

IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE
Case: FMT 21019 and FMT 21020

FINANCIAL MARKETS TRIBUNAL

BETWEEN: (1) ZACHARY CEFARATTI

(2) DALMA CAPITAL MANAGEMENT LIMITED

Applicants

-and-

THE DUBAI FINANCIAL SERVICES AUTHORITY

Respondent

DECISION

Mr Ali Al Aidarous

His Honour David Mackie KC

Mr Patrick Storey

Mr Christopher Sallon KC instructed by **Norton Rose Fulbright** appeared
for the Applicants

Mr Adam Temple instructed by the **DFSA Legal Department** appeared for
the Respondent.

31 January 2023

1. This is an appeal brought on 18 November 2021 by the Applicants Mr Zachary Cefaratti and Dalma Capital Management Limited (“Dalma”) against the DFSA’s Decision Notices (the “Cefaratti Decision Notice” and the “Dalma Decision Notice”) dated 19 October 2021. Both applicants seek orders setting aside the Decision Notices. The case is about Dalma allegedly permitting trades to be carried out by an unqualified and uncontracted person and providing false and incomplete information to the DFSA. The DFSA also claims that Mr Cefaratti was knowingly concerned with this activity and provided false, misleading or deceptive information to it.
2. This Decision comprises:
 - Introductory: Paragraphs 3 to 8.
 - Summary of the case: Paragraphs 9 to 25.
 - Facts: Paragraphs 26 to 70.
 - Was there a relevant contract between Dalma and Mr Dean?: Paragraphs 71-72.
 - The Evidence: Paragraphs 73 to 139.
 - Was there trading and did Mr Cefaratti know about it at the time?: Paragraph 140.
 - Alleged failure by Dalma to conduct its business with due skill, care and diligence: Paragraphs 141 to 147.
 - Allegedly false, misleading and deceptive information: Paragraphs 148 to 186.
 - Conclusions: Paragraphs 187 to 190.
 - Penalty: Paragraphs 191 to 218.

INTRODUCTORY-THE ROLE OF THE TRIBUNAL AND THE HEARING

3. **Jurisdiction.** The Financial Markets Tribunal (“FMT” or “Tribunal”) was created under the Regulatory Law (DIFC Law No 1 of 2004) (“the Regulatory

Law”). It hears and determines References and Regulatory Proceedings. A Reference is a proceeding in front of the FMT to review a decision of the DFSA. The FMT conducts a full merits review of any DFSA decision referred to it. It can take into account any relevant new evidence that came to light after the DFSA's original decision. The FMT may, among other things, affirm, vary or set aside the DFSA's original decision. The FMT can also remit the matter to the DFSA with directions as to how the DFSA should make its decision.

4. **Applicable Law.** The law applicable to the Tribunal is the law of the DIFC. There is no requirement to follow precedents from any other legal system, whether in the financial services context or otherwise. However, the Tribunal, the regulatory framework and indeed the DIFC itself were modelled in large part on the legal and regulatory system of England & Wales, and so precedent from England & Wales (and other Commonwealth jurisdictions as appropriate) has persuasive authority.
5. **Rules.** The FMT Rules of Procedure describe the procedures that apply generally to the conduct of proceedings but (Rule 4) we have the discretion to adopt different procedures to ensure the just, expeditious and economical resolution of proceedings.
6. The overriding objective (Rule 7) of these Rules is to enable the FMT to deal with cases fairly and justly. This includes: (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties; (b) avoiding unnecessary formality and seeking flexibility in the proceedings; (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; (d) using any special expertise of the FMT effectively; and (e) avoiding delay, so far as compatible with proper consideration of the case. We are not bound by any formal rules of evidence. We bear all these considerations in mind.
7. **The hearing** took place remotely between 12 to 14 and on 16 September 2022 by video conference between the locations where the parties and their advisers and witnesses were situated. Rule 16 requires the hearing to be in public unless the panel orders otherwise. We exercised our power to sit otherwise than by live hearing within the DIFC. We provided for public access, a copy of the transcript was placed on the website each day and members of the public who wished to do so were able to watch the proceedings on line. We are grateful to Mr Mohammed Saeed and his team from Lloyd Michaux for their admirable

service and to Ms Fatima Mohyeddin of the DFSA for assembling documents for our screens.

8. **Counsel.** We are most grateful to Mr Sallon KC and Norton Rose Fulbright for the Applicants and Mr Temple and the DFSA Legal Department for their very able preparation and presentation of this case.

SUMMARY OF THE CASE AND OF THE APPLICANTS' RESPONSE.

9. The central issue in this case is whether the Applicants misled the DFSA as to trading that occurred on the Dalma Unified Return Fund' ("DURF", "Fund" or "Dalma Fund"), between 5 April and 6 June 2016 ("the Trading Period") and, if so, whether that was done deliberately. During that period, Dalma was in communication with two individuals employed at another firm: Elysium Global (Dubai) Limited ("Elysium"). Both Dalma and Elysium intended, at the time, that those two individuals would be employed by Dalma as traders. The two individuals were Mr Lyle Dean and Mr Nicholas Allsop. The DFSA's case is that the Second Applicant Mr Cefaratti allowed Mr Dean to conduct trading with the Fund's money whilst Dalma was still negotiating to hire him. Mr Dean was not in fact employed by Dalma. When Dalma, and Mr Cefaratti, were subsequently investigated by the DFSA, the DFSA was told that Mr Dean had placed no such trades. The DFSA say that this was untrue and must have been known to be untrue. The Applicants' case is that Mr Dean did not place any trades on the Fund or, if Mr Dean did place trades, that Mr Cefaratti was unaware of them. The DFSA also alleges that Mr Dean ought not to have been allowed to trade on the Fund, given his inexperience and the lack of any contract for the provision of those services.
10. The Applicants maintain and say they have done so consistently that: (a) Mr Dean did not carry out any live trading activities during the Trading Period and that the evidence on the record demonstrates as much; (b) alternatively, if any such live trading was carried out by Mr Dean during the Trading Period, it can only have taken place under the supervision and instruction of his supervisor and mentor, Mr Allsop. In those circumstances, any such trading was undertaken without the knowledge or approval of Mr Cefaratti. Both Mr Dean and Mr Allsop were in effect employed by Dalma during the Trading Period. The Applicants did not provide the DFSA with false, misleading or deceptive information during the course of investigations. They acted in a forthcoming, open and honest manner demonstrating high standards of transparency, cooperation, integrity and fair dealing.

11. This Decision is by a majority, Mr Ali Al Aidarous dissenting for the reasons given at Paragraphs 105 and 106 below.
12. **The written and oral evidence.** Neither party is confined to the evidence nor other material used in the previous process. We have considered all the evidence and submissions carefully but in the interest of keeping this Decision within an acceptable length we mention only those matters and arguments which we consider to be relevant and significant. The sources of our written information are contained in the documents contained in the files for the case listed from A to G. Both sides cite transcripts of interviews to support their cases. These are formal interviews often under oath or affirmation, sometimes with lawyers present, they carry weight but not of course as much as live evidence. Statements have been submitted on behalf of witnesses who in the end did not give live evidence. These are admissible and we gave them appropriate weight.
13. In written submissions both parties have, with reference to the decision in Gestmin v Credit Suisse [2013] EWHC 3560 (Comm) at [15]-[22] referred to in other cases before this Tribunal, discussed the particular role of documents in cases of this kind. No special considerations apply to this case which turns very much on evaluation of the witnesses in the context of the written contemporaneous materials and background.
14. **Investigation and process before the DMC.** The parties have disagreements about aspects of this which are largely irrelevant to the entirely fresh evaluation conducted by the Tribunal. We do not therefore say much about them in this Decision.
15. **Personal antagonism.** There was and remains unusually bitter antagonism between Mr Cefaratti and Mr Allsop which, as we see it, has affected events and the evidence. There is much about this in the submissions of the parties and evidence (even expert evidence) on matters of credibility. We give that much less emphasis in this Decision.
16. **Witnesses and statements.** The DFSA submitted statements from Ms Fiona Paddon, Mr Lyle Dean and Mr Nicholas Allsop. All three were cross-examined. The witnesses relied on by the Applicants were Mr Zachary Cefaratti, Mr Amir Anwar, Mr Vladimir Maslyakov, Mr Gaurav Manhas, Mr Jon Boylan and Ms Ritchie Alesing. There were also character references from Mark Mobius,

Mishal Kanoo, Saila Grace Seveilleno and David Gibson Moore. Mr Cefaratti, Mr Anwar, Mr Boylan and Mr Maslyakov were cross-examined.

17. **The Relevant Law and Rules.** The jurisdiction for the fines and the prohibition (in respect of Mr Cefaratti) is Article 90 of the Regulatory Law, which provides for such sanctions in respect of a contravention of *'any legislation administrated by the DFSA'*. The jurisdiction for the restriction against Mr Cefaratti is Article 59 of the Regulatory Law, which does not require a contravention of any particular rules, but depends on the DFSA believing that a person is not a fit and proper person. The requirement for Mr Cefaratti to dispose of his holdings in Dalma arises under Article 64 of the Regulatory Law, given that the DFSA considers that Mr Cefaratti is no longer an acceptable controller of an authorised firm.
18. The DFSA relies on Article 66 of the Regulatory Law, which states that: *'A person shall not: (a) provide information which is false, misleading or deceptive to the DFSA; or (b) conceal information where the concealment of such information is likely to mislead or deceive the DFSA.'* By Article 86(2) an officer of a body corporate who is knowingly concerned in a contravention, also commits a contravention.
19. The DFSA also relies on the following. The General Module of the DFSA Rulebook ("GEN") Rule 4.2.2 sets out Principle 2 for Authorised Persons (i.e., Dalma): *'In conducting its business activities an Authorised Firm must act with due skill, care and diligence.'* GEN Rule 4.4.1 sets out Principle 1 for Authorised Individuals (i.e., Mr Cefaratti): *'An Authorised Individual must observe high standards of integrity and fair dealing in carrying out every Licensed Function.'* GEN Rule 4.4.4, sets out Principle 4 for Authorised Individuals: *'An Authorised Individual must deal with the DFSA in an open and co-operative manner and must disclose appropriately any information of which the DFSA would reasonably be expected to be notified.'*
20. There are other relevant provisions. By GEN Rule 5.3.21:

'(1) An Authorised Person which outsources any of its functions or activities directly related to Financial Services to service providers (including within its Group) is not relieved of its regulatory obligations and remains responsible for compliance with legislation applicable in the DIFC.

(2) The outsourced function under this Rule shall be deemed as being carried out by the Authorised Person itself.

(3) An Authorised Person which uses such third party providers must ensure that it:

(a) has undertaken due diligence in choosing suitable service providers;

(b) effectively supervises the outsourced functions or activities; and

(c) deals effectively with any act or failure to act by the service provider that leads, or might lead, to a breach of any legislation applicable in the DIFC.'

By GEN Rule 5.3.22:

'(1) An Authorised Person must inform the DFSA about any material outsourcing arrangements.

