Schembri tagħmel referenza għad-dokument mibgħut, l-*Istatement of Compliance*.

Is-Sur Victor Farrugia, f'isem il-Fornitur tas-Servizz, ikkonferma bil-ġurament ir-risposta tal-kumpanija.

Taħt kontro-eżami, huwa wiegħeb illi:

⁷ P. 89 - 90

⁸ P. 94

“Mistoqsi jekk l-iStatement of Compliance li bagħtet il-kumpanija huwiex l-originali, ngħid, jekk m’inix sejjer żball, jiġi ffirmat in duplicate. Il-klijent jingħata kopja u aħna jkollna kopja imma, naturalment, il-kopja li jkollna fil-file tkun ipprezentata lill-klijent (fil-fatt, iffirmata minnu), u nżommuha fil-file bħala evidenza illi l-klijent ingħata l-informazzjoni skont din l-iStatement of Compliance.”⁹

Ingħad li l-firma tal-klijent li hemm fuq d-dokument li ntbagħat mill-kumpanija permezz ta’ email, mhijiex tal-klijent. L-Arbitru intervjena biex jispjega li d-dokument li bagħtet il-kumpanija mhuwiex l-istess dokument originali li għandu l-Ilmentatur.

Ikompili jispjega l-Arbitru li minkejja li l-*wording* fuq id-dokument li bagħtet il-kumpanija jidher identiku, però, mhuwiex photocopy tad-dokument li għandu l-Ilmentatur għaliex il-heading ta’ fuq u l-firma t’isfel juru ċar li huma differenti.

Wara s-seduta, il-Fornitur tas-Servizz bagħat il-verżjoni t-tajba ta’ dan id-dokument.¹⁰

L-Arbitru rrefera għall-*quotation* u għal Dokument 2 li hu l-*Important Notes* li l-MSV tgħid li jkunu fuq wara tal-*quotation*, u jgħid li l-*quotation* li għandu l-Ilmentatur ma hemm xejn fuq wara. Hu għandu biss il-*front cover* tal-*quotation* u m’għandux il-*back cover* tal-*quotation*. Il-*front cover* iffirmat imma l-*back cover* mhuwiex iffirmat.

Allura, l-Ilmentatur qiegħed jiddubita l-veraċità ta’ Dokument 2.

“Ngħid li l-prattika dejjem kienet li l-quotations joħroġ fuq karti li jkunu pre-printed u l-quotation toħroġ fuq quddiem. Żbalji amministrattivi jista’ jkun li ġraw fil-passat, jiġifieri jista’ jkun li giet ipprintjata mhux fuq l-Important Notes. Imma, fil-fatt, l-Important Notes jikkonfermaw dak li hemm fl-iStatement of Compliance li l-Ilmentatur jidher li għandu u ffirmat, u għalkemm mhux preċiż fil-kopja huwa wkoll iffirmat.”¹¹

L-Arbitru ħa nota tad-diskrepanza f’dawn id-dokumenti.

⁹ P. 94 - 95

¹⁰ P. 96

¹¹ P. 95

Fis-sottomissjonijiet finali tiegħu, l-Ilmentatur saħaq illi:

“Ngħid li jien l-evidenza ġibtha allavolja hemm xi affarijiet li ma jaqblux mal-affarijiet tiegħi.

Ngħid li ser noqgħod fuq l-evidenza li ssottomettejt jiena.”¹²

Fis-sottomissjonijiet finali bil-miktub tiegħu,¹³ il-Fornitur tas-Servizz qal is-segwenti:

- 1. “Fl-ewwel lok nixtiequ nirrimarkaw illi l-Mapfre MSV Life (‘MSV’) tixtieq tistrieħ fuq l-eċċezzjonijiet imniżżlin fir-risposta tas-Sur Victor Farrugia. Però, nixtiequ nagħmlu numru ta’ osservazzjonijiet:***
- 2. Hemm allegazzjonijiet li meta l-ilmentaturi xtraw il-polza, kien hemm garanziji u wegħdiet li ma ntlewq. Dan mhux korrett għax il-wegħdiet kienu li MSV tħallas id-death benefit fil-każ ta’ mewt biss jew il-maturity value fil-każ ta’ maturità. Dan jirrizulta mill-kuntratt innifsu ta’ bejn il-partijiet u cioè mill-polza (Fol. 018 - 043), partikolarment:-***
- 3. Fol. 19 tal-proċess (Preamble): ‘The Company hereby agrees to pay either the Death Benefit or the Maturity Value’. Minħabba li din il-polza waslet għall-maturità, allura irrelevanti noqgħodu nitkellmu dwar id-death benefit iżda niffukaw fuq il-Maturity Value li skont il-polza tfigħer il-valur tal-policy account fid-data tal-maturità. Il-Policy account tikkonsistit f’“all investment premium paid by the Assured and the declared accrued reversionary bonuses.” Dan juri illi l-MSV ottemporat mal-garanzija li tat għax dispota li tħallas il-policy account value.***
- 4. MSV dejjem aġixxiet in bona fede għax qabel mal-ilmentatur ddecieda li jixtri l-polza, ipprovdietu tramite r-rappreżentant F. Vella b’dokumentazzjoni dettaljata dwar il-polza li kienet tinkludi bosta specific disclaimers li jinkludu l-Important Notes, Product information u Statement of Compliance, dan tal-aħħar għidlek illi “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***

