Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 044/2026

AH

('l-Ilmentatur')

vs

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

('il-Fornitur tas-Servizz')

Seduta 25 t'Awwissu 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 ħamsa u għoxrin sena, din hija ferm 'il bogħod mis-somma li kienet indikata lilu oriġinarjament.

Huwa rrakkonta li kien mar għandu rappreżentant tal-Fornitur tas-servizz bl-isem ta' Philip Borg, u dan kien spjegalu li jekk iħallas Lm261.25 *premium* kull sitt xhur għal ħamsa u għoxrin sena, fl-aħħar kien ser jirċievi s-somma ta' Lm41,443 (€96,536.22). Peress li r-rappreżentant kien ikkonvinċieh li din il-polza kienet vantaġġjuża u kien ser ikollha ritorn tajjeb, l-Ilmentatur afdah u xtraha.

Iżda s-somma li ġiet offruta lilu wara li l-polza mmaturat kienet ta' €42,760.60.

Għaldaqstant, huwa qed jitlob[2] li jingħata s-somma li kienet indikata lilu oriġinarjament u, ċioè, id-€96,536.22.

[1] P. (paġna) 1 - 6 b'dokumenti addizzjonali, p. 7 - 64
[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 FP405585 of nature Endowment Policy with Sum Assured ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainants. Consequently, the complainant is requesting the Honourable Arbiter to order MMSV to provide compensation in the amount of €96,536.22.*

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. MMSV has also previously replied to the complainant in this sense by letter dated 15.12.25 (MSV DOC 5).*

3. *In the first place, the amount being requested by the complainant is based on estimates shown in the handwritten signed quotation, provided by the complainant (fol. 010) together with this complaint, along with the Important notes, 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. ***Furthermore, the quotation in question shows three different rates, calculated namely on the rates of 5.25%, 5.25% and 6.75%, showing three different scenarios of the estimated maturity value including reversionary bonus.** In fact, the estimated maturity value including reversionary bonus was indicated as Lm25,541, Lm29,588 and Lm31,879. **The quotation calculated the estimated maturity value including reversionary and terminal bonus. Therefore, the quotation clearly shows three Estimated Maturity Values including Reversionary and Terminal Bonuses, with values of Lm33,203, Lm38,465 and Lm41,443**.*

[3] P. 68 - 81

5. *However, apart from the fact that there were three scenarios and therefore none of those three scenarios could have been guaranteed. The "Important Notes" on the reverse of the quotation (MSV DOC 1) also state "Depending on the performance of the company, bonus rates may go down as well as up".* ***Hence, the quotation made it clear that these rates are not guaranteed and therefore could fluctuate. Such values were only projected amounts and not promised amounts.***

6. *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>****. 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 quotation provided was indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.</u>***

7. *It has also been stated in the "Important Notes" (DOC 01) that "Investment returns can go down as well up and therefore past performance is not necessarily a guide to the future" Besides the fact that the quotation itself presented* ***three scenarios*** *and provided that those scenarios could not materialize if the rates were to change and therefore said figures could not have been guaranteed.*

8. *The Important Notes (MSV DOC 01), delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus". The said notes also explain that the Policy was participating "****<u>in the Company's distribution of its profits by means of an allocation of Annual Reversionary Bonuses declared from time to time ...</u>*** *Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured."* ***<u>Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion</u>***

<u>to do so.</u> *Therefore, the amounts mentioned, 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 of how the value of the Policy Account of their Policy was increasing over the years. This is so, because as was explained in the notes, it was only those bonuses which were declared by MMSV from time to time were in fact guaranteed to be paid to the complainant.).*

9. *With regards to the "Terminal Bonus", the same document showing the Important Notes also explains that "**<u>Depending on its profits experience the Company may</u>**, after the end of the Policy's TENTH year, and ten year's full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared bonuses... Policyholders should be aware that Terminal Bonus Rates are likely to be highly volatile and very dependent on the Company's investment performance". Therefore, <u>the three amounts mentioned, being indicated in the quotation as "Estimated Maturity Value including Reversionary and Terminal Bonuses" were likewise not guaranteed since the terminal bonus was highly volatile</u>. This was also explained in the definitions section provided with the policy account statement for year ending 2023 (DCC. MSV 2), whereby it is stated that "Final Bonus means an extra amount, which may be allocated at Maturity or upon payment of a Death Benefit. 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.*

10. *Furthermore, the only amount mentioned in the Life Policy Schedule (fol.016) was the sum assured of LM1O,000 and no amounts containing the word 'Estimate' were mentioned in this 070 Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonuses were never guaranteed.*

11. *The notes that formed part of the quotation (MSV DOC 1) also provided that "Whilst the purpose of these notes is to* ***guide*** *policyholders and prospective policyholders, the* ***conditions applying to all the benefits provided by the Policy are defined in the Policy document****.. In case of conflict of meaning between this quotation and the Policy document, the Policyy document shall prevail."* ***This meant that the complainants could not treat the quotation as a stand-alone document, but it had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the Policy document.***

12. *It is to be noted that the Proposer in fact signed at the bottom of the Life Assurance Quotation (fol.010) and hence confirmed that:*

    > *"I/We hereby confirm that I/We have read and understood the Important Notes to this quotation and that the Representative has fully explained the notes overleaf to me/us and we are satisfied with the policy/s illustrated and its explanation."*

13. *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 quotations and the other documentation provided by the Company.* ***Notwithstanding, the complainants are merely basing their claim on estimated maturity value without putting them in the context of all the documents provided to them when the Policy was being sold to them and every year thereafter as shall be explained hereunder.***

14. *MMSV continued to act in good faith even after the Policy was issued in favour of the complainants until the maturity thereof because it always managed the MSV With Profits Fund in the best interest of the policyholders, including the complainant. In fact, the said fund has been managed not only subject to the scrutiny of MMSV's executive management and investment committees, but also subject to the scrutiny*

of the independent actuary director of Willis Towers Watson and of the Malta Financial Services Authority. The performance of the said fund is entirely and always subject to the changes and shifts that take place in the value of the investment markets in which MMSV invests the investment premium of its policyholders. ***<u>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.</u>***

