Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 029/2026

TF

('l-Ilmentatur')

vs

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

('il-Fornitur tas-Servizz')

Seduta 15 ta' Lulju 2026

L-Arbitru,

Ra l-ilment,[1] fejn l-Ilmentatur issottometta li ma jaqbilx mas-somma li qed tiġi offruta lilu mal-maturità tal-polza, u dan minħabba li wara tletin sena, din hija ferm 'il bogħod mis-somma li hu kien allegatament imwiegħed.

Huwa spjega li l-ammont imwiegħed u kkwotat kien ta' Lm56,763 ekwivalenti għal €132,222. Iżda, meta għalqet il-polza fis-sena 2025, ġie offrut ammont ferm anqas ta' €49,874.37.

B'hekk, l-Ilmentatur iqis li s-somma offruta mal-maturità tal-polza hija insuffiċjenti għaliex din ma tirriflettix dak li kien imwiegħed u qed jitlob li jingħata l-ammont sħiħ ta' €132,222, kif jgħid li ġie imwiegħed.

Ra t-tweġiba tal-Fornitur tas-Servizz[2]

1. *"MAPFRE MSV Life plc ("MMSV") refers to the allegation made by the complainant that the maturity value of the policy in question numbered 26436 of the nature Comprehensive Endowment Policy with Sum Assured ("the Policy") was not equivalent to the estimated maturity*

[1] Paġni (p.) 1 - 5 u dokumenti annessi p. 6 - 66
[2] P. 71 – 75 b'dokumenti annessi 76 - 78

value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainants. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to pay the complainant the amount of €132,222.

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 quotation presented by the complainant together with this complaint (fol.013). 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 quotation 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 quotation were not guaranteed because they were based on the investment conditions and circumstances at the time.</u>*** *Such estimates were calculated using the bonus rates declared by the Company at the previous year end. Such bonus rates can go down as well as up, depending on the company's performance. At the time, the bonus rate was much higher than it is today, with a rate of 6.75% between 1995 – 1998 and 7% in 1999, which started to decrease as from 2000 onwards with minor fluctuations throughout. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.* ***<u>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.</u>***

5. *The amount of LM37,842 that was indicated in the quotation as ''Estimated Maturity Value Including Reversionary Bonus'' was not guaranteed because one needed to wait until the finalisation of the bonus declaration process in order to confirm whether MMSV was*

going to declare a reversionary bonus for the previous year and if in the affirmative at what rate, and it was only at that time that the complainant could have been certain how the value of the Policy Account of his Policy was increasing over the years.

6. *With regards to the ''Terminal Bonus'', this bonus is also dependent on the profit made 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, the amount being indicated in the quotation (fol.013) as "Estimated Maturity Value Including Reversionary and Terminal bonuses" of LM56,763 was likewise not guaranteed since it was highly volatile.*

   This was also explained in the definitions section of the policy account statement provided yearly (as per example shown in MSV DOC 1), whereby it is stated that "It is highly dependent on the investment performance of the MAPFRE MSV With-profits Fund and MAPFRE MSV Life p.l.c is under no obligation to pay a Final Bonus, meaning that this is not guaranteed."

7. *In fact, the Life Policy Schedule of the Policy (fol.020) provides that ''In respect of each premium paid, LM392.49 shall be credited to the Policy Account which will be increased by the bonuses which may be declared by the Company from time to time.'' This continues to support what was provided for in the above-mentioned notes in relation to the fact that MMSV was not obliged to declare reversionary bonuses every year but once declared then they were guaranteed to be paid to the policyholders.*

8. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.020) was the sum assured of LM11,510.00, and no amounts containing the word 'Estimate' in the quotation were mentioned on this Schedule, which further shows that according to the agreement between the parties the Estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonus were never guaranteed.*

9. *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 and what the eventual maturity value shall be made up of and how said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation which was given by the Company. Notwithstanding, the complainant is merely basing the claim on estimated maturity values without putting them in the context of all the documents provided to the complainant when the Policy was being sold 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. *Notwithstanding the fact that the maturity value could not be equivalent to the estimated maturity values indicated in the quotations due to the said shift in the performance of the market, the investment part of the Policy still rendered a good return when compared to other similar investments that were available during the term of the Policy despite the fact that the return was made while there were three financial crises. In fact, the complainant made a gain in the amount of €22,446.57 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a rate of*

return-on-investment premium amounting to 3.61% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 4.25%.