¹² P. 95

¹³ P. 98 - 102

by Middle Sea Valletta Life Assurance Company Limited, the Bank or any of its employees. We have also been warned that past performance is not a guide to future performance.”

- 5. L-ilmentatur ikkontesta l-firma fuq l-istatement of compliance ipprezentat mill-MSV, u li huwa dokument maħruġ mill-BOV li kien jinsab fil-file tal-MSV, u sostna li ma kinitx il-firma tiegħu; madankollu, fl-istess seduta l-ilmentatur ipprezenta Statement of Compliance ieħor fejn hu stess qal li dan jinkludi l-firma tiegħu, u b’hekk effettivament għamel inkluż il-paragrafu hawn fuq sottolineat. Barra minn hekk, wara eżami tad-dokument li pprezenta l-ilmentatur li ngħata lill-MSV wara l-aħħar seduta qed jiġi osservat li l-firem fuq iż-żewġ dokumenti jidhru li huma sostanzjalment identiċi u l-unika differenza bejn iż-żewġ dokumenti tinsab fil-parti intitolata “customers”, fejn l-ordni tal-kliem tidher differenti, izda fil-fatt iż-żewġ verżjonijiet jesprimu l-istess informazzjoni.***

Għandu jiġi nnutat ukoll li d-data stampata fuq iż-żewġ dokumenti hija l-istess, u għalhekk, minkejja li d-dokumenti mhumiex fotokopji ta’ xulxin, dawn jirrapprezentaw l-istess dokument li ġie mimli b’mod differenti biss f’dik it-taqsimha partikolari, wieħed miżmum mill-MSV u l-ieħor ingħata lill-klijent.

L-MSV tħalli dan il-punt fid-diskrezzjoni tal-Onorevoli Arbitru sabiex jikkunsidra u jivvaluta dawn iż-żewġ dokumenti. F’dan ir-rigward, l-MSV qed terġa’ tannetti l-verżjoni tagħha, li diġà pprezentat lill-Onorabbli Arbitru biex ikun faċli biex wieħed jirreferi għalih.

- 6. Illi jrid jingħad illi l-ammont abbażi ta’ xiex qed isir l-ilment huwa fuq quotation (MSV DOC 1) li ingħatat minħabba li l-MSV kienet obligata bil-liġi u għada sal-lum obligata li tagħtiha meta persuna tkun trid tixtri polza.***
- 7. L-istima li ingħatat lill-ilmentaturi li tirreferi għall-Important Notes, kellha bosta spjegazzjonijiet dwar kif kienu maħdumin il-figuri u li daww setgħu jinbidlu minħabba illi kienu jiddependu kif imorru l-investimenti fil-futur. Barra li intużaw il-kliem “illustration” u “estimated” ħdejn “maturity value” għax daww l-ammonti ma kinux garantiti, sabiex MSV***

taċċerta li tagħmilha ċara li l-“estimated maturity values” ma kinux garantiti u li setgħu ivarjaw ħadmet il-quotation fuq tliet scenarios differenti, cioè, abbażi tar-rata ta’ 5.25%, 6.25% u 6.75% u għalhekk l-ebda waħda minn dawk it-tliet scenarios ma setgħu kienu garantiti. Il-quotation tgħid fost ħafna affarijiet oħra illi “Projected Estimated Maturity Value if future rate of return is ...” 5.25%, 6.25% u 6.75% u Terminal Bonus ta’ 2%, u, cioè, il-quotation għamlitha ċara illi dawk ir-rati setgħu jinbidlu.

