Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 303/2025

WP

('l-Ilmentatriċi')

vs

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

('il-Fornitur tas-Servizz')

Seduta 09 ta' Settembru 2026

L-Arbitru,

Ra l-ilment,[1] fejn l-Ilmentatriċi esprimiet id-diżappunt tagħha fil-konfront tal-maturità tal-polza tal-assikurazzjoni tal-ħajja li hija kellha mal-Fornitur tas-Servizz. Dan għaliex is-somma offruta lilha mal-maturità tal-polza tvarja ħafna u hija bil-wisq inqas mill-valur li kien imwiegħed lilha oriġinarjament mal-bejgħ tal-istess polza.

L-Ilmentatriċi tiftakar li fis-sena 2000 kien żar id-dar tagħha rappreżentant tal-Fornitur tas-Servizz u wiegħedha somma sabiħa mal-maturità tal-polza. Iżda issa li għaddew il-ħamsa u għoxrin sena u l-polza mmaturat, dik is-somma ma ntlaħqitx.

Barra minn hekk, l-Ilmentatriċi ssostni li fil-*Policy Account Statements* kien hemm miktub li jekk twaqqaf il-polza qabel iż-żmien, hija kienet ser titlef il-*bonuses* li ġew iddikkjarati u teħel xi penali oħra. B'hekk, hija ħassitha kostretta li tkompli bil-polza sa ma jagħlaq żmienha u aktar kellha raġuni għala taħseb li l-polza ser timmatura fil-valur li kien imwiegħed.

[1] Formola tal-Ilment fil-paġni (P.) 1 – 6, b'dokumenti addizzjonali p. 7 - 89

Għalkemm l-Ilmentatriċi tagħraf li s-somma kienet biss stima bbażata fuq il-kundizzjonijiet u ċ-ċirkostanza tal-investimenti ta' dak iż-żmien, hija tinnota diskrepanza sinifikanti bejn l-ammont ikkwotat u dak offrut. Hija ssostni li din id-diskrepanza tammonta għal miżrappreżentazzjoni, u l-fatt li l-Fornitur tas-Servizz kellu kontroll fuq kif il-profitti għandhom jitqassmu lill-poloz iwassal lill-Ilmentatriċi biex tissuspetta li l-aġir tal-Fornitur tas-Servizz kien wieħed abbużiv u qarrieqi (*in mala fede*).

Għaldaqstant, l-Ilmentatriċi qiegħda titlob[2] lill-Arbitru jordna lill-Fornitur tas-Servizz iħallasha l-ammont imwiegħed ta' €48,511.52, jew kwalunkwe ammont ieħor li l-Arbitru jidhirlu xieraq fiċ-ċirkostanzi.

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 57208 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 the sum of €48,511.52.*

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

2. *In the first place, the amount being requested by the complainant is based on estimates shown in the quotations, two of which were presented by the complainant together with the complaint, as fol.085, which was signed by both the complainant and the broker, and another copy presented as fol.083. Therefore, none of the figures which were indicated in the quotations as ''estimated'' could be said to have been guaranteed.*

[2] P. 4.
[3] P. 95 - 102.

3. *The estimated maturity values shown in the quotations in question were calculated using the bonus rates that were being declared by MMSV at the time that the Policy was being sold.* ***<u>The estimated maturity values shown in the quotations were not guaranteed because they were based on the investment conditions and circumstances at the time.</u>*** *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.* ***<u>This shows that the quotations provided were indeed correct as they were issued according to the circumstances at the time, therefore, MMSV had acted in good faith.</u>***

4. *The amount of LM15,146 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 of how the value of the Policy Account of the 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, which were in fact guaranteed to be paid to the complainant.*

5. *With regards to the ''Final Bonus'', the same bonus is also dependent on the profit earned 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 amount being indicated in the quotation as "Estimated Maturity Value Including Reversionary and Terminal bonuses (if any)" of LM20,826 was likewise not guaranteed</u>* *since it was highly volatile. This was also explained in the Important Notes on the reverse of the quotation (fol.086).*

6. *The Life Policy Schedule, (presented in the complaint as fol.019) provides that ''In respect of each premium paid, LM116.30 shall be credited to the Policy Account which will be increased by the bonuses which* ***may*** *be declared by the Company from time to time.'' This continues to support what was provided for in the above-mentioned notes in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholder.*

7. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.019) was the sum assured of LM5,409 and no amounts containing the word 'Estimate' were mentioned in this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonuses were never guaranteed.*

