



THE GOVERNMENT GAZETTE OF MAURITIUS

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SPECIAL LEGAL SUPPLEMENT

See General Notice No. 878

LEGAL SUPPLEMENT

See General Notice No. 879

General Notice No. 905 of 2023

BEFORE THE FINANCIAL SERVICES REVIEW PANEL

2022 FSRP 4

In the matter of:

N 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

On 29 July 2022 when this case was called before us for hearing, learned counsel for the respondent informed us that: *"as at date, no sanction has been implemented by the Financial Services Commission. The Financial Services Commission has decided that it will not proceed with the implementation of the aforesaid sanction. As such, the Financial Services Commission is giving an undertaking before the FSRP that it shall not implement the aforesaid sanction. However, this shall not debar the FSC from contemplating any sanction in the event of future breaches committed by the applicant. In the light of the undertaking of the FSC that it shall not proceed with the implementation of the administrative sanction, the application has 'no raison d'etre'".*

On being apprised of the above statement, learned counsel for the applicant informed the Review Panel that since the applicant is having the carriage of the proceedings, it will not withdraw its application but instead has moved that the decision of the Enforcement Committee be purely and simply cancelled. Learned counsel has referred us to the judgment in the case of **V Company** which this Panel has previously delivered on a similar motion.

This being so, the Review Panel reserved its determination. We have taken into consideration the statements made by both learned counsel. We also took note of sections 53(3), (4), (6) and (7) of the Financial Services Act (the Act), which provide as follows -

53. *Disciplinary proceedings*

(3) *Where, after considering the written representations under subsections (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 date of the decision.*

(7) *The Review Panel may, after hearing the Committee, 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}

We note that the implementation of the decision of the Enforcement Committee was suspended on 2 September 2021. Irrespective of that suspension, we are of the view that the said sanction is still alive but that its implementation has only been suspended pursuant to section 53(7) of the Act and upon request being made by the applicant without any objection from the FSC.

Since that sanction is still alive, albeit suspended, we consider that given the stand taken by the respondent, not to proceed further in the matter, it would make no sense to pursue the hearing of this case.

Section 66(1) of the 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) confirm, amend or cancel a decision made by the Enforcement Committee; or

(ii) remit the matter to the Enforcement Committee for reconsideration;

In the light of the stand taken by 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 such administrative sanction.

G.Angoh, GOSK

(Chairperson)

S.Lalmahomed

(Member)

24/08/2022