- 8. Fit-tieni seduta ġie nnotat li n-Noti Importanti (MSV DOC 2) ma kinux overleaf tal-kwotazzjoni, għandu jiġi osservat li l-prattika konsistenti hija li tali noti jitpoġġew fuq in-naħa ta’ wara tal-quotation oriġinali. Is-soċjetà esponenti ma kellhiex l-opportunità li tara d-dokument oriġinali iżda rat kopja tiegħu waqt is-seduta virtwali; madankollu, l-imsemmija noti jinsabu fil-fajl tal-klijent. Dan jikkonferma li dawn in-noti kienu bla dubju parti mill-pakkett ta’ dokumenti li ngħataw lill-klijent.*
- 9. Il-fatt li l-quotation inħadmet fuq tliet scenarios differenti, minflok rata waħda juri li l-MSV kienet aktar kawta fil-kwotazzjonijiet li ħarġet u dan jirrifletti l-ħsibijiet tal-Onorabbli Arbitru f’kawżi reċenti deċiżi minnu. Kien hemm numru ta kawżi li ttrattaw poloz li inbiegħu fis-snin disgħin.*

F’dawn il-kawżi sar aċċenn mill-Onorabbli Arbitru fejn hu ħass li f’dawk iż-żminijiet flok rata waħda l-MSV messha ħarġet spectrum ta’ kwotazzjonijiet maħduma b’rati differenti għax fuq perjodu ta’ iktar minn 25 sena xejn ma’ jibqa’ stabbli. F’din il-Polza u fuq numru ta’ poloz oħra wara s-sena 2000, hekk sar u, għalhekk, kif sostna l-Onorabbli Arbitru f’dawn il-każijiet, dan għin “lill-klijent jinduna u, fuq kollox, jifhem li ma kien hemm xejn garantit matul it-terminu tal-Polza.” Għalhekk l-informazzjoni li ingħatat lill-ilmentaturi għinithom jindunaw u jifhemu li l-estimated maturity values ma kinux garantiti. Barra minn hekk, fil-każ reċenti Każ ASF 013/2024 FC vs MAPRE MSV Life p.l.c., l-Onorabbli Arbitru qies li, ‘Il-fatt li l-kwotazzjoni kien fiha tliet ‘Projected Maturity Values’ ibbażati fuq tliet ‘future rates’ differenti huwa aktar minn indikattiv li dawn kienu stimi u mhux garanziji’.

F'dan il-każ, l-Arbitru iddetermina li l-inklużjoni ta' numru ta' stimi differenti kienet tindika li l-ebda minnhom ma kienet garantita, lanqas l-inqas stima.

- 10. Fl-ilment tagħhom, l-ilmentaturi qed jippretendu l-oġġla ammont fl-istima, fil-fatt jgħidu "The remedy I am seeking is a compensation but wish to receive the full amount of Lm24,000 which we signed for and were assigned by MAPFRE MSV Life plc representative that we will receive it on the Maturity Date", iżda fix-xhieda tiegħu l-ilmentatur u martu jgħidu li ġew iggarantiti l-ammont ta' LM19,000 (li jirrifletti l-inqas stima). Dan juri li l-ilmentaturi mhumiex konsistenti għaliex filli qed jgħidu li iggarantilhom Lm24,000 u fis-seduta qalu li l-ammont li aċċertalhom li ser jieħdu żgur kien fil-fatt Lm19,000. Imbagħad f'mument ieħor l-ilmentatur jgħid li (lil offrewli tliet brackets). Dan iqajjem dubji dwar l-eżattezza u l-affidabbiltà tad-dikjarazzjonijiet tal-ilmentaturi fir-rigward tal-informazzjoni mogħtija mir-rappreżentant F. Vella 25 sena ilu.**
- 11. Barra minn hekk, f'ebda punt id-dokumenti ma jindikaw li l-ilmentaturi kienu mwiegħda l-ammont li qed jippretendu, speċjalment fid-dawl tal-fatt li kien hemm tliet xenarji differenti ta' bonus rates. Fil-verità, jekk wieħed jibbaża fuq id-dokumenti, ma jistax jasal għall-konklużjoni li l-ammonti indikati bħala estimated kienu ggarantiti.**
- 12. L-ilmentaturi jammettu li ma tawx kas id-dokumenti, u fil-fatt jgħidu illi "ma naħsibx li qrajnihom kollha" u "ngħid li jista' jkun ma qrajtux sew". Dan juri wkoll li kien hemm negliġenza min-naħa tagħhom meta bbażaw id-deċiżjoni tagħhom biss fuq il-figuri li raw fil-kwotazzjoni u ma tawx kas id-dokumenti illi ngħataw lilhom, u interpretawhom bħala ggarantiti. Dan minkejja li l-kwotazzjoni stess tindika li l-ammont li qed jippretendu l-ilmentaturi ma setax ikun ggarantit.**
- 13. Barra minn hekk, l-ilmentaturi kkonfermaw li għandhom edukazzjoni, jafu jaqraw u jitekellmu bl-Ingliż għalhekk kienet negliġenza da parti tal-ilmentaturi li kellhom edukazzjoni biex jaqraw id-dokumenti u jifhmuhom u ma ndenjawx ruħhom jagħtu kas id-dokumenti mogħtija**