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 his return.*

13. *During the term of the Policy, MMSV always kept the complainant informed about the value of the Policy Account of his Policy and how said value was increasing every year and about the bonuses that were being declared by MMSV, which bonuses were being credited to the Policy Account of the Policy. This information was communicated to the complainant by MMSV by sending him, on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As from 2001, MMSV had also started sending to the complainant, every year, a Media Release (copies of the Policy Account statements are attached with the complaint and marked fol.038-fol.058). 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 quotations which is self-explanatory, the Important Notes (MSV DOC 1) 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.

14. *Furthermore, it needs to be noted that apart from the investment element, the Policy also provided a guaranteed life cover during the duration of the Policy. This amount was guaranteed to be paid upon death, in fact it is referred to as the 'Sum Assured' on the Policy Schedule*

(fol.020) with an amount of LM11,510.00. In addition, having a sum assured allowed the complainant to provide the Policy as a security to the Bank. This is evident in the pledge letter attached to this complaint as MSV DOC 2. Another characteristic of this policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to €27,427.80 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 €22,446.57, which amount represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the policy in question was not only an investment but also provided cover on the complainant's life.*

16. *As explained, MMSV has met all its contractual obligations, because the quotation did not guarantee the estimated maturity values, but the estimated maturity values were only an indication of the potential performance of the policy which could vary in the future.*

17. *It is clear that the Policy does not guarantee payment of the estimated maturity values but guarantees that the* ***maturity value*** *is paid in the event that the life assured is still living when the policy matures. The maturity value according to the Estimated Maturity letter issued one month in advance of the maturity date (fol.060) 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 statement made by the complainant in the online complaint (fol.002) stating that "...li jekk inħallas LM400.00 għal tletin sena jien se nieħu lura LM 56,763...", has no basis, since the complainant signed the quotation showing estimated values and not an agreement showing a promised maturity value. In fact, the bonuses declared by the Company, including the Terminal Bonuses are never guaranteed and are calculated according to the current bonus rates at the time of the quotation. Terminal Bonuses can also be reduced or even withdrawn in times of drastically low investment performance, which is known to have happened in the past. 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 complainants were presented with the Statutory Notice (MSV DOC 3) 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."*

Seduti

L-ewwel seduta nżammet fit-22 t'April 2026 għax-xiehda tal-Ilmentatur li qal:

"Ngħid li dak iż-żmien, f'Diċembru 1995, kien ġie rappreżentant tal-Middlesea, is-Sur Wallace Falzon, id-dar biex jagħtini kwotazzjoni bil-prezzijiet, kemm ser tkun l-insurance, kemm għandi nħallas u kemm għandi nieħu return.

Kien qalli li jekk nonora dan il-kuntratt għal tletin sena fejn inħallas din is-somma ta' Lm400 kull sena, nieħu Lm57,000.

Is-Sur Wallace qalli li biex jagħtini l-kwotazzjoni kelli nħallas b'ċekk dakinhar stess u nkun marbut. Għamiltlu ċ-ċekk dakinhar u ċ-ċekk issarraf. Ngħid li f'darba ftiehemna kollox; tajtu ċekk ta' Lm400 dak il-ħin u ssarraf.

Ngħid li din il-laqgħa damet sejra madwar nofs siegħa, tliet kwarti u spjegali kollox.

Ngħid li kien sabni s-Sur Wallace Falzon through persuna oħra. Xi ħadd irrakkomandah. Imbagħad, ġie d-dar u rabatni dak il-ħin, jiġifieri ħallast dakinhar stess mhux ħallasthom wara. Ma għamilniex laqgħa oħra. Kollox sar dakinhar.