15. *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 at least three financial crises. In fact, the complainant made a gain in the amount of €13,643.60 after deducting the investment premium that was paid by the complainant from the maturity value, and this represents a WI rate of return-on-investment premium amounting to 2.93% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.45%. It also needs to be emphasised that the maturity value of the Policy is tax free and that this benefit is not applicable in other forms of regular savings where the complainant would have been otherwise obliged to pay taxes from their return.*

16. *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 of the Policy. This information was communicated to the complainant by MMSV sending on a yearly basis, a Policy Account Statement together with the so-called Important Notes. As from 2001, MMSV also started sending to the complainants, every year, a Media Release (copies of the Policy Account Statements are presented as fol. 042-056). Therefore, the complainants were fully aware of what bonuses were being declared and of the value of the Policy over the years. Apart from the use of the term*

"Estimated" which was conditional in the quotation which is self-explanatory, the Important Notes forming part of the Policy Account Statements mentioned above as well as the media releases have repeatedly made it clear that the bonus rates were not guaranteed and that they depended on the performance of the underlying investments, and therefore, said investments could go up as well as down. Therefore, the values of the Estimated Maturity Value including Reversionary Bonus and Estimated Maturity Value including Reversionary and Terminal Bonuses indicated in the quotation could be varied depending on the performance of the investments during the term of the Policy.

17. *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.016) with an amount of LM10,000. This amount could also be used to pledge the policy against a bank loan, as was done by the policy owner as indicated in the pledge document MSV DOC 3. Another characteristic of this Policy is that the investment premium, which as at the date of the maturity of the Policy had amounted to €29,117.00 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.*

18. *Therefore, MMSV adhered to its obligations under the Policy because the Maturity value of the Policy exceeded the investment premium that was paid by the complainants by an additional €13,643.60 which represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates overtime, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complainants' life.*

19. *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.*

20. *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. 058) 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.*

21. *The comment made by the complainant in the online complaint (fol.003), stating that "...amount originally indicated to me...has no basis, since the complainants signed the quotation, showing estimated values and not an agreement showing a promised maturity value. The Company has always managed the MSV With Profits fund in the best interest of its policyholders. Moreover, the company provided the complainant with yearly statements, keeping him 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.*

22. *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 4) that was issued in compliance with the provisions of the Life Insurance (Statutory Notice) Regulations, 1989. The Statutory Notice set out several warnings including the right of the complainants to withdraw*

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

23. *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-11 ta' Mejju 2026, deher l-Ilmentatur fejn iddikjara bil-ġurament dak li kiteb fl-ilment:

"***Ngħid li kien ikkuntattjani Mr Philip Borg. Ma nafx kienx jaħdem ma' xi ħadd jew kienx għal rasu. Ġie f'isem il-kumpanija.***

Ngħid li meta ġie d-dar qagħad ifiehemni imma milli jidher ma fiehemnix sewwa. Ġie fuq jumejn, ġie dakinhar u kellu xi ħaġa u reġa' ġie l-għada biex inkomplu u baqa' jispjega.

Naħseb li l-meetings damu xi siegħa u nofs b'kollox. Ngħid li kif beda jispjegali kienet tidher tajba ħafna. U wara dawn iż-żewġ meetings, jien għażilt li nagħmilha.

Ngħid li dak iż-żmien kelli xi 22 jew 23 sena, kont mastrudaxxa u bħala edukazzjoni kelli basic sekondarja. Ngħid li ma kellix 'O' Levels.

Ngħid li ma tantx kont naf naqra bl-Ingliż imma s-Sur Borg qalli li kont naf u jien għidtlu, 'Jien qed naqraha imma mhux qed nifhem x'inhi!' Imma hu baqa' jesiġi li jien naf naqra u naf nikteb.

Għidtlu, 'Jien ma tantx naf, dak qed tgħidu inti, imma naħseb li tifhem aktar minni imma mbilli qed naqraha, nispelliha, jien tgħidlix x'inhi għax ma nafx.'"[4]

Taħt kontroeżami huwa wieġeb:

"***Mistoqsi peress li għaddew 25 sena minn mindu saru dawn il-meetings u xtrajt il-polza, jekk niftakarx kelma b'kelma li ntqal f'dawk is-siegħa u nofs, ngħid li mhux kollox, imma l-importanti iva, niftakru.***

Mistoqsi x'niftakar fuq l-ispjega, ngħid li hemm xi karti li mlihom is-Sur Borg bħal Life Assurance Quotation (paġna 10 tal-ilment). Ngħid li dik il-kitba tiegħu mhux tiegħi. Ma qbadtx u vvintajtha jiena. Fuq il-final amount baqa' jinsisti li ser nieħu Lm41,000 jew Lm39,000. U qalli, 'Jew saħansitra aktar.'

Mistoqsi rigward din l-istess l-quotation jekk naqblux li din kienet stima bi tliet xenarji differenti ta' 5.25%, 6.25% u 6.75%, ngħid li le, qalli fuq il-Lm41,000 u d-Lm39,000. Dik, it-tielet waħda, niżlet wara għax hu qalli – għax jien għidtlu, 'Din kif ġiet hawn?', li l-kumpanija tesiġi li jimlewha.

Qalli, 'Qed tarahom dawn it-tlieta ta' fuq? Dawn nistgħu inħalluhom vojta imma l-kumpanija tesiġi li bilfors irridu nagħmluha.'

Staqsejtu x'jiġifieri 'tesiġi', u qalli xi kelma bl-Ingliż. Għidtlu, 'Sewwa jiena ma fhimthiex bil-Malti, ser tgħidhieli bl-Ingliż?'

Qed jingħad li xorta hemm tliet xenarji fejn hemm iċ-ċifri li qed insemmi ta' Lm41,443 u ta' Lm38,465, imma qed jingħad li hemm ukoll iċ-ċifra ta' Lm33,203.

Ngħid li l-aħħar waħda kienet vojta u hu baqa' jurini dawk it-tnejn.

Fuq it-tielet ċifra qalli li ser neliminawha għax dik ikun irid jiktibha bilfors għaliex il-kumpanija tesiġi li tkun hemm.

Ngħid li iva kien hemm tliet xenarji, però, l-inqas wieħed eliminah għax hekk kien qalli.

Jien kont għidtlu, 'Ġietni opportunità li nixtri garaxx u jaqbilli nixtri lilu. Hemmhekk hemm Lm5,000 inqas.'

