Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 218/2025

TX

('l-Ilmentatur')

vs

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

('il-Fornitur tas-Servizz')

Seduta 23 ta' Settembru 2026

L-Arbitru,

Ra l-ilment,[1] fejn l-Ilmentatur issottometta illi ma jaqbilx mas-somma li qed tiġi offruta lilu mal-maturità tal-polza, u dan minħabba li wara sebgħa u għoxrin sena, din hija ferm 'il bogħod mis-somma li kienet indikata lilu minn Azzopardi Insurance Brokers f'isem il-Fornitur tas-Servizz.

L-Ilmentatur spjega li jħossu ddiżappuntat għaliex il-wegħdiet li sarulu fil-bidu ma ntlaħqux fl-aħħar tal-polza. Is-somma li kienet indikata lilu bħala l-estimated maturity value kienet ta' Lm 23,962 (ekwivalenti għal madwar €55,816), filwaqt li s-somma li ġiet offruta lilu mal-maturità tal-polza hija biss ta' €22,292.09.

B'hekk, iħoss li ġie żgwidat mill-Fornitur tas-Servizz fil-bidu tal-polza, speċjalment meta wieħed iqis ir-ritorn annwali pożittiv tal-Fornitur tas-Servizz.

Għaldaqstant, huwa qiegħed jitlob li jingħata s-somma li ġiet miftehma oriġinarjament u, ċioè, €55,816.[2]

[1] P. 1 - 5, b'dokumenti addizzjonali p. 6 - 60
[2] P. 3.

Ra t-tweġiba tal-Fornitur tas-Servizz[3]

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

1. *MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the Policy in question numbered 40463 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 complainant. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay him the sum of €55,816.*

2. *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.*

3. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotations, a signed copy by the complainant and the broker was presented by the complainant together with this complaint (fol.021), and another copy is presented as MSV DOC 1. Therefore, none of the figures which were indicated in the quotation as "estimated" could be said to have been guaranteed.*

4. *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 6.75% in 1998, 7% in 1999, and 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 quotations provided were indeed correct as they***

[3] P. 66 - 70, b'dokumenti addizzjonali p. 71 - 74

<u>were issued according to the circumstances at the time, therefore, MMSV had acted in good faith.</u>

5. *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.*

6. *With regards to the "Terminal Bonus", this bonus is also dependent on the profit dome by the Company, whereas it can be decided that after the end of the Policy's TENTH year and ten years full premia have been paid, from time to time a Terminal Bonus is allocated. Therefore, <u>the amounts bang indicated in the quotations (MSV DOC 1) as "Estimated Maturity Value including Reversionary and Terminal bonuses" of LM16,816 and LM23,963 respectively, were likewise not guaranteed</u> since they were highly volatile.*

7. *In fact, the Life Policy Schedule (presented in the complaint as fol.026) provides that "In respect of each premia paid, LM55.00 shall be credited to the Policy Account which will be increased by the bonuses which **may** be declared by the Company from time to time." This continues to support what was provided for in the above-mentioned notes in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholders.*

8. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.026) was the sum assured of LM5,612 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.

9. *At the moment that the policy was being sold, MMSV had provided the complainant with sufficient information about the Policy, including the fact that part of it was an investment, what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotation and the other documentation provided 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 him when the Policy was being sold to him and every year thereafter as shall be explained hereunder.***

10. *MMSV continued to act in good faith even after the Policy was issued in favor 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.***

11. *Although the value of the maturity could not match the estimated figures in the quotations 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 complainant made a gain of €8,455.13 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 2.73% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.21%.

12. *It also needs to be emphasises 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.*

13. *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 him, on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As of 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.042-052). 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 value of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the terms of the Policy.*

14. *In addition, the complainant was also provided with an "Estimated Maturity Value" letter in March 2016 (MSV DOC 3 and 4), which is 16*

years into the policy term. The letter shows that the Estimated Maturity value provided at the time, based on Assumed Bonus Rates of 3%, 3.5% and 4% were of €21,966.00, €23,968.00 or €26,093.00 respectively. This shows that the complainant was aware of the performance of the policy, and cannot rely solely on the estimates given prior to commencement of the policy.