(2) An Authorised Person which has a material outsourcing arrangement must:

(a) establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes;

(b) enter into an appropriate and written outsourcing contract; and

(c) ensure that the outsourcing arrangements neither reduce its ability to fulfil its obligations to customers and the DFSA, nor hinder supervision of the Authorised Person by the DFSA.

(3) An Authorised Person must ensure that the terms of its outsourcing contract with each service provider under a material outsourcing arrangement require the service provider to:

(a) provide for the provision of information under section 11.1 in relation to the Authorised Person and access to their business premises; and

(b) deal in an open and co-operative way with the DFSA.'

21. By Article 86 of the Regulatory Law:

'(1) If a person is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded against and dealt with accordingly.

(2) If an officer of a body corporate is knowingly concerned in a contravention of the Law or Rules or other legislation administered by the DFSA committed

by a body corporate, the officer as well as the body corporate commits a contravention and is liable to be proceeded against and dealt with accordingly.

...

(6) For the purposes of Article 86, “officer” means a director, member of a committee of management, chief executive, manager, secretary or other similar officer of the body corporate or association, or a person purporting to act in such capacity, and an individual who is a controller of the body.

(7) For the purposes of Article 86, a person is ‘knowingly concerned’ in a contravention if, and only if, the person

(a) has aided, abetted, counselled or procured the contravention;

(b) has induced, whether by threats or promises or otherwise, the contravention;

(c) has in any way, by act or omission, directly or indirectly, been knowingly involved in or been party to, the contravention; or

(d) has conspired with another or others to effect the contravention.’

(There seems no dispute in this case as to the meaning of ‘knowing concern’.)

22. **Burden and standard of proof.** The FMT conducts in effect a de novo hearing of the process which led to the Decision Notice. The burden of proof lies on the DFSA to prove the case. The standard of proof is the balance of probabilities but as in previous cases (e.g., Waterhouse (FMT 17004), 2019) we proceed on the basis that, given the impact of a finding of lack of integrity on the career of a professional person, such a finding should not be made in the absence of cogent evidence.

23. **The Notices.** By the Dalma Decision Notice of 19 October 2021, the DFSA fined Dalma USD170,000 for the following contraventions:

-Between 5 April 2016 and 6 June 2016 Dalma arranged for and permitted trades to be placed on behalf of the Dalma Fund by an individual, Lyle Dean, who was not suitably qualified and experienced and who was not employed by, or otherwise contractually obligated to, Dalma. The DFSA found that this amounted to a failure by Dalma to conduct its business activities with due skill,

care, and diligence, contrary to Principle 2 of the DFSA's Principles for Authorised Firms as set out in Rule 4.2.2 of GEN.

-Between 14 August 2016 and 5 July 2018 ("the Notice Response Period"), in response to three separate requests for information, Dalma provided false, misleading, and deceptive information to the DFSA and concealed information such as to mislead or deceive the DFSA, in breach of Article 66 of the Regulatory Law.

24. By the Cefaratti Decision Notice the DFSA fined Mr Cefaratti USD300,000, prohibited him from holding office in or being an employee of any Authorised Person, DNFBP, Reporting Entity or Domestic Fund, pursuant to Article 90(2)(g) of the Regulatory Law and restricted him from performing any function in connection with the provision of Financial Services in or from the DIFC, pursuant to Article 59 of the Regulatory Law. The DFSA also required Mr Cefaratti to dispose of his holdings in Dalma in an arms-length transaction to a person who is not a related party or an Associate, and to do so within 60 days of the Decision Notice, pursuant to Article 64(3)(b) and (4)(c) of the Regulatory Law. The sanctions set out in the Cefaratti Decision Notice were imposed on Mr Cefaratti as a result of the DFSA concluding that he had been knowingly concerned (within the meaning in Article 86 of the Regulatory Law) in the contraventions committed by Dalma and had provided false, misleading, and deceptive information to the DFSA in breach of Article 66 of the Regulatory Law and broken Principles 2 and 4 of the DFSA's Principles for Authorised Individuals, as set out in GEN Section 4.4.
25. The Applicants deny all the DFSA's allegations and claim that the DFSA in reaching the decisions in the Decision Notices placed undue reliance on the testimony of unreliable witnesses, failed to have due regard to factual evidence produced by the Applicants, misdirected itself on the legal standard of proof and misapplied it.

FACTS.

26. The following matters seem largely undisputed apart from passages where we express a view or attribute one to others.
27. **Background.** Dalma acts as a fund manager and alternative investment platform provider and was authorised by the DFSA on 20 March 2014 as a Category 3C Authorised Firm, licensed to provide a range of Financial Services. Dalma also provides financial advisory and investment banking services. The

Dalma Fund is and was a foreign-based collective investment fund (referred to by Dalma personnel as a hedge fund). It is domiciled in Malta and licensed by the Malta Financial Services Authority.

28. The Dalma Fund was the only active fund managed by Dalma in March 2016 (so one would expect the management to keep it under scrutiny) but the firm was in the process of establishing other funds. The Dalma Fund had a net asset value of USD3.37 million at the end of March 2016, reducing to USD2.97 million by the end of May 2016 mainly as a result of an investor making a series of partial withdrawals. The fund had discretion to invest in a variety of instruments including foreign exchange and commodity derivatives and the investment strategy was subject to change at any time. According to the Supplement to the Offering Memorandum for the Dalma Fund, the Investment Objective for the Dalma Fund was: *'To pursue consistent income and generate positive returns while minimising risk regardless of market conditions by principally investing in a diversified portfolio of global indices, equities, bonds, exchange traded derivatives based on quantitative analysis combining three unified strategies.'* The instruments and securities that the Dalma Fund would invest in were stated to be subject to the following limitations: *'... The Fund will not typically invest in commodity derivatives, foreign exchange or foreign exchange derivatives unless the net equity exposure of those individual derivative positions is less than 1% of the Net Asset Value of the Fund and gross equity exposure is less than 10%.'* The investment restrictions did not prohibit the fund from exceeding those parameters.
29. The objective on the Dalma Fund are said by the DFSA to be relevant, given that the trading during the Trading Period included a number of currency and commodity derivatives. The DFSA's case, which the Applicants reject, is that there was no attempt to 'minimise risk' through the transactions placed. Mr Dean's evidence was that his trading was always within risk limits.
30. Dalma was led by its Senior Executive Officer, Mr Howard Leedham. Prior to February 2016, the portfolio manager of the Dalma Fund was Mr Ryan Mahoney. According to Dalma, Mr Cefaratti then 'stepped in' as interim portfolio manager, whilst it sought to recruit a new portfolio manager for the fund.
31. Elysium is or was the private family office of Mr Sanjay Shah. Elysium was incorporated in the DIFC, but at no time was it an Authorised Firm. By late 2015, Elysium's employees included Mr Allsop who was Head of Trading, and Mr Dean who had been employed at Elysium since June 2014. He had

previously worked as a tutor to Mr Shah's children. His trading experience prior to joining Elysium was a four-month trading internship in 2013 at Oak Futures Limited. Mr Dean's job at Elysium had originally involved the building of a reconciliation spreadsheet and, as of late 2014, proprietary trading of Mr Shah's and Elysium's funds. By March 2015, this had led to Elysium seeking to establish a fund so that Mr Dean could expand his trading activities under supervision of Mr Mankash Jain and, later, with Mr Allsop. In February 2016, both Mr Allsop and Mr Dean were permitted to carry out proprietary trading at Elysium. This trading was subject to 'stop loss' limits of EUR250,000 in a month, and EUR500,000 in a year. Mr Dean traded under the supervision of Mr Allsop.

32. Dalma says that it was introduced to Elysium and Mr Shah in March 2015. By 8 March 2016, Dalma appeared to have agreed in principle, but subject to contract, to employ both Mr Allsop and Mr Dean as portfolio managers at Dalma. As at 13 April 2016, the anticipated agreement was that Mr Allsop and Mr Dean would trade with money to be invested by Elysium and/or by Varengold (a bank in which Mr Shah held an interest) and Elysium/Varengold would receive a share of the profits. Mr Dean continued to be paid by Elysium until June 2016 when he was dismissed. Mr Allsop contracted with Dalma in June 2016 to act as its Senior Portfolio Manager. Mr Allsop says that it was only after he signed that contract that he conducted any trades at Dalma but the Applicants disagree.
33. **Trading systems at Dalma.** At the start of the Trading Period, Dalma traded or intended to trade using the "Exante" trading platform, supplied by a Maltese broker, XNT Limited and the "Interactive Brokers" platform. There were difficulties in trading futures through Interactive Brokers, at least at the start of the Trading Period. Dalma had set up the Eze Castle system ("Eze"). This was an order management system, such that any trades would still have been executed through some other platform(s) such as Exante and/or Interactive Brokers. Eze visited Dalma's offices to set up the software, and train Dalma staff (plus Mr Dean and Mr Allsop, who were not members of staff at that stage) but the Eze system was never implemented for live trading but could still be used for training and dummy trading purposes. Most transactions during the Trading Period were traded via the Exante and Interactive Trader systems.
34. **Email contact prior to the Trading Period.** Mr Dean on 29 March 2016 at 9:23 am, emailed Mr Cefaratti with the subject '*Trades*', stating: '*Please let me know if we are able to trade now through Interactive Brokers, if so we can arrange to get those orders filled today.*' The DFSA infers from this that, prior

to this email, Mr Dean had been in communication with Mr Cefaratti about trading for Dalma, through the Interactive Brokers system. Mr Cefaratti responded at 10:18 am: *'Relevant people were out yesterday so I will have to work with their compliance later tonight to get our NFA [National Futures Association] filing acknowledged. Is there anything on cash/equity side you want to trade in the meantime?'* Mr Dean responded at 10:24 am: *'I guess we could trade the spot FX positions while we wait for compliance to get the NFA filing acknowledged.'* Mr Cefaratti responded at 10:54 am: *'Do you want to come by and do so? I can log you in on your laptop. I am making final preparations for our conference which begins tomorrow in Abu Dhabi for almost 400 people, all C suite/Mds at the region's largest institutional investors and fund managers – so I am a bit distracted by that but if you come by I can get you logged in. We transferred some more funds into the account so there are now \$2m and we're sending another \$1m in the next few days'* Mr Dean responded at 10:55 am: *'Ok yep, let me know the login details and I can set up on my PC, if its easier I can pop by at a time that suits you?'* Mr Cefaratti responded at 10:59 am: *'Do you have a public RSA key I can use to encrypt a file with the logins to email to you? Otherwise, I can just drop the access details off at your office.'* Mr Dean responded at 11:03 am: *'Nope I don't have a public RSA key on this computer, if it's easier I can pop over to you.'* Mr Cefaratti responded at 11:13 am: *'We will provision you with a trading terminal next week that you can access remotely. This will have software etc embedded and will be accessed remotely via PCOIP encrypted over SSL. As a stopgap until then we will stick to 'Moscow Rules' for now and drop off paper document with access details so you can use Interactive Brokers' software directly.'*

35. On 30 March 2016 at 4:32 pm, Mr Dean emailed Mr Cefaratti as follows: *'Just to let you know there are still no trading permissions for futures, if you could chase up Interactive Brokers that would be great.'* Mr Dean chased the next day, 31 March 2016: *'If you could chase up IB tonight so we can put on those trades tomorrow that would be great.'*
36. On 4 April 2016 Mr Cefaratti emailed Mr Dean, informing Mr Dean that it would take another day or two before futures trading could be enabled on Interactive Brokers. Mr Cefaratti said that: *'In the meantime, we still have about \$200,000 in an account with Exante which can be used to trade futures as needed. It also looks like SG account will be open sooner than anticipated. I will work with you to set up Exante tomorrow and you can begin trading there. I will keep pushing with IB to get themselves sorted. From what I have learned, it sounds like the CFTC [Commodity Futures Trading Commission] came down*

on them (IB) due to a lot of hedge funds filing incorrect exemptions and now they are overly cautious. Alas, we have nothing to worry about. Nonetheless, rest assured we will get it sorted quickly. I can transfer more funds to Exante if you like to use them while we wait – liquidity is no longer an problem with them so either way this should be a non-issue. We actively traded all the products of interest to you on their platform which is actually pretty good.’ Mr Dean responded saying, ‘See you tomorrow at 9.30am. I shall head over to your office.’