[4] P. 82

Qabeż u qalli, 'Le, dak neliminawh. Dak qiegħed hemm għalina biss.'

Imbagħad, beda jistaqsini fuq il-garaxx. Qalli, 'Inti jekk ser tixtri garaxx, il-flus ser toħroġhom f'daqqa. Sewwa?'

Għidtlu, 'Iva, vera imma forsi jgħinni naqra missieri u nixtrih.'

Dak iż-żmien kien xi Lm5,500. Kieku xtrajt il-garaxx u ħallejtu hemm jimtela bl-għanqbut u ma krejtux għal 25 sena, ukoll kont immur aħjar.

Jiena qgħadt fuq li qalli u ngħid li qatt ma qalli li stajt ninżel aktar minn hekk. Qatt ma semmiha, qatt, qatt!

Qed jingħad li jien iffirmajt id-dokumenti.

Ngħid li jiena ma nifhem xejn. Min hu l-professjonist, jien jew hu? Hu kellu d-dover li jgħidli.

Qed niġi referut għall-Important Notes annessi mar-risposta ta' MAPFRE li jkunu fuq wara tal-quotation.

Mistoqsi ingħatajtx dan id-dokument, ngħid li naħseb hemm qegħdin.

Nikkonferma l-firma tiegħi fuq Dokument MSV 4, l-iStatutory Notice li jgħid li kelli ż-żmien biex naħsibha fuq dak li kien ġie spjegat lili.

Jien ngħid li ma kellix għalfejn naħsibha; kif spjegali dehret tajba u ma kellix għalfejn naħsibha.

Nikkonferma li kien għandi dan id-dokument.

Qed niġi muri l-Proposal Form u nikkonferma l-firma tiegħi fuqu u li ġie mogħti lili waqt il-laqgħa.

Mistoqsi naqbilx meta nara d-dokumenti u li hemm tliet stimi differenti, li dawn id-dokumenti imkien ma qed jgħiduli li kien hemm ammont imwiegħed lili, ngħid li le, ma naqbilx. Jien qgħadt fuq li qalli hu għax jien għidtlu li ma tantx naf naqra u ma qallix dan il-kliem. Ngħid li ma spjegalix dan.

Mistoqsi waqt li xtrajt il-polza tajtx kas id-dokumenti, ngħid xi tridni nagħti kas jekk jien ma nafx naqra u ma nafx x'hemm miktub?

Mistoqsi wrejthomx lil xi ħadd biex jispjegahomli, ngħid lil min? Lil missieri? Lanqas jaf jikteb ismu!

Ngħid li meta spjegajt lil Philip, qalli, 'Issa nispjegalek jien. Ħalli f'idejja.'

U ma kienx onest. Li kien għalija, anke lilu nfittex.

Mistoqsi naqbilx li meta għamilt il-polza, din għamiltha mhux biss għall investiment imma anke għal-Life Cover għas-somma ta' Lm10,000, ngħid li qalli li kien hemm polza ta' Lm10,000 attaċċjata magħha, imma jiena l-aktar mhux għalhekk għamiltha.

Mistoqsi naqbilx li jien użajt il-Life Cover bħala pledge favur il-bank mis-sena 2005 sas-sena 2019, ngħid li iva.

Mistoqsi naqbilx li matul il-polza, kull sena, kont nirċievi Policy Account Statements bil-figuri biex turini l-andament tal-polza, ngħid li iva u meta rajtha baxxa, lili qaluli li dak normali. Qaluli li s-somma titla' fl-aħħar ħames snin. Qalli, 'Jekk tkun baxxa, tagħtix kasha għax dawn fl-aħħar ħames snin l-aktar li jitilgħu.'

Hekk għall-inqas qalli lili.

Imbagħad, xi sitt snin qabel, għidt, 'Kif jista' jkun? L-ewwelnett, issa m'għadniex bil-Maltin imma qlibna għall-Euro, u għadhom 'il bogħod ħafna minn kemm qalli.' U bqajt sejjer inkellem lil xi ħaddiema tal-OAFS u qaluli li ma stajt nagħmel xejn qabel tagħlaq.

Mistoqsi meta xtrajt il-polza ridtx nagħmel investiment riskjuż inkella ridtx inġemma', ngħid li jien ridt dak li qaluli, li dak li ffirmajt u wegħduni, jsir.

Qed jingħad li l-kapital kien assigurat u ma kienx ser jintilef u li fuq dan, kont ser nieħu ħafna aktar.

Ngħid li le, ma ridtx nissogra l-kapital. Imma jekk inqisu mbagħad l-inflation, naħseb lanqas għamilt qligħ għax jien fil-bidu kont inħallas bil-Liri Maltin.

Ngħid li lili fiehemni li l-kapital ser ikun assigurat u li jien ser nieħu dik il-figura li qalli.

Mistoqsi mill-Arbitru kontx naf lil dan Philip Borg minn qabel, ngħid li, le. Kont irċevejt telefonata mingħandu. Qalli min hu u ma' min jaħdem. Ma niftakarx ma' min kien jaħdem għax imbagħad kienu bidlu l-isem. Jista' jkun li kienu Middlesea Valletta.

Jien kont naf kemm ser noħroġ, għal kemm snin u importanti li nkun naf kemm ser nieħu. Qed jingħad li d-diskors li użajt fl-ilment tiegħi m'għidtx li dan qalli li kont ser neħodhom żgur imma d-diskors li wżajt jiena kien 'amount originally indicated'.

Ngħid li hemmhekk, fl-ilment, m'hemmx imma hu qalli li jien ser neħodhom. Mistoqsi għalfejn għażilt dawn il-kliem, ngħid li jien ma nifhimx, m'inix avukat. Ngħid li hemm karta fejn fuq hemm Lm500 for 25 years u, mbagħad, hemm miktub, 'Final amount Lm41,000 or Lm39,591'. Imbagħad kelli kemm ridt noħroġ kull sitt xhur, Lm261.25.

Qed jingħad li jien kontinwament fl-ilment tiegħi nuża l-kliem 'originally indicated'. Ngħid iva, jiġifieri indikali li ser nieħu dawk.

Qed jingħad li 'originally indicated' hija ħaġa, u guaranteed li ser neħodhom, hija livell differenti.