Qiegħed nippreżenta kwotazzjoni li kien tani Wallace Falzon b'figuri xi ftit differenti mill-kwotazzjoni li ppreżentajt fl-ilment.

Qed nippreżenta wkoll graph li turi li matul tletin sena, titla' għall-figura ta' Lm50,000.

Dawn ser jintbagħtu lill-parti l-oħra wara din is-seduta.

Ngħid li jiena dejjem matul dawn it-tletin sena sħaħ onorajt il-pagament u qatt ma kkuntattjawni b'telefonata ħlief f'Diċembru 2025 biex immur nirtira s-somma li offrewli li ma kinitx diċenti. Fi tletin sena, ħadd ma ċempilli.

Ngħid li kont nirċievi statements kull sena imma jien ma nifhimhomx. Kieku ċempilli xi ħadd f'nofs il-polza jgħidli, 'Isma', din nieżla!' U jispjegali u jekk irrid inkompli, u jekk ma rridx, ma nkomplix.

Ngħid li jien qed nippretendi l-ammont ta' €132,222 li kien imwiegħed, ekwivalenti għal Lm56.763. Tletin sena huwa żmien twil ħafna u qatt mhu ser ikolli ċans nagħmel insurance oħra.

Ngħid li dak iż-żmien kont u għadni panel beater. Ngħid li bħala edukazzjoni, la għandi 'O' u lanqas 'A' Levels u ma tantx nifhem u naqra bl-Ingliż. Kemm niddobba."[3]

Waqt kontroeżami kompla jixhed li:

"Qed jingħad li għaddew tletin sena minn din il-laqgħa.

Mistoqsi niftakarx dak kollu li spjegali s-Sur Wallace, ngħid, iva.

Mistoqsi stajtx insejt xi dettalji minn din l-ispjega, ngħid li, le.

Qed niġi referut għall-kwotazzjoni li ppreżentajt fl-ilment u qed niġi mistoqsi naqbilx li mkien fil-polza ma hemm li l-ammont li huwa stmat (estimated) hu garantit.

Ngħid li lili Wallace qalli li kienu garantiti, li żgur ser neħodhom. Anzi qalli li ser nieħu aktar. Kien offrieli wkoll ftit wara li jekk inħallas 10% oħra, titlali aktar.

Ngħid li meta għamilt din il-polza, ma ridtx nirriskja l-kapital.

Qed jingħad li mhux talli faddalt, talli għamilt gwadann ta' €22,446.57.

Mistoqsi inix konxju ta' dan il-gwadann, ngħid li iva imma dan mhux il-gwadann li wiegħedni.

[3] P. 79 - 80

Mistoqsi inix konxju li l-MSV kienet qed tagħtini wkoll garanzija tas-Sum Assured f'każ ta' mewt, ngħid li iva, dik kien spjegahieli Wallace.

Qed jingħad li fil-kwotazzjoni hemm figura oħra ta' Lm37,842.

Mistoqsi xi ngħid fuqha, ngħid li ma qalilix din, ma nafx x'inhi.

Mistoqsi staqsejtx lill-MSV jew lil Wallace fuqha, ngħid li din irċevejtha wara.

Qed niġi referut għall-iStatutory Notice (Doc. MSV 3 mar-risposta).

Ngħid li l-firma fuq dan id-dokument mhux qed nagħraf li hi tiegħi imma ma neskludix li kont niffirma hekk tletin sena ilu.

Ngħid li qatt ma qalli xejn fuq dan id-dokument. Dan id-dokument qatt ma rajtu.

Ngħid li ma spjegalix li meta nirċievi l-polza kelli ċans ħmistax-il ġurnata li jekk ma togħġobnix nista' nikkanċella kollox.

Kulma qalli b'dik il-karta, ċekk dak il-ħin u kont marbut.

Mistoqsi naqblux li jien użajt il-polza bħala garanzija darbtejn fl-1997 u fl-2001 mal-BOV, naħseb li darba imma jista' jkun.