37. The DFSA does not claim that Mr Dean placed any trades during the week of 29 March 2016 or at all via the Interactive Brokers platform. Mr Dean confirmed that he did not believe he traded on Interactive Brokers and so the trades on that platform were placed by Mr Cefaratti. However, the DFSA points to the fact that foreign exchange trading took place on 29 March 2016, the same day that Mr Dean suggested that *‘we could trade the spot FX positions while we wait’* and Mr Cefaratti responded *‘Do you want to come by and do so? I can log you in on your laptop’*. The DFSA points to these interactions between Mr Cefaratti and Mr Dean before the Trading Period. It says that by this time it is clear that there was a joint intention that Mr Dean carry out trades on the Interactive Brokers system after Mr Dean had been onboarded by Dalma, but that the trade of futures was prevented by issues outside their immediate control. Mr Cefaratti responds that the messages are ambiguous both as to who would be doing the trading and whether they would be live or “sandbox” (i.e., dummy trades used for training and testing).
38. While Mr Dean was waiting for a trading terminal to be set up, Mr Cefaratti indicated that he would provide him login details to conduct trading as a stop-gap solution. Mr Dean did not have access to Dalma’s Interactive Brokers account but was aware that Dalma was still waiting for permission to trade futures as at 4:32 pm on 30 March 2016. He sent to Mr Allsop a document showing open positions on Interactive Brokers. The discussions involved money held within the Interactive Brokers and Exante platforms by Dalma. Matters were left on the basis that Mr Dean would attend Dalma’s office on 5 April 2016 at 9:30 am, when Mr Dean would be able to trade with about USD200,000 on Dalma’s account with Exante.
39. The Applicants point to the words ‘you’ and ‘we’ being employed loosely in informal communications. Mr Dean said in his evidence that these informal communications were not self-explanatory and “we” could refer to his and Mr Allsop’s own actions or those of Mr Cefaratti. The DFSA says that the import of the emails is clear: Mr Cefaratti was discussing setting up Mr Dean as a trader

for Dalma. Mr Dean explained in his interview with the DFSA that, during early April 2016, although still generally based in Elysium's offices he was 'handed the keys' and told to start trading on the Dalma Fund by Mr Cefaratti. In his evidence, Mr Dean admitted that it may have been Mr Allsop who provided him with login details. The username he was provided with for the Exante system was not his own username, but was that of '*Ryan or something*'. He made this comment before being told that trades had in fact been made using the Exante account in Mr Ryan Mahoney's name. There had been some problem with the Interactive Brokers account, so that they '*switched doing it to all Exante*'. He would ask Mr Cefaratti to add products for him to trade, and Mr Cefaratti would oblige. Mr Cefaratti did not conduct any trading of which Mr Dean was aware. Mr Dean's description in interview to which we refer below is consistent with, and confirmed by, the emails sent between Mr Dean and Mr Cefaratti on 5 April 2016.

40. At 9:55 am on 5 April Mr Dean forwarded to Mr Cefaratti a list of bond, treasury, and crude oil securities and nine potential foreign exchange trades ("The Trades Document"). This contained 13 named securities which were listed by reference to their 'Bloomberg Ticker' and 'Name'. The Applicants note that the syntax used within the Trades Document was not the same as the syntax of either Interactive Brokers or Exante. Given that the Trades Document was produced before Mr Dean was given access to any of Dalma's systems, it is correct that it was not created by reference to either Interactive Brokers or Exante. Instead, it was a list of trades that Mr Dean suggested as part of a trading strategy (most of which he did place) after he started trading on the Dalma Fund. Five securities appears to have been traded on Interactive Brokers (and therefore by Mr Cefaratti) days before Mr Dean sent the Trade Document to Mr Cefaratti. According to a list of trades generated by Exante's system ("the Exante Trades Record"), at 9:48 am a user using Mr Mahoney's log-in details sold one unit of a security which correlates with the trade in the Dalma Fund 'NAV statement' for April, which includes a full list of trades during the relevant month. The DFSA infers that this trade was placed by Mr Dean as an initial test trade, and that he then sent Mr Cefaratti the Trades Document as an indication of the securities that he would subsequently trade. A further four of the securities were traded in the 35 minutes after Mr Dean sent the Trades Document to Mr Cefaratti, all of which were traded using Mr Mahoney's account on the Exante system.
41. At 12:59 pm, Mr Dean emailed Mr Cefaratti under the subject 'Test Trades', stating that he could not find three of the four securities from the Trade

Document which he had not yet traded). *'I cannot find the following products on Exante. Could you please inquire?'* At 4:38 pm, Mr Cefaratti informed Mr Dean that: *'When adding instruments to Exante, it is actually best that you email me for now and I will be sure they are added in a timely manner. When possible, please let me know any instruments you might trade in future that are not available so I can be sure they are added in advance. Thank you.'* Mr Dean then apparently checked on the Exante system to see whether the three securities he had mentioned to Mr Cefaratti in his email at 12:59 pm were available. Finding they were not available, he emailed Mr Cefaratti at 4:48 pm: *'Thanks Zachary, I can't seem to see those instruments I mentioned before on Exante'*. At 4:55 pm, Mr Cefaratti replied, informing Mr Dean that, of the three securities he had requested in his 12:59 pm email, two had been added to Exante and one was already there. In listing out the securities, Mr Cefaratti adopted the syntax used on the Exante system, as opposed to the Bloomberg ticker that Mr Dean had used in the Trades Document. At 4:57 pm Mr Dean replied, stating that he still could not see the three securities on the Exante system. Mr Cefaratti replied at 5:05 pm stating, *'Yeah working on it will let you know when its up'*. Mr Cefaratti was apparently successful in adding two securities which then traded. It appears Mr Dean attempted to trade another security on the basis of the incorrect syntax provided by Mr Cefaratti, but that this led to an incorrect purchase.

42. The tables relied on by the parties are complex but the overall position is this. The DFSA says that 7 of the test trades were identical to the securities listed in the Trades Document; 4 were variations; an attempt was made to trade 1 further Security; and 1 was not traded at all. The Applicants accept that 7 securities were traded that were identical to the Trades Document. However, they argue that different expiry months mean that they are not 'freely substitutable' and so it cannot be said that the variations of the securities that were traded were in line with the Trades Document. Nevertheless, the Applicants accept that 4 'similar' securities were traded, and say that the other security traded was related to the others but was not listed in the document. The DFSA considers the trades in variations of, or 'similar', securities show that the Trades Document formed the basis for those trades. If the purpose of the test trades was to ensure that Mr Dean could place small test trades, which he intended to be closed out within days (as they were), then a variation of the expiry date of a Security would be largely irrelevant.
43. The Applicants also point out that there is a second section of the Trades Document, with 5 various currency pairs, and 4 call options referring to

currency pairs. It appears that Mr Cefaratti traded the 5 currency pairs on Interactive Brokers, on 29 March 2016, four days prior to Mr Dean sending the Trades Document to Mr Cefaratti. The Applicants also state that the trades document was consistent with Mr Dean suggesting trading ideas, which were ultimately executed by Mr Cefaratti. The DFSA says that the fact that some currency pairs were traded a few days earlier (and in line with what Mr Dean wanted to trade) does not alter the reality confirmed by the following.

44. Significant additional trading occurred over the following two months, leading first to praise for Mr Dean and then, apparently to Dalma's decision not to employ him. On 6 April 2016 at 9:42 am, Mr Dean emailed Mr Cefaratti saying: *'What reporting is offered by Exante and Interactive Brokers, now we have open positions it would be great to generate a daily report with the following: - Positions Traded - Open Positions - Net PnL Could you please advise.'*
45. In the afternoon of 6 April 2016 there was an exchange between Mr Dean and Mr Cefaratti regarding potential trading strategies. At 2:14 pm Mr Dean stated in an email to Mr Cefaratti: *'I just thought I'd give you more of an overview of a strategy that we might employ on the long/short equity fund when we start trading if your clients have any questions, here's a trade example I came up with recently.'* Mr Dean proceeded to describe a strategy for trading in equities in certain listed banks by reference to a 'Chinese hard landing'.
46. Mr Dean says that in this email, he was exploring a strategy to be employed in the future for a fund which, in the event, was never activated. Mr Dean says that he did not treat the trades on 5 April 2016 as 'trading for profit', as they were simply test trades. Accordingly, when he referred to 'when we start trading', he was referring to trading for profit. That the test trades were not geared towards profit, says the DFSA, is evidenced by the fact that, on 7 April 2016, all the positions on the securities opened on 5 April 2016 were closed out. The Exante Trades Record shows that these trades led to profits of up to USD150 and losses of up to USD120 with negligible impact on the value of the Dalma Fund.
47. Mr Dean was unclear in his evidence about whether he had executed trades on 5 April 2016. In his interview in 2018, he stated that the test trades had been executed by 'they' or 'them'. He confirmed in his cross examination that these trades were placed by someone other than himself and was unable to remember if he had carried out any trading prior to 19 April 2016.
48. On 10 April 2016, Mr Dean travelled to Switzerland to attend a conference. He returned to Dubai on 14 or 15 April 2016. No trades were placed during the 4

to 5 days of his absence. On 19 April 2016, Mr Dean undertook 12 further trades. On 21 April 2016, Mr Dean attended Dalma's offices, before he travelled to London to attend his grandfather's funeral. He recalls having trading positions on the Dalma Fund open during the course of that trip, which is consistent with the Exante Trades Record which shows a number of trades on 22 April. He returned to Dubai three or four days later, at which point the trading became considerably more active. The Exante Trades Record shows numerous trades from 25 April 2016, increasing to dozens of trades per day from 3 May 2016. From a count of the number of transactions listed on 4 May 2016 alone there were 86. The April NAV Statement showed a large number of trades in commodity derivatives, including gold and crude oil. The Dalma Fund stated that it would not typically invest in commodity derivatives. Mr Cefaratti pointed out that this was not a prohibition and in April 2016 there were unusual opportunities available in this sector.