Mistoqsi liema waħda minnhom, ngħid li lili qalli li dawk ser nieħu. Ngħid li ggarantixxihomli li ser neħodhom il-Lm41,000. Hu qalli li ser nieħu bejn dawk iż żewġ ċifri li semmejt."[5]

Fit-tieni u l-aħħar seduta, deher il-Fornitur tas-Servizz irrappreżentat mis-Sur Victor Farrugia li kkonferma bil-ġurament ir-risposta tal-Fornitur tas-Servizz.

Xehed ukoll is-Sur Philip Borg li kien ir-rappreżentant li kien biegħ il-polza lill-Ilmentatur:

"***Ngħid li jien kont inbiegħ il-poloz tal-assikurazzjoni tal-MSV fis-sena 2000, partikolarment dawk tal-Endowment Assurance with Profits.***

Ngħid li kont trained u licensed; u dak iż-żmien kont ili nagħmel dawn il-poloz xi tliet snin. Ngħid li kont ibiegħ ħafna poloz u, mir-records li għandi, jidher li kont biegħejt il-polza FP405585 lill-(Ilmentatur)

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[5] P. 83 - 86

Ngħid li ma niftakrux fiżikament lill-klijent għax għaddew ħamsa u għoxrin sena imma niftakar li kien joqgħod bejn wieħed u ieħor Sta. Venera għax niftakar li tlajt mill-Main Street, St. Joseph, il-Ħamrun u dort xi side street hemmhekk. Niftakar li kien filgħodu.

Ngħid li dak iż-żmien kont impjegat ma' kumpanija li kienet tirrappreżenta lill MSV. U dak iż-żmien kienu jsiru telefonati lill-klijenti biex jispjegawlhom il-kumpanija x'kienet toffri bħala servizzi u min jaċċetta kien isirlu appuntament.

Fil-każ tal-(Ilmentatur) kien referut biex inżuru jiena.

Ngħid li skont id-diary notes tiegħi, kien il-15 ta' Novembru 2000, filgħodu.

Ngħid li l-bejgħ tal-polza kont naqsamha f'darbtejn jew tlieta.

Meta kont niltaqa' mal-klijent, f'dan il-każ, (l-Ilmentatur), kont nagħmel introduzzjoni qasira tiegħi innifsi u lil min qed nirrappreżenta. Kont nispjega kemm il-kumpanija kienet ilha mwaqqfa, bejn wieħed u ieħor, u x'toffri bħala servizzi.

Imbagħad, konna ngħaddu għall-ispjegazzjoni importanti tal-polza.

Ngħid li kien hemm tliet meetings mal-(Ilmentatur) Wieħed fil-15 ta' Novembru 2000, ieħor fit-23 ta' Novembru 2000 fejn għandi nota fid-diary li kien fis-6.30 p.m., imbagħad, sar l-aħħar meeting fl-1 ta' Diċembru 2000 li kien fil-5.00 p.m.

Bejn dawn il-meetings, għandi nota li kien hemm xi kuntatt bit-telefon.

Qed niġi referut għad-diary note tal-meeting tat-23 ta' Novembru 2000.

Ngħid li hemm miktub '(Isem l-Ilmentatur) appoint probably to do CFP.'

Ngħid li mal-(Ilmentatur) kelli telefonata qabel. Fil-fatt, qiegħda notata fis-17 ta' Novembru 2000. Probabbli ftiehemna għat-23 ta' Novembru 2000, bil-ħsieb li forsi nikkonkludu l-polza, però, dakinhar ma konniex ikkonkludejna l-polza. Kien meeting ieħor ta' diskussjoni.

Qed niġi referut għall-ingassar tal-isem ta' klijent li hemm fuq id-diary notes tat 23 ta' Novembru u tal-1 ta' Diċembru.

Ngħid li dak ifisser li kont lestejt l-appuntament, qisni lestejt id-duty tiegħi tal ġurnata.

Fuq id-diary hemm isem redacted ta' klijent u hemm 'X' ħdejh. Dak ifisser li l-klijent ikun ħassar l-appuntament minn qabel. Jekk tneħħi dak li hemm mgħotti tara l-kelma 'Cancelled'.

Qed jingħad li fix-xhieda tiegħu, l-Ilmentatur qal li jien kont mort fuq jumejn, u kkonkludejt il-meeting l-għada.

Ngħid li kemm ilni nbiegħ il-poloz, qatt ma biegħejt poloz mil-lum għall-għada. Lanqas kważi f'temp ta' ġimgħa. Kieku kellek tara r-records tiegħi kollha, naħseb mill-inqas ikun hemm bejn tmien u għaxart ijiem bejn l-ewwel appuntament u t tieni appuntament tal-polza.

Id-diary note tixhed li l-għada ma mortx għax kieku kienet tkun imniżżla.

Nassigurak li mhijiex il-prattika tiegħi li nikkonkludi polza mil-lum għall-għada. Dak li jkun, mil-lum għall-għada, lanqas ikun laħaq ħasibha sew jew tkellem ma' xi ħadd.

Ngħid li dawn il-meetings kienu jieħdu bejn siegħa u siegħa u kwart. U jekk tara d-diary notes, l-appuntamenti kont niskedahom siegħa u nofs in between. Kont nalloka dik is-siegħa għall-meeting mal-klijent u dik in-nofs siegħa jew 20 minuta għall-ivjaġġar minn appuntament għall-ieħor.

Ngħid li fl-ewwel meeting, kif nagħmel ma' kull klijent, u kif għamilt ukoll mal-(Ilmentatur) kont inħalli l-kwotazzjoni tal-investiment li jkun ser jinvesti. Ngħid li l-kwotazzjoni, bl-Important Notes fuq wara, nkun ħallejtha lill-klijent. L-informazzjoni tkun imtliet, għax dik hija meħtieġa, u fl-aħħar meeting, jekk il-klijent jiddeċiedi li jrid jagħmel il-polza, inkunu ffirmajna u ddatajna l-karti kollha.

Hija l-proċedura li meta ddaħħal polza, kull dokument anness mal-polza jrid jidħol bil-firem kollha meħtieġa fuq kull karta.

Ngħid li wara l-introduzzjoni tiegħi u tal-kumpanija, nibda biex nispjega l-prodott. Inkun spjegajt li din kienet sistema ta' tfaddil regolari kull sena jew inkella wieħed seta' jaqsam l-ammont li jrid ifaddal fuq perjodu differenti. Fil-

fatt, fin-nota tad diary għandi li (l-Ilmentatur) kien qasam l-ammont tat-tfaddil f'darbtejn, kull sitt xhur.