15. *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.026) with an amount of LM5,612.00. another characteristic of this Policy is that the investment premium, which as at the date of the maturity value of the Policy had amounted to €3,669.60 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.*

16. *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 €8,455.13 which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complainant's life.*

17. *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.*

18. *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. 054) 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.

19. *The word "**promises**" made by the complainant in the online complaint (fol.003) has no basis, since the complainant was presented with the quotation showing estimated values and not an agreement showing a promised maturity value. The Company has always managed the MSV With Profits fund in the best interest of its policyholders as explained earlier in point. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion. 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. Moreover, the company provided the complainant with yearly statements, keeping her informed on the performance of his investment. On the contrary, even though the investment returns were decreasing, the Company always declared bonuses at its discretion.*

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 complainants were presented with the Statutory Notice (MSV DOC 2) 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 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 complainants did not exercise any of the said rights set out in the 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 proved during the course of these proceedings.*

With reservation for any further pleas."

Seduti

Fl-ewwel seduta tal-21 ta' Mejju 2026, deher l-Ilmentatur assistit minn Dr Peter Paul Zammit. L-Ilmentatur xehed is-segwenti:

"***Ngħid li 27 sena ilu, kien ġie rappreżentant ta' Azzopardi Insurance Brokers id dar tiegħi u kien tani pakkett attraenti dak iż-żmien.***

Ngħid li llum il-ġurnata dan il-pakkett ma baqax daqshekk attraenti meta rċevejt ir-riżultat lura.

Dan il-pakkett dak iż-żmien kien qed juri li kont ser naqla' Lm23,000.

Ngħid li skont id-dokument li għandi ir-rappreżentant kien ġie għandi fil-15 ta' Jannar 1998. L-Arbitru jiġbed l-attenzjoni li fir-risposta tal-MSV, hemm miktub "which commenced on 9 February 2000".

Dr Veronica Grixti tikkonferma li hemm żball fid-data u li d-data trid taqra, "9 February 1998".

Ngħid li bil-bonuses b'kollox jien kont ser naqla' bejn wieħed u ieħor Lm23,000 li llum il-ġurnata jiġu €55,000.

Wara dan iż-żmien kollu, l-polza immaturat, qlajt €22,292 li jiena bil-maturazzjoni u bil-bonus rajtha vera ftit għal dan iż-żmien kollu.

Ngħid li lili qatt ma qaluli li ser jonqsu u jekk matul dan iż-żmien kollu kien hemm xi ħaġa ħażina, setgħu qaluli u forsi kont nirranġa jew xi ħaġa hekk.

Ngħid li fis-sena 2016, kont ser immur niġbidhom għax kelli bżonn xi flus. Imma meta mort, qaluli li jekk neħodhom issa, kont ser nitlef €4,000 u l-final bonus ukoll.

Imbagħad, tkellimt mal-mara tiegħi u qaltli li aħjar inħallihom jimmaturaw. U ħallejthom.

Ngħid li kienu Azzopardi Insurance Brokers li kienu ikkuntattjawni. Ftiehemna ġurnata u ġew għand ommi u missieri għax dak iż-żmien kont għadni ngħix magħhom. Jien ma kont nifhem xejn f'dawn l-affarijiet, ċemplu huma u ġew id dar.

Ngħid li meta ġew id-dar, il-meeting dam madwar siegħa u nofs. Ngħid li dak iż żmien kont għarus, u tkellimt ma' ommi u ma' missieri u xi ħbieb tiegħi fejn xi ħbieb tiegħi qaluli li aħjar ma nagħmel xejn, u kont ċemplitlu lura.

Kien hemm it-tieni fejn reġa' spjegali xi ħaġa fuq fuq u ffirmajna. Ngħid li dak iż żmien kont għadni kemm spiċċajt l-iskola u ser nidħol fid-dinja tax-xogħol. Kont spiċċajt l-iskola Sekondarja u kont dieħel is-Sixth Form imma mbagħad bdejt ix xogħol.

