

REPORTS BY THE BOARD OF REVIEW

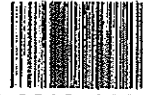
Chief Justice Emeritus Dr Joseph Azzopardi

Dr Mark Simiana

Report by the Board of Review

dated 23.11.2020

Dr Edwina Licari



IA-23022023-1

REPORT BY THE BOARD OF REVIEW

**CHIEF JUSTICE EMERITUS DR JOSEPH AZZOPARDI
DR MARK SIMIANA**

BOARD OF REVIEW
Chief Justice Emeritus Dr Joseph Azzopardi
Dr Mark Simiana

Decision dated 23rd November, 2020

*In the case concerning Doctor of Laws Edwina Licari, General Counsel of the
Malta Financial Services Authority*

This Board of Review's terms of reference were expressed in the letter of appointment dated 6th November, 2020, whereby this same Board was set up "to review the claims reported in the media and the statements given by the CEO and General Counsel respectively", which media reports were to be "examined separately and distinctly from one another" for the Board to "examine and establish the facts associated with these media reports in order to ascertain, for each of the respective reports, the occurrence or otherwise of any possible breach of ethics and/or MFSA rules and regulations, also in the context of the MFSA's obligations towards the relevant EU institutions (including the European Central Bank)". The Board was finally instructed to "report its recommendations, including any suggested courses of action, if deemed necessary, to the Board of Governors for the latter's due consideration and determination". The Board was given a term of two weeks from its setting up to submit its report, which term was extended to the 30th November, 2020, upon a request by this Board.

The Board heard witnesses, and examined the FSA's Ethics Framework, the MFSA Guidelines on the Acceptance of Hospitality and the ECB's Code of Conduct for High level ECB Bank officials.

The Board first heard [REDACTED] as well as members of the Board of Governors. They explained to the Board the various procedures of the Authority and informed the Board on the important dates relating to this Review.

On the second sitting the board heard [REDACTED] who provided the Board with various documents relating to this review as well as explaining the same; the Board also heard [REDACTED] who compiled the documents relating to the various interests held by Mr. Yorgen Fenech which are listed with the Authority and other companies. [REDACTED] assisted [REDACTED] in providing a number of documents. The Board was provided *inter alia* with the various newspaper reports which led to the appointment of this Board of Review.

On the third and final sitting held on the 17th November 2020, the Board heard Mr. Cuschieri and Dr. Licari

The Board considers it useful and opportune, at the very outset, to identify the allegations or facts raised by media reports which are relevant and which refer to Dr Licari. These media reports, which were published by more than one media house, refer to the following events:

- The trip to Las Vegas which Dr Licari took with Mr Joseph Cuschieri, Mr Yorgen Fenech and another party
- Dr Licari's employment with the MFSA
- Dr Licari's participation in the FIAU
- Conflicts of interest
- Dr Licari's trips abroad

These events shall be examined individually in the same order above proposed.

The trip to Las Vegas

From the evidence produced before this Board of Review, it results unequivocally that at the time during which the trip to Las Vegas, which was funded by Mr Fenech, took place, Dr Licari was not yet an employee of the MFSA, and in fact, was still employed at the Malta Gaming Authority (MGA). Dr Licari held that this trip was in fact authorised by the MGA, and she was assigned to participate in this same trip in an official role, as a representative of the Authority.

It is clear that this Board is bound by its terms of reference, which do not include or comprise Dr Licari's obligations or duties as an employee of the MGA. Consequently, this issue falls beyond the Board's review.

Dr Licari's employment with the MFSA

The media reports which covered this particular aspect alleged that Dr Licari was employed at the behest of the MFSA's Chief Executive Officer, and that the financial package awarded to her was excessive. Other allegations concerned the manner in which her recruitment was carried out, and the fact that the

position which she was recruited to, that is, General Counsel, did not exist at the time and was only given legal effect afterwards.

The Board considers that insofar as Dr Licari herself is concerned, these allegations cannot lead to a finding of wrongdoing on her part. Certainly no evidence suggesting otherwise was found by this Board. A call for applications was published, for which Dr Licari and another two candidates applied. The recruitment process following that call for applications was conducted by the Authority, and any shortcomings which may or may not have occurred during that process cannot be laid at the feet of the candidate.