Appena jitfa' l-ewwel premium, dak li jkun – skont l-età tiegħu, skont iż-żmien, skont kemm qed iħallas – ser ikun intitolat għal somma assikurata li dik tkun garantita f'każ li jiġi nieqes (tingħata lill-werrieta) u tkun garantita mill-ewwel ġurnata. L-istess somma kienet tista' tintuża bħala garanzija fuq self mill-banek.

Ngħid li din il-garanzija kienet Life Cover fuq il-ħajja. Fil-każ tal-Ilmentatur, kienet xi Lm10,000 li kienet garantita bħala Death Benefit; ma kellhiex x'taqsam ma' bonuses u imgħaxijiet li jingħataw fuq il-premiums li kien qed iħallas.

Il-polza kienet u għadha mhijiex taxxabbli għall-klijenti u s-sistema kienet li wieħed qed jitfa' l-flus regolari u kull sena jakkumula l-bonuses, ir-Reversionary Bonuses. Jien kont nenfasizza u għadni nagħmilha li dak insejjaħlu l-imgħax ta' kull sena biex dak li jkun jifhimni. Dan il-kliem tekniku kont nagħti spjegazzjoni tiegħu bil-Malti.

Ir-Reversionary Bonus kien jingħata kull sena abbażi tal-profitt li tkun għamlet il-kumpanija. Kien joħroġ rendikont tiegħu u jintbagħat lil kull klijent. U milli nista' nifhem l-Ilmentatur irċieva dawn l-istatements.

L-istatement kien juri l-imgħax ta' Diċembru tas-sena ta' qabel u dak kien ikun garantit jiġifieri dak żgur li ser jingħata.

Hawnhekk jien kont nieqaf biex dak li jkun jekk ikollu xi domandi jkun jista' jistaqsi u niċċaraw l-affarijiet. Jekk ikun hemm domandi, konna nispjegawhom u jekk ma jkunx hemm, kont inkompli nispjega l-kumplament tal-polza.

Kont nispjega li ġaladarba wieħed ikun ħallas il-premiums kollha matul is-snin u żamm il-polza sal-aħħar, sal-maturità tagħha, il-kumpanija, fuq diskrezzjoni tagħha, jiġifieri skont deċiżjoni tagħha skont kif tkun marret fis-snin ta' qabel u anke dik is-sena, u skont kif ikun mar is-suq ukoll, setgħet (mhux bilfors) tagħti Terminal Bonus. Dan huwa bonus addizzjonali fuq dawk il-poloz li kienu ilhom in force għal aktar minn 10 snin.

Ngħid li dan ma kienx garantit. Fl-ebda ħin ma aċċennajt li r-Reversionary Bonus u t-Terminal Bonus ser jingħataw żgur.

Nikkonferma l-firma tiegħi fuq il-Proposal Form (Doc. 6). Konna mlejniha flimkien, jien għandi kopja tagħha. Skont kif kien qal l-Ilmentatur, dak iż-żmien kien Kitchen Helper il-Capua Palace Hospital. Kien tani d-dettalji personali tiegħu.

Nikkonferma l-firma tiegħi fuq il-Quotation (paġna 10 tal-proċess). Ngħid li dik tkun imtliet fl-ewwel meeting u nkun tajthielu. Ngħid li magħha jkun hemm l-Important Notes. Dawn ikunu bl-Ingliż imma jiena nkun għamilt aċċenn għalihom bil-Malti, fuq ir-Reversionary Bonus li ma jkunx garantit ta' kull sena u jekk jingħata tiġi ddikjarata rata li tkun fuq l-istatement. Nispjega li t-Terminal Bonus jingħata at the discretion tal-kumpanija, eċċ.

Nikkonferma l-firma tiegħi fuq l-iStatutory Notice u ngħid li dik inkun tajthielu fl aħħar għax fil-formola li hu jista' jikkanċella l-polza li jkun fetaħ mid-data li wieħed ikun irċieva d-dokument id-dar, hemm 15 days' cooling off period.

Fuq il-Quotation hemm tliet rati ta' bonus: 5.25%, 6.25% u 6.75% li kont nispjega lil kulħadd, inkluż l-Ilmentatur, li dawn huma indikazzjoni fejn jista' jmur l-investiment bir-rati li kienet toħroġ il-kumpanija dak iż-żmien abbażi tal-passat tagħha.

Però, ir-rati ma kinux garantiti kif hemm fuq in-noti ta' wara li jien aċċennajt għalihom aktar qabel.

Ngħid li r-rata ta' 5.25% ma kinitx l-inqas rata li l-investiment jagħti u r-rata ta' 6.75% lanqas kienet l-ogħla rata. Fil-fatt, is-sena ta' qabel, fl-1999, l-MSV tat 7%.

Kien hemm snin ukoll li r-rati kienu inqas minn 5.25%. Imma għal dak il-perjodu kienet qed tagħti l-istimi tagħha b'dawk ir-rati.

Ngħid li skont in-noti ta' wara, li jien spjegajt bil-Malti, dawn ma kinux garantiti – l-ebda waħda ma kienet garantita.

Ngħid li jien żgur m'għidtx lill-Ilmentatur li l-figuri li hemm fil-Quotation, ta' Lm41,000 u Lm39,000, ser jeħodhom żgur. Kienu miktubin hemmhekk bħala *indikazzjoni imma nassigurak li jien qatt f'ħajti ma ggarantejt xi rati li hemm miktubin fuq il-quotations, la lill-(Ilmentatur) u lanqas lil ħadd.*

Lanqas stajt ngħidlu li dawk ir-rati kienu fissi.

Meta inti tieħu t-training fuq dawn il-poloz, l-ewwel ħaġa li jenfasizzawlek hi li ma tistax tmur kontra l-loġika tas-sistema.

L-Ilmentatur fix-xhieda tiegħu qal li fuq ir-rati ta' 6.25% u s-6.75%, jien għidtlu li alright, nistgħu nimlewhom, imma l-inqas rata ta' 5.25%, qal li għidtlu li kważi kważi ma kienx hemm għalfejn nimlewha.