Qed jingħad naqbilx li jien flok poġġejt dawn il-flus il-bank, investejthom f'din il-polza.

Ngħid li le. Kieku investejthom fil-proprjetà, kieku telgħetli ħafna aktar minn hekk. Dak iż-żmien kont tixtri dar Lm5,000 u llum il-ġurnata jiswilek mat-Lm300,000."[4]

Ix-Xhieda tal-MSV

Inżammet seduta fit-28 ta' Mejju 2026, għax-xhieda ta' MSV.

Victor Farrugia għan-nom ta' MSV ikkonferma bil-ġurament il-kontenut tar-Risposta datata 27 ta' Jannar 2026.

Xehed ukoll Wallace Falzon li kien biegħ il-polza ilmentata bħala rappreżentant ta' MSV. Wallace Falzon ma kienx jiftakar dan il-każ speċifiku iżda billi kien biegħ

[4] P. 80 - 81

numru kbir ta' poloz simili fuq medda ta' diversi snin, allura, kien qed jixhed skont kif jgħid kull meta kien ibiegħ polza bħal din.

Spjega li hu kien jispjega il-punti saljenti tal-polza, il-koperatura fuq il-ħajja, il-bonus li jiġi kkonfermat kull sena li la darba joħroġ, kien garantit u ma jistax jonqos minnu anke jekk is-swieq iduru 'l isfel, u li kien jispjega li l-figuri ikkwotati kienu stimi bbażati fuq ir-rati ta' dak iż-żmien u mhumiex garantiti għal kull sena futura tal-polza. Kien ukoll jisħaq li t- *Terminal Bonus* inkluż fil-kwotazzjoni kien jista' ma jingħatax skont kif ikunu s-swieq fis-sena li tagħlaq il-polza.

Waqt kontroeżami huwa xehed:

"Mistoqsi niftakarx lill-Ilmentatur, ngħid li ma niftakrux.

Mistoqsi kontx Senior Life Representative tal-Middlesea Valletta, ngħid li kont Tied Intermediary, li tfisser l-istess ħaġa.

Nikkonferma l-firma tiegħi fuq il-quotation li kont tajt lill-Ilmentatur.

Qed jingħad li fl-ebda ħin fuq din il-kwotazzjoni m'hawn li din xi darba kienet ser tinżel u qed niġi muri graph li tidher li dejjem tiela' 'l fuq.

Ngħid li fuq il-kwotazzjoni hemm ċar li kienu estimated. Ngħid li dak inkun spjegajthom. Hemm 'Estimated', l-ewwel kelma li tara f'kull waħda. Din kienet parti mill-proċess u bħala kienu jirċievu l-uffiċjali tal- Middlesea bin-noti wkoll spjegati. Jiġifieri qed nippreparahom għalxiex iridu jfittxu, xi jridu jaraw.

Mistoqsi jekk l-istima tvarjax ħafna u li lill-Ilmentatur jien m'għidtlux li setgħet tvarja ħafna, ngħid li l-Ilmentatur kien jirċievi statement kull sena u biex tgħaxxaq, wara li tlaqt jien, l-aħħar ħmistax-il sena, fl-opinjoni tiegħi, kienu niżlu r-rati u nispera li baqgħu jibagħtu l-istatements.

L-Ilmentatur kien jirċievi kull sena x'kellu bħala rati. U dawk li jtellgħu għas-somma finali. L-Ilmentatur mal-Middlesea irid jiċċekkja jekk bagħtuhomlux jew le.

Ngħid li meta spjegajtha jien, spjegajtha bl-instructions li kienu ħarġu mill-kumpanija. Dik kienet l-ispjega li trid tagħti. Aħna nirrepetu dak li tgħidilna l-kumpanija.

Mistoqsi kemm kont ili nbiegħ dawn it-tip ta' poloz, ngħid li xi ħamsa u għoxrin sena. Dan kien fil-bidu u bqajt sakemm tlaqt.