Ngħid li kont naqra bl-Ingliż u nifhem.

Dr Veronica Grixti tixtieq tagħmel korrezzjoni oħra fir-risposta tal-Fornitur tas Servizz f'paġna 4, paragrafu 15. Minflok il-figura, €3,669.60, il-figura trid taqra €13,836.98."[4]

Taħt kontroeżami huwa wieġeb:

"*Mistoqsi xi spjegazzjoni tani r-rappreżentant ta' Azzopardi Insurance Brokers fuq in-numri li hemm fuq il-quotation, ngħid li skont kif spjegali hu, jien kont ser noħroġ ammont kull tliet xhur u kemm ser tiġini bħala estimation meta nagħlaq 50 sena jiena.*

[4] P. 75 - 76

Ngħid li kif ħadimhieli hu, bil-bonuses b'kollox, għandi miktub hawnhekk fl-estimation no. 4B li ser nieħu Lm23,962. Mistoqsi xi spjegali fuq il-figura ta' Lm5,612, ngħid li kien spjegali kemm kont ser noħroġ jiena matul dawn is-27 sena. Kif ħadimhieli hu kont ser noħroġ Lm6,393 minn dawn il-Lm5,612, mil-Life Assurance u kif spjegahieli, mal-maturità tagħha, naqla' Lm16,816 imma bil-bonus b'kollox tiġi Lm23,962.

Naqbel li ma niftakarx kelma b'kelma dak li spjegali r-rappreżentant dakinhar li għamilt il-polza.

Qed jingħad li s-somma ta' Lm5,612 hija s-somma li kienet iggarantita lili bħala Life Cover.

Mistoqsi niftakarx xi spjegali fuq dan, ngħid li naħseb dik jekk jinqalali xi ħaġa qabel ma jgħaddu 27 sena, jekk immut jew xi ħaġa hekk, kienu jagħtuni dawk il-flus qabel.

Mistoqsi naqbilx li kienet stima, u li kienet maħduma fuq ir-rati ta' dak iż-żmien u li dik l-istima setgħet tinbidel, ngħid li l-istima li tani hu kienet stima sabiħa. Mistoqsi naqbilx li l-istima kienet ibbażata fuq il-current rate of return, ngħid li anzi wara beda jispjegali li bħalissa l-finanzi qegħdin tajbin, jibqgħu jitilgħu u jkomplu telgħin. Infatti, kien qalli wkoll li minn Lm23,000 jafu jitilgħu anke sa Lm25,000 u Lm30,000. Qalli skont ir-rati, jistgħu immorru naqra ħażin u jistgħu imorru tajbin u bħalissa huma tajbin.

Qed niġi referut għal dak li għidt fix-xhieda tiegħi li setgħu qaluli li ma kinux sejrin tajbin u qed jingħad li jien kont nirċievi l-Bonus Statements ta' kull sena.

Mistoqsi xi ngħid li l-kumpanija kienet qed tgħidli permezz ta' dak il-Bonus Statements li l-polza nieżla fil-valur, ngħid li jien ma tantx nifhem.

Qed jingħad li għax ma tajtx kashom u mhux għax ma ġejtx infurmat, ngħid li iva kien hemm affarijiet imniżżlin imma jiena ma nifhimx fihom u bqajt nibbaża fuq kif rajtha jiena l-ewwel darba u li l-estimation tkun naqra 'l hemm u 'l hawn mit Lm23,000.

Qed niġi referut għal Dok. 3 annessa mar-risposta tal-Fornitur tas-Servizz li hija ittra tat-8 ta' Marzu 2016 fejn hemm table (li fuq request tal-Ilmentatur probabbilment għax kien qed jikkonsidra jagħmel surrender tal-polza), fejn infurmawni bir-Revised Maturity Values fejn mal-maturità kont ser nieħu bejn stimi ta' €21,966 u €26,093.

Ngħid li ma nafx biha jien din l-ittra.