Ngħid li le. Ibda biex, lanqas taċċettaha l-kumpanija quotation li ma tkunx mimlija kollha.

Qed jingħad li għidtlu li ser nimlewha għalina biss.

Ngħid li żgur li ma għidtlux dan id-diskors.

Ngħid li assolutament mhux minnu li jien iggarantixxejt lill-Ilmentatur li kien ser jieħu s-somma ta' Lm41,000. La s-somma tal-Lm41,000, la tad-Lm39,000 jew tat Lm38,465 u lanqas tat-Lm33,000 jew Lm35,000, kemm qiegħda.

Naċċenna li jien ma ggarantixxejt xejn.

Ma naħsibx li ser nieħu dik ir-responsabbiltà f'ismi personali jew f'isem il-kumpanija u niggarantixxi xi ħaġa meta naf illi dawn ser ivarjaw.

Ngħid li għadni nagħmel dan ix-xogħol part time. Ngħid eżatt eżatt ma nafx kemm-il polza biegħejt imma madwar 700 polza."[6]

Taħt kontroeżami huwa wieġeb:

"*Qed niġi muri dokument, Graph Quote, (paġna 12 tal-proċess) li hemm ukoll kitba fuq wara dan id-dokument.*

Mistoqsi nikkonferma li din hi l-kitba tiegħi, nikkonferma li l-kitba li hemm fuqu hi l-kitba tiegħi imma ma hemm xejn garantit. Din hi l-istess ħaġa li hemm miktub fuq l-illustration imma ma hemm xejn miktub li hu garantit.

[6] P. 116 - 120

Qed niġi mistoqsi allura xi jfisser 'Final Amount' li hemm miktub fuq dan id dokument fejn hemm żewġ ammonti biss. Qed jingħad ukoll li jien għidtlu li ser inħallsu bejn 1 u 2 (hawn l-Ilmentatur qed juri ż-żewġ ammonti).

Qed jingħad ukoll li jien għidtlu biex jarmiha din il-karta.

Ngħid li le, żgur m'għidtlux biex jarmiha u, terġa' u tgħid, anke hemmhekk tajtu żewġ offerti biss, fis-sens li tajtu żewġ premiums differenti u mhux illustrations.

Mistoqsi kemm-il complaint kelli fuq il-poloz li biegħejt, ngħid li jien biegħejt 'il fuq minn 700 polza (eżatt ma nafx kemm imma dan jistgħu jikkonfemawh l-MSV mir-records tagħhom) u complaints, apparti dan il-każ, kelli xi tnejn jew tlieta oħra fejn il-perċentwali fejn is-700 li biegħejt huwa very, very, very minimum. U nista' ngħid li ħafna poloz li biegħejt reġgħu investewhom għal darba u darbtejn oħra."[7]

Fir-rieżami, l-Ilmentatur għamel referenza għall-*graph*[8] fejn hemm ir-rata ta' 6.75%, u s-Sur Borg kompla jwieġeb:

"***Ngħid li dak li ktibt bl-idejn kienet quote li konna nużawha biex wieħed nagħmluhielu aktar faċli biex jifhem is-sistema. Il-Graph Quote, jekk qed niftakar tajjeb, kien ta' xi Lm300. Dak biex nagħtu eżempju, jiġifieri għandek l-ammont ta' flus, għandek il-perjodu u l-graph titla' bl-imgħaxijiet ftit ftit.***

Ħriġna s-somma assigurata, miktuba żgur fuq il-Graph Quote, imbagħad, il-bonuses tal-aħħar.

Fuq dik il-Graph Quote kont nikteb ukoll li kienet tax free biex wieħed iżommha f'moħħu. U konna niktbu kemm wieħed jista' jikkexxja f'każ li jwaqqaf il-polza qabel. Fil-fatt, jekk m'inix sejjer żball, hemm li l-ewwel tliet snin ma jieħu xejn, u f'perjodu ta' 10 snin jieħu break even.

Xi ħaġa hekk kienet. Kienet biss illustration biex wieħed jifhem aħjar kif taħdem is-sistema.

[7] P. 121
[8] P. 12

Ngħid li ma stajtx ngħidlu jagħti kas tal-Graph Quote u ma jagħtix kas tad dokumenti l-oħra. Il-Graph Quote ma tiswa xejn fis-sens li hija biss spjegazzjoni."[9]

Fis-sottomissjonijiet finali tiegħu, l-Ilmentatur qal is-segwenti:

"***Ngħid li vera kif qal is-Sur Borg fix-xhieda tiegħu, li ltqajna u fiehemni xi affarijiet.***

Imma meta ġejna għall-ammonti ma qallix li jistgħu jonqsu daqshekk. Hemm 55% inqas mill-ammonti li wiegħedni.

Jien għadni nsostni li dawn l-ammonti wiegħedhomli.

Jekk tmur tixtri karozza, ma jurihielekx?

Mhux ovvja li rrid inkun naf wara dawn il-25 sena x'ser nieħu lura?"[10]

Fis-sottomissjonijiet finali tiegħu, il-Fornitur tas-Servizz irreplika l-punti prinċipali li semma fit-tweġiba tiegħu.[11]

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.[12]

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 lilu mal-maturità.

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[9] P. 121 - 122

[10] P. 122.

[11] P. 124 - 129

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

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."*[13]

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 iddikjara illi, għalkemm ma jiftakarx lill-Ilmentatur fiżikament, il-proċedura u l-ispjegazzjoni li kien jimxi magħhom kienu l-istess. Ir-rappreżentant spjega li kellu tliet laqgħat mal-Ilmentatur bejn Novembru u Diċembru 2000, u anke xi telefonata miegħu.[14]

Minkejja li l-Ilmentatur xehed li jiftakar li r-rappreżentant biegħlu l-polza fi żmien jumejn,[15] in-notamenti fid-djarju tal-istess rappreżentant juru li kienu saru tliet appuntamenti.[16]

Il-verżjoni tar-rappreżentant dwar l-ispjega li kien jagħti waqt dawn il-laqgħat hija pjuttost dettaljata u l-Arbitru ma jara l-ebda raġuni għalfejn m'għandhiex tkun kredibbli. Allura jeħtieġ li jiġi analizzat x'wassal lill-Ilmentatur sabiex jisħaq fuq il-verżjoni tiegħu – jekk kienx hemm xi *misselling* min-naħa tal-Fornitur tas-Servizz, jew jekk din hijiex xi forma ta' memorja selettiva min-naħa tal-Ilmentatur li qed jiftakar jew jiddikjara biss dak li jaqbillu.