Mistoqsi kif jien wiegħedt lill-Ilmentatur affarijiet li jien ma kontx naf kif il-kumpanija ser tasal għalihom, u għaliex m'għidtx fuq affarijiet li l-kumpanija ma kintix ser tasal għalihom, ngħid li probabbilment jien u l-Ilmentatur konna injoranti fuq il-futur, kif ikun kulħadd.

Jiena irrepetejt dak li l-kumpanija tatni bħala instructions. Il-kumpanija mhix tiegħi. Jiena tajt l-istess spjega kif jien xtrajt il-prodott għalija stess, jiġifieri fuq dik il-konvinzjoni, jiena kont nagħti l-istess spjega lil kulħadd u kif xtrajt il-prodott jien għax jien kont policyholder bħall-Ilmentatur. Ngħid li meta ġejt għall-maturity, jien ma kellix Terminal Bonus. Xi minn daqqiet kwistjoni ta' luck.

Ngħid li lili l-istatements urewni li r-rati bdew jinżlu għall-polza tiegħi. Nassumi li l-Ilmentatur irċieva l-istess.

Rieżami:

Mistoqsi jekk jiena tajtx xi garanzija lill-Ilmentatur li kien ser jieħu żgur dik is-somma fuq il-kwotazzjoni jew li tkun viċin tagħha, ngħid li l-ispjega kif għidt. Jien kont nirrepeti eżatt kif għidt, jiġifieri, għandek is-somma garantita f'każ ta' mewt u fuq ir-Reversionary Bonus, once declared, they are guaranteed, u dejjem jakkumulaw sakemm iwasslu għas-somma finali.

Ngħid li ġara dak li ġara, imma l-Middlesea dejjem bagħtet statements b'rati jinżlu baxxi b'mod illi sinċerament ngħid li kieku llum ma ninvestix. Din hi opinjoni personali.

Ir-rati baqgħu neżlin imma biex tgħaxxaq, kien żmien meta jiena kont diġà tlaqt u ma stajtx niġbed l-attenzjoni ta' xi ħadd.

Ngħid li jiena kelli mal-erbat elef klijent u kont nirrepeti dejjem l-istess. Li xi ħadd, wieħed kull tant, ikun fehem differenti mal-proċess taż-żmien, I can understand it. Information gets mixed up."[5]

[5] P. 98 -99

Sottomissjonijet Finali

L-Ilmentatur ma għamilx sottomissjonijiet finali għajr li saħaq li Wallace Falzon kien tah garanzija mhux biss bil-kliem imma anke bil-miktub.[6]

Il-Fornitur tas-Servizz qal:

"Minbarra li nistrieħu fuq l-eċċezzjonijiet tar-risposta li niżżilna, nixtiequ wkoll nagħmlu xi osservazzjonijiet.

Il-wegħda li għamlet l-MSV, fir-rigward ta' kif qed jgħid allegat l-Estimated Maturity Value mhix minnha u dan qed jiġi kkontestat għax mhux hekk hemm miktub fil-polza li ngħatat ukoll lis-Sinjur fil-kuntratt tal-polza.

Fil-fatt, fil-Policy Schedule, li hija parti mill-kuntratt tal-polza, m'hemm l-ebda ammont garantit. L-uniku ammont imsemmi hu s-Sum Assured.

L-ammont abbażi ta' xiex qed isir l-ilment, huwa ibbażat fuq quotation li ngħatat mill-MSV għax kienet obbligata li tagħti quotation. Barra minn dan, il-quotation kienet tiddistingwi b'mod ċar bejn is-Sum Assured u l-Maturity Value li fih hemm 'estimated' u anke hemm il-kelma 'illustration'.

Dawn il-kliem juru li l-quotation ma kinitx kuntratt, iżda l-Ilmentatur iddeċieda li jqis il-quotation bħala kuntratt – li mhux il-każ – u għażel li jinjora dawk il-kliem li kienu miktubin fuq il-quotation.