Accordingly, the Board finds that there was no breach of rules or regulations on the part of Dr Licari in this matter.

Dr Licari's participation in the FIAU

Dr Licari was appointed as member to the Board of the FIAU with effect from the 25th June 2019 for a period of three years. This appointment was extended up to the 22nd February 2020 by means of a letter dated 20th January 2020, and for a further period up to the 29th March 2023 by means of a further letter dated 28th April 2020. The appointment was made by the Minister for Finance in all three occasions. Dr Licari resigned from this position on the 30th October 2020, in the wake of the media reports which led to the setting up of this same Board.

This appointment was done in accordance with article 19 of the Prevention of Money Laundering Act, and it does not result that Dr Licari was precluded from appointment to the Board of the FIAU for any reason contemplated in the cited legislation. It is also relevant to point out that, in accordance with article 18(2) of the same Act:

The Board shall be responsible for the policy to be adopted by the Unit and to be executed and pursued by the Director and to ensure that the Director carries out that policy accordingly. The Board shall also be responsible for advising the Minister as provided in article 16(1)(g)

The implementation of those policies is then entrusted in the hands of the Director of the FIAU, as is the actual day to day running of the Unit.

The Board found no evidence of breach of rules or regulations in connection with Dr Licari's appointment to the FIAU.

Conflicts of Interest

Dr Licari declared to this Board that she is personally acquainted with various persons who are involved in business, trade and commerce in Malta, including Mr Fenech. Indeed she also said that this acquaintance dates back since both Mr. Fenech and herself were children.

The Board has ascertained that effectively Dr Licari declared her acquaintance with Mr Fenech himself whenever any issue connected to him, his business or his family and their business, came up in connection with her duties at the MFSA, and abstained from participating in that issue.

The Board considers that Dr Licari's declaration of acquaintanceship or friendship, and her abstention from further involvement from that matter, were proper and correct, and exclude any finding of breach of rules or regulations in this context.

The very definition of "conflict of interest", as expressed in the Authority's Ethics Framework, is:

"a situation where a member of staff or a member of decision-making and other internal bodies of the Authority has a personal interest which may influence or appear to influence the impartial and objective performance of that person's duties".

"Personal interest" is then defined as "any benefit or potential benefit, of a financial or non-financial nature, for the members of staff or the members of decision-making and other internal bodies of the Authority, their family members and other relatives or for their circle of friends and close acquaintances".

The same Ethics Framework then specifies, in clause 9.2, that during the recruitment process, it is the responsibility of the Recruitment Interviewing Board to establish whether or not a candidate is in a position to present a conflict of interest due to previous occupational activities or personal relationships – the same rule holds that the presence of such conflicts of interest do not preclude that candidate from employment if the conflict can be managed.

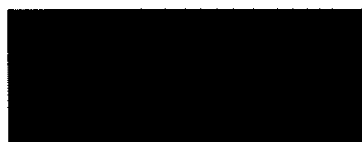
Accordingly, the Board finds that when Dr Licari abstained from participating in duties which were connected to Mr Fenech, she acted properly and correctly, and finds no breach.

Dr Licari's trips abroad

From information tabled in Parliament, it resulted that Dr Licari went abroad four times together with the CEO, Mr Cuschieri, as part of her duties as General Counsel for the MFSA. As already expressed above, it is beyond the Board's remit to take cognizance of facts or allegations which concern the period prior to Dr Licari's employment with the MFSA. The amount of four trips is not deemed excessive or abnormal in the context of Dr Licari's employment at the MFSA.

CONCLUSION

In view of all the above considerations, the Board finds that there was no breach of rules or regulations of the MFSA on the part of Dr Edwina Licari.



