Quddiem l-Arbitru għas-Servizzi Finanzjarji

Każ ASF 148/2026

ON & EN

('l-Ilmentaturi')

vs

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

('il-Fornitur tas-Servizz')

Seduta tal-20 ta' Novembru 2026

L-Arbitru,

Ra l-ilment,[1] fejn l-Ilmentaturi ssottomettew illi ma jaqblux mas-somma li qed tiġi offruta lilhom mal-maturità tal-polza, u dan minħabba li wara ħamsa u għoxrin sena, din hija ferm 'il bogħod mis-somma li kienet allegatament miftehma mar-rappreżentant tal-Fornitur tas-Servizz.

L-Ilmentaturi jiftakru li kienu ftehmu mal-istess rappreżentant li wara ħamsa u għoxrin sena, il-polza kienet ser timmatura fil-valur ta' bejn Lm23,862 u Lm29,894 (ekwivalenti għal madwar €55,584 – €69,634).

Wara dawn is-snin kollha fejn dejjem ħallsu l-*premium* fil-ħin, l-Ilmentaturi jħossuhom iddiżappuntati li s-somma offruta lilhom mal-maturità tal-polza hija biss €29,444.35.

Għaldaqstant, huma qegħdin jitolbu[2] li jingħataw somma ta' €64,551 ekwivalenti għas-somma medjana ta' Lm27,712 li kienet offruta fil-ftehim li għamlu mar-rappreżentant tal-Fornitur tas-Servizz.

[1] Paġni (P.) 1 – 6, b'dokumenti addizzjonali, p. 7 - 72
[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 complainants that the maturity value of the Policy in question numbered FP409616 of nature Endowment With Profits Policy ("the Policy") was not equivalent to the estimated maturity value including reversionary and terminal bonus which was indicated by MMSV when the Policy was sold to the complainants. Consequently, the complainants are requesting the Honourable Arbiter to order MMSV to provide compensation of an amount €64,551.*

2. *In this regard, MMSV is of the view that the claimants' request is unfounded and therefore, the complainants are not entitled to receive any compensation in addition to the maturity value as is going to be explained in further detail hereunder. MMSV has also previously replied to the complainants in this sense by letter dated 14 April 2026 (fol.08-011).*

3. *In the first place, the amount being requested by the complainants is based on estimates shown in the signed quotation provided by the complainant (fol.013) 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%, 6.25% and 6.75%, showing three different scenarios of the estimated maturity value including reversionary bonus.*** *In fact, the estimated maturity value including reversionary bonus was indicated as Lm18,356, Lm21,317 and Lm22,996.* ***The***

[3] P. 75 - 86

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 Lm23,862, Lm27,712 and Lm29,894.

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.* ***The estimated maturity values shown in the quotation were not guaranteed because they were based on the investment conditions and circumstances at the time.*** *At the time, the bonus rate was much higher than it is today, with a rate of 5.75% in 2000 which started to decrease as from that same year onwards with minor fluctuations throughout. The most important factor that affects bonus rates is the underlying investment performance and in recent years the investment returns internationally were lower.* ***This shows that the quotation provided was indeed correct as it was issued according to the circumstances at the time, therefore, MMSV had acted in good faith.***

7. *It has also been stated in the "Important Notes" (MSV DOC 1) 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 1), delve into the meaning of "Reversionary Bonuses" and "Terminal Bonus". The said notes also explain that the Policy was participating "**in the Company's distribution of its profits by means of an allocation of annual Reversionary Bonuses declared from time to time …** Reversionary Bonuses, once declared, are guaranteed to be paid at maturity or on prior death of the Life Assured." **Therefore, these notes explained that there was an element of investment to the Policy and that it was not obligatory for MMSV to declare reversionary bonuses every year but that it was in its discretion to do so**. Therefore, the amounts mentioned, indicated in the quotations as ''Maturity Value including estimated 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 complainants 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 which were in fact guaranteed to be paid to the complainants.*