8. *The notes that formed part of the quotation above-mentioned also provided that "Whilst the purpose of these notes is to* ***guide*** *the policyholders and prospective policyholders the* ***benefit provided by the Policy are conferred by the Policy document…*** *In the 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. *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 the claim on estimated maturity values without putting them in the context of all the***

documents provided when the Policy was being sold 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.* ***<u>Therefore, the difference between the estimated maturity values shown in the quotations and the maturity value is merely reflective of the shift in the performance of the investment markets during the term of the Policy.</u>***

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 €6,963.37 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 2.71% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.19%.*

12. *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 the gain made.*

13. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account, 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. This information was communicated to the complainant by MMSV by sending, 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 presented by the complainant marked as fol.046-fol.074). 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, the said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotations could be varied depending on the performance of the investments during the term of the Policy.*

14. *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.019) with an amount of LM5,409.00. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to €13,545.50 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.*

15. *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 €6,963.37 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.*

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. 075) 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. *The word "promised" in the statement done by the complainant in the online complaint, (fol.004) stating that "The claimant is requesting the Arbiter to order Mapfre MSV Life p.l.c to pay her the full amount promised...'' has no basis as the complainant was aware that the values quoted in the quoations presented, were not promised values. The Company has always managed the MSV With Profits fund in the best interest of its policyholders as explained earlier. 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, which can also not have the capital guaranteed element, 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, providing information on the performance on the policy.

19. *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 (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.*

20. *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 ta' nhar it-12 ta' Mejju 2026, l-Ilmentatriċi ddikjarat illi:

> "***Ngħid li kien għad kelli tmintax-il sena, u kelli l-ewwel job tiegħi. U jibdew iħajruk biex tinvesti. Dawn għadhom s'issa jċemplu l-ħin kollu biex jiġu d-dar, jagħmlu appointment miegħek biex iħajjruk tinvesti.***

Ovvjament, ta' età żgħira tgħid aħjar għall-futur nibda nwarrab naqra, naqra biex ikolli xi somma mfaddla.

Ngħid li dak iż-żmien aċċettajna li jiġu d-dar. Kien ta' Azzopardi. Ġew id-dar u konna hemm jien, oħti u missieri li llum ġie nieqes.

Ngħid li din il-persuna ġiet id-dar tagħna u beda jispjegalna fuq din il-polza. Kien spjegalna li aħna ser infaddlu tant kull sena. Niftakar li konna nħallsu l-payment darbtejn f'sena, every May u every November.

Kienu qalulna wkoll li tant konna ser immorru tajjeb b'din l-offerta li konna ser nieħdu f'idejna s-somma ta' Lm20,000, l-ekwivalenti għal €40,000.

Ngħid li aħna tant attiratna din il-polza li konna għadna żgħar u għidna, 'Tajjeb, ikollna fuq il-40s u jkollna dik is-somma mfaddla.'

Ngħid li meta irċevejt l-istatement u rajt li rċevejt €20,000, għidt din hija scam. Illum il-ġurnata meta jċempluli xi ħaġa hekk wara din li ġratli, ma naċċettahiex. Safrattant, tal-MAPFRE huma l-aktar li jċemplu li darba minnhom, tal-MAPFRE stess qaltli, 'Insiha dik il-polza. Dawn poloz tajbin,' biex nitħajjar nerġa' nagħmel polza magħhom.

Ngħid li għandi polza żgħira magħhom imma naqqastha għax ħassejt li ngdimt ħafna. Ngħid li r-rappreżentant meta ġie biex ibiegħ il-polza spjega bil-miktub. Spjegali ċ-ċifri bil-miktub fuq il-karta biex ikolli dan kollu ċar f'għajnejja. Jien dak iż-żmien, kelli 18/19 years. Kelli l-ewwel job tiegħi u ovvjament dawn huma persuni professjonali, ikunu liċenzjati mill-MFSA u jiġu jispjegawlek dawn l-affarijiet finanzjarji. Sal-lum il-ġurnata għadhom jagħmluhom dawn l-affarijiet.

Persuna liċenzjata nimmaġina li tkun taf x'inhi tgħid.

Ngħid li meta qalli li ser nieħu s-somma ta' Lm20,000, ma kienx qalli li din is-somma tista' tvarja. Kieku qalli li setgħet tvarja ftit, ser tagħmilha imma mhux b'varjazzjoni li ħadt in-nofs.

Ngħid li tieħu nofs il-polza hija scam.