Naqbel li jien ma ridtx nagħmel investiment riskjuż li nitlef il-kapital imma li ridt inġemma'.

Mistoqsi naqbilx li jien ġemmajt €8,455 u għamilt gross rate of return ta'3.21%, ngħid li iva."[5]

Fit-tieni seduta ta' nhar it-23 ta' Lulju 2026, deher is-Sur Maurizio Jacono f'isem il-Fornitur tas-Servizz. Huwa xehed is-segwenti:

"***Nikkonferma l-kitba u l-firma tiegħi fuq il-quotation (paġna 21 tal-proċess). U magħhom kien hemm l-ispjegazzjoni bil-miktub tiegħi li konna nagħmlu fil-proċess (paġna 22).***

Ngħid li paġna 17 fiha xi noti, parti mill-package li konna nagħtu lill-klijent.

Nikkonferma l-kitba tiegħi fuq paġna 19 fejn hemm ħafna spjegazzjonijiet.

Nikkonferma l-kitba u l-firma tiegħi fuq il-Proposal Form.

Ngħid li l-proċess mhux mill-bejgħ tal-prodott biss, imma l-ewwel li jsir hu l-financial planning b'daqshekk dettall. U ħadt pjaċir li wrejt ċerti dokumenti għaliex l-aktar ħaġa li kont nagħmel premura għaliha hija l-istat tal-klijent li qiegħed fih, il-ħtiġijiet li għandu bżonn, l-objectives li jrid jilħaq u r-risk appetite tal-klijent.

Ngħid li din hija l-financial planning.

[5] P. 76 - 77

Ngħid li jiena kont nirrappreżenta kumpanija li hija broker. Ovvjament, brokerage ma jkollux prodott wieħed. Nistgħu mmorru fuq diversi prodotti.

Ngħid li dan il-prodott jiġi analizzat wara a full detailed financial planning.

Ngħid li dak iż-żmien, mid-dokumenti, jidher ċar li l-klijent kien għadu żgħir. Konna qed nagħmlu savings scheme li ser tħalli return għall-futur tiegħu. Konna qed naħsbu għal xi ħaġa żgħira għax ovvjament meta tkun żgħir ma tistax taħseb fil-kbir. Bil-mod, il-mod, li qed tfaddal ser tiggwadanja minnu 'l quddiem.

Ngħid li l-prodott kien MSV Endowment Assurance with Profits li bażikament is-savings, xahar wara l-ieħor, jew quarterly (kif naħseb li kienu f'dan il-każ), kienu qed jiġu akkumulati fejn, apparti dan, kellu life cover li kien garantit. U għal dak kollu li kien qed ifaddal, kien jirċievi statement kull sena. Dawk huma garantiti għax huma diġà saved.

Il-maturity hija important li tilħaqha għax is-Surrender Value ħadd ma jista' joqgħod fuqu għax skont iż-żmien li jkun ilu fih. Imbagħad, hekk kif joħorġu l-bonuses kull sena, jirċievi l-istatement u dawk huma dejjem tiegħu.

Ngħid li l-polza kienet on an Estimated Reversionary Bonus, jiġifieri estimated hija xi ħaġa li tista' tvarjalek as we go along.

U jekk jilħaq il-maturità tal-polza, hija għad-diskrezzjoni tal-prinċipal li joħroġ it-Terminal Bonus. Imma dak hu apparti. Aħna dejjem noqogħdu fuq ir-Reversionary Bonuses.

U dejjem fuq estimated.

Ngħid li l-ewwel ħaġa li rridu naċċertaw ruħna hija x'età għandu l-klijent, x'qed jaqla', xi bżonnijiet għandu, x'commitments għandu u mhux nara l-gross revenue tiegħu. Irridu naraw in-net u rridu naraw il-commitments. F'dan il-każ, il-klijent kien ta' età tenera u dejjem kien ser ikun hemm ċertu commitments.

Ngħid li l-premium kont inħobb ħafna nżommu baxx għax ovvjament ser ikun hemm ċertu commitments. Ngħid li l-aktar ħaġa li kienet iddejjaqni u għadha ddejjaqni, hi meta tisma' klijent jgħidlek li ser jagħmel surrender għax ma jiflaħhiex. That is not financial planning.