JOSEPH AZZOPARDI LL.D
CHIEF JUSTICE EMERITUS



MARK SIMIANA LL.D

23.11.2020

Report by the Board of Review

dated 23.11.2020

Mr Joseph Cuschieri



IA-23022023-2

REPORT OF BOARD OF REVIEW

CHIEF Justice Emeritus Joseph Azzopardi and Dr. Mark
Simiana

REPORT OF BOARD OF REVIEW

(Chief Justice Emeritus Joseph Azzopardi and Dr. Mark Simiana)

The undersigned were appointed as members of a Board of Review by the Board of Governors of the Malta Financial Services Authority on the 6th November 2002 in order to review claims reported in the media and the statements given by the Chief Executive Officer Mr. Joseph Cuschieri and General Legal Counsel of the MFSa Dr. Edwina Licari.

This Board was to examine and establish the facts associated with these media reports in order to ascertain for each of the respective reports the occurrence or otherwise of any possible breach of ethics and/or MFSa rules and regulations, also in the context of the MFSa's obligations towards the relevant Eu institutions including the European Central Bank.

The Board heard witnesses, and examined the FSA's Ethics Framework, the MFSa Guidelines on the Acceptance of Hospitality and the ECB's Code of Conduct for High level ECB Bank officials.

The Board first heard [REDACTED] who [REDACTED] as well as members of the Board of Governors. They explained to the Board the various procedures of the Authority and informed the Board on the important dates relating to this Review.

On the second sitting the board heard [REDACTED] who provided the Board with various documents relating to this review as well as explaining the same; the Board also heard [REDACTED] who compiled the documents relating to the various interests held by Mr. Yorgen Fenech which are listed with the Authority and other companies. [REDACTED] assisted [REDACTED] in providing a number of documents. The Board was provided inter alia with the various newspaper reports which led to the appointment of this Board of Review.

On the third and final sitting held on the 17th November 2020, the Board heard Mr. Cuschieri and Dr. Licari..

As background to the relevant events, the Board will first sum up the facts which emerged during the course of its investigation. Mr. Cuschieri was Chief Executive Officer of the Malta Gaming Authority from October 2013 until April

2018 when he was appointed CEO of the MFSA. Sometime after leaving the MGA he was invited by Mr. Fenech to accompany him to Las Vegas on a fact finding mission as he was interested in investing further in the Casino Business; according to Mr. Cuschieri he was to give Mr. Fenech his expert advice on the subject since he had been at the helm of the MGA up to a few weeks before. They were accompanied by Dr. Licari – at the time General Counsel with the MGA - and another person. Mr. Cuschieri says he had known Mr. Fenech since 2014 during his tenure at the MGA.

The Las Vegas trip.

The main thrust of the newspaper reports centred around this trip, that is to say, whether this constituted a breach of professional ethics on the part of Mr. Cuschieri. Mr. Cuschieri says he felt no conflict of interest since he had already left the MGA and the advice he rendered to Mr. Fenech regarded his casino activities which is regulated by the MGA and not by the MFSA. Mr. Fenech paid all expenses relating to the trip but Mr. Cuschieri states that he did not ask for remuneration nor was he offered any.

In the **MFSA guidelines of Hospitality** it is pointed out that;

It is not appropriate to accept any exclusive or expensive hospitality invitations. There is no comprehensive definition of what constitutes exclusive or expensive hospitality, but it would include invitations for lunches, dinners sporting or cultural and other entertainment events, particularly if only a small number of people have been invited to attend.

The **European Central Bank's Code of Conduct** for high level European Central Bank Officials, also applicable to Malta, includes Article 13;

Members and alternates shall not solicit, and shall exercise caution when offered, any advantages which are connected in any way with the duties and responsibilities conferred on them. For the purpose of this provision, 'advantages' shall mean any gift, hospitality, or other benefit, whether financial or in kind, which is not the agreed compensation for services delivered and to which the recipient is not otherwise entitled.

An advantage, offered or given to a member or an alternate or to any direct family member, spouse or partner, which is connected in any way with the carrying out of the duties and responsibilities of that member or alternate, may be accepted by them in the following circumstances:

- (a) it is offered by a public sector organisation, including another central bank, a national public body, an international organisation or academia, and is of a value which is considered customary and appropriate;
- (b) it is offered by one or more private entities or individuals and has a value not higher than EUR 100, or if higher, (i) is handed over to the respective institution of which the relevant member or alternate is a representative or (ii) the excess above EUR 100 is paid by the member or alternate to that institution;
- (c) it takes the form of hospitality and is commensurate with the duties and responsibilities of the member or alternate and is in line with customary limits;
- (d) it is not offered by a supervised entity;
- (e) its acceptance does not otherwise raise conflict of interest concerns.