Ngħid li mhux aħna għamilna kuntatt magħhom. Huma kienu ċemplu, għamilna appuntament u ġew id-dar.

> ***Ngħid li l-ewwel meeting dam siegħa żgur. Ngħid li ħalla d-dokumenti d-dar, iffirmajnihom u ġie għalihom id-dar. Xi ħaġa hekk kienet dak iż-żmien.***
>
> ***Ngħid li t-tieni darba ma reġax spjega, kemm ħa d-dokumenti.***"[4]

Taħt kontroeżami, hija wieġbet:

> "***Mistoqsija niftakarx kelma b'kelma dak kollu li qalli s-salesman, ngħid li kelma b'kelma ma niftakarx.***
>
> ***Mistoqsija stajtx insejt xi dettall, ngħid li ċ-ċifra m'intix ser tinsiha.***
>
> ***Mistoqsija x'deskrizzjoni ta fuq iċ-ċifri, ngħid li ċ-ċifri kitibhomlna fuq karta.***
>
> ***Mistoqsija naqbilx li r-rappreżentant ipprovdieli spjegazzjoni dettaljata dakinhar, ngħid li naqbel għax attirani biex nagħmel il-polza.***
>
> ***Qed niġi mistoqsija naqbilx li r-rappreżentant ipprovdieli dokumenti, (paġni 83 – 89) li jinkludu wkoll dettall bil-miktub.***
>
> ***Paġna 83 hi l-quotation fejn hemm is-somma ta' Lm20,000.***
>
> ***Paġna 85 hija l-handwritten quotation; b'noti mal-quotation f'paġni 84 u 86.***
>
> ***Qed jingħad li tani wkoll spjegazzjoni kif tiżdied il-polza permezz tal-graph f'paġna 87; tani wkoll il-Product Information li huwa f'paġni 88 u 89.***
>
> ***Qed jingħad li fid-dawl ta' dawn id-dokumenti jidher li s-Sur Deguara ma daħalx u ħareġ u ta spjegazzjoni ta' malajr.***
>
> ***Mistoqsija naqblux li tana spjegazzjoni u qagħad jiktbilna biex jispjega l-prodott, ngħid li naqblu.***
>
> ***Qed jingħad li d-dokumenti jispjegaw li r-rata ta' dakinhar (tal-figuri) kienu bbażati fuq current rate return. U l-istess dokumenti jgħidu li dawn ir-rati jistgħu jitilgħu u jinżlu.***
>
> ***Mistoqsija naqbilx li qed nagħmel dan l-ilment għax ma naqbilx mal-valur li ħadt imma mhux għax b'xi mod kont naf li huma garantiti imma kont naf li ser jiċċaqlaq dak il-valur b'xi mod, ngħid li le, ma naqbilx;***

[4] P. 103 – 104.

jiċċaqlaq imma mhux li jiċċaqlaq b'mod drastiku. Li jiċċaqlaq depends on how it fluctuates. Qed ngħidu Lm20,000 għal €20,000, it doesn't make sense.

Mistoqsija tkellimniex fuq xi perċentaġġ kemm din is-somma setgħet tvarja, titla' jew tinżel, ngħid li ma niftakarx.

Qed niġi referuta għal paġna 85 fejn hemm Estimated Maturity Value ta' Lm15,146, li hu Estimated Reversionary Bonuses only u Estimated Maturity Value ta' Lm20,000.

Qed niġi mistoqsija għalfejn qed nibbaża fuq l-ogħla ammont."

Hawnhekk Dr Ryan Falzon, li qed jassisti lill-Ilmentatriċi, joġġezzjona għal din il-mistoqsija għax it-tieni figura tinkludi kemm ir-*Reversionary Bonus* u kemm it-*Terminal Bonus*.

"Ngħid li din kienet tinkludi t-Termination Bonus; jekk toħroġ minnha titlef it-Termination Bonus, u aħna bilfors kellna nibqgħu hemm.

Mistoqsija x'kien spjegali dwar is-Sum Assured, ir-Reversionary Bonus u t-Terminal Bonus, ngħid li ma niftakarx.

Mistoqsija naqbilx li fil-bidu għidt li 'aħjar inwarrab, ikolli somma biex infaddal', ngħid li mhux biex tfaddal, inti dejjem trid tfaddal, imma biex inti minn età żgħira, ma taħlix il-paga.