Il-Maturity Value ma setax ikun garantit għaliex l-istima li ġiet ippreżentata (paġna 13 tal-proċess), tiddistingwi ċarament li hemm differenza wiesgħa li hemm bejn l-Estimated Maturity Value including Reversionary Bonus u l-Estimated Maturity Value including Reversionary and Terminal Bonus.

Ukoll, is-Sur Wallace Falzon, fix-xhieda tiegħu, tana rakkont tal-proċess li kien juża fejn juri ċar li l-istimi qatt ma kienu garantiti.

Għalhekk, l-MSV tħoss li ma għandhiex tiġi ikkastigata fuq xi ħaġa li għamlet ai termini tar-regoli u l-good market practice ta' dak iż-żmien u bl-informazzjoni li kellha għad-dispożizzjoni tagħha dak iż-żmien u liema prattika għadha, fil-fatt, segwita llum.

Id-differenza bejn l-Estimated Maturity Value u l-Maturity Value hija riżultat taċ-ċirkostanzi li ma kinux fil-kontroll tal-MSV għax dik id-differenza seħħet

[6] P. 99

minħabba t-taqlib li kien hemm fid-dinja tal-investimenti b'rati ta' bonus li naqsu mis-sena 1995 li baqgħu baxxi sal-lum.

Fl-ilment oriġinali tiegħu, l-Ilmentatur kiteb li r-rappreżentant ikkonvinċih u li 'l-ftehim kien iffirmat minn żewġ rappreżentanti tal-imsemmi kumpanija' u issa jidher li l-espressjoni li 'l-ftehim kien iffirmat minn żewġ rappreżentanti tal-imsemmi kumpanija' huwa qed jirreferi għall-polza nnifisha (paġna 19 tal-proċess) peress li kienet iffirmata minn żewġ rappreżentanti tal-kumpanija.

Dan juri biċ-ċar li l-Ilmentatur kien konxju li l-polza u mhux il-kwotazzjoni kien il-ftehim. Dan il-fatt huwa sinifikanti għax fuq l-istess preamblu (paġna 19), li huwa l-istess dokument li fuq hemm il-firem li rrefera għalihom fl-ilment, hemm miktub:

'The Company hereby agrees to pay the greater of either the Basic Sum Assured or Policy Account ...'.

U xejn aktar. Dan kien il-ftehim li l-Ilmentatur stess għażel li jsejjaħ il-ftehim fl-ilment tiegħu, mhux il-kwotazzjoni.

U dak il-ftehim, jiġifieri l-polza, fl-ebda lok ma jsemmi ammonti stmati jew garanzija ta' estimate maturity values. Għalhekk, l-Ilmentatur innifsu qed jikkonferma li l-kuntratt kien il-polza u mhux il-kwotazzjoni fl-ilment tiegħu.

Fl-ilment tiegħu saħansitra jgħid li 'ikkonvinċewni' u nistaqsi kienx hemm aktar minn persuna waħda li kkonvinċietu. Fix-xhieda li kellna llum u fix-xhieda tiegħu, semma' persuna waħda, jiġifieri, hemm kontradizzjoni fl-ilment u f'dak li qal fix-xhieda.

Kontradizzjoni oħra importanti li għamel l-Ilmentatur fix-xhieda tiegħu hi:

'... kelli nħallas b'ċekk dakinhar stess u nkun marbut."

Iżda kif ikkonferma s-Sur Wallace Falzon u anke kif hemm fid-dokumenti, mhux minnu li kien intrabat dakinhar għax kien hemm l-Avviż Statutorju li kien jagħtih ħmistax-il jum biex jekk ma jaqbilx ma' dak li ġie spjegat, jieħu flusu lura.

Għalhekk, wara li ħallas biċ-ċekk, l-Ilmentatur ma kienx marbut u kien għadu fil-ħin li jreġġa' lura minn dak li ddeċieda.

Anke fil-verżjoni tal-Ilmentatur stess, hemm differenza ċara li filli jgħid Lm50,000 u filli jgħid il-figura li hemm fuq il-quotation ta' Lm56,763 li jitlob imbagħad fl-ilment.