lilhom mir-rappreżentanti li jfiehmuhom li l-bonuses setgħu ivarjaw u jitiġħu u jinżlu.

- 14. Illi fix-xhieda tiegħu, l-ilmentatur stqarr illi “ngħid li kont mort il-bank għax kelli silfi jaħdem magħhom – hu kien ħajjarni għax jien ma ridtx nagħmilha – u kien qalli li qed jiggarantili biex inserraħ moħħi”. Dan jindika illi waħda mir-raġunijiet ewlenin li wassluh jixtri l-polza kienet rakkomandazzjoni minn silfu. Dan jindika li d-deċiżjoni li jidhol għal din il-polza setgħet giet influwenzata b’mod sinifikanti minn parir personali ta’ persuna terza, li huwa silef l-ilmentatur, li semma l-ilmentatur stess fix-xhieda tiegħu. Għalhekk, dan idgħajjef kwalunkwe pretensjoni li għie mqarraq jew influwenzat b’mod indebitu mir-rappreżentant tal-bejgħ.**

Dan juri illi l-motivazzjoni u l-intenzjoni tal-ilmentaturi biex jesploraw u possibilment jakkwistaw il-polza, tirrifletti interess ġenwin fil-prodott offrut minħabba dak li semgħu minn persuni terzi u kienu ġia influwenzati minn x’semgħu u x’qalu persuni terzi.

- 15. Nixtieq ukoll nenfasizza li r-rappreżentant tal-bejgħ, F Vella, kien impjegat mal-Bank of Valletta, u fil-fatt l-ilmentaturi stess ikkonfermaw dan. Għalhekk dan jindika li l-polza inbiegħet minn persuna li kien sempliciment impjegat tal-bank u mhux ser jieħu kumissjoni fuq il-bejgħ ta’ dan il-prodott.**

- 16. Irid jingħad ukoll illi l-bejgħ tal-polza in kwistjoni sar ai termini ta’ regolamenti applikabbli fil-mument tal-bejgħ tal-polza. L-ilmentaturi ġew ippreżentati bl-Avviż Statutorju (Dok. MSV 5) iżda l-ilmentaturi ma eżercitaw l-ebda dritt ikkomunikat lilhom f’dan l-Avviż.**

- 17. Anke wara l-ħruġ tal-polza, MSV dejjem żammet lill-ilmentaturi mgħarrfin b’dak li kien qed jiġri fid-dettall bl-andament tar-rati tal-imgħax li permezz tal-Bonus Statement u l-Important Notes (li kienu jingħataw mal-Bonus Statements) u allura minkejja li r-rati kienu neżlin, l-MSV dejjem tat informazzjoni kompluta lill-ilmentaturi fuq l-andament tal-polza tagħhom.**

- 18. L-ilmentaturi ma ppreżentaw l-ebda prova li dak iż-żmien kellhom xi għażla ta’ polza oħra differenti mill-polza in kwistjoni jew inkella kont**

bankarju b'raci inqas u lanqas opportunity loss minhabba l-Polza in kwistjoni, tant huwa hekk illi fix-xhieda tiegħu, l-ilmentatur qal li hu ma jehux riskji. Fil-fatt, l-average rate of return għal din il-polza hija ta' 2.96% meta wieħed jieħu d-differenza bejn l-investment premium u l-maturity value tal-polza u rate of return (gross of 15% withholding tax) on investment premium ta' 3.49% u, cioè, l-ilmentaturi għamlu gwadann ta' Euro 8,292.02.

