

APPEAL BOARD OF THE FINANCIAL INTELLIGENCE CENTRE ACT

Case 12/3/1/5 – Audi Mbombela

In the matter between

GROUP SIX TRUST t/a AUDI CENTRE MBOMBELA

Appellant

And

FINANCIAL INTELLIGENCE CENTRE

Respondent

Appeal panel: LTC Harms (chair); Adv Thami Ncongwane SC and Adv William Ndinisa

For the appellant: Mr L Dolezal (trustee)

For the respondent: Adv F Latif of FIC

Hearing: 16 September 2019

Summary: Failure to report cash threshold transactions – administrative sanction – appeal –

DECISION

This is an appeal against an administrative sanction imposed in terms of sec 45C(3)(c) of the Financial Intelligence Centre Act 38 of 2001 by the respondent, the Financial Intelligence Centre, on 23 November 2018, on the appellant, Group Six Trust t/a Audi Centre Mbombela, for having failed to comply with its reporting duties of cash receipts above the prescribed level.

It is common cause that the appellant had failed in its reporting duties over a period of some four years in respect of 64 transactions totalling R 4 944 514.13. The penalty imposed amounted to 10% of the value and of that half was suspended, meaning that the appellant has to pay the sum of R247 225.50. The Centre, at the hearing, proposed that the amount be paid in six monthly instalments.

The appellant failed to comply with its dual reporting duty and the transactions all relate to cash deposits into the bank account of the appellant. The appellant says that it was not aware of the duty to report such deposits.

The appeal is against the quantum of the penalty and is based on the single factor that the appellant's understanding was that the reporting duty applied to cash payment received at its premises only.

It is not alleged that the Centre did not take this fact into consideration and it is not said that the Centre has had erred in finding that the failure was serious and extensive or that had failed to give due regard to all mitigating factors.

It is trite that this Board 'does not enjoy an unfettered discretion to interfere with the Tribunal's assessment and imposition of an administrative penalty. Even if

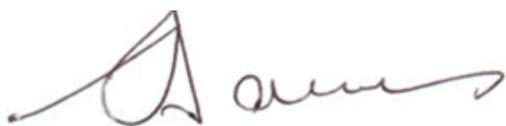
we decided that a different penalty was appropriate we are not merely at large to substitute our finding for that of the Tribunal. This approach is consistent with the general principle that in an appeal against the exercise of its discretion by a court or a statutory body, the court on appeal has limited power to interfere. It can only do so on certain well-recognised grounds, namely, where the court a quo exercised its discretion capriciously, or upon a wrong principle, or where it has not brought its unbiased judgment to bear on the question or where it has not acted for substantial reasons.' *Federal Mogul Aftermarket SA (Pty) Ltd v Competition Commission and another*, 2005 (6) BCLR 613 (Competition AC).

Absent an allegation and finding that the Centre exercised its mind capriciously, or upon a wrong principle or that it failed to bring an unbiased judgment to bear on the question of an appropriate penalty the test is whether the sanction was 'excessive or startlingly inappropriate. This cannot be said in the circumstances.

ORDER

The appeal is dismissed and the decision of the Centre is confirmed.

Signed on behalf of the Appeal Board on 20 September 2019

A handwritten signature in blue ink, appearing to read 'LTC Harms', with a stylized initial 'L' and a long horizontal flourish.

LTC Harms (Chair)