49. On 2 May 2016, Mr Dean emailed Mr Allsop reporting on the Dalma Fund's profit of USD97,959.64 for April 2016. Mr Allsop forwarded Mr Dean's email to Mr Shah and Mr Leedham at Dalma, adding 'Mention in Dispatches' to the subject line, and saying: *'Gents Want to bring to your attention the fine trading performance by Lyle [Dean] in April. He made over \$100,000 gross profit on very small positions – in just two weeks. A 3% return in one month is a very impressive showing – and certainly worthy of a mention in dispatches. Bodes well going forward.'* The email was not sent to Mr Cefaratti. (In closing submissions, the Applicants do not seek to explain this message but refer to other points about the process and the reliability of Mr Allsop.)
50. Mr Dean's evidence (which was disputed by the Applicants) is that Mr Cefaratti was familiar with the results of Mr Dean's trades. At around this time, he says that Mr Cefaratti jokingly asked Mr Dean what Mr Dean's 'magic trick' was for making money. Mr Dean recalls that Mr Cefaratti pushed him to take more risks. On 4 May 2016, Mr Allsop reported to Mr Leedham that the Dalma Fund's profits were approximately USD340,000, equal to the losses that the Dalma Fund had made up to 31 March. It was disputed that the financial statements showed such a profit. However, if true, this would suggest that Mr Dean had made additional profits of c. USD240,000 since the previous USD100,000 profit was mentioned just two days earlier. This profit figure is consistent with the 'profit and loss' that Mr Dean was reporting to Mr Allsop by WhatsApp messages: At 08.51 on 3 May, he stated that *'Pnl YTD [year to date] should be 120k usd'*. At 18.24 on 3 May, he stated *'PnL \$280k at the moment'*. At 20.14 on 4 May, he stated *'PnL should be around +335 usd... Only another 10k usd'*

and Dalma will be positive... Plenty more trades next week.’ It would be odd for Mr Allsop to be reporting to his superiors, and Mr Dean to his colleague in private on WhatsApp, profits on trades that did not exist. The Applicants argue that the profits referred to are not reflected in the financial statements.

51. Mr Dean continued to trade as indicated in emails on 12 and 13 May 2016, both of which state that he has “access to Exante” and which were copied to Mr Cefaratti. On 12 May 2016 at 5:42 pm, Mr Dean emailed Panagiotis Siatras (who appears to have provided IT support for Dalma), to ask about an inability to connect to Dalma’s ‘VDI’ (virtual desk infrastructure). On 13 May 2016 at 12:46 pm, Mr Dean stated to Mr Siatras: *‘I still can't connect. This is very worrying that the system can be down for over 24 hours during a trading day. I have access to Exante but going forward we will be using the OMS system [Eze] to input trades in the remote server, it is imperative that my access to the system is uninterrupted for trading purposes.’*
52. The earlier successful trading started to sour as a series of WhatsApp messages from Mr Dean to Mr Allsop indicates. Dalma Fund’s NAV statement for May 2016 showed that the Dalma Fund had suffered a monthly loss of USD130,183.89.82. On 1 June 2016, Mr Leedham emailed Mr Allsop and Mr Dean, copied to Mr Cefaratti, pointing out that the Dalma Fund was *‘down 4% for the month’*. Mr Leedham asked Mr Allsop and Mr Dean if these results were in line with their expectations. It would be odd for him to do this if trades were not live ones but dummies.
53. Mr Dean was dismissed from Elysium in early June, and his employment contract with Dalma was never executed. There is a dispute as to why Mr Dean was dismissed. He says Mr Leedham and Mr Allsop told him that it was because of the losses on the Dalma Fund. Mr Cefaratti, whilst not party to the relevant conversation, maintains that Mr Dean’s departure was *‘a matter of redundancy as opposed to a termination for poor performance’*.
54. On 6 June 2016, Mr Dean’s last effective working day at Dalma, there were some 75 trades for the Dalma Fund. Sixty-five of these trades were made in the space of five minutes. Mr Dean says he was instructed to place those trades by Mr Allsop. Mr Allsop agrees and this is consistent with Mr Dean’s positions being closed out. The only relevant documentary reference is an email from Mr Dean to Mr Shah on 6 June 2016 (which was not copied to Mr Cefaratti), *‘It is a shame I have been let go from the company. I have returned you personally +362 euros YTD. Dalma Capital YTD -26 euros. I have effectively been the only person trading on the desk for the last 8 months.’* Mr Shah responded: *‘Thanks*

for all your efforts, Lyle. Nick and Howard will have explained the rationale for your redundancy. All the best for the future.’ It would have been odd for Mr Dean to write in these terms if he had not indeed been trading. In an email dated 14 June 2016 (which was also not copied to Mr Cefaratti), from Mr Leedham to the Group Financial Controller at Elysium, Mr Leedham stated: *‘He’s [i.e., Mr Allsop’s] only got our assets to trade with at the moment, and he took off Lyle’s positions, which did prevent loss.’* Mr Leedham thus understood that Mr Dean had been trading. Apart from a single one on 17 June, there were no further trades until 29 June 2016, when these started under Mr Allsop’s username.

55. **Further dealings between Mr Allsop and the Applicants.** The Applicants attach importance to these as relevant to whether or not Mr Allsop has told the DFSA and the Tribunal the truth. On 24 July 2017, Mr Allsop signed an addendum to his contract of employment with Dalma in which he agreed to reduce his salary from AED 120,000 per month to AED 60,000 per month. After further disputes leading to his departure, on 22 April 2018, Mr Allsop filed a claim in the Small Claims Tribunal (“SCT”) for remuneration which he claimed to be owed.
56. On 24 April 2018, Mr Allsop lodged an official complaint with the DFSA against Mr Cefaratti, Mr Leedham and Mr Anwar. Mr Allsop’s first complaint was that in April 2016, while working for Elysium, he and Mr Dean were approached by Mr Leedham and Mr Cefaratti to manage the DURF. Mr Allsop stated that Mr Dean had agreed to do so and that Mr Cefaratti and Mr Leedham *“recklessly permitted [Mr Dean] to do so; whereas he [Mr Allsop] had refused because he believed that to do so would have been ‘unprofessional, unethical and probably illegal’.”* Mr Allsop maintained that *“the adventure ended disastrously for the Fund’s investors”*. The Applicants suggest that these claims were untrue.
57. On 23 May 2018, Mr Allsop was invited by Ms Paddon to attend a voluntary interview with the DFSA. Prior to the interview Mr Cefaratti on behalf of Dalma had disclosed to the DFSA a cache of email correspondence relating to Elysium and Dalma covering a period from 2014 to June 2016. This included the email dated 2 May 2016 from Mr Allsop to Mr Shah and Mr Leedham headed *“Mention in Dispatches”*. It also included the further email from Mr Allsop dated 4 May 2016, *‘we started taking positions for the Fund equals now profits of \$340,000. Thought you might like to know this’*.
58. On 8th July 2018 Judge Nassir al Nasser gave judgment in Mr Allsop’s favour for AED 264,402. The original claim was for AED 883,000 which had been

reduced to the SCT limit of AED 500,000. At one point the Applicants suggested that this partial success or failure somehow reflected on Mr Allsop's integrity (which of course it did not), and in closing, point to his admitted disappointment at the outcome as part of his grievances against them.

59. **Forged reference letter.** A letter was submitted by Mr Allsop as part of a job application to RAK Bank towards the end of February 2021 which purported to come from Dalma and to bear Mr Cefaratti's signature ("RAK Letter"). When RAK Bank sought to verify the contents, Mr Anwar saw that the letter contained inaccurate information as to Mr Allsop's final salary while employed at Dalma in 2017. He also noticed that the signature was not that of Mr Cefaratti. That he was right is apparent both from amateur observation and an expert's report obtained by the Applicants from Mr Cosslett. Mr Cefaratti denies that he provided Mr Allsop with the RAK Letter. Mr Allsop had claimed that the letter sent to the bank was genuine and signed in his presence by Mr Cefaratti. This was wrong and corrected in his second statement only, claim the Applicants, because Mr Allsop had been caught out in an untruth. In turn Mr Cefaratti accepted that the text was bland and was understandably unable to comment on the WhatsApp exchange between Mr Allsop and his lawyer on the day of the meeting about "*multiple reference letters*" and that it had been a "*very civilised meeting.*" It is therefore unclear why Mr Allsop would want to forge it.
60. As we see it the only significance of these matters, and other personal accusations which it is unnecessary to mention, is to illustrate the very bitter personal hostility, unusual in a commercial context, that exists between Mr Allsop and, on the other hand Mr Cefaratti. We are convinced that that hostility warped the accuracy of the evidence of both.
61. **Proposed contract between Dalma and Mr Dean and Mr Allsop.** The Applicants point to the details of the discussions about this proposed move.
62. Between March and December 2015, Mr Leedham was in discussions with Mr Shah who was the CEO of Elysium, that Mr Allsop and Mr Dean should join Dalma to replace Dalma's outgoing Portfolio Manager. This arrangement may have been mutually beneficial because it would enable Elysium's funds to be managed via Dalma which would be able to establish a new fund and manage assets pursuant to a substantial proposed investment from Varengold Bank and provide a team of experienced traders to manage DURF.
63. Mr Dean told the DFSA that by March 2016, Mr Allsop had lost around EUR500,000 of Sanjay Shah's money and had reached his stop limit. A plan

was devised by Sanjay Shah/Elysium to borrow money, make investments in and trade on the DURF. Discussions were initiated and progressed between Mr Allsop, Mr Dean, Greg Nixon (General Counsel at Elysium) and Mr Leedham (on behalf of Dalma) whereby Mr Allsop, assisted by Mr Dean, would transfer from Elysium to Dalma where they would help set up and manage a fund in Dalma and trade assets. It was envisaged that their salaries would be funded by Elysium but paid by Dalma. Mr Cefaratti, who at that time was the Chief Operating Officer, was tasked by Mr Leedham with helping to train both men to trade on two brokerage platforms – Exante and Interactive Brokers.