19. Huwa ċar illi l-investment tal-ilmentaturi ma marx kif kienu qed jispjegaw l-ilmentaturi. Però, ma jfissirx li kien hemm misselling. L-MSV tista' tifhem id-dizappunt tal-ilmentaturi, imma fl-istess ħin m'huwiex xieraq illi għaliex sempliciment l-investment ma marx tajjeb daqs kemm xtaqu, jippretendu illi MSV tagħmel tajjeb għat-tnaqqis fil-valur tal-investimenti ikkawżati minhabba problemi li seħħew fid-dinja finanzjarja matul is-snin waqt li l-polza kienet fis-seħħ."

Sema' lill-partijiet.

Ra l-atti kollha tal-każ.

Jikkunsidra:

FIL-MERTU

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

Il-punt kruċjali f'dan l-ilment jitratta l-ammont offrut lill-ilmentaturi mal-maturità tal-polza, liema ammont ivarja sostanzjalment minn dak allegatament miftiehem.

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-ilmentaturi, u x'eventwalment ġew mogħtija jew offruta lillhom 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 għal-ilment.*¹⁵

¹⁴ Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).

¹⁵ Ibid. Artikolu 19(3)(c).

L-Arbitru għandu quddiemu żewġ pożizzjonijiet dwar dak li verament ġara u ntqal waqt il-laqgħa tal-bejgħ. Peress li r-rappreżentant tal-Fornitur tas-Servizz mill-Bank of Valletta ma deherx, huwa diffiċli sabiex l-Arbitru jiddetermina x'intqal eżatt u x'wassal lill-Ilmentaturi jsostnu l-verżjoni tagħhom għaliex ma jstax jisma' ż-żewġ partijiet li kienu preżenti dakinhar tal-laqgħa.

L-Ilmentaturi qalu li kien ikkuntattjahom il-bank u fil-laqgħa waħda li kellhom mar-rappreżentant iffiraw u rranġaw kollox. L-Ilmentatur stqarr li għall-bidu ma xtaqx jixtri l-polza iżda, mbagħad, tħajjar u aċċetta li jixtriha. Sostna li għalkemm ir-rappreżentant urieh tliet rati, wegħdu li jiġri x'jiġri, l-inqas somma ta' Lm19,000 jeħodha żgur: **“Lili qaluli li jiġri x'jiġri, l-inqas rata neħodha żgur”**.¹⁶

B'hekk, iħoss li **“Allura jiena ġejt ingannat. Dañqu bija”**¹⁷ għaliex is-somma li offrieli l-Fornitur tas-Servizz mal-maturità tal-polza **“hija ħafna 'l bogħod milli wegħduni.”**¹⁸ Ikompli jaċċerta li dan ġie ggarantit lilu **“kelma b'kelma”**¹⁹ għax li kieku ma kienx jaf biċ-ċert is-somma finali x'ser tkun, ma kienx jidhol għaliha din il-polza.

Iżda fl-istess ħin, id-dokumenti li kienu ngħataw l-Ilmentaturi, u cioè, l-kwotazzjoni, il-*Product Information*,²⁰ u l-Avviż Statutorju,²¹ ma jistgħux ma jingħataw importanza stante li huma ffirmati mill-Ilmentaturi: **“tawhomlna u nikkonferma li l-firem fuqhom huma tiegħi u tal-mara”**.²²

Għalkemm meta ġie mistoqsi jekk kinux qraw dawn id-dokumenti qabel ma ffiraw, l-Ilmentatur wieġeb illi: **“inti taħseb li tista' taqra ruxxmata karti u jgħidlek tiffirma? Ma naħsibx li qrajnihom kollha”**,²³ din mhijiex skuża. Wieħed għandu dejjem jaqra u joqgħod attent għal dak li qed jiffirma għaliex ladarba jkun iffirma, jintrabat b'dak li hemm miktub.

L-Ilmentaturi dejjem setgħu talbu li jieħdu l-karti u jaqrawhom bil-kwiet id-dar u wara jiftiehemu laqgħa oħra biex jiffirmawhom, naturalment jekk kienu jaqblu mal-kontenut. Madankollu, l-*Istatutory Notice* xorta tahom **“15-il ġurnata biex**

¹⁶ p. 88

¹⁷ p. 87

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ p. 85

²¹ p. 86

²² p. 89

²³ p. 90

naqraw id-dokumenti u naħsbuha u, jekk ma naqblux ma' dawn id-dokumenti, nistgħu nikkancellaw."²⁴

L-Arbitru nnota wkoll diskrepanza bejn il-kwotazzjoni li ngħataw l-Ilmentaturi u dik li kellu l-Fornitur tas-Servizz għaliex f'dik tal-ewwel ma kienx hemm l-*Important Notes* ipprintjati fuq wara.