L-Ilmentatur spjega li r-rappreżentant tal-Fornitur tas-Servizz kien ikkuntattjah f'isem kumpanija u eventwalment mar għand l-Ilmentatur sabiex ibigħlu l-polza. Meta ġie mistoqsi jekk jiftakarx dak li kien intqal kelma b'kelma, l-Ilmentatur wieġeb "***...mhux kollox, imma l-importanti iva, niftakru***."[17]

Matul ix-xhieda u l-kontroeżami tiegħu, l-Ilmentatur jinsisti li dak iż-żmien huwa ma kienx jifhem bl-Ingliż:

"***Ngħid li dak iż-żmien kelli xi 22 jew 23 sena, kont mastrudaxxa u bħala edukazzjoni kelli basic sekondarja. Ngħid li ma kellix 'O' Levels.***

[13] *Ibid*, Artikolu 19(3)(ċ).
[14] P. 117 - 118
[15] P. 82
[16] P. 113 - 115
[17] P. 83

Ngħid li ma tantx kont naf naqra bl-Ingliż imma s-Sur Borg qalli li kont naf u jien għidtlu, 'Jien qed naqraha imma mhux qed nifhem x'inhi!' Imma hu baqa' jesiġi li jien naf naqra u naf nikteb.

Għidtlu, 'Jien ma tantx naf, dak qed tgħidu inti, imma naħseb li tifhem aktar minni imma mbilli qed naqraha, nispelliha, jien tgħidlix x'inhi għax ma nafx.' ...

Staqsejtu x'jiġifieri 'tesiġi', u qalli xi kelma bl-Ingliż. Għidtlu, 'Sewwa jiena ma fhimthiex bil-Malti, ser tgħidhieli bl-Ingliż? ...

Mistoqsi waqt li xtrajt il-polza tajtx kas id-dokumenti, ngħid xi tridni nagħti kas jekk jien ma nafx naqra u ma nafx x'hemm miktub?"[18]

Jidher li ma kienx hemm familjarità bejn l-Ilmentatur u r-rappreżentant:

"***Mistoqsi mill-Arbitru kontx naf lil dan Philip Borg minn qabel, ngħid li, le.***"[19]

Għalhekk, l-Arbitru jsib diffikultà jifhem għalfejn l-Ilmentatur, minkejja li saħaq li ma setax jifhem id-dokumenti li kienu ngħatawlu, u b'hekk għal liema kundizzjonijiet kien qed jorbot lilu nnifsu, xorta waħda ddeċieda li jixtri l-polza.

Barra minn hekk, bejn laqgħa u oħra kellu l-opportunità biex jistaqsi lil xi ħadd indipendenti u tal-fiduċja tiegħu sabiex jispjegalu x'hemm miktub fl-*Important Notes*[20] u l-Avviż Statutorju,[21] biex ikun ċert stante li kien ser jidħol għal investiment ta' ħamsa u għoxrin sena. Il-*Policy Document* fih ukoll it-traduzzjoni bil-Malti.[22]

L-Ilmentatur ikkonferma l-firma tiegħu kemm fuq il-*Proposal Form* kif ukoll fuq l-Avviż Statutorju.[23]

Wieħed għandu dejjem jaqra u joqgħod attent għal dak li qed jiffirma għaliex ladarba jkun iffirma, jintrabat b'dak li hemm miktub.

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[18] P. 82 - 84
[19] P. 85
[20] P. 74
[21] P. 77
[22] P. 14 - 40
[23] P. 84

Madankollu, l-Avviż Statutorju tah anke *cooling-off period*: "*Il-liġi tagħtik 15-il jum li jibdew igħoddu mill-jum li fih jingħata dan l-avviż biex taħsibha mill-ġdid u jekk tkun tixtieq, biex terġa' lura minn negozju*".[24]

L-Ilmentatur sostna wkoll li r-rappreżentant tal-Fornitur tas-Servizz wegħdu li ser jieħu somma sostanzjali mal-maturità tal-polza:

"***Fuq il-final amount baqa' jinsisti li ser nieħu Lm41,000 jew Lm39,000. U qalli, 'Jew saħansitra aktar.' ...***

Mistoqsi rigward din l-istess l-quotation jekk naqblux li din kienet stima bi tliet xenarji differenti ta' 5.25%, 6.25% u 6.75%, ngħid li le, qalli fuq il-Lm41,000 u d-Lm39,000. Dik, it-tielet waħda, niżlet wara għax hu qalli – għax jien għidtlu, 'Din kif ġiet hawn?', li l-kumpanija tesiġi li jimlewha.

Qalli, 'Qed tarahom dawn it-tlieta ta' fuq? Dawn nistgħu inħalluhom vojta imma l-kumpanija tesiġi li bilfors irridu nagħmluha.' ...

Ngħid li iva kien hemm tliet xenarji, però, l-inqas wieħed eliminah għax hekk kien qalli. ...

Jiena qgħadt fuq li qalli u ngħid li qatt ma qalli li stajt ninżel aktar minn hekk. Qatt ma semmiha, qatt, qatt! ...

Mistoqsi liema waħda minnhom, ngħid li lili qalli li dawk ser nieħu. Ngħid li ggarantixxihomli li ser neħodhom il-Lm41,000. Hu qalli li ser nieħu bejn dawk iż żewġ ċifri li semmejt. ...

Hemm 55% inqas mill-ammonti li wiegħedni.

Jien għadni nsostni li dawn l-ammonti wiegħedhomli."[25]

Min-naħa l-oħra, ir-rappreżentant tal-Fornitur tas-Servizz stqarr li:

"***... jien żgur m'għidtx lill-Ilmentatur li l-figuri li hemm fil-Quotation, ta' Lm41,000 u Lm39,000, ser jeħodhom żgur. Kienu miktubin hemmhekk bħala indikazzjoni imma nassigurak li jien qatt f'ħajti ma ggarantejt xi rati li hemm miktubin fuq il-quotations, la lill-(Ilmentatur) u lanqas lil ħadd.***

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[24] P. 77

[25] P. 83 - 86, 122.

