

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 134433/2023

DATE: 04-01-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 22/01/2024

SIGNATURE

10 In the matter between

GRADUATE INSTITUTE OF FINANCIAL SCIENCES PTY LTD Applicant
and

INSURANCE SECTOR EDUCATION & TRAINING AUTHORITY Respondent

J U D G M E N T

YACOOB, J: The common cause facts in this matter are as follows; the applicant is, or was until 14 December 2023, an
20 accredited skills development provider in the insurance sector. The first respondent is the body that bestowed this accreditation.

In April 2021, the first respondent received a complaint from a former employee of the applicant. The applicant was not at that stage informed about the

complaint. In November 2021, an investigation report was produced, which found that there may have been dishonest conduct on the part of the applicant. That report was also not initially furnished to the applicant nor was the applicant included in the investigation.

In May 2022, the applicant was informed that the first respondent intended de-accrediting it. The first respondent took the view that it was only required to hear a party it was intending to suspend and not a party it intended to de-
10 accredit, despite its only policy requiring that the party participate in the process before a decision is taken.

There was some interaction between the applicant and the first respondent, which culminated in the applicant instituting review proceedings in September 2022 to review and set aside the report. Those proceedings are still pending.

On 26 September 2022, after the review applicant was lodged, the first respondent took the decision to de-accredit the applicant. The applicant then lodged an appeal with the
20 second respondent.

The first respondent initially took the position that the appeal did not affect the de-accredited status of the applicant, but eventually acquiesced to the applicant remaining accredited pending the appeal.

The applicant made numerous inquiries with the

second respondent about the process and the progress of the appeal, as did the first respondent, and the second respondent appears to have responded time and time again that it would revert, but it did not substantively do so until September 2023.

In the meantime, in June 2023, the first respondent renewed the accreditation of the applicant until June 2024. The applicant took the view that this somehow meant that the first respondent had abandoned the de-accreditation
10 even though the pending appeal process meant that the first respondent had to proceed as though the de-accreditation was not final.

In September 2023, the second respondent informed the applicant that it would await the outcome of the review before determining the appeal. In the interim period the applicant had referred a complaint about the first respondent to the Public Protector.

On 14 December 2023, the applicant complained to the second respondent about certain conduct of the first
20 respondent, which was conveyed by the second respondent to the first respondent on the same day and the first respondent undertook to respond by 18 December. On 14 December, the same day, at 17:38 in the evening, the first respondent informed the applicant that it was de-accredited with immediate effect. The first respondent informed the

applicant that this de-accreditation was founded on the dismissal of the appeal by the second respondent on 1st December.

The applicant informed the first respondent that it had not received the decision of 1st December and made certain demands. These demands were not met and the first respondent published the de-accreditation on its website informing stakeholders of it. The applicant then launched urgent proceedings on 21st December.

10 I have already found that this matter is urgent. The applicant has acted without delay and if its allegations are well founded would not be able to obtain substantive relief in due course. The first respondent's suggestion that damages would cure any harm does not assist.

I have also decided to grant the applicants application for condonation. I consider that it is in the interest of justice that the merits of this application be dealt with.

20 The applicant seeks an order interdicting the first respondent from implementing its decision of 14 December, ordering the first respondent to withdraw a memorandum informing stakeholders of the de-accreditation and to confirm to all stakeholders that the applicant remains accredited until 30 June 2024. Also, to immediately grant access or restore access to the applicant to the first respondent's management information system. This order

that the applicant seeks is to be an interim order, pending the finalisation of the review application already referred to above and of part B of this application, which is a review of the de-accreditation decision.

Only the first respondent opposed the application. The applicant served the application by email on the basis that offices are closed for the year, and physical service therefore not possible.

I am satisfied that there was sufficient service, taking
10 into account that the first respondent has opposed the application, and as far as the second respondent is concerned that the applicant served on active email addresses with which there has been frequent recent interaction.

The first respondent apart from disputing the urgency of the application, contends that the relief is faulty because the decision of the second respondent is not challenged, and also that the applicant has not made out a case for relief. The first respondent contends that the harm
20 contended for by the applicant is not substantiated, it is simply a bold allegation that the applicant will be prejudice in providing training services if it is not accredited. The first respondent also contends that the balance of convenience does not favour the applicant because the first respondent has to de-accredit the applicant due to the

seriousness of the allegations against the applicant, fraud and dishonesty not being something to toy with.

In addition, the first respondent, while it annexes the letter of 1st December containing the alleged decision of the second respondent which it relied upon, does not explain why it believes the letter was transmitted to the applicant despite the applicant stating in the founding affidavit that it had not received the letter.

The applicant makes allegations of *mala fide* and
10 underhand conduct against the first respondent, particularly because of the timing of the de-accreditation letter, that it was on the same day as the applicant made complaints to the second respondent, and also that it was sent after close of business on the last business day of the year for many people, so that the applicant would find it difficult to deal with the de-accreditation timeously. I do not consider that I need to deal with these allegations of *mala fide* and underhand conduct as simply setting out the common cause facts seems to me to establish that the applicant has made
20 out a case for interim relief.

The requirements for an interim interdict are that there must be a *prima facie* right to which there is a threat of imminent harm or actual harm, and that the balance of convenience must favour the applicant. I am satisfied that the applicant has established a *prima facie* right, firstly, to

conduct training as an accredited skills trainer and secondly, to fair administrative action. I am satisfied also that there is harm to those rights. Firstly, it follows as a matter of logic that the loss of accreditation will result in the applicant not being able to provide accredited services to its clients, which it has already contracted to provide. Secondly, simply on the basis that the second respondent first informed the applicant that it would await the outcome of the review and then changed its mind and apparently
10 made a decision without informing the applicant of the basis of the change or the reasons for the decision, the right to fair administrative action is impacted. When that is taken together with the timing of the notification as well as the fact that no opportunity was given to the applicant to respond before the de-accreditation was implemented and that there does not appear to have been *audi* in the appeal process, there is *prima facie* unfairness.

As far as a balance of convenience is concerned, when one balances the interest of the two parties, one has
20 to take into account both that there is no allegation that the applicant is not able to provide proper training, as well as that the first respondent was happy to let the applicant continue being an accredited trainer for over two years from the date of the report being received. In fact, the first de-accreditation decision was made a year after the report was

received. So, the first respondent cannot now claim any prejudice in a delay of the de-accreditation.

I am satisfied that the balance favours the applicant. The only reservation that I have is that the applicant has shown a remarkable lack of keenness in prosecuting its review. Admittedly the fault seems to be that the first respondent has not filed an answering affidavit, but the applicant has remedies in terms of the rules that it has not taken advantage of. Nevertheless, the first respondent
10 also has remedies in terms of the rules if the applicant is delaying prosecuting its various applications. So, I think that a proper application of the rules provides sufficient safeguard for both parties.

For these reasons I grant an order in terms of the draft order provided by the applicant, as amended in terms of our discussion earlier.

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YACOUB, J

20 JUDGE OF THE HIGH COURT

DATE: 22/01/2024