Ngħid li ma ridtx nidħol f'investiment riskjuż ta' età żgħira. Illum li inti adulta, tifhem naqra, imma dak iż-żmien, aħna ma ridniex nidħlu f'xi ħaġa riskjuża.

Mistoqsija x'kien il-livell ta' edukazzjoni tiegħi dak iż-żmien, ngħid sal-A Levels."[5]

Fit-tieni u l-aħħar seduta deher is-Sur Ray Deguara, ir-rappreżentant tal-Fornitur tas-Servizz, li kien biegħ il-polza lill-Ilmentatriċi. Huwa xehed illi:

"***Ngħid li f'Settembru tas-sena 2000, kont Claims Executive ma' Azzopardi Insurance Brokers.***

Nikkonferma l-kitba tiegħi u l-firem tiegħi fuq il-Proposal Form (paġna 35), il-Quotation bl-Important Notes (paġni 85 u 86), dokument ieħor ta'

[5] P. 104 - 106.

Azzopardi Insurance Brokers (paġna 87), il-Product Information (paġni 88 u 89) u l-Avviż Statutorju (Dok. 2, paġna 102).

Ngħid li dak iż-żmien, is-segretarji ta' Azzopardi Insurance Brokers kienu jagħmlu l-appuntamenti mal-prospective clients. Ngħid li mhux jiena kont nagħmel l-appuntamenti.

Ngħid li apparti prodotti tal-MSV, kont inbiegħ prodotti ta' kumpaniji oħra.

Ngħid li bħala prodott kellu dejjem is-Sum Assured li kienet tkun garantita f'każ ta' mewt.

Jekk maż-żmien, l-account jitla' aktar mis-somma assigurata, f'każ ta' mewt, titħallas which is the highest: jew is-Sum Assured jew l-account fejn ikun wasal.

Fil-maturità tal-polza, jingħataw ir-Reversionary Bonuses li kienu jakkumulaw kull sena. Kienu dejjem estimated. Ngħid li nkun spjegat 'estimated' fil-Quotation.

Rigward ir-Reversionary Bonuses ngħid li l-klijent kien kull sena jirċievi statement u jkun jaf kull sena kemm qed jirċievi u b'liema rata qed jagħtuh.

Ngħid li kien hemm it-Terminal Bonus fejn dejjem fil-Quotation hu estimated. Dan ma kienx garantit; seta' jingħata u seta' ma jingħatax.

Is-somom estimated kienu bir-rati ta' dak iż-żmien. L-aċċenn dejjem kien li dawn kienu estimated.

Ngħid li kien hemm klijenti li kienu jgħidulek, 'Iva, ħa nagħmilha' dakinhar stess. U kienet tagħlaq il-polza. U kien ikun hemm klijenti li jkunu għadhom ma ddeċidewx u tħallilhom id-dokumenti kollha u, mbagħad, iċemplu huma biex jagħlquha. Aħna konna nagħmlu follow-up wara minimum ta' ġimgħa, jiġifieri ma konniex nikkuntattjaw lill-klijent qabel ġimgħa biex naraw x'deċiżjoni jkun ħa. Jekk klijent jiddeċiedi li ma jkomplix, aħna nieqfu hemmhekk u ma jitkompliex il-proċess. Jekk klijent iċempillek l-għada jew jumejn wara, inti terġa' tagħmel appuntament għat-tieni darba biex tagħlaq il-polza.

Ngħid li fuq il-Quotation hemm figuri varji. Ngħid li rigward is-somom ta' Lm15,146, Lm20,826, nispjega li l-passat mhux garanzija tal-futur.

> ***L-ispjega tagħna kienet dejjem l-istess, immorru għand min immorru. Kellna qisu setup ta' kif nagħmlu l-presentation u dejjem nimxu ma' kulħadd l-istess.***
>
> ***Ngħid li jien qatt ma stajt ngħid kemm setgħet tvarja għax ħadd ma jaf il-futur.***
>
> ***Qed niġi mistoqsi mill-Arbitru jekk inix qed niftakar il-meetings mas-Sinjuri WP partikolarment jew inix qed nitkellem b'mod ġenerali x'kont ngħid lil kulħadd.***
>
> ***Ngħid li għaddew bosta snin u ma jistax ikun tiftakar il-klijenti, impossibbli. Jekk inti għamilt nofs siegħa jew tliet kwarti għand klijent, dan kif ser terġa' tiftakru wara ma nafx kemm-il sena? F'dan il-każ għaddew 26 sena.***
>
> ***Kif għidt, aħna kellna presentation waħda illi konna ngħiduha lil kulħadd dejjem l-istess.***
>
> ***Nikkonferma li jien mhux qed nitkellem fuq il-memorja speċifika ta' dan l-inkontru li kelli mal-Ilmentatriċi imma fuq il-bażi ta' x'kont ngħid lil kulħadd. Aħna kellna set-up ta' presentation u ma tistax tvarja.***
>
> ***L-ispjega kienet tkun ġusta għal kulħadd. Konna monitored mill-Managing Director, Jennifer Azzopardi, li kienet tagħtina t-training u aħna ovvjament dejjem nagħtu presentation waħda lil kulħadd l-istess.***"[6]