This Board is not concerned with any conflict of interest Mr. Cuschieri may have had in connection with his previous position as head of the MGA but with any such conflict with his tenure as Chief Executive Officer of the MFSA since it is appointed and has to refer to the last mentioned Authority. Since it is a well known fact that Mr. Fenech's family has vast commercial interests, the Board therefore instructed the competent officials to investigate the commercial interests of Mr. Fenech which are regulated by the MFSA. It results in fact, that Mr. Fenech has many interests in companies which although not engaged directly in Financial Services, have so many different areas in which they operate that it is very probable that in one way or another, the MFSA may have to be engaged with one or more of these companies. So much so that it resulted that Dr. Licari, who was subject to a separate albeit parallel review before this Board found occasion to abstain from her duties on account of Mr. Fenech's involvement on at least three occasions since the commencement of her duties with the MFSA. A person of Mr. Cuschieri's undoubted intelligence ought to have realised this.

The Board therefore does not agree with Mr. Cuschieri that there was no possible conflict of interest in accompanying Mr. Fenech and advising him. In any case it is abundantly clear to the Board that Mr. Cuschieri infringed both the above mentioned Guidelines on Hospitality and the ECB Code of Conduct even if no future conflict of interest would have occurred in that he accepted hospitality which was both expensive and exclusive.

Payment for Board Meetings.

The other controversy which emerged from the newspaper reports concerned the payments Mr. Cuschieri received for attending the Board meetings in addition to his salary and allowances. As a matter of fact, the Chief Executive Officer is "ex officio" member of the Board in a non voting capacity. There was no agreement in Board as to this although initially Mr. Cuschieri was in effect being paid like a normal Board member. Eventually this matter was settled by the Ministry concerned which decided that he was not to be paid for these meetings and also ordered him to refund the monies he had already been paid. As a matter of fact Mr. Cuschieri has already started doing so. Even if the payments to Mr. Cuschieri for his participation in the Board's meetings were finally considered by the Ministry to be unjustified, the Board cannot find that there was a breach of rules or regulations by Mr. Cuschieri. Mr. Cuschieri simply claimed the payment of this *honoraria*, which was provisionally approved by the Chairman of the Board.

With reference to his salary this was in agreement with the MFSA.

Recruitment of General Counsel.

A few months after the beginning of Mr. Cuschieri's tenure at the MFSA, the person occupying the role of *Director Legal*, resigned, Mr. Cuschieri gave instructions for recruitment to commence, for which the role was to be renamed "General Counsel responsible for EU and International Affairs". Three persons applied and the Selection Board (composed of the Chairman, CEO and Human resources Manager) decided to interview Dr. Licari only as she appeared to them to be the most qualified and experience person in the field. She was subsequently selected and started at the job on the 1st October 2018. Dr. Licari had previously been General Counsel at the MGA so obviously Mr. Cuschieri knew her from that time, in fact he confirms he alerted her to this vacancy.

There is no doubt that Dr. Licari is fully qualified and had the relevant experience for the job. However the Board feels that all three applicants should have been interviewed in view of the fact that the other applicants were quite eligible to apply and also had sufficient qualifications and experience to be considered. Besides this, the surprising low number of applicants did not justify short listing. Otherwise there was nothing wrong in Dr. Licari's selection.

It also resulted that at the time during which Dr. Licari applied and was recruited for this position, the MFSA fell under the application of Directive 7, issued by the

Public Service. This Directive permitted the entities which fell under its remit to recruit for an existing position without seeking the Public Administration Human resources Office (PAHRO) 's approval. However, the position filled by Dr. Licari was a new position and therefore such approval was required. The MFSA was however, exempted from the effects of Directive 7 during the same month of October during which Dr. Licari started her employment.