64. From March to May 2016 numerous draft contracts had been prepared. In March, Mr Allsop and Mr Dean represented Dalma in a meeting with four or five directors of Varengold Bank in which they sought to persuade the bank to invest in a new fund to be established by Dalma. Email correspondence shows that in March, Mr Allsop and Greg Nixon and Mr Leedham were actively discussing the details of Mr Allsop's and Mr Dean's transfer to Dalma and suggesting that the new contracts should use current Elysium contracts as templates. Mr Cefaratti apparently had a minimal role in these discussions.
65. By 8th March, Mr Allsop was arranging with Dalma on behalf of himself and Mr Dean to transfer their existing corporate health cover benefits. He also sought help with visas for himself and his family. On 13 March, Mr Allsop emailed Mr Leedham to request that he and Mr Dean wished Dalma to create email addresses at dalmacapital.com.
66. On 18 March 2016, Mr Leedham emailed Mr Allsop and Mr Dean informing them that employment transfer agreements and other documents would be with them early in the following week. On 28 March 2016 Mr Leedham was in contact with Kay Pindoria of Abacus Financial Consultant about obtaining health insurance for Mr Allsop and Mr Dean's employment at Dalma. On 30 March, Mr Leedham emailed Greg Nixon concerning Employment Transfer Agreement(s) between Dalma, Mr Allsop and Mr Dean ('based on their current contracts'). The costs '*would eventually be covered by [Mr Allsop's] and [Mr Dean's] profits 'because they flow back to them for which they would retain a percentage of their salary, and all else comes back to Elysium.'*' In early April, a period of 'orientation' was planned for Mr Allsop and Mr Dean pending full employment. According to Mr Allsop, he and Mr Dean would not be able to trade until ongoing Interactive Brokers Compliance issues had been resolved and test trades had been fully accepted.

67. Asked by the DFSA about his trading activities at Dalma between 21 and 25 April 2016 and whether he continued to be employed by Elysium, Mr Dean agreed but told the DFSA that, at this point, he assumed that some kind of employment agreement (with Dalma) was in place, although he could not remember signing one, since *'things were happening pretty fast...in my personal life, and the...trading side'*. The Applicants rely on an admission by Mr Dean that he thought he was an employee but in fact the witness in doing that referred back to his interview which he thought would be more accurate. The interview exchange was:

FIONA PADDON: I mean, do you ever consider that you actually became an employee of Dalma? LYLE DEAN: Yes, I thought there was some arrangement between, at the time, Dalma and Elysium, but then because obviously by June the 6th I'd left the -- kind of Elysium and Dalma, and in that period, you know, I was given my -- I think I was still getting paid by Elysium and I was given my, you know, severance pay from Elysium, I was given my medical insurance from Elysium and I was given my kind of termination letter from Elysium...'

68. On 25 April 2016, Mr Allsop was pressing Mr Leedham to provide the *'necessary information.... asap'* to Kay Pindoria of Abacus Financial Consultant, so that health insurance quotes could be prepared for both himself and Mr Dean.
69. On the same date, Mr Allsop sent his and Mr Dean's bank account details to Mr Leedham, so that salary payments could be made on the 24th of each month. On 26 April 2016, Mr Leedham sent an email to Ashley Richardson of Elysium confirming that Mr Dean and Mr Allsop had been at Dalma's premises, *'setting up a desk'* and *'trading all week'*. On 10 May 2016 (during the trading period), Mr Allsop sent his and Mr Dean's 'final draft' contracts to Mr Leedham and suggested a meeting to discuss outstanding points. Mr Dean's final contract was provided to him by Mr Allsop on 17 May 2016, and Mr Allsop's employment contract was dated 1 June 2016 and signed.
70. The Applicants submit that the principal terms of these contracts appear to have been agreed as early as 13 March 2016 and both Mr Dean and Mr Allsop had carried out work for Dalma. The Applicants submit that subsequent drafts of employment contracts merely reflected ongoing issues concerning unresolved *'administrative details'* such as health insurance - but those prior to June were seen to be *'visa transfer, health insurance arrangements and the structure of commission payments'*, hardly mere details in Dubai. The Applicants also rely on acts that they say are those of employees - attending an important pitch

meeting with “*four or five directors of Varengold Bank...with a view to the Bank investing in a fund to be set up by Dalma, with a strategy that would be created by Mr Allsop and me.*”, drafting a trading strategy for a proposed fund called “Dalma Futures Fund”; and attending training at Dalma in relation to the Eze Castle system. Indeed the Applicants contend that if, which they do not accept, Mr Dean did trade he would thereby and, with what went with that, become employed.

WAS THERE A CONTRACT BETWEEN DALMA AND MR DEAN DURING THE TRADING PERIOD?

71. We deal with this now as the issue does not require resolution of disputed evidence.
72. The Applicants cite English case law to the effect that a contract may well come into force notwithstanding that not all formalities to give effect to it have been put into effect. In their closing submissions they cite leading authorities on implied contracts and terms. As we see it there is no room for these considerations when the contractual position at the time was explicit and clear. Mr Dean was employed by Elysium and paid by Elysium and, when the time came to dismiss him in June, terminated and paid off by Elysium not Dalma. Elysium was providing its employee Mr Dean to Dalma. During the Trading Period Mr Dean and Dalma were discussing a new and different contract as a result of which he would become employed by Dalma, not by Elysium at a future point. By the end of that period matters were still outstanding. If they had been concluded, the contract would have taken effect only once the contract with Elysium had terminated. By June matters were resolved for Mr Allsop and a contract was formed. They were never resolved for Mr Dean or a binding agreement reached. If they had been Mr Dean would have been paid and dismissed by Dalma not Elysium. It was only the skill of Mr Sallon and his team that caused there to be serious discussion of the application of basic contractual principles.

THE EVIDENCE.

73. Before turning to the important evidence of Mr Cefaratti, Mr Dean and Mr Allsop we summarise that of the other witnesses.
74. **Ms Paddon** was a senior manager in the Enforcement Division of the DFSA, and is now Associate Director in the Legal Division. She gave an account of the DFSA’s investigation into the Applicants, points to particular statements made

to her in interview, and responds to criticisms that the Applicants make of the DFSA's decision-making process. Those criticisms were pursued in cross examination. Essentially the Applicants complain about such reliance being placed at the investigation stage on what they see as obviously biased complainants and the DFSA responds that it has to look closely at all allegations of misconduct including sometimes from those who are themselves complicit. It was also suggested, in effect, that Mr Dean had been inappropriately coached about his evidence by the DFSA. We reject that criticism as we mention below.

75. **Mr Amir Anwar**, the Chief Financial Officer and a 5% shareholder of BBAC Limited (Dalma's holding company) gave evidence criticising Mr Allsop and comments on what he describes as improvements within Dalma and the effect of the imposition of penalties on Dalma. He challenged the suggestion that Mr Dean made profits amounting to USD340,000, and deals with what he describes as 'Mr Allsop's falsified experience letter'. He accepted that a move of c. USD240,000 over a few days from USD97,979.64 on 29 April to USD335,000 on 4 May for the Dalma Fund, *'would be highlighted'* and potentially of serious concern. Mr Anwar is clearly loyal to his employer and very hostile to Mr Allsop. He was still a truthful witness.
76. **Mr Vladimir Maslyakov**, the co-founder and former Chief Technology Officer of digital broker, Exante, and a shareholder of BBAC Limited (Dalma's holding company) was the cofounder of Exante, and is the former Chief Technology Officer of that company, having left in June 2015. He speaks to the Exante platform and other issues, including his view of Mr Dean's qualifications and trading limits. Mr Maslyakov states that *"If what is stated [in Mr Dean's CV] is accurate, then in my opinion, Lyle had the requisite experience to trade unsupervised for a fund such as DURF in April 2016."* He gives evidence about the Exante system about which he is an expert and which Mr Dean used, and confirms, as is not in dispute, that the Trades Document did not come from Exante. This witness has connections with the Applicants but we do not doubt the truth of his evidence.
77. **Mr Jon Boylan** is Portfolio Manager and Product Director at Sulla Investments Ltd, the firm where Mr Dean was employed following his time at Dalma in late 2016. His statement refers to Mr Dean's role and qualifications at Sulla Investments. He described Mr Dean as *"...more than suitably qualified for his role with us..."* and a *"...highly diligent and competent trader and programmer...He managed risk appropriately and was proactive in identifying and addressing any risks. He was not an excessive risk taker and demonstrated skill as a trader."*

78. The DFSA says that as Mr Boylan was not involved in any trading decisions being made by Mr Dean so his view is limited.
79. During cross-examination, Mr Boylan recalled that Mr Dean was a “*smart guy*”¹ who was “*interested in trading*”² and was a person who could execute both FX and ETFs on the market.³ Mr Boylan testified that Mr Dean told him about trading FX at his previous job at Dalma⁴, and that he and Mr Dean traded as a two-man team, and neither was allowed to trade independently of the other.
80. Mr Boylan explained that a 10% move in the value of his fund over a month is unheard of, and that a large move might be 3 or 4%. This contrasts with Mr Dean’s trades⁵ Mr Boylan accepted that the Dalma Fund may not be comparable to that of Sulla Investments.
81. In re-examination Mr Boylan was asked whether Mr Dean was bright enough to trade independently. Mr Boylan responded in the affirmative, confirming that Mr Dean was a smart guy with “*tons of knowledge of the markets*”, which could not be acquired “*just by reading about it*”.
82. We found Mr Boylan’s expertise and straightforward evidence about these matters to be truthful and impressive.
83. **Mr Gaurav Manhas, Dalma’s IT Administrator** confirmed in a statement (as is common ground) that the Eze Castle system was never connected to Dalma’s brokers for live trading and as far as he was aware Mr Dean did not have access to live trading. He also states that he did not provide access to Mr Dean to Dalma’s live trading platforms. The DFSA accepts that and responds that it has never suggested that Mr Manhas did so. Mr Dean states that he was told to download the Exante application to his laptop and he did so, and that Mr Cefaratti provided him with the login details of Mr Mahoney.
84. **Ms Ritchie Alesing**, Executive Assistant to Mr Cefaratti and Dalma’s Deputy Money Laundering Reporting Officer said in a statement that she cannot

¹ (Tr4/29/1)

² (Tr4/20/9)

³ (Tr4/21/1)

⁴ (Tr4/21/12-14)

⁵ (Tr4/27/10-20)

remember dropping off a document to Mr Dean with the Interactive Brokers access details. The DFSA does not allege that Mr Dean had remote access to Interactive Brokers. She addresses other uncontroversial matters, improvements that she has noted within Dalma, and Mr Cefaratti's character.