Ir-rappreżentant tal-Fornitur tas-Servizz fil-fatt spjega illi: ***“Żbalji amministrattivi jista' jkun li graw fil-passat, jiġifieri jista' jkun li giet ipprintjata mhux fuq l-Important Notes”***.²⁵ Madankollu, l-*Statement of Compliance* ffirmata mill-Ilmentaturi tgħid:

*“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.”*²⁶

Għaldaqstant, l-Arbitru jikkonsidra li l-Ilmentaturi ma ressqux provi bil-miktub li xi somma kienet imwiegħda lilhom. Mentri d-dokumenti li ngħataw jgħidu biċ-ċar li l-valuri huma biss indikazzjonijiet u 'estimates'. In oltre, fil-kwotazzjoni kien hemm tliet rati mnizzlin: ***“5.25%, 6.25% 6.75%”***²⁷ li jkomplu juru li l-ebda rata ma kienet garantita. Dawn ir-rati kienu konformi mal-ambjent finanzjarju prevalenti fiż-żmien meta ġew ikkwotati.

L-Ilmentaturi ammettew anke li kienu konxji li din il-polza kien fiha element ta' investiment sigur bla riskju: ***“Ngħid li meta għamilt il-polza qatt ma ridt nagħmel investiment riskjuż”***.²⁸

Huwa evidenti d-diżappunt tal-Ilmentaturi rigward ir-ritorn li għandhom mill-polza. Argumentaw li anke meta ġgħib stima fuq xi xogħol din tista' tvarja xi ftit iżda mhux qabza ta' inqas min-nofs. Dan argument validu għal xi haġa li tiġi

²⁴ Ibid.

²⁵ P. 95

²⁶ P. 96

²⁷ P. 88

²⁸ P. 90

attwata fi żmien qasir iżda, fuq medda ta' 25 sena, kollox huwa incert għax hadd ma għandu viżjoni għal żmien tant twil.

L-Ilmentaturi ma pprezentaw l-ebda prova li turi li dak iż-żmien kellhom xi għażla aħjar jew minn polza simili jew kont bankarju b'rati aħjar. Għalhekk, l-Arbitru jqis li l-Ilmentaturi ma pprezentawx prova ta' *opportunity loss* li huma garrbu minhabba li għażlu li jixtru l-polza in kwistjoni abbażi tal-informazzjoni mogħtija.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-2000, ma kinitx xi haġa li setgħet tiġi sostnuta u garantita għal ħamsa u għoxrin sena sħaħ. Għalhekk, għandu jiġi kkunsidrat il-fatt li anke persuna li mhijiex daqstant intiża fil-finanzi xorta tifhem li mhuwiex f'loku li tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal ħamsa u għoxrin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq medda ta' ħamsa u għoxrin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel biex b'hekk torbot ir-rati tal-imagħax għal tul ta' żmien.

Barra minn hekk, meta l-Arbitru kkunsidra l-andament kumplessiv tal-polza ilmentata, ra li r-rendiment tagħha kien ta' 3.49%²⁹ li, fiċ-ċirkostanzi kollha, ma kienx wieħed hażin u, b'hekk, dan għandu wkoll jiġi meqjus fl-isfond fejn il-kapital tal-investment u l-qligħ iddikjarat kienu sostanzjalment garantiti, flimkien mal-*Life Cover* u l-benefiċċju li s-somma tkun mingħajr taxxa mnaqqsa.

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

Iżda f'dan il-każ partikolari, il-kwotazzjoni kienet ibbażata fuq tliet stimi ta' xenarji differenti u l-Ilmentaturi ma kellhomx inisslu pretensjonijiet li bilfors ser jieħdu xi waħda minn dawk l-istimi. Anzi, suppost kellhom jifhmu li l-fatt li haġu

²⁹ P. 101

diversi stimi fuq xenarji differenti, allura, xejn ma kien garantit, lanqas l-istima l-aktar baxxa.

Deciżjoni

Għar-raġunijiet surreferiti, l-Arbitru jhoss li dan l-ilment mhuwiex ekwu u raġonevoli, u mhux ser jiġi milqugh.

Kull parti għandha għorr l-ispejjeż tagħha.

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 taht 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. Dettalji personali tal-ilmentatur/i jkununu anonimizzati skont l-Artikolu 11(1)(f) tal-Att.