



THE GOVERNMENT GAZETTE OF MAURITIUS

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SPECIAL LEGAL SUPPLEMENT

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LEGAL SUPPLEMENT

See General Notice No. 879

General Notice No. 903 of 2023

**Before the Financial Services Review
Panel**

2022 FSRP 2

In the matter of -

V Company

Applicant

V

The Financial Services Commission

Respondent

(Published by the Financial Services Review Panel under section 66(7) of the Financial Services Act)

DETERMINATION

This matter came before us on 11 July 2022, on which date Counsel appearing for the Respondent stated that -

"The Respondent wishes to inform the FSRP that it will not proceed with the administrative sanction imposed by the Enforcement Committee. As such, the application before the FSRP has no raison d'etre."

The position taken by the Applicant was that it had the carriage of proceedings and would not withdraw its application.

It was thus left to the Review Panel to make a determination in this matter, with Counsel for the Respondent stating that -

"[. ..] the sanctions currently before this Panel have not yet been imposed because following motion of this Applicant, the sanctions have been stayed pending this determination. As such, no sanctions have been imposed by the Respondent. "

At this juncture, we have found it appropriate to refer to sections 53 (3), (4), (6) and (7) of the Financial Services Act, which provide as follows -

53. *Disciplinary proceedings*

(3) Where, after considering the written representations under subsection (2) (c) or where no written representations are received within the time specified in the notice under subsection (2) and the Enforcement Committee decides to impose an administrative sanction, it shall issue a written notification to the person, stating the type and the terms of the administrative sanction.

(4) Any licensee who is aggrieved by the decision of the Enforcement Committee under subsection (3) -

(a) may, within 21 days of the issue of the written notification, lodge an application with the Secretary of the Review Panel specifying the reasons for a review of the decision; and

(b) shall, at the same time, file a copy of his application with the Commission.

(6) Notwithstanding an application under subsection (4)(a) but subject to subsection (7), the decision of the Enforcement Committee under subsection (3) shall be given effect immediately after the period of 21 days from the date of the decision.

(7) *The Review Panel may, after hearing the Commission, suspend the implementation of the decision of the Enforcement Committee under subsection (3) on such terms and conditions as may be determined by the Review Panel.*

[Emphasis is ours]

True it is that the implementation of the decision of the Enforcement Committee has been suspended in this matter. However, we cannot agree with the proposition of the Respondent that no sanctions have been imposed by it. The reality is that a sanction has been imposed by the Respondent and that it is only the implementation of the sanction that has been suspended under section 53(7) of the Act.

The question is what to do with this sanction that still subsists, albeit suspended.

One option is to hear this matter on the merits and determine the propriety of the sanction. However, in the face of the clear position taken by the Respondent before us on 11 July 2022, we find it counterproductive to pursue this approach.

Section 66(1) of the Financial Services Act provides that-

- (1) *On the hearing of an application for review, the Review Panel may-*
- (a) *where the review is conducted pursuant to section 54(2)(a) [i.e. an application by an aggrieved person against a decision of the Enforcement Committee] -*
 - (i) *confirm, amend or cancel a decision made by the Enforcement Committee; or*
 - (ii) *remit the matter to the Enforcement Committee for reconsideration;"*

Based on the unequivocal intention of the Respondent not to proceed with the decision of the Enforcement Committee to impose an administrative sanction on the Applicant, we find it appropriate to purely and simply cancel this decision.

G. Angoh, GOSK

(Chairperson)

Y. Jean-Louis

(Vice-Chairperson)

S.Lalmahomed

(Member)

25th July 2022