85. **Mr Mishal Kanoo**, Chairman of the Kanoo Group and a member of Dalma's Board of Directors and **Mr David Gibson Moore**, President and CEO of Gulf Analytica, a business advisory firm in Dubai, and member of the advisory board of Dalma refer to Mr Cefaratti's role as Senior Executive Officer and/or his character more generally as honest and skillful. **Dr Mark Mobius**, founding partner of Mobius Capital Partners LLP submitted a letter praising Mr Cefaratti's integrity.
86. **Ms Saila Grace Seveilleno**, housekeeper for Mr Cefaratti, describes in a statement the medical treatment that he is paying for, and sets out her experience of Mr Cefaratti's fine character.
87. **Mr Stephen Cosslett**, a forensic document examiner provided an undisputed report about the reference letters.
88. **Mr Dean** had, after graduating in Biotechnology from Imperial College London, been employed at Elysium since June 2014 as a Risk Analyst. He also worked as a tutor to Mr Shah's children. His only trading experience prior to joining Elysium was a four-month trading internship in 2013 at Oak Futures Limited. Mr Dean traded under the supervision of Mr Allsop. At the end of 2014, Mr Dean was given a small amount of Mr Shah's personal money to trade stocks, bonds, and other instruments including FX futures etc. Another employee of the company, Mr Mankash Jain, was assigned to mentor Mr Dean.⁶ Both Mr Dean and Mr Jain were, in March 2015, tasked by Mr Shah to meet with fund managers to discuss setting up a new fund.
89. The Applicants submit that Mr Shah would only have tasked Mr Dean with this task if he considered him to be a diligent, experienced and successful trader. Mr Dean himself confirmed during cross examination that he had strong trading

⁶ (Tr1/34-35)

ideas,⁷ was a keen market observer,⁸ and was a “*smart intelligent person*”⁹ who had a “*positive*” run during his time at Elysium.¹⁰ As early as April 2015, prior to Mr Allsop’s involvement with Elysium, Mr Dean was introduced to Mr Leedham by Mr Shah, with a view to transferring to Dalma as a Trader, which, the Applicants submit is yet further evidence of the high regard in which Mr Dean was held in his trading role. In October 2015, Mr Allsop joined Elysium and became Mr Dean’s line manager. From November or December 2015, each of the pair were given EUR 1 million each for proprietary trading, with a stop loss limit of EUR250,000 for a month and EUR500,000 for a year. Over the period of trading, Mr Dean traded successfully. The Applicants submit that Mr Dean was a well-qualified and sufficiently experienced trader, based on his performance during this period with Elysium.

90. Mr Dean explained in his interview with the DFSA and confirmed in evidence that, during early April 2016 although still generally based in Elysium’s offices, he was ‘handed the keys’ and told to start trading on the Dalma Fund. Mr Cefaratti ‘*gave me access to the e-brokerage account and told me to start trading*’...*it was Zachary [Cefaratti] was kind of my point of contact for arranging the systems. He basically set up -- we had the account with a Maltese broker. I can't remember the name, but --* Question: *Was it Exante?* LYLE DEAN: *Yeah, Exante, and so he'd given me the account details for that. He sat near me and, you know, so I traded in the Dalma office initially...*’ The username he was provided with for the Exante system was not his own username, but was that of ‘*Ryan or something*’. (At that point he had not been reminded that trades had in fact been made using the Exante account in Mr Mahoney’s name.) He recalled that there had been some problem with the Interactive Brokers account, so that they ‘*switched doing it to all Exante*’.
91. He would ask Mr Cefaratti to add products for him to trade, and Mr Cefaratti would oblige: ‘*...he knew what kind of business we had on. It was just having a set of instruments that I could trade, but with those instruments as well, I would have to -- because some of them wasn't onboarded, I guess, so Zachary would have to request them to be onboarded on the platform to allow the risk limits on the platform. So, if I wanted to trade something that wasn't in the platform, I*

⁷ (Tr1/39/25)

⁸ (Tr1/50/1)

⁹ (Tr1/39/2)

¹⁰ (Tr1/50/8)

would ask Zachary to get that product on there so that I could trade it.' Mr Cefaratti did not conduct any trading of which Mr Dean was aware. He recalled well the events recorded in email, when his trading was successful and received praise and also the events leading to termination of his employment with Elysium.

92. Mr Dean also gave evidence in support of the DFSA's case about his insufficiency of experience to do the trading which he did for Elysium at Dalma including this:

'the main thing around trading is not just being knowledgeable and being smart. I love solving problems and that's why I got drawn to trading originally because you can kind of read about stuff and go back to the news and you can make all these connections. But I think there's a fundamental thing there around risk management and understanding how a fund works and what a fund is and having appropriate training which is different, right? So I had experience and I knew how to trade, but was I experienced enough to be in that position? Looking back, I don't think so and again, as I said, when I left the company and I looked to take on a similar role I couldn't find a similar job because the market didn't think -- and I looked for six months afterwards. The market didn't think that I was qualified to be in that role and when I did take on a role at Sulla Investment, which was different from my role at Elysium Global, my salary more than halved' (Day 1/94:19-95:13)

93. The DFSA says that Mr Dean was clearly an honest witness, doing his best to assist the FMT. Over six years have passed since the Trading Period, and it is understandable that he suggested that his evidence in interview to the DFSA (in October 2018, so just over 2 years after the Trading Period) was more likely to be accurate on points where he could not remember. The suggestions that he lied about his relationship with Mr Allsop and his suitability to trade are, it submitted, without foundation.
94. The Applicants say that Mr Dean's evidence is unreliable because his memory is so poor, he may have been acting with Mr Allsop to cause them harm and may have been coached by someone at the DFSA. Mr Cefaratti also, suggested in evidence that he was *'dishonest'*. The Applicants say that he 'put forward a bogus portrayal' of his relationship with Mr Allsop. The Applicants are particularly critical of Mr Dean's evidence about his lack of experience and qualifications during the Trading Period.
95. The Tribunal is not unanimous in its evaluation of the evidence of Mr Dean.

96. In the view of the majority Mr Dean was an entirely honest and convincing witness. His account was wholly consistent with the contemporaneous written evidence such as the emails and WhatsApp messages and with its absence, for example of the alleged ‘sandbox’ trading. It has remained consistent while the Applicants have claimed that there was no live trading or it was just sandbox trading and then that it was trading by Mr Cefaratti and Mr Allsop and then finally, apparently, that Mr Allsop did it alone.
97. Mr Dean’s mentions of the difficulty of recollecting things after some years and his suggestions that his interviews would be more reliable evidence than what he recalls now were common sense and the mark of a careful and honest witness.
98. Mr Dean was ready to look at matters objectively, thus about some emails he said this;
- “...I’m referring to myself and Nick. I’m not sure I’m referring to Zachary here. Maybe - I think just to be bluntly about it, I think my use of grammar and emailing sometimes is not very clear which has probably led to this kind of misrepresentation. And reading that I guess it is a possibility you could infer that I am referring to myself, Nick and Zachary at this point.”¹¹*
99. We accept that Mr Dean and Mr Allsop have had scarcely any contact since they worked together. They work in different fields, are of different ages and are very different characters. Mr Dean explained that they have had no contact since June 2016, apart from a request for a reference on 3 February 2017.
100. There is nothing as we see it in the allegation of coaching. This was not accepted by Ms Paddon and the evidence of Mr Dean, is convincingly to the contrary.
101. Other factors point to the evidence of Mr Dean being true. He was able to recall the login account details he used (without prompting), which he would have had no reason to know if he had not in fact been trading. The contemporaneous WhatsApp messages contain regular references to Mr Dean trading, in the context of the Dalma Fund. The contemporaneous emails above speak for themselves. As Mr Dean put it ‘*you wouldn’t obviously get that kind of praise and encouragement if you are trading on a sandbox environment*’. Mr Leedham knew that Mr Dean had been trading; he both sent and received emails about it.

¹¹ (Tr1/162-163/19-6)

Mr Dean's response to Mr Shah over his dismissal was in terms of his trading record.

102. Mr Dean no longer works in finance and is a young man involved successfully in a different sphere of activity, an intelligent energy platform, who soon found work after leaving Elysium. It is highly improbable that he has any grievance against Dalma that would cause him to lie to us and there was no sign whatever that he did.
103. A further reason for accepting evidence after this length of time is that the issue in dispute is not of nuance or detail but simply whether there was live trading over a period and, to a degree, whether Mr Cefaratti was aware of this. On some points of detail Mr Dean may or may not be mistaken – such as whether Mr Allsop also traded but we are convinced that he is right about the central issues.
104. While we regard the evidence of Mr Dean on these factual matters to be thoroughly reliable we do not place weight on his modest evaluations of his expertise at the time and his suitability for his role. This is not because we do not accept his view to be a genuine one but simply that he has been away from the sector for some time and his experience was comparatively brief and junior.
105. **Dissent of Tribunal member.** Mr Ali Al Aidarous does not share the view of the majority of the Tribunal on the assessment of the witness statement of Mr Lyle Dean as being an 'honest' witness. In his view in assessing the credibility of a witness, one must not only be satisfied that the statement of a given witness is more convincing or that is more consistent with the contemporaneous evidence than that of the other witnesses, but one should also consider the motive of the witness, which is a part of the judicial process of assessing the credibility of a witness.
106. The fact that no enforcement action has been taken against Mr Dean by the DFSA following the series of statements he provided during several interviews that, in the view of Mr Ali Al Aidarous, constitute an unequivocal admission of placing trades without a licence or being under the employment of a licensed company that constitutes a contravention under Article 42(3) read with Article 85 of the Regulatory Law, leads this tribunal member to give the evidence of this witness little or no weight. This is notwithstanding the fact that no such concerns have been pleaded let alone any convincing evidence adduced, as the same is simply a logical and objective inference drawn from the circumstances under which Mr Dean gave his statements. While Mr Al Aidarous agrees with the majority's assessment of the other witnesses, except where conclusions

depend on the evidence of Mr Dean, he considers that all the allegations against Dalma and Mr Cefaratti should fall as they depend on each other and the evidence of Mr Dean.

107. **Mr Allsop** was, as explained above, employed by Elysium and then by Dalma until his contract was terminated in 2018. He reported these matters to the DFSA in 2018.
108. The Applicants say that he did this only because they would not yield to what they see as blackmail demands made when he left their employ and that he has been making false and shifting claims about them ever since. They claim that he was complicit in anything that contravened legislation or the rules and driven by bitterness toward individuals, Mr Cefaratti in particular.
109. Following the hearing the Applicants position is this: *‘Mr Allsop has been revealed to be dishonest, cunning, bitter and vindictive. He was an evasive witness whose account in evidence conflicted not only with that of Mr Dean but also with what he had told the DFSA in interview. He was not merely a disgruntled former employee of Dalma with an axe to grind, but one with the blade specifically aimed at Mr Cefaratti’.*
110. Mr Allsop is not a party to this case but an unrepresented witness from whom, to a degree, the DFSA has distanced itself when justifying use of his testimony. There is therefore a risk of leaving an unfair picture of his character and integrity.
111. Mr Allsop must have had an unhappy time at Dalma. Few of us have to experience our salary being halved in a situation where we feel that our circumstances prevent us from leaving. Mr Allsop was fully entitled to bring a case when he felt that he did not receive what was due to him when he left. His case was only partly successful but he won it. It was odd for it to be suggested at the hearing that in asserting his rights and not winning his full claim his integrity was in doubt. He is however aggrieved that he did not recover more and this is claimed to motivate him to cause the Applicants harm.
112. Other matters raised were said to go to Mr Allsop’s credibility as a witness. There was the evidence about the reference letters (complete with expert report) with an inconclusive outcome and claims and cross claims about various essentially private matters. The emphasis on these collateral matters illustrates the very bitter feelings between Mr Allsop and Mr Cefaratti so evident on the

transcript and the tone and manner to which they referred to each other in evidence. Mr Allsop's tone was particularly belligerent.