The newspapers also referred to Dr. Licari's salary, implying that it higher than other employees of the same rank. However after examining other salaries at the MFSA, it appears to the Board that her salary is more or less equivalent to that of other so called "Chiefs " of various units within the Authority. It also appears that the call for applications referred to three year contract whereas Dr. Licari was employed on an indefinite contract. Mr. Cuschieri said it is not usual for employees at the MFSA to be employed on a definite contract; in fact the CEO himself is the only person to be engaged in this manner.

Tumas Group Court case.

Mr. Cuschieri confirmed that he was called as witness in a case instituted by another company against Tumas Group in relation to an extension he had granted to contract signed by MGA and Tumas Group in 2006 – that is well before his tenure. This fact in itself is not relevant to his job as CEO of the MFSA; besides this contrary to what most people believe, witnesses are not for or against a party but are subpoenaed to tell the truth.

Expression of interest for lease of offices.

The newspapers also referred to a call for tenders for the above. It appears that the MFSA had started considering this since 2016/7.

Mr. Cuschieri stated that seven proposals were received at the closing date for submissions. An independent evaluation committee was set up to review all the proposals received and make recommendations to the Board. The committee was made up of an MFSA representative (not the CEO), a secretary and two other members (as technical experts) from outside the MFSA. The evaluation process shortlisted two sites which satisfied all the criteria set out in the Expression of interest while five submissions were disqualified because they did not have a Planning Authority permit, when the call for the expression of interest clearly stated that such a permit was to be in hand. The evaluation committee shortlisted two proposals: Trident (owned by the Farsons Group) and The Quad (owned by Gasan & Tumas Groups).

The final draft report of the evaluation committee stated that more analysis was needed to choose between the two proposals while highlighting the pros and cons of each one. During a meeting Mr. Cuschieri had with the Director of Contracts in November 2019, it was recommended that the MFSA appoints a new evaluation committee to review the two qualifying proposals and choose the best one, taking into account the future logistical, operational and strategic requirements of the MFSA. The key problem however was the financing of the potential move to new premises in view of the fact that the MFSA had other key priorities which included multi-million investments in technology/data systems (€20m) and information systems, capacity building and reforms which needed a boost to the MFSA budget from the Ministry of Finance.

When the MFSA switched Ministry in January 2020, and following a discussion with the Ministry of Finance with respect to the MFSA's 5-year business and strategic plan and the financing of it, it was decided that the MFSA explores in more detail the possibility of redeveloping and redesigning the existing site before considering a move to new premises. To this effect, the MFSA formally closed the process and notified all proponents that the MFSA will not be proceeding further without a selection is being made).

In the meantime, the MFSA is in the process of issuing a call for proposals from architectural firms to request a detailed feasibility study to explore the different options on how the existing MFSA office building can be redeveloped and redesigned to become a modern corporate office.

There is no evidence of any wrong doing from the MFSA but this incident confirms what was stated in the above considerations regarding the Las Vegas trip – that is, that the vast commercial interests of the Fenech family makes it very possible for the MFSA to have dealings with them in one way or another, and for a conflict of interest to arise.

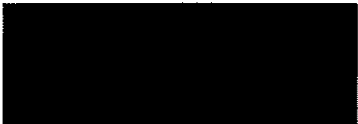
Other trips abroad.

Regarding other trips by the CEO the past two years from MFSA it appears that Mr. Cuschieri went abroad 34 times, and all are duly recorded. This is considered normal in similar posts. He was accompanied by the General Counsel four times. The Board as already indicated is not concerned with trips he may have made as CEO of the Gaming Authority. It is recommended that all trips made by MFSA officials on business duty are communicated to the Board of Governors.

Conclusion.

As far as the main issue raised by the newspaper reports, that is regarding the Las Vegas trip, is concerned, the Board has no doubt that Mr. Cuschieri infringed both the Guidelines above mentioned and the ECB Code of Conduct. Regarding other allegations, the Board refers to the respective paragraphs above.

The Board furthermore feels it should submit that the Board of Governors should be in a better position to scrutinise actions or decisions of a Chief Executive Officer especially before certain such actions and decisions of major importance are taken.


JOSEPH VAZZOPARDI LL.D
CHIEF JUSTICE EMERITUS


MARK SIMIANA LL.D

23.11.2020