Taħt kontroeżami huwa wieġeb:

> "***Mistoqsi naqbilx li jien kelli din il-presentation li s-selling point ta' dawn il-poloz kienet illi wara l-iskadenza tal-polza, kienu ser jieħdu dik is-somma li llum jiena qed ngħid li din kienet estimate, ngħid li jien qatt ma stajt ngħid, 'Din is-somma,' għax qisek qed tgħid li kienet garantita.***
>
> ***Allura, d-diskors kien ikun li fl-aħħar ser tieħu somma li it may go up and it may go down u l-passat mhux garanzija tal-futur.***
>
> ***Qed jingħad li fl-ebda mod mhu qed jiġi ssuġġerit lili li jien iggarantejt l-ammont. Id-domanda kienet li s-selling point kienet li inti ser tieħu***

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[6] P. 107 - 109.

somma. U li s-somma li kont qed nurihom hija din is-somma li qed nirreferu għaliha bħala estimate.

Ngħid li ħdejha hemm ir-Reversionary Bonus biss u f'paġna 085 tal-proċess, hemm:

'Illustrations are based on the current rate of return.'"[7]

Fis-sottomissjonijiet finali tagħhom, iż-żewġ partijiet essenzjalment irrepetew dak li ssottomettew fl-ilment, fit-tweġiba għall-ilment, jew waqt is-seduti. L-ilmentatriċi aċċennat illi dakinhar tal-bejgħ tal-polza, il-polza ġiet spjegata b'tali mod li ta lill-ilmentatriċi x'taħseb illi ser tieħu somma sabiħa mal-maturità tal-polza.

Filwaqt li l-Fornitur tas-Servizz tenna li l-ebda somma ma kienet garantita u li l-istess Fornitur tas-Servizz mexa *in bona fede* fil-konfront tal-Ilmentatriċi.

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-Ilmentatriċi 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-Ilmentatriċi, u x'eventwalment ġie offrut lilha 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]

L-Arbitru għandu quddiemu żewġ pożizzjonijiet opposti dwar dak li tassew ġara u ntqal waqt il-laqgħa tal-bejgħ. Ir-rappreżentant tal-Fornitur tas-Servizz ammetta li ma jiftakarx il-klijenti tiegħu, imma spjega b'mod ġenerali l-

[7] P. 109.
[8] Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).
[9] *Ibid*. Artikolu 19(3)(ċ).

ispjegazzjoni li kien jagħti fil-laqgħat li kien ikollu magħhom. Huwa spjega li kien dejjem jagħmilha ċara li s-somom imsemmija mhumiex garantiti:

> "***Fil-maturità tal-polza, jingħataw ir-Reversionary Bonuses li kienu jakkumulaw kull sena. Kienu dejjem estimated. Ngħid li nkun spjegajt 'estimated' fil-Quotation.***
>
> ***…***
>
> ***Ngħid li kien hemm it-Terminal Bonus fejn dejjem fil-Quotation hu estimated. Dan ma kienx garantit; seta' jingħata u seta' ma jingħatax.***
>
> ***Is-somom estimated kienu bir-rati ta' dak iż-żmien. L-aċċenn dejjem kien li dawn kienu estimated.***"[10]

Mill-banda l-oħra, l-Arbitru jrid janalizza x'wassal lill-Ilmentatriċi sabiex issostni li l-verżjoni tagħha. Kien hemm xi forma ta' memorja selettiva mill-Ilmentatriċi jew *misselling* min-naħa tal-Fornitur tas-Servizz?