9. *With regards to the ''Terminal Bonus'', the same document showing the Important Notes also explains that ''**Depending on its profits experience the Company may,** after the end of the Policy's TENTH year, and ten year's full premia have been paid, decide to allocate from time to time a Terminal Bonus in addition to other declared bonus… However, as they depend materially on the investment performance at the time of the claim, they may be reduced or even withdrawn altogether".* ***Therefore, the three amounts mentioned, being indicated in***

the quotation as "Maturity Value including estimated Reversionary Bonus and Terminal Bonus'' were likewise not guaranteed since the terminal bonus was highly volatile. This was also explained in the definitions section provided with the policy account statement for year ending 2023 (MSV DOC 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.017) was the Sum Assured (in this case the Minimum Sum Assured chosen by the complainant and defined as 101% of the Policy Account) and no amounts containing the word 'Estimate' were mentioned in this Schedule, which further shows that according to the agreement between the parties the estimated maturity value including reversionary bonus and the estimated maturity value including reversionary bonus and terminal bonuses were never guaranteed.*

11. *The notes that formed part of the quotation (MSV DOC 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 Policy document shall prevail." **This meant that the complainants could not treat the quotation as a stand-alone document, but it had to be read and understood in the light of the notes that formed part of the quotation and more importantly in the light of the terms and conditions of the Policy document.***

12. *At the moment that the Policy was being sold, MMSV had provided the complainants with sufficient information about the Policy, including the fact that part of it was an investment,*

what the eventual maturity value shall be made up of and how the said amount was calculated including that the bonus rates may go up or down as expressly shown in the quotations and the other documentation provided by the Company. ***Notwithstanding, the complainants are merely basing their claim on estimated maturity value without putting them in the context of all the documents provided to them when the Policy was being sold to them and every year thereafter as shall be explained hereunder.***

13. *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 complainants. 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.***

14. *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 €9,458.39 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 3.01% and a rate of return (gross of 15% withholding tax) on investment premium amounting to 3.54%. 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.

15. *During the term of the Policy, MMSV always kept the complainants 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 complainants 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. 042-064). 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 Maturity Value including estimated Reversionary Bonus and Maturity Value including estimated Reversionary and Terminal Bonuses indicated in the quotation could be varied depending on the performance of the investments during the term of the Policy.*

16. *Furthermore, it needs to be noted that the investment premium, which as at the date of the maturity of the Policy had amounted to €19,746.21 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.*

17. *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 €9,458.39 which represents the bonuses that have been declared by MMSV during the term of the Policy. Thus, despite the reduction in bonus rates over time, the Policy in question was still a valuable investment because in addition to the tax-free "Maturity Value", the Policy also provided cover on the complainants' life.*

18. *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.*

19. *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. 066) 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 complainants 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.

20. *The comment made by the complainants in the online complaint (fol.003), stating that ''ftimna li jekk nhallsu is somma ta Lm365 fis sena ghal perjodu ta 25 sena, ahna inkunu intitolati ghal hlas bejn Lm23,862 u Lm29,894." 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 complainants with yearly statements, keeping them informed on the performance of the investment. Even though the investment returns were decreasing, the Company always declared bonuses at its discretion. In fact, as stated in the Important Notes marked as MSV DOC. 1 ''The Company aims to achieve a fair and equitable distribution of these investment returns and profits between different generations and types of with-profits policies. In addition the company aims to provide policyholders with some protection from fluctuations in the investment markets by smoothing bonus rates from year to year.''*

21. *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 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.

22. *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-30 ta' Lulju 2026, dehru l-Ilmentaturi.

L-Ilmentatur ikkonferma l-kontenut tal-ilment bil-ġurament u bażikament irrepeta l-każ kif spjegat fl-ilment.

"Ftehimna fuq din il-polza fejn konna nħallsu Lm365 fis-sena. Ngħid li kien ħareġ tliet projections fejn qalli biex ma mmurx għall-aħħar waħda. Qalli għandek l-inqas waħda (bil-5.25%); in-nofs, in-normali (bis-6.25%) u jekk kollox imur sewwa, għandek l-aħħar waħda (bis-6.75%).

Ngħid li tana dawn l-istimi: waħda ta' Lm23,862, l-oħra ta' Lm27,712 u l-oħra ta' Lm29,894 (paġna 13 tal-proċess).

Ngħid li b'dawn il-valuri li tana, tħajjarna, għamilna l-kuntratt u xtrajniha din il-polza.

Ngħid li darbtejn ġie għandna. L-ewwel darba tana l-ispjega u, mbagħad, wara li ħsibniha u ddeċidejna li nagħmluha, kien reġa' ġie u ffirmajna xi karti."[4]

[4] P. 87

Saħaq ukoll li meta qaleb minn pagament kull sena għal pagament kull xahar beda jeħel spejjeż żejda li ma kienx jaf bihom.