Dak huwa bejgħ ta' prodott. U l-brokerage firm li kont nirrappreżenta kienet tagħmel enfasi enormi, 'We are financial planners here. We are not just salesmen of a company.'

Ngħid li aħna dejjem konna naħdmu fl-interess tal-klijent.

Qed niġi riferut għall-quotation (paġna 21 tal-proċess) fejn hemm:

'Life Assurance on the life of TX for Lm5,612 or the policy account (Whichever is the higher).'

Ngħid li nkun spjegajt fuq il-Life Cover. Hemm Term 27 years u kemm ser iħallas premium.

Qed niġi riferut għall-"Estimated Maturity Value at approx. Age 50

(a) Lm16,816 (tax free) Based on estimated Reversionary Bonuses only

**Illustrations are based on the current rate of return."*

Ngħid li jiena kont inħobb nagħmel underline, jew asterisk, jew xi ħaġa jew oħra, għal dak kollu li nkunu qed ngħidu. Jekk m'iniex sejjer żball, hemmhekk hemm underlining u hemm miktub ukoll li hija estimate.

Ngħid li hija estimate għax ħadd ma jaf x'ser jiġri 'l quddiem. U ħadd ma jaf b'kemm ser joħorġu dawk il-bonuses. U, aktar u aktar, ħadd ma jaf il-performance tal-principal, jekk jistax jagħti a Terminal Bonus. JIen lanqas biss kont nagħti kas it-Terminal Bonus. Nagħti kas ir-Reversionary Bonuses.

U kont nagħti kas, aktar u aktar, li l-premium jibqa' jitħallas biex ġaladarba qed tirċievi l-istatements, dawk huma tiegħek.

Ngħid li jekk il-principal qed jgħidlek li l-quotation hi on an estimated basis u hija biss illustration, min jiena jiena biex niggarantixxi xi ħaġa?

> ***L-interess tiegħi kien dejjem lejn il-klijent u meta nara klijent li mmaturatlu l-polza, nieħu pjaċir għax ix-xogħol tiegħi ta' financial planner ikun milħuq. Hemm differenza bejn xi ħadd jgħidlek li għamel sitt snin iħallas b'Lm1,000 fis-sena u jwaqqafha. Dan xi skop hu? Aħna long-term savings konna qed naraw hemmhekk.***
>
> ***Ma konniex qed inbiegħu prodott; konna qed nagħmlu life savings fejn dawk il-life savings huma tax free. Hekk kienet u naħseb li hekk għadha għax m'għadnix in practice illum il-ġurnata.***
>
> ***Ngħid li qed tgawdi l-futur tiegħek għax hawnhekk aħna qegħdin fir-retirement. Mela hemmhekk diġà għandek bażi konkreta fuqiex tista' tibbaża, apparti l-pensjoni tal-Gvern. Għandek xi ħaġa oħra addizzjonali.***
>
> ***Mistoqsi mill-Arbitru li dan li għadni kif xhedt huwiex fuq dak li niftakar partikolarment fil-laqgħat li kelli mal-Ilmentatur jew jekk tkellimtx b'mod ġenerali, ngħid li rridu napprezzaw il-fatt li għadda ħafna żmien. Ngħid li jien ma niftakar lil ħadd.***
>
> ***Jien qed nitkellem through the general practice I exercised in my profession.***
>
> ***Ngħid li konna neħduha bis-serjetà għaliex aħna konna studjajna fuq dak is-settur; konna nagħmlu ongoing training il-ħin kollu. Konna niġu aġġornati; u jien personalment, kont nieħu l-interess oltre.***
>
> ***Ngħid li ħafna drabi ma kontx narah darba klijent. Kont inħobb narah darbtejn jekk mhux tlieta.***
>
> ***Ngħid li lis-Sur TX ma niftakrux u din kienet il-proċedura tiegħi li kont nuża ma' kulħadd.***"[6]

Taħt kontroeżami, huwa wieġeb:

> "***Mistoqsi meta bdejt b'dan ix-xogħol, ngħid li bdejt fl-1996. Meta bdejt fl-1996, ma qbadtx u mort nara l-ewwel klijent. Kien hemm ħafna studju qabel tara l-ewwel klijent. Kien hemm on-site training regolarment u anke barra mal-principal.***

[6] P. 79 – P. 82.