L-Ilmentatriċi xehdet li meta kien mar għandha r-rappreżentant tal-Fornitur tas-Servizz biex ibiegħ polza lilha u lil oħtha, hija kellha madwar 18-il sena u saħqet li "***… meta qalli li ser nieħu s-somma ta' Lm20,000, ma kienx qalli li din is-somma tista' tvarja***."[11] Però, ikkonfermat li ma tiftakarx kelma b'kelma x'intqal dakinhar tal-laqgħa u ma tiftakarx li kienu ftehmu fuq xi perċentwal ta' kemm is-somma setgħet tvarja.[12]

Minħabba dan il-kuntrast fix-xhieda tal-partijiet, l-Arbitru jkollu jistrieħ fuq dak li hemm miktub fid-dokumenti. Minkejja li l-Ilmentatriċi tippretendi li tieħu l-ogħla somma indikata fil-kwotazzjoni daqslikieku kienet garantita, id-dokumenti ppreżentati kollha jwissu b'mod ċar li s-somom huma sempliċiment indikazzjonijiet u '*estimates*'; '*These figures may vary according to prevailing financial conditions*';[13] '*Illustrations are based on the current rate of return*';[14] u li '*Depending on the performance of the company, bonus rates may go down as well as up.*'[15]

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[10] P. 108.
[11] P. 104.
[12] P. 105.
[13] P. 83.
[14] P. 85.
[15] P. 86.

Huwa evidenti li l-Ilmentatriċi tħossha ddiżappuntata bir-ritorn li għandha minn din il-polza. Però, fl-istess waqt, ma ressqitx prova li dak iż-żmien kellha għażla differenti għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. B'hekk, l-Ilmentatriċi ma pprovatx li ġarrbet xi tip ta' *opportunity loss*.

Sabiex tintlaħaq il-figura kkwotata fl-istima jrid isir '*compounding*' b'rata għolja li, filwaqt li kienet fattibbli fis-sena 2000, ma kinitx xi ħaġa li setgħet tiġi sostnuta u garantita għal ħamsa u għoxrin sena sħaħ. Għalhekk, għandu jiġi kkunsidrat ukoll il-fatt li anke persuna li mhijiex daqstant midħla tal-finanzi xorta tifhem li mhuwiex f'loku li tassumi li t-tali rati kienu ser jibqgħu f'dak il-livell għal ħamsa u għoxrin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa matul ħamsa u għoxrin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel sabiex torbot ir-rati tal-imgħax għal tul ta' żmien.

L-Arbitru jifhem li polza bħal din tinħadem 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' ħamsa u għoxrin sena u li minħabba f'hekk, is-somma finali taf tvarja. Fil-fatt, eventwalment il-Fornitur tas-Servizz beda joħroġ tliet stimi minflok waħda.

Għaldaqstant, għar-raġunijiet kollha mogħtija iżjed 'il fuq f'din id-deċiżjoni, l-Arbitru jiddeċiedi li l-ilment huwa wieħed ekwu, ġust, 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-Ilmentatriċi, sal-limitu ta' fejn kienu leġittimi, ma ġewx milħuqa. L-aspettattivi tagħha kienu li mal-maturità tal-polza, kienet ser tirċievi l-ogħla somma murija fil-kwotazzjoni, minkejja li din kienet biss stima u suġġetta għal *terminal bonus* li jista' ma jingħatax.

B'hekk, talbet kumpens ta' €48,511.52. Iżda, ma jistax jingħad li l-aspettattivi tal-Ilmentatriċi kienu għalkollox leġittimi.

L-Arbitru jeħtieġ jasal għal kumpens ibbażat fuq ġustizzja ekwitattiva kif huwa espressament stipulat fl-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 jikkunsidrax li l-Ilmentatriċi għamlet xi telf minn din il-polza. Anzi, hija għamlet gwadann ta' 3.66% bla taxxa[16] u kellha 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-Ilmentatriċi, u minflok jiddeċiedi li s-somma xierqa li għandha tingħatalha bħala kumpens hija ta' **€3,076**.

Għaldaqstant, ai termini tal-Artikolu 23(3)(c)(iv) tal-Kapitolu 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil *MAPFRE MSV Life p.l.c.* tħallas lill-Ilmentatriċi s-somma ta' tlett elef u sitta u sebgħin ewro (€3,076) b'żieda mas-somma diġà offruta u, ċioè, mas-somma ta' €20,508.87[17] **u, b'hekk, tħallasha s-somma kumplessiva ta' €23,584.87.**

B'imgħax ta' 2.40%[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
L-Arbitru għas-Servizzi Finanzjarji

[16] P. 103.
[17] P. 75.
[18] Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew.

Nota ta' Informazzjoni relatata mad-Deċiżjoni tal-Arbitru

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 għal 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).