Waqt kontroeżami qal:

> ***"Qed niġi referut għall-quotation (paġna 13 tal-proċess), u mistoqsi nikkonferma li barra li hemm tliet rati fuq din il-quotation, hemm miktub:***
>
> ***'Projected Estimated Maturity Value if future rate of return is:',***
>
> ***ngħid li iva.***
>
> ***Mistoqsi kif allura qed nippretendi li nirċievi mill-inqas is-somma ta' Lm23,862 jekk id-dokument qed jgħidli li jekk dik ir-rata tkun il-każ, ngħid li llum l-affarijiet inbidlu. Dak iż-żmien, ħamsa u għoxrin sena ilu, jekk jiġi bniedem jiggarantilek xi ħaġa fejn ikun hemm bank imdeffes fin-nofs u kien hemm il-Middlesea Life ukoll u jgħidlek, 'Isma' dawn siguri. Qed naħdmu mal-bank,' il-kelma tal-bniedem dakinhar kienet tiswa ħafna aktar mil-lum. Aħna konna żgħar ħamsa u għoxrin sena ilu u fejn ser nindunaw li qed jidħqu bina?***
>
> ***Qed jingħad li allura r-risposta tagħna hija li aħna qgħadna fuq dak li qalilna avolja kellna dan bil-miktub.***
>
> ***Ngħid li meta ġiet din il-persuna, hekk fiehemna. U m'għamlilniex enfasi fuq din il-kelma li għidtilna inti għax kieku għamlilna enfasi fuqha – u naħseb kulħadd kieku għamlulhom enfasi fuqha din – kieku ħadd ma jagħmilha għax jgħid hawn m'hawn xejn garantit.***
>
> ***Mistoqsi jekk rajtx il-kliem 'projected' u 'estimated', ngħid li le, ma rajthomx għax kieku ma kontx nagħmilha żgur.***
>
> ***Mistoqsi x'irrid infisser meta għidt li r-rappreżentant qalilna, 'Jekk l-affarijiet imorru sew,' u mistoqsi abbażi ta' xiex iddeċidejna li ser nieħdu s-somma ta' Lm27,712 jew ninżlu għas-somma ta' Lm23,862, ngħid li mhumiex ivvintati minna. Dawn għamluhom il-Middlesea u dak iż-żmien, ħamsa u għoxrin sena ilu, kienu jeżistu. Anke llum għadhom jeżistu.***

Mistoqsi xi spjegalna Ray Sciortino, ngħid li qalilna li l-Middlesea ser tħaddmilna l-flus sewwa u wara ħamsa u għoxrin sena, ser jagħtuna dan ir-return. Aħna fhimna li l-Middlesea ser tinvesti flusna u ser tagħtina return fuqhom.

Mistoqsi xi spjegalna fuq ir-ringiela li hemm fuq il-quotation tal-Estimated Maturity Value including Reversionary Bonus u r-ringiela tal-Estimated Maturity Value including Reversionary and Terminal Bonuses, ngħid li ma niftakarx.

Qed jingħad li s-Sur Sciortino tana żewġ dokumenti: Doc. MSV 1, l-Important Notes, u Doc. MSV 3, l-iStatutory Notice.

Nikkonfermaw li d-dokument, Important Notes, ingħatalna mal-quotation.

Qed jiġi kkwotat paragrafu 3 ta' dan id-dokument li jgħid:

'The Estimated Maturity Values shown overleaf have been calculated using the bonus rates declared by the Company at the previous year end. Depending on the performance of the company, bonus rates may go down as well as up.'

U paragrafu 12 jgħid:

'Investment returns can go down as well as up and therefore past performance is not necessarily a guide to the future.'

Mistoqsi għalfejn ma għidniex lil Ray Sciortino li dan id-dokument mhux qed jgħid li huma garantiti kif qalilna hu, ngħid li meta ffirmajna dan il-kliem, kienu għadhom iridu jiġu mħaddmin għaliex meta bdejna nibagħtu l-flus, il-Middlesea kienet tibgħatilna l-karti kif sejrin, dawn l-ishma kienu sejrin tajjeb. Qatt ma tawna l-impressjoni li dawn l-ishma li kienu investiti fihom sejrin ħażin.