Ngħid li mhux biss għall-Middlesea qed nitkellem, kemm Malta u anke barra. U bqajna nistudjaw anke barra minn Malta through l-International Financial Services u l-ACII.

Ngħid li bqajt għaddej sal-2001.

Mistoqsi għandix amment kemm rajt klijenti, ngħid li rajt ħafna. Kont nara mat-tliet jew erba' klijent kuljum għal erba' jew ħamest ijiem kull ġimgħa.

Qed niġi referut għall-quotation u mistoqsi hux korrett li dan id-dokument juri biss żewġġ varjazzjonijiet u xejn iżjed, ngħid li hija illustration, hija indikazzjoni. U nieqaf hemmhekk.

Mistoqsi nikkonferma meta niltaqa' ma' persuna x'kont nevalwa meta nagħmel il-financial planning, ngħid,

- *l-età*
- *x'commitments għandu*
- *x'xogħol għandu*
- *f'liema stadju tal-ħajja qiegħed*
- *xi jrid jilħaq minnu*
- *x'varjazzjonijiet jistgħu jkun hemm matul iż-żmien*
- *irridu naħsbu wkoll għal perċentaġġ minn dak li jiflaħ mhux noħorġu perċentaġġ min-net income.*

Konna nnaqqsu perċentaġġ minnu għaliex inti dejjem tista' żżid. Mhux problema li żżid as we go along. Tista' tieħu promotion, tista' żżid per year change, tista' tiżviluppa l-karriera tiegħek, eċċ. U tgħid, 'Jiena ħa nagħmel polza oħra', jew, 'Jien ħa mmur fuq xi ħaġa oħra'.

Imma tnaqqas ma tistax. Mela jiena rrid nara x'inhu l-affordable income li hu komdu, mhux illum biss, imma as we go along.

> ***Jien niftakarha ċara daqs il-kristall: kont ngħid lill-klijent li jekk inti għandek il-bonus – hawn Malta għandna erba' bonises – mela almenu dik hija gratis. Ħa mmorru bejn wieħed u ieħor fuq hemmhekk għax dak żgur li nifilħuh.***"[7]

Fis-sottomissjonijiet finali tagħhom, il-partijiet essenzjalment irrepetew dak li ssottomettew fl-ilment, fit-tweġiba għall-ilment, jew waqt is-seduti. L-Ilmentatur saħaq illi dakinhar tal-bejgħ tal-polza ma kienx ingħata biżżejjed informazzjoni dwar kif il-valur seta' jvarja.

L-Ilmentatur semma wkoll li jħossu aggravat li minn mindu mmaturat il-polza sa issa għadu ma rċeviex is-somma mingħand il-Fornitur tas-Servizz.

Sema' lill-partijiet.

Ra l-atti kollha tal-każ.

Jikkunsidra:

FIL-MERTU

L-Arbitru jrid jiddeċiedi l-każ b'referenza għal dak li, fil-fehma tiegħu, huwa ekwu, ġust u raġonevoli fiċ-ċirkostanzi partikolari u merti sostantivi tal-każ.[8]

Il-punt kruċjali f'dan l-ilment jittratta l-ammont offrut lill-Ilmentatur 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-Ilmentatur, u x'eventwalment ġie offrut lilhom mal-maturità.

Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx '*l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment.*'[9]

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[7] P. 82 - 83
[8] Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).
[9] *ibid* Artikolu 19(3)(ċ).