Lanqas stajt ngħidlu li dawk ir-rati kienu fissi.

Meta inti tieħu t-training fuq dawn il-poloz, l-ewwel ħaġa li jenfasizzawlek hi li ma tistax tmur kontra l-loġika tas-sistema. ...

Ngħid li skont in-noti ta' wara, li jien spjegajt bil-Malti, dawn ma kinux garantiti – l-ebda waħda ma kienet garantita. ...

Ngħid li assolutament mhux minnu li jien iggarantixxejt lill-Ilmentatur li kien ser jieħu s-somma ta' Lm41,000. La s-somma tal-Lm41,000, la tad-Lm39,000 jew tat Lm38,465 u lanqas tat-Lm33,000 jew Lm35,000, kemm qiegħda.

Naċċenna li jien ma ggarantixxejt xejn.

Ma naħsibx li ser nieħu dik ir-responsabbiltà f'ismi personali jew f'isem il kumpanija u niggarantixxi xi ħaġa meta naf illi dawn ser ivarjaw."[26]

In vista ta' dawn iż-żewġ verżjonijiet dijametrikament opposti ta' x'intqal eżatt dwar is-somma finali fil-laqgħat surreferiti, l-Arbitru jkollu jistrieħ fuq id-dokumenti u, ċioè, x'hemm miktub bl-iswed fuq l-abjad.

Għalkemm l-Ilmentatur baqa' jsostni sal-aħħar li din is-somma ġiet imwiegħda lilu, huwa ma ressaq l-ebda prova ta' dan bil-miktub. Il-kwotazzjoni u d-dokumenti annessi magħha jwissu li l-valuri mniżżlin huma biss "*estimates*",[27] li "*[t]he quotation provided is for illustration only and does not confer any rights*",[28] u li "*bonus rates may go down as well as up*".[29]

Fil-kwotazzjoni kien hemm ukoll tliet rati mniżżlin: 5.25%, 6.25% u 6.75%,[30] li jkomplu juru li l-ebda rata ma kienet garantita.

Meta l-Ilmentatur ġie mistoqsi jekk jaqbilx li l-kwotazzjoni kienet stima bi tliet xenarji differenti, huwa wieġeb: "***Ie, qalli fuq il-Lm41,000 u d-Lm39,000***."[31]

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[26] P. 120
[27] P. 10
[28] *ibid*.
[29] P. 74
[30] P. 10
[31] P. 83

Meta ġie mistoqsi jekk jaqbilx li fid-dokumenti hemm tliet stimi differenti u li mkien ma jgħidu li hemm ammont imwiegħed, huwa wieġeb: "***... le, ma naqbilx. ... Ngħid li ma spjegalix dan***."[32]

Huwa xehed ukoll illi: "***... hemmhekk, fl-ilment, m'hemmx imma hu qalli li jien ser neħodhom***."[33]

L-Ilmentatur ma ppreżenta l-ebda prova li dak iż-żmien kellu xi għażla għajr polza bħal dik ilmentata, jew inkella kont bankarju b'rati inqas. Għalkemm l-Ilmentatur semma wkoll li dak iż-żmien seta' xtara garaxx,[34] garaxx ma jinxtarax billi tħallas ammont żgħir għal ħamsa u għoxrin sena, u huwa ma ppreżenta l-ebda evidenza li kellu xi offerta f'dan is-sens. B'hekk, l-Ilmentatur ma pprovax li ġarrab xi tip ta' *opportunity loss*.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding'* b'rata għolja li, għalkemm 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 il-fatt li anke persuna li mhijiex daqstant intiża fil-finanzi xorta tifhem li mhuwiex f'loku li tassumi li dawn ir-rati kienu ser jibqgħu f'dak il-livell għal ħamsa u għoxrin sena, speċjalment peress li l-kontribuzzjonijiet kienu mifruxa fuq medda ta' ħamsa u għoxrin sena, għall-kuntrarju ta' '*lump sum investment*' li tiġi nvestita mill-ewwel sabiex 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[35] u mhuwiex qed jiddeċiedi mod ieħor f'dak ir-rigward.

Fuq kollox, meta l-Arbitru kkonsidra l-andament kumplessiv tal-polza ilmentata, ra li r-rendiment tagħha kien ta' 3.45%[36] li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin u, b'hekk, dan għandu wkoll jiġi meqjus fl-isfond fejn il-kapital tal-investiment u l-qligħ iddikjarat kienu garantiti flimkien mal-*Life Cover* u l-

[32] P. 84
[33] P. 85
[34] P. 83
[35] P. 68 - 73
[36] P. 71

benefiċċju li s-somma tkun mingħajr taxxa mnaqqsa. Ta' min iqis ukoll li din il-polza ntużat bħala *pledge* favur il-bank mis-sena 2005 sas-sena 2019.[37]

F'każi oħra simili, l-Arbitru kkritika lill-Fornitur tas-Servizz li kien joħroġ stima waħda fil-kwotazzjoni għaliex dan, minkejja dak kollu li jkun iffirma l-Ilmentatur li l-istima ma kinitx garanzija, seta' nissel aspettattiva differenti f'moħħ l-Ilmentatur.

Għalhekk, f'dawk il-każi, l-Arbitru kien ta xi kumpens limitat għall-fatt li l-istess Fornitur tas-Servizz kien naqas meta ma tax stimi bbażati fuq rati differenti, biex il-klijent ikun jista' jifhem sew li fuq medda twila ta' snin xejn mhu garantit u l-istimi jistgħu jvarjaw.

Iżda f'dan il-każ partikolari, il-kwotazzjoni kienet ibbażata fuq tliet stimi ta' xenarji differenti u l-Ilmentatur ma kellux inissel pretensjonijiet li bilfors ser jieħu xi waħda minn dawk l-istimi. Anzi, suppost kellu jifhem li l-fatt li ħarġu diversi stimi fuq xenarji differenti juri li xejn ma kien garantit, lanqas l-istima l-iżjed baxxa.

Deċiżjoni

Għar-raġunijiet surreferiti, l-Arbitru jħoss li dan l-ilment mhuwiex ekwu u raġonevoli u, għaldaqstant, mhuwiex ser jiġi milqugħ.

Kull parti għandha ġġorr l-ispejjeż tagħha.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

[37] P. 84

<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.