Mistoqsi jekk qrajniex l-Important Notes, ngħid li qrajnihom imma ma fhimnihomx.

> ***Mistoqsi Ray Sciortino qgħadtx ifiehemna dawn meta ġie għandna, ngħid li l-enfasi ma kinitx fuq dawn; l-enfasi kienet fuq dawn it-tlieta. Għax kieku jgħidlek fuq dawn l-affarijiet, jgħidlek li 99.9% lanqas l-aħħar waħda m'inti ser tieħu, u għandek xorti jekk tieħu l-kwart, taħseb li kieku ser ibiegħ waħda mġiddma?***
>
> ***Ngħid li ma niftakrux jekk Ray Sciortino ppruvax ifiehemhomlna l-Important Notes.***
>
> ***Mistoqsi jekk ridniex nagħmlu investiment biex inġemmgħu jew jekk ridniex nagħmlu investiment riskjuż, ngħidu li aħna ridna nagħmlu investiment li wara ħamsa u għoxrin sena, inkunu iggwadanjajna xi ħaġa."***[5]

Wara s-seduta, l-Ilmentatur bagħat skeda tispjega kif l-ispejjeż ždiedu minn Lm12 meta kien iħallas kull sena għal €72.96 meta beda jħallas kull xahar[6]. Għal dan kien hemm ir-risposta ta' MSV u skeda aġġustata[7].

Peress li l-ilment reġistrat ma kienx jinkludi dan l-aspett dwar l-ispejjeż, l-Arbitru mhux ser jgħaddi ġudizzju fuqu.

Fit-tieni seduta ta' nhar it-23 ta' Settembru 2026, deher bħala xhud tal-Fornitur tas-Servizz, is-Sur Ray Sciortino li kien biegħ il-polza ilmentata. Huwa spjega li kien hu li biegħ din il-polza bħala *Tied Insurance Intermediary* (TII) ta' MSV u li kien liċenzjat u ttrenjat biex jagħmel dan ix-xogħol li dam jagħmlu xi 27/28 sena.

Spjega l-metodu li kien juża biex jispjega l-polza. Qal illi l-ewwel kien ħareġ *quotation* fejn kien hemm kopertura fuq il-ħajja ta' Lm8,000, iżda l-klijenti ma għoġbithomx u biex inaqqsu l-ispejjeż ta' kopertura fuq il-ħajja u jżidu l-investiment, ħarġet kwotazzjoni ġdida b'kopertura minima u l-polza ħarġet a bażi ta' din il-kwotazzjoni kif tidher (folio 13) annessa mal-ilment.

[5] P. 89 - 91
[6] P. 92
[7] P. 94 - 95

Meta mistoqsi xi spjega dwar it-tliet xenarji ta' 5.25%, 6.25%, u 6.75% li hemm fil-kwotazzjoni huwa qal:

> ***"Ngħid li dik sempliċi ħafna. Li nkunu qed ngħidu aħna u li nkun għedt lill-klijent, aħna hawnhekk qed nagħtuk eżempju bi tliet quotations. Dawn qegħdin hemm biex nuruk li tista' titla' u tista' tinżel, ovvjament għax il-quotation qed turik 5.25, 6.25, u 6.75. Li nkun għedt ukoll hija li s-6.75, anzi darba konna tajnieha anke bis-7%, hija what we had mainly from quite a few years I would say many years bis-6.75% u mbagħad peress li s-suq beda jilgħab... is-suq beda jilgħab fis-sens tal-kelma kien hemm gwerer u mbarazz u ma nafx x'ma kienx hemm in between, allura l-affarijiet jibdew jinbidlu. Ovvjament il-Middlesea jpoġġihom fis-swieq, jinvestihom, u mbagħad ovvjament li jaqla' jrid ixerred... jiġi individwat mal-dan, u joħroġ persentaġġ li ħa jagħti, il-Middlesea ħa jagħti għal sena li kienet... li ġejja jew... bħal speċi...***
>
> ***Imma li qed nipprova ngħidlek hija li dawn jiġu spjegati litteralment... għax anke kieku ridt ngħid jiena... ma ggarantejt xejn minnhom, l-unika ħaġa li stajt għedt, u nimmaġina li għedtha għax normali li ngħidhom dawn l-affarijiet, li aħna qegħdin bejn wieħed u ieħor bħalissa kienu r-rati bejn wieħed u ieħor kienu bejn is-6.25% u l-5.25 kienu qisu roughly about fin-nofs. Però, jidher li ovvjament ir-rati naqsu allura dan ovvjament, kif kont qed ngħid, projections huma projections. M'iniex ngħid li huma garantiti. L-uniku darba li nsemmu l-kelma 'garanzija', 'garantit', hija meta naraw l-istatement. Meta int tirċievi... il-Middlesea at the end of the year jibgħatlek statement x'ġara s-sena ta' qabel, u hu ovvjament kellu ħamsa u għoxrin statement mibgħut lilu, jew erbgħa u għoxrin statement għax l-aħħar wieħed imbagħad jiġi ma' kollox.***
>
> ***Issa, jekk inti tara l-istatement u ... ingħataw ir-rati, ir-rati jvarjaw. Jiġifieri hu kellu dawn ir-rati f'idu kull darba li jirċievi l-istatement. U jien kont ngħidlu 'int ħa tirċievi statement u dak l-istatement li qed taraw fuqu hija kif qed 'tibbildja' l-polza tiegħek. U dawk huma qisek għandek il-ktieb tal-bank u qed jgħidlek x'għandek u***