Kieku kienet xi ħaġa li effettivament kienet imwiegħda, il-figura la kienet tvarja u lanqas kien ikun hemm 'estimated' ħdejha, jiġifieri hawnhekk ukoll qed naraw differenza bejn il-figuri minn dak li kiteb fl-ilment u fix-xhieda tiegħu.

Irid jiġi innotat ukoll li l-Ilmentatur xehed 'li kien sabni s-Sur Wallace Falzon through persuna oħra. Xi ħadd irrakkomandah.'

Dan ifisser li l-Ilmentatur ma ġiex avviċinat mis-Sur Wallace Falzon mingħajr stedina iżda xi ħadd li l-Ilmentatur jafu, irrakkomandalu lis-Sur Wallace Falzon u l-prodott.

Dan inaqqas sostanzjalment kull allegazzjoni ta' pressjoni jew bejgħ qarrieqi.

Illum sirna nafu wkoll li kien hemm aktar persuni f'dan il-meeting li ma ġewx imsemmija fix-xhieda tiegħu.

Barra minn hekk, il-polza kellha Life Cover li kienet tkopri lill-Ilmentatur kieku allaħares qatt ġie nieqes l-għada li ħallas l-ewwel premium, u l-eredi kienu intitolati li jitħallsu mill-MSV is-Sum Assured.

L-Ilmentatur seta' wkoll joffri l-polza bħala pleġġ u hekk għamel. Ippleġġja darbtejn fis-snin 1997 u 2001, u bgħatna d-dokumenti. L-Ilmentatur ma ftakarx li ppleġġja darbtejn. Qal li darba. Nemmen li l-memorja ta' kulħadd tonqos wara t-trapass ta' dan iż-żmien kollu.

Barra minn hekk ingħata l-Bonus Statements, l-Important Notes, Media Releases li kellhom disclaimers fuq il-qligħ tal-investiment li dan seta' jinżel kif ukoll jitla'; li l-passat mhuwiex garanzija tal-futur.

Dawn l-Ilmentatur ammetta li kien jirċevihom imma qal li ma kienx jifhimhom.

Ngħid li dan mhuwiex tort tal-MSV. L-MSV dejjem tat l-informazzjoni u l-Ilmentatur kellu kull opportunità li jistaqsi jekk ma fehemx xi ħaġa fuq id-dokumenti li rċieva.

Għalhekk hija ċara li l-aspettattiva li l-Ilmentatur li jirċievi l-Estimated Maturity Value including Reversionary and Terminal Bonuses ma kinitx waħda leġittima. L-Ilmentatur konvenjentement jirreferi għall-ogħla figuri fuq il-kwotazzjoni u jgħid li dawn kienu garantiti.

Il-Maturity Value eċċediet bi qligħ nett ta' €22,446.57, b'rate of return ta' 3.61% nett ta' taxxa u rate of return ta' 4.25% (gross of 15% withholding tax), return tajjeb meta tqabbel ma' investimenti simili disponibbli matul it-tletin sena li fihom kien hemm tliet kriżijiet finanzjarji.

Għalhekk, l-MSV tiċħad l-allegazzjoni li dan kien bejgħ qarrieqi."[7]

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

L-Ilmentatur qal li hu ma fehem xejn mill-kwotazzjoni li tawh ħlief li jħallas il-*premium* għal 30 sena u wara jieħu l-ogħla somma kkwotata. Qal imma li jaf li kellu kopertura fuq ħajtu ta' Lm 11,510.[10] Meta mistoqsi jekk ir-rappreżentant kienx spjegalu i-*quotation*, qal li kien fehemu li kienu garantiti u seta' anke jieħu iżjed.[11]

L-Arbitru għandu diffikultà jifhem jekk l-Ilmentatur fehem u ftakar dak li jaqbillu biex isostni l-każ tiegħu permezz ta' memorja selettiva jew jekk dan kienx każ ta' 'mis-selling' min-naħa tar-rappreżentant.