113. As the Applicants point out in their closing, Mr Allsop's account differed in some respects from that of Mr Dean. For example, while Mr Allsop insisted that he had done no trades until June, Mr Dean believes that he did or may have done. It is not necessary for us to examine the apparent differences in detail because none of them seem to us to undermine in any way Mr Dean's account of the relevant matters.
114. We deal separately below with the issue of whether Mr Allsop traded, (he was adamant that he did not do so) in the Trading Period and the relevance of that issue.
115. Mr Allsop's bitterness, his tendency to seize every opportunity to criticise the Applicants in his evidence, together with the fact that he may have had some involvement in the alleged breaches engender caution about the reliability of his evidence. As the DFSA sees it Mr Allsop was only called to give evidence because the Applicants insisted that he appear. In these circumstances, while making no findings one way or the other about his overall truthfulness, we do not think it appropriate to rely on his evidence about the central issues or his views about the appropriateness of Mr Dean fulfilling the role that he did - particularly as the latter would be based on a disputed view of what that role was.
116. **Mr Zachary Cefaratti**, one of the Applicants, is a co-founder, shareholder (through a holding company) and Senior Executive Officer of Dalma. He gave information to the DFSA in the Dalma's responses to the DFSA's enquiries during the investigation and in interview. Mr Cefaratti explained that he had established voluntary contact with the DFSA before the events in issue in this case to report a potentially serious unrelated regulatory issue. That is not disputed. He points out that he had not misled the DFSA in the past and says he had no reason to do so over these events involving, at worst, a relatively minor breach.
117. Mr Cefaratti summarised his position in his first statement made in June 2022 as follows:

'My recollection is that I did not provide Mr Dean with access to our live trading platforms (including Interactive Brokers and Exante) and instead only provided support for him to access our dummy/sandbox accounts. The purpose

of the dummy/sandbox accounts was to enable Mr Dean to undertake training in relation to the kind of trading activities that he was expected to carry out after he had been on boarded by Dalma.

I followed the instructions of Mr Leedham. Had I given Mr Dean access to our live accounts I would say so. There is no reason why I would mislead the regulator in relation to something the DFSA itself has called a “minor infraction”, particularly given that Mr Leedham and Mr Allsop were ultimately responsible for Mr Dean and that I had already voluntarily reported a potentially much more serious breach of the regulator’s rules to the DFSA regarding the company’s relationship with Elysium. I did so out of an abundance of caution. As far as I am aware Mr Dean was only given access to dummy accounts for trading purposes (sandboxes) and whatever live trading was carried out by Dalma during the Relevant Period was carried out by me or Mr Allsop. Mr Dean was also a source of trading ideas, and was a very talented and bright trader. He originated many trading ideas, but I was ultimately executing some of those trades and Mr Allsop was executing others.

I was not aware of the status of onboarding and visa transfers of Mr Allsop and Mr Dean, I was aware that it had been agreed that they would join the team and I have seen from experience that the process of transferring Visas in the DIFC can take time. I followed instructions from Mr Leedham to support them as needed as their visas, health insurance etc. were being transferred.’

118. At another point he says this ‘*I never gave him access to our live platforms. I am only aware of Mr Dean trading on the sandbox accounts. I do however accept there is a possibility that Mr Dean placed live trades without my knowledge. I can only speculate about how this may have happened because, as I have said, I had no knowledge of this. If he did place trades, he appears to have done so under the supervision of Mr Allsop which Mr Allsop could have easily enabled on his own trading terminal, or by providing access details to Mr Dean.*’ [C/6/46]
119. Mr Cefaratti says that he considered test trades to refer to dummy sandbox trades and would have understood an email with the subject title “Test Trades” was that the trades being referred to were sandbox and not live trades. Mr Cefaratti did not receive any real time notifications of trades being conducted and would not have been contemporaneously aware of what the full record of trades was for a month. Accordingly, Mr Cefaratti says that he had no reason to believe that Mr Dean was personally executing live trades.

120. In closing Mr Sallon summarises Mr Cefaratti's case as still being that he has no contemporaneous recollection of Mr Allsop trading prior to the effective date of Mr Allsop's employment contract with Dalma. Mr Cefaratti maintains that the on-boarding of Mr Allsop and Mr Dean, the commencement of live trading by Mr Allsop and the execution of Mr Allsop's employment contract are all day-to-day activities in which Mr Cefaratti had limited or no involvement and did not have reason to clearly remember the exact dates of, in the absence of documentary evidence. Mr Cefaratti only learned that Mr Allsop may have traded prior to the effective date of his employment contract after the event, and upon learning of this, the relevant response to the DFSA was promptly amended.
121. As we see it there were unsatisfactory aspects to Mr Cefaratti's accounts which have varied somewhat.
122. He has repeatedly claimed that Mr Dean was trading on a 'sandbox' Exante account. Mr Dean denies that he did so, there is no contemporaneous evidence of Mr Dean having used any Exante sandbox account and the written material is all consistent with the trades being real.
123. It is suggested that if Mr Dean had access to live trading, he would not have needed Mr Cefaratti's help to add securities, or produce trading reports within the Exante system. But there were reasons for Mr Dean's identity as a trader not being disclosed and there is no reason not to believe Mr Dean's evidence that the process was not 'intuitive' and he needed help.
124. Mr Cefaratti claimed that Mr Dean did not place trades or at least those of which he was aware because any trades on the Fund were either by him or Mr Allsop. Mr Allsop says that he did not trade during the Trading Period. Mr Dean's evidence in cross-examination was that he did not recall Mr Allsop trading on the Fund, though his memory was 'fuzzy', nor did he recall that Mr Allsop had access to conduct trades on the Fund prior to his own departure. Nevertheless, Mr Dean stated: *'I know he didn't trade big amounts; he wasn't trading the amount I was trading. But if there was a possibility he traded, it would have been small or test trades.* Mr Dean said in interview, where his recollection was, judging from the surrounding discussion, limited *'I think he might've done a few trades but, again, I can't -- recall.'*
125. Only one document might suggest that Mr Allsop, not Mr Dean traded: his email dated 4 May 2016 in which he referred to profits of USD340,000 *'since we*

started taking positions for the fund'. Even that depends on what is meant by 'we'. This message has to be set against the material pointing the other way.

126. The WhatsApp messages include references to the trades that Mr Dean made not to any by Mr Allsop. In the 'mention in dispatches' email, Mr Allsop was clear that Mr Dean placed the trades, despite the incentive for him to claim credit for what (at that stage) were profitable trades. There is no sign that Mr Allsop obtained log-in details from Dalma.
127. Mr Cefaratti's evidence that Mr Allsop did place trades included a claim that when trading Mr Allsop was '*very braggadocious*'. This alleged tendency had never been mentioned before or put to Mr Allsop when he gave evidence.
128. Another difficulty with Mr Cefaratti's apparent position at one point that he believed at the time that Mr Allsop was trading is that it is contradictory to submissions made on his behalf to the DFSA during the Decision Notice process to the effect that Mr Cefaratti never authorised (or was aware of) Mr Dean or Mr Allsop carrying out live trading on the Dalma Fund.
129. Mr Cefaratti was, apart from the 14 Interactive Brokers trades which he placed, unable to set out any coherent basis for attributing any of the trades claimed by Mr Dean in the Trades Document to himself or Mr Allsop.
130. We conclude, as Mr Cefaratti did at one time, that it is unlikely that Mr Allsop did any trades for Dalma before 1 June 2016. If he did, they were small and not those at issue in this case which were traded by Mr Dean.
131. The DFSA claims that Mr Cefaratti knew full well about the trading. Mr Dean was clear that Mr Cefaratti knew that he was trading. Mr Cefaratti sent the email on 4 April 2016 offering to '*work with you to set up Exante tomorrow and you can begin trading there*'. Mr Dean went to Dalma's offices the next day. Within minutes trades started on the Dalma Fund. On 25 April 2016, in WhatsApp messages between Mr Dean and Mr Allsop, Mr Dean discussed his EUR:AUD trade with Mr Cefaratti, both by email and (as the text makes clear) orally:

'[25/04/2016, 17:06:10] Nick Allsop: You see Zachary latest email concerning your eur/aud fx deal from earlier today?

[25/04/2016, 17:08:26] Lyle Dean: Yep seen that and spoke to him

[25/04/2016, 17:08:42] Nick Allsop: Good man

[25/04/2016, 17:08:55] Lyle Dean: I sent that email to tell him to check if Exante roll the position

[25/04/2016, 17:09:05] Nick Allsop: Ok

[25/04/2016, 17:09:15] Lyle Dean: I think he got confused and started talking about EZE.'

When asked about this, Mr Cefaratti stated, incorrectly, that he did not think that any such email exists, and that the WhatsApp message 'doesn't make any sense'. Subsequently in his WhatsApp messages, Mr Dean stated: *'[04/05/2016, 22:12:33] Lyle Dean: I told Zachary to close IB and take the cash from there [04/05/2016, 22:12:47] Lyle Dean: Still use exante, but the margin from that can go into SG'*. Mr Dean was discussing the money available to trade with Mr Cefaratti, something which can only have related to live trading. Mr Cefaratti said of this: *'if the assistant to the senior portfolio manager is helping with suggestions around rebalancing cash, and so on and so forth, you know, that's his suggestion. I'm the one, it looks like he is asking me to do something that he can't do and doesn't have access to do.'* But it is plain that Mr Cefaratti knows from this that Mr Dean is trading.

132. Mr Cefaratti told the DFSA in interview that he *'was very frequently sitting with'* Mr Dean. In evidence he said that he did this only *'occasionally'*. There were dozens of trades a day in May 2016. It is unlikely that Mr Dean was placing hundreds of trades on the only fund that Dalma managed, and that Mr Cefaratti as Chief Operating Officer and in charge of the Fund prior to the appointment of a new portfolio manager, was unaware of those trades, particularly given the swings in profitability on those trades.
133. After the Trading Period, Mr Cefaratti sent WhatsApp messages to Mr Leedham on 26 April 2018 in which he stated: 1) *'I think an honest mistake which he [Mr Allsop] specifically highlighted will become a problem... It seems when we were training and setting up handover to nick and Lyle, they had access to live trading accounts before we completed their employment transfer'*. When Mr Leedham stated *'But as I recall. You controlled trading and put on trades as advised??'*, Mr Cefaratti responded *'Yes on interactive brokers'* and then *'I think Lyle may have had direct access to exante... I'm not sure... I'm looking into it.'*
134. Mr Cefaratti seemed to suggest that the 'mistake' was an alleged lie by Mr Allsop but that does not make sense. Mr Cefaratti was certainly at this point

aware of information which falsified what had been said to the DFSA but he took no steps to correct that information. It is also unexpected, in the light of what he clearly knew at this point, that he maintained his current position in this case. (Mr Cefaratti made no reference here to Mr Allsop trading, contrary to his later position that he believed Mr Allsop to be trading throughout the Trading Period (eg Day 143:7-144:19).