m'għandekx. Il-ktieb tal-bank jurik kemm poġġejt u kemm ħriġt. Issa fil-każ tagħna ma tistax toħroġ, tista' toħroġ imma it's a... it's a loan sort of thing. Li kont spjegajt ukoll li tista' tuża loan bħala l-polza ukoll tieħu loan minn ġo fiha according to kemm għandek flus ġo fiha.

Jien inkompli ngħid li, biex inkompli mas-suġġett, inkun għedtilhom ukoll jiġifieri li ħeqq il-polza titla' u tinżel, jiġifieri għandek miktub kullimkien, lanqas inkun nixtieq ngħid mod ieħor għax jekk tara sia fuq il-polza din u sia fuq wara tagħha miktubin kollha l-ħin kollu jgħidulek li din tista' titla' u tinżel. Jekk kif... kif qed ngħidlek ħallejtlu id-dokumenti warajh dan kellu miktub dan.

Issa, għax inti kont qed tgħidli xi jfissru r-Reversionary Bonus, dan inkun għedtilhom dik hija tar-Reversionary Bonus li inti ovvjament jekk għamiltha fis-sena, f'dan il-każ hi fis-sena, ħa jagħmel... ħa jkollu payment ta' kull darba kuljum u jibqa' tiela' ta' kull sena. Dak huwa r-Reversionary Bonus u dak huwa skont ma tiddikjara l-kumpanija fl-aħħar tas-sena li ħa jkun qed jingħata. Jagħtik il-persentaġġ u jibgħat jgħidu lil kulħadd u tkun fuq it-televixin, tkun fl-e-news infatti, tkun fil-gazzetti u x'naf jiena, mal-midja kollha tkun qiegħda."

...

"Ngħid li allura mbagħad kont ngħidilhom li t-Terminal Bonus x'inhuwa. It-Terminal... dawn jiġifieri dejjem xejn minnhom mhu garantit li bilfors se jseħħ kull sena jew xi ħaġa. Għax kieku jista' jseħħ kull sena jew xi ħaġa lanqas kellna għalxiex noqogħdu nibagħtu l-istatements u affarijiet, ovvja.

Li qed ngħid hawnhekk issa, it-Terminal Bonus inkun ukoll għedtilhom li accordingly l-profitti tal-kumpanija. U l-kumpanija tiddikjara, bħalma tiddikjara r-Reversionary Bonus tiddikjara dan ukoll magħhom at the same time skont il-qligħ tal-kumpanija. Il-biċċa l-kbira kważi dejjem tajna ħafna drabi, imma dan imbagħad ovvjament ikun hawn żmien fejn ma jingħatax minħabba l-investiment tal-kumpanija ma jkunx daqshekk din. I mean... u l-