L-Arbitru għandu quddiemu żewġ pożizzjonijiet opposti dwar dak li verament ġara u ntqal waqt il-laqgħa tal-bejgħ. Ir-rappreżentant tal-Fornitur tas-Servizz ammetta li ma jiftakarx dan il-każ partikolari, iżda huwa spjega b'mod dettaljat il-proċedura li kien jimxi magħha u l-ispjegazzjoni li kien jagħti fil-laqgħat mal-klijenti prospettivi kollha. Huwa ċaħad li ggarantixxa xi ammont partikolari lill-klijenti tiegħu.[10]

Mill-banda l-oħra, l-Arbitru jrid janalizza x'wassal lill-Ilmentatur sabiex isostni l-verżjoni tiegħu – jekk kienx hemm xi forma ta' memorja selettiva mill-Ilmentatur jew jekk dan huwiex każ ta' *misselling* min-naħa tal-Fornitur tas-Servizz.

L-Ilmentatur xehed illi fl-1998 kienu kkuntattjawh Azzopardi Insurance Brokers u ftiehmu li jiltaqgħu għand l-Ilmentatur. Huwa jiftakar li r-rappreżentant kien spjegalu l-polza kif taħdem u qallu li fl-aħħar ser jieħu Lm 23,962, *bonuses* inklużi, jekk mhux iktar.

L-Ilmentatur qal li ma jiftakarx kelma b'kelma dak li kien spjegalu dakinhar ir-rappreżentant imma huwa ċert li kien pinġielu stampa sabiħa tal-andament tal-polza.[11] Mill-bqija, l-Ilmentatur wieġeb li ma jifhimx dwar il-*Bonus Statements* u affarijiet oħra mniżżlin fid-dokumenti, iżda baqa' jibbaża ruħu fuq l-istima li kien ingħata.[12]

Meta jqis il-kuntrast fix-xhieda tal-partijiet, l-Arbitru jkollu jistrieħ fuq li hemm miktub bl-iswed fuq l-abjad fid-dokumenti. Għalkemm l-Ilmentatur jippretendi li jieħu l-ogħla somma indikata fil-kwotazzjoni daqslikieku kienet garantita, id-dokumenti ppreżentati kollha b'mod ċar iwissu li s-somom huma biss indikazzjonijiet u '*estimates*', u li '*Illustrations are based on the current rate of return*'.[13]

Huwa evidenti li l-Ilmentatur mhuwiex kuntent bir-ritorn li għandu minn din il-polza, iżda fl-istess ħin, huwa naqas milli jippreżenta xi prova li dak iż-żmien kellu għażla differenti għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. B'hekk, l-Ilmentatur ma ġabx prova li huwa ġarrab xi tip ta' *opportunity*

[10] P. 81
[11] P. 77
[12] *ibid*.
[13] P. 21

loss minħabba li ddeċieda li jixtri l-polza offruta abbażi tal-informazzjoni li kienet mogħtija.

Minkejja dan, l-Arbitru josserva li l-Ilmentatur ressaq dan l-ilment peress li l-ammont offrut lilu mal-maturità tal-polza huwa ferm inqas minn dak li kien qed jistenna li jirċievi, abbażi tal-informazzjoni li l-Ilmentatur kellu f'idejh fil-mument tal-bejgħ.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-1998, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal sebgħa 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 sebgħa u għoxrin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq medda ta' sebgħa u għoxrin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel biex b'hekk torbot ir-rati tal-imgħax għal tul ta' żmien.

L-Arbitru jifhem li polza bħal din taħdem bil-mod kif spjegat mill-Fornitur tas-Servizz fit-tweġiba għall-ilment u mhuwiex qed jiddeċiedi mod ieħor. Iżda madankollu, iħoss li l-Fornitur tas-Servizz seta' kien iżjed kawt fil-kwotazzjonijiet li kien jagħti. Minflok stima waħda, missu ħareġ firxa ta' stimi sabiex tkun ċara f'moħħ il-klijent li xejn ma huwa garantit li ser jibqa' stabbli fuq perjodu ta' sebgħa u għoxrin sena u li minħabba f'hekk, is-somma finali taf tvarja.

Fil-fatt, eventwalment bdew joħorġu tliet stimi minflok waħda.