In vista tal-kuntrast fix-xhieda tal-partijiet, l-Arbitru jkollu jistrieħ fuq id-dokumenti u, ċioè, x'hemm miktub bl-iswed fuq l-abjad. Minkejja li l-Ilmentatur

[7] P. 99 - 102
[8] Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).
[9] Ibid. Artikolu 19(3)(c).
[10] P. 80
[11] *Ibid.*

baqa' jsostni sal-aħħar li din is-somma ġiet garantita lilu, huwa ma ressaq l-ebda prova ta' dan bil-miktub.

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 '*terminal bonus'* inkluż fl-ogħla figura kien *'highly dependent on performance … MSV is under no obligation to pay a final bonus meaning that this is not guaranteed".*[12]

Huwa evidenti li l-Ilmentatur mhuwiex kuntent bir-ritorn li għandu minn din il-polza, iżda fl-istess waqt, ma ppreżenta l-ebda prova li dak iż-żmien kellu għażla differenti għajr polza bħal dik ilmentata jew inkella kont bankarju b'rati inqas. Semma biss li li kieku investihom fil-proprjetà kien imur ħafna aħjar.

Xiri ta' proprjetà u investiment fuq polza tal-ħajja bi tfaddil u kapital garantit li jmur biss 'il quddiem u li joffri kopertura fuq il-ħajja tul il-perjodu kollu tal-polza mhumiex investimenti paragonabbli. Biss biss, il-polza tiġi ffinanzjata bi *premium* żgħir kull sena waqt li xiri ta' proprjetà jitlob investiment kollu f'daqqa mill-bidu.

B'hekk, l-Ilmentatur naqas milli jippreżenta xi tip ta' prova li huwa ġarrab xi tip ta' *opportunity loss* minħabba li ddeċieda li jixtri l-polza offruta abbażi tal-informazzjoni mogħtija.

Madankollu, l-Arbitru josserva li abbażi tal-informazzjoni li l-Ilmentatur kellu fil-mument tal-bejgħ, huwa evidenti li qed iressaq dan l-ilment minħabba l-fatt li l-ammont offrut lilu mal-maturità tal-polza huwa ferm inqas minn dak li kien qed jistenna li jirċievi.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fl-1995, ma kienitx xi ħaġa 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 floku li tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal tletin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq medda ta' tletin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel biex b'hekk torbot ir-rati tal-imgħax għal tul ta' żmien.

[12] P. 76

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 minkejja dan, iħoss li l-Fornitur tas-Servizz seta' kien iżjed kawt fil-kwotazzjonijiet li ta. Minflok stima waħda, missu ħareġ '*spectrum*' 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 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 jinghatax. B'hekk talab kumpens ta' €132,222. 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 jaċċerta li dan l-ammont ikun raġonevoli, huwa diffiċli li jkun preċiż stante d-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 kellu gwadann ta 3.61% bla taxxa (qligħ ta' €22,446.57)[13] u kellu kopertura fuq il-ħajja u anke kellu l-faċilità li uża l-polza billi taha bħala *pledge* għal xi self mill-bank.[14]

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 dik ta' **€7,481.63.**

[13] P. 73
[14] P. 85 - 94

Għaldaqstant, ai termini tal-Artikolu 23(3)(c)(iv) tal-Kap. 555 tal-Liġijiet ta' Malta, l-Arbitru qed jordna lil MAPFRE MSV Life p.l.c. tħallas lill-Ilmentatur is-somma ta' sebat elef, erba' mija u wieħed u tmenin ewro punt sitta tlieta euro (€7,481.63) b'żieda mas-somma diġà offruta, ċioè, mas-somma ta' €49,874.37[15] u, għalhekk, tħallsu s-somma kumplessiva ta' €57,356.

B'imgħax ta' 2.40%[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.

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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

[15] P. 2; 8
[16] Rata kurrenti MRO (*Main Refinancing Operations*) tal-Bank Ċentrali Ewropew

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).