> ***ieħor qegħdin ngħidu, l-estimated maturity value including r-Reversionary Bonus dawk qegħdin ngħidu li huma stimi tagħhom, jinkludi t-tnejn kollha kemm huma flimkien, imma ma tfissirx li dik huwa garantit.***
>
> ***Mistoqsi jekk qattx għedtilhom li t-23,862 huwa l-minimum u t-29,894 huwa l-maximum li jistgħu jirċievu, ngħid no, no no no. Nerġa' ngħid, lanqas kieku rrid, għax jekk hu jara d-dokument tiegħu minn fuq wara li tajtu u hu jaf li għandu għax semmieh, urieh proprjament, dak fuqu għandek miktub u jekk...***
>
> ***Mistoqsi jekk kontx naqralhom l-Important Notes (Dok. MSV1), ngħid li Dok. MSV1 bilfors kellu għax għandu l-quotation f'idu u jekk għandu l-quotation f'idu għandu d-dokument f'idu. Mistoqsi għal darb'oħra jekk kontx naqrah, ngħid li kont nispjegah mhux naqrah għax bl-Ingliż u ħafna min-nies... issa, ħafna mill-policies ... jiġifieri l-ktieb li kont ħallejtlu warajja u anke l-ktieb li tibgħat il-Middlesea, il-polza proprja, dak ikun fih Malti u Ingliż, jiġifieri ma kienx hemm problema biex tispjega... biex jaqrawh għax bil-Malti u bl-Ingliż, jiġifieri lingwa jew oħra dak li jkun ikun jista' jifhem.***
>
> ***Però, nerġa' ngħid, anke f'din stess jgħidlek li tista' titla' u tinżel u s-surrender values l-istess storja. Huwa value at the end of the year, this figure may vary according to previous financial conditions. Jiġifieri hemm miktub taħt eżatt. Jiġifieri ma nistax nifhem kif jiena għedtlu..."***[8]

Waqt kontroeżami qal:

> ***"L-Arbitru jgħid li qed niġi akkużat illi meta mort id-dar tal-Ilmentaturi jien ippreżentajt ruħi bħala uffiċjal tal-Bank of Valletta. Ngħid li no, ma jistax ikun. Ngħid li jiena naħdem b'liċenzja tiegħi nnifsi. Aħna individwali kollha mal-MSV Life."***[9]

[8] P. 115 - 117
[9] P. 120

Dan għaliex wara x-xhieda ta' Ray Sciortino, l-Ilmentaturi qalu li huma fehmu li Sciortino kien rappreżentant tal-BOV għax qabel kienu staqsew lill-BOV dwar polza bħal din[10].

L-Arbitru ddikjara li d-dokumenti annessi mal-ilment juru li l-polza ħarġet fuq kwotazzjoni li ħareġ Sciortino, waqt li d-dokumenti kollha huma iffirmati minn Sciortino bħala rappreżentant.

L-Arbitru fehem li saru żewġ laqgħat, waħda fis-27 ta' Marzu 2001 fejn ħarġet kwotazzjoni (mhux ippreżentata) b'kopertura fuq il-ħajja ta' Lm8,000 u fuq din ħarġet riċevuta ta' Lm365 għall-ewwel *premium*[11]. Iżda, mbagħad, jidher li saret laqgħa oħra fil-5 t'April 2001 fejn ħarġet kwotazzjoni fuq kopertura minima a bażi tal-*premium* li kien imħallas fl-ewwel laqgħa u l-polza ħarġet fuq din it-tieni kwotazzjoni (folio 13).

Sottomissjonijiet Finali

Fis-sottomissjonijiet finali tagħhom, l-Ilmentaturi, filwaqt li affermaw l-ilment tagħhom, sostnew is-segwenti:

> *"5. Aħna meta għamilna dan l-investiment għamilniha fuq il-premessa li huma tal-bank BOV u dan ridnieh li jkun mal-bank, għal iktar protezzjoni u sigurtà.*
>
> *Mr. R. Sciortino meta ġie għandna introduċa ruħu bħala rappreżentant tal-Bov/Middle Sea mhux bħala xi ħadd li hu illiċenzjat għal rasu. Bħalma intqal illum minn Mr. R. Sciortino. Din l-informazzjoni sirna nafuha illum 23 09 2026 mhux meta saret il Polza."*[12]

Fis-sottomissjonijiet finali tiegħu, il-Fornitur tas-Servizz, filwaqt li saħaq l-argumenti għala l-ilment m'għandux jiġi milqugħ, issottometta s-segwenti:

> *"L-ilmentaturi x'aktarx qed jirreferu għall-Bank of Valletta għaliex, ftit żmien qabel ma kisbu l-istima mingħand Ray Sciortino, huma kienu kisbu żewġ stimi oħra mingħand il-Bank of Valletta plc, u probabbilment irċevew*

[10] P. 127 – 128 mibgħuta mill-Ilmentaturi turi li dan sar fl-1999 u il-kwotazzjonijiet kienu fuq bażi differenti minn dik ikkuntrattata.
[11] P. 126
[12] P. 124

ukoll spjegazzjoni mingħand Bank of Valletta, fir-rigward tal-istess prodott li eventwalment xtraw permezz ta' Ray Sciortino, iżda għal ammonti differenti.