Għaldaqstant, 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 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 l-ogħla somma fil-kwotazzjoni minkejja li din kienet stima u suġġetta għal *terminal bonus* li jista' ma jingħatax. B'hekk, talab kumpens ta' €55,816. Però, ma jistax jingħad li l-aspettattivi tal-Ilmentatur kienu għal kollox leġittimi.

L-Arbitru jrid jasal għal kumpens ibbażat fuq ġustizzja ekwitattiva kif huwa espressament meħtieġ li jagħmel skont l-Artikoli 19(3)(b) u 26 tal-Kapitolu 555 tal-Liġijiet ta' Malta. Għalkemm huwa jrid jaċċetta li dan l-ammont ikun raġonevoli, huwa diffiċli li jkun preċiż in vista tad-diversi fatturi li jridu jittieħdu in konsiderazzjoni.

Fuq kollox, mingħajr preġudizzju għal dak iddikjarat hawn fuq, l-Arbitru ma jarax li l-Ilmentatur għamel telf minn din il-polza. Anzi, għamel gwadann ta' 3.21% bla taxxa (qligħ ta' €8,455)[14] u kellu wkoll kopertura fuq il-ħajja.

Għalhekk, meta qies iċ-ċirkostanzi kollha tal-każ, l-Arbitru wasal għal deċiżjoni li ma jkunx ekwu li jilqa' t-talba sħiħa tal-Ilmentatur, u minflok jiddeċiedi li s-somma xierqa li għandha tingħatalu bħala kumpens hija ta' **€3,344.**

Għaldaqstant, ai termini tal-Artikolu 26(3)(c)(iv) tal-Kapitolu 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' tlett elef, tliet mija u erbgħa u erbgħin ewro (€3,344) b'żieda mas-somma diġà offruta, u ċioè, mas-somma ta' €22,292.09[15] u, b'hekk, tħallsu s-somma kumplessiva ta' €25,636.09.

B'imgħax ta' 2.65%[16] 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.

<u>Nota finali</u>

L-Arbitru għandu simpatija mal-punt li ressaq l-Ilmentatur fis-sottomissjonijiet finali rigward il-fatt li MSV għadhom sal-lum ma ħallsuhx l-ammont tal-maturità tal-polza li dwaru ma hemmx kontestazzjoni. Dan huwa punt validu meta tikkonsidra li l-polza mmaturat fi Frar 2025.

[14] P. 77
[15] P. 9
[16] Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew.

L-Arbitru jħoss li bħala regola ġenerali, meta konsumaturi jeżerċitaw id-dritt li jilmentaw mal-Uffiċċju tal-Arbitru għax jidhrilhom li l-offerta ma hix konformi mal-aspettattiva tagħhom, MSV għandha toffri li tħallas l-ammont tal-maturità tal-polza bla preġudizzju għad-dritt tal-konsumaturi li jiftħu ilment dwar iż-żieda li jidhrilhom li jimmeritaw jew għandhom dritt għaliha.

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Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

<u>Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru</u>
Dritt ta' Appell

Id-Deċiżjoni 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-Deċiżjoni jew, fil-każ li ssir talba għal kjarifika jew korrezzjoni tad-Deċiżjoni 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-Deċiżjoni skont l-artikolu msemmi.

Skont il-prattika stabbilita, id-Deċiżjoni tal-Arbitru tkun tidher fis-sit elettroniku tal-Uffiċċju tal-Arbitru għas-Servizzi Finanzjarji. 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 ddeċieda min għandu jħallas l-ispejjeż tal-proċeduri u f'liema proporzjon skont iċ-ċirkostanzi partikolari tal-każ.

L-ispejjeż tal-proċeduri jistgħu wkoll jinkludu kull pagament raġonevolment u legalment applikabbli ta' spejjeż professjonali u legali mħallsa mill-Ilmentatur, limitati għall-atti ppreżentati matul il-każ. Tali spejjeż professjonali m'għandhomx jinkludu spejjeż ġudizzjarji jew ħlasijiet oħra kontinġenti 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 (Kap. 12).