Dan juri li l-ilmentaturi ma kellhomx memorja ċara u li kienu qed iħawdu lil Ray Sciortino mal-Bank of Valletta. Għaldaqstant, wieħed ma jistax jistenna li huma jiftakru kelma b'kelma l-konverżazzjoni li kellhom miegħu dwar il-bejgħ tal-polza. Is-sekwenza tal-fatti kienet is-segwenti. Fis-27 ta' Marzu 2001, l-ilmentaturi ħallsu lil Ray Sciortino premium ta' Lm365 skont l-istima esebita bħala Dok. MSV 7, li kienet tipprevedi somma assigurata (Sum Assured) ta' Lm8,000. Fit-30 ta' Marzu 1999[13]*, huma marru għand Bank of Valletta plc, minn fejn kisbu żewġ stimi oħra li kienu jipprevedu premiums u somom assigurati differenti. Sussegwentement, fil-5 ta' April 2001, reġgħu ltaqgħu ma' Ray Sciortino u għażlu li jnaqqsu s-somma assigurata għall-minimu previst mill-polza. F'dan ir-rigward, Ray Sciortino spjega li, wara li informa lill-ilmentaturi bl-ispejjeż marbuta mas-somma assigurata, huma ma baqgħux interessati fil-kopertura inizjalment diskussa fis-27 ta' Marzu 2001. Għaldaqstant, fil-5 ta' April 2001, huma għażlu li jixtru l-polza bis-somma assigurata minima."*[14]

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.[15]

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

[13] Mhux 2001 kif tidher fis-sottomissjonijiet.
[14] P. 132
[15] Att dwar l-Arbitru għas-Servizzi Finanzjarji, Kapitolu 555 tal-Liġijiet ta' Malta, Artikolu 19(3)(b).

L-Arbitru jrid imur għall-waqt li kienet qed tinbiegħ il-polza ilmentata, x'ġie mwiegħed lill-Ilmentaturi, u x'eventwalment ġie offrut lilhom mal-maturità. Irid jara wkoll kif sar il-bejgħ tal-prodott ilmentat u, fuq kollox, jekk dan laħaqx *"l-aspettattivi raġonevoli u leġittimi tal-konsumaturi u dan b'referenza għaż-żmien meta jkun allegat li jkunu seħħew il-fatti li jkunu taw lok għall-ilment."*[16]

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 spjega b'mod dettaljat il-proċedura li kien jimxi magħha u l-ispjegazzjoni li kien jagħti fil-laqgħat mal-klijenti prospettivi kollha. Huwa saħaq li dejjem kien jikkjarifika r-rati xi jfissru u li xejn ma huwa garantit.

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

L-Ilmentatur xehed li jħossu ddiżappuntat li minn tliet ċifri lanqas l-inqas waħda ma ġiet offruta. Huwa qal li ma jiftakarx dak li kien spjegalu r-rappreżentant li biegħlu l-polza ħamsa u għoxrin sena ilu, imma li qiegħed jibbaża ruħu fuq l-istima li kienet ingħatatlu. Iżda, mbagħad, meta ġie muri l-*Important Notes*, qabel li d-dokumenti ma kinux jiggarantixxu stima iżda ma jiftakarx jekk Sciortino kienx fehemhomlhom, però, kkonferma li ***"qrajnihom imma ma fhimnihomx"***.[17]

Għalkemm l-Arbitru jaqbel li dak li ntqal fil-laqgħat huwa importanti, l-Ilmentaturi ma ġabu l-ebda prova li s-Sur Sciortino wiegħedhom xi ċifra partikolari. Dan in vista wkoll tal-verżjoni dijametrikament opposta tas-Sur Sciortino stess dwar x'intqal meta biegħ il-polza:

> ***"Mistoqsi jekk qattx għedtilhom li t-23,862 huwa l-minimum u t-29,894 huwa l-maximum li jistgħu jirċievu, ngħid no, no no no no. Nerġa' ngħid, lanqas kieku rrid, għax jekk hu jara d-dokument tiegħu minn fuq wara li tajtu u hu jaf li għandu għax semmieh, urieh proprjament, dak fuqu għandek miktub u jekk..."***[18]

[16] *Ibid*. Artikolu 19(3)(ċ).
[17] P. 91
[18] P. 116

Għaldaqstant, l-Arbitru jkollu jistrieħ fuq x'hemm miktub bl-iswed fuq l-abjad u, ċioè, id-dokumenti ppreżentati. Wara kollox, l-Ilmentaturi jifhmu u jaqraw bl-Ingliż. Il-kwotazzjoni u d-dokumenti annessi magħha jwissu li l-valuri mniżżlin huma biss "*estimated*" u li *"figures may vary according to prevailing financial conditions"*.[19]

Fil-kwotazzjoni hemm ukoll tliet rati mniżżlin – 5.25%, 6.25%, u 6.75% – li jkomplu jixhdu li s-somom kienu biss stimi u l-ebda waħda ma kienet garantita. Infatti, fl-ilment talbu li tiġi akkordata l-kwotazzjoni medja u ilmentaw li dak li ġie offrut lilhom kien 'il bogħod anke mill-kwotazzjoni l-aktar baxxa.

L-Ilmentatur ammetta anke li kienu konxji li din il-polza kien fiha element ta' investiment u ma ridux jieħdu riskju bil-kapital għax riedu li wara 25 sena ***"inkunu iggwadanjajna xi ħaġa"***.[20]

Huwa evidenti d-diżappunt tal-Ilmentaturi fil-konfront tar-ritorn li għandhom mill-polza in kwistjoni, imma fl-istess waqt, ma ppreżentawx provi li dak iż-żmien kellhom għażla aħjar minn polza bħal dik ilmentata, jew inkella xi kont bankarju b'rati aħjar.

Għalhekk, l-Ilmentaturi naqsu milli jippreżentaw xi tip ta' prova li ġarrbu *opportunity loss* minħabba li ddeċiedew li jixtru l-polza offruta abbażi tal-informazzjoni mogħtija lilhom.

Biex tintlaħaq il-figura kkwotata jrid isir '*compounding*' b'rata għolja li għalkemm kienet fattibbli fis-sena 2001, 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 biex b'hekk torbot ir-rati tal-imgħax għal tul ta' żmien.

[19] P. 13
[20] P. 91

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 f'dak ir-rigward.

Barra minn hekk, meta l-Arbitru ħares lejn l-andament kumplessiv tal-polza ilmentata, ra li r-rendiment tagħha kien ta' 3.01%[21] li, fiċ-ċirkostanzi kollha, ma kienx wieħed ħażin, u għalhekk, dan għandu wkoll jiġi kkunsidrat fi sfond fejn il-kapital tal-investiment u l-qligħ dikjarat kienu sostanzjalment garantiti, u l-benefiċċju li s-somma finali tkun mingħajr taxxa mnaqqsa. L-aspettattiva li l-kapital ma jkunx espost għal riskju u li jiggwadanjaw xi ħaġa għalhekk ġiet milħuqa.

F'każijiet oħra simili, l-Arbitru kkritika lill-Fornitur tas-Servizz li kien joħroġ stima waħda fil-kwotazzjoni u dan, minkejja dak kollu li jkunu iffirmaw l-Ilmentaturi li l-istima ma kinitx garanzija, seta' nissel aspettattiva differenti f'moħħ l-Ilmentaturi.

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

Iżda f'dan il-każ, il-kwotazzjoni kienet ibbażata fuq tliet stimi ta' xenarji differenti u l-Ilmentaturi ma kellhomx inisslu pretensjonijiet li bilfors ser jieħdu xi waħda minn dawk l-istimi. Anzi, suppost kellhom jifhmu li l-fatt li ħarġu diversi stimi fuq xenarji differenti, allura, xejn ma kien garantit, lanqas l-istima l-aktar baxxa.

Deċiżjoni

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

Kull parti għandha ġġorr l-ispejjeż tagħha.

Alfred Mifsud
Arbitru għas-Servizzi Finanzjarji

[21] P. 83

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.