135. Paragraphs 112 to 147 of the Applicants' closing argument comprise a detailed review of much of the email and WhatsApp traffic. They suggest that there is ambiguity in a number of documents and possibilities that individual items may have a meaning different from that contended for by the DFSA. Read in context however and looked at as a whole and in their entirety, the suggested ambiguity falls away. This documentation fully supports the relevant parts of Mr Dean's evidence and is not consistent with Mr Cefaratti's accounts which have differed somewhat. To repeat an example, when Mr Cefaratti emailed Mr Dean to say '*I will work with you to set up Exante tomorrow and you can begin trading there*' he clearly meant what he said.
136. The Applicants contrast what they say is the truthfulness of Mr Cefaratti with suggested inconsistencies between the accounts of Mr Allsop and Mr Dean and suggestions that these two are unreliable because both were involved in the contraventions and conspiring together to do Dalma down. We reject Mr Cefaratti's evidence about Mr Dean that '*I don't think he's an honest person*' [D6/1154 line 14].
137. As is often the case with regulatory matters those giving evidence for the regulator may share some blame and want to avoid it. While this may have affected the testimony of Mr Allsop that is not the case for someone in the very junior position of Mr Dean against whom disciplinary action would be most unlikely. We have found above that these two did not cooperate or conspire together. Further we are not attaching weight to the evidence of Mr Allsop when considering the evidence against the Applicants.
138. In discussing the evidence of Mr Cefaratti we have addressed variations in his account only because these exist. The Applicants recognise this indirectly in their closing submissions:

'The Applicants submit that, when Mr Cefaratti gave live evidence about the matter, some six years after the event, it is perfectly understandable that he may have been confused as to what he knew at the time, and what he learned retrospectively from conversations with others, and from documents which he

had not seen at the relevant time. Any such minor lapse is immaterial compared with the false and contradictory testimony given by Mr Allsop and the repeated memory failure displayed by Mr Dean.'

139. Mr Cefaratti is a highly intelligent, well-educated and experienced financial services professional with no previous record of getting into regulatory difficulty. As he points out he has initiated contact with the regulator when appropriate. His competence and integrity are well spoken of in the witness statements and other material referred to above (which we bear in mind despite the DFSA submitting that we should not). Mr Cefaratti was very articulate when giving evidence. He was however in the habit of referring to generalities when asked detailed questions and also of characterising his position as, for example, 'consistent' rather than providing a detailed answer. He would say what his 'position' was, or suggest improbability, given his previous record, rather than explain why his account did not appear to fit contemporaneous documentation. This left an impression that a direct and truthful answer might be damaging to him. His position on some points has changed over time and not always because of new facts coming to light. He also sought to embellish an assertion with the 'braggadocious' allegation, which we believe cannot have been true. Mr Cefaratti's account was frequently inconsistent with the documents and commercial probability and sometimes with his previous accounts. Mr Cefaratti's evidence was affected by his bitter antagonism towards Mr Allsop, though less acutely than that of the latter.

WAS THERE TRADING AND DID MR CEFARATTI KNOW ABOUT IT?

140. Taking all matters into consideration including undisputed facts, the documentary record, commercial realities and our view of the evidence of the witnesses, and the approach to proof mentioned above the majority is sure that there was trading during the Trading Period by Mr Dean and that Mr Cefaratti knew it at the time.

ALLEGED FAILURE BY DALMA TO CONDUCT ITS BUSINESS WITH DUE SKILL, CARE AND DILIGENCE

141. Was there a failure by Dalma to conduct its business activities with due skill, care, and diligence, contrary to Principle 2 of the DFSA's Principles for Authorised Firms as set out in Rule 4.2.2 of GEN? As explained above there are two limbs to this. The DFSA claims that Dalma permitted Mr Dean to trade when he was not suitably qualified and experienced and not employed by, or otherwise contractually obligated to, Dalma.

142. **Contract.** For the reasons given above there was no contract in place and Mr Dean was not employed by, or otherwise contractually obligated to, Dalma. The infringement was a relatively minor one given that it was intended that a contract be in place but Dalma inappropriately allowed Mr Dean to trade before that was done.

143. **Suitable Qualifications and experience.** The DFSA contends that Mr Dean ‘was not suitably qualified and experienced’, a matter which it must prove. The Applicants say the following in their closing submissions.

“-The DFSA’s case is that Mr Dean was “not suitably qualified and experienced” to trade on behalf of Dalma. It falls to the DFSA to prove on the balance of probabilities that this is the case. It is difficult to see how the DFSA can do so given:

-The DFSA has not identified the requisite standard of “due skill, care and diligence” that is said to apply. The DFSA appears to have proceeded on the assumption that Mr Dean had no experience of trading at all and that he was wantonly set loose on DURF with predictably disastrous results. As noted above, this is the tale that Mr Allsop presented to the DFSA in his complaint and in his interview but has proved to be false. The Applicants remain in the dark about the standard that they are required to meet.

- As explained above, while Mr Dean and Mr Allsop are unable to tell a consistent story in this regard, Mr Dean’s own evidence that any trading that he carried out at Dalma was under the supervision and mentorship of Mr Allsop. The DFSA does not appear to allege that Mr Allsop was not suitably qualified and experienced to trade. In view of the conflict of evidence between the DFSA’s own witnesses, it is impossible reliably to identify any trades that Mr Dean placed without the benefit of Mr Allsop’s experience and supervision.”

144. Essentially, we agree. The DFSA must prove its case clearly. There is no published guide or standard to explain what qualifications and experience is required in any given case or evidence from the DFSA from an expert or other person in a position to express a reliable view. There are of course some cases where the facts speak for themselves and further evidence is not required. This is not one of them. The DFSA relies on the evidence of Mr Dean and Mr Allsop who, for different reasons, are not able to give useful evidence about what qualifications and experience are required or whether they were met in this case. The Applicants have two outside witnesses referred to above both speaking well of Mr Dean’s experience and, while Mr Boylan conceded a little ground to Mr

Temple, this did not begin to amount to anything enabling the DFSA to prove its case.

145. This does not mean that we are in any way satisfied with the arrangements under discussion. The supervision of Mr Dean seems to have been unsatisfactory but uncertainties about the role of Mr Allsop prevent us from making findings about that.
146. Further there is no doubt that Dalma failed to establish and maintain comprehensive outsourcing policies, contingency plans and outsourcing risk management programmes as alleged by the DFSA. We have not been shown any such policies.
147. **Conclusion.** We therefore conclude that the case is proved as regards contract but not as to lack of qualifications and experience. There was also a failure to maintain the policies referred to in the last paragraph. To this extent there was a failure by Dalma to conduct its business activities with due skill, care, and diligence, contrary to Principle 2 of the DFSA's Principles for Authorised Firms as set out in Rule 4.2.2 of GEN.

ALLEGED FALSE, MISLEADING AND DECEPTIVE INFORMATION

148. Did Dalma provide false, misleading, and deceptive information to the DFSA and conceal information such as to mislead or deceive the DFSA, in breach of Article 66 of the Regulatory Law? If so was Mr Cefaratti knowingly concerned (within the meaning in Article 86 of the Regulatory Law) in the contraventions?
149. **The First Dalma Response.** On 23 July 2017, the DFSA issued a notice to Dalma under Article 73 of the Regulatory Law requiring documents and information, in particular Dalma's communications with Elysium. Dalma responded to that notice on 14 August 2017 by providing a USB stick of information and a narrative ("the First Dalma Response").
150. The First Dalma Response described negotiations in the period between February to May 2016 for the hire of Mr Allsop and Mr Dean to manage the Dalma Fund and the 'Prospective Futures Fund' (a prospective fund that was not ultimately established). The First Dalma Response stated that, during the negotiation period, training had been provided to Mr Allsop and Mr Dean on the Eze system they would use once at Dalma. It was said that:

"Dalma continued discussions with the prospective employees and began training them on the Eze Order Management Trading Systems they would use

for managing the proposed Dalma Futures Fund and the Elysium Managed Accounts that might be set up if the mandate were to proceed, which included ring-fenced, sandbox access to Dalma's trading systems which were not live and were not attached to any accounts (as no accounts indeed existed for the [Prospective Futures Fund] and Dalma had no access to any Elysium accounts). For the avoidance of doubt, these trading systems had never been connected to any live accounts, Dalma performed on site training at its offices of Eze Order Management System trading software, statpro risk management software, Interactive Brokers software and ATP trading platform in April 2017 [sic – 2016] to Nick Allsop and Lyle Dean so that they would be ready to assume portfolio management duties after transferring employment to Dalma Capital."

151. The DFSA points out that the First Dalma Response stated that both Mr Allsop and Mr Dean had been provided with 'sandbox' access to the Eze system, such that neither Mr Allsop nor Mr Dean had access to any 'live accounts' and that the intention was that both Mr Allsop and Mr Dean would only 'assume portfolio management duties' after the transfer of their employment. The first is not true, even on Mr Cefaratti's evidence, given that he now asserts that Mr Allsop was trading before the transfer of his employment. In reality, though, it was Mr Dean who had access to live accounts during the Trading Period. The Applicants now resile from the second statement too, arguing that Mr Allsop was (or might have been) trading before the start date on his employment contract. The DFSA says that the First Dalma Response was plainly misleading, and concealed information in a way likely to mislead or deceive the DFSA.
152. It follows from our findings of fact that, leaving aside the somewhat forensic point about the role of Mr Allsop, that what the DFSA says is correct.
153. Mr Cefaratti says that in order to draft the First Dalma Response, on 8 August 2017, he spoke to Mr Leedham who had been solely responsible for hiring Mr Allsop and Mr Dean. Mr Leedham expressly told Mr Cefaratti during the call that Mr Dean did not have access to live trading. Mr Cefaratti took notes and drafted a timeline which he then sent to Mr Leedham to confirm its accuracy. Mr Leedham responded to confirm the accuracy of that timeline. In addition to speaking to Mr Leedham, Mr Cefaratti also spoke to Mr Allsop about the timeline. Mr Cefaratti's evidence is that Mr Allsop also confirmed that Mr Dean did not conduct live trading at Dalma. Mr Cefaratti therefore based his Response on what he was told by the two individuals to which he had access at the time who were best placed to provide reliable answers to the DFSA's queries.

154. As we read the timeline it does not address the central issue. Further the recollection that Mr Leedham told Mr Cefaratti that Mr Dean did not have access to live trades is surprising, given the latter's knowledge at the time through emails and the later WhatsApp exchange between the two. As we are clear that Mr Cefaratti knew that there was trading we do not consider that there was any good reason for him not to be frank with the regulator.
155. **The Second Dalma Response.** On 25 April 2018, the DFSA issued a second notice to Dalma seeking: confirmation of the exact date upon which Mr Allsop had commenced employment with Dalma and an explanation of any difference between that date and the date of 1 June 2016 evident in his employment contract; records specifying the full details of all trading activity carried out on any fund managed by Dalma from 1 March 2016 to 1 June 2016, including for each trade: 1) the name of the individual undertaking the trade; 2) the individual's physical location at the time of the trade; and 3) the trading platform or software used by the individual and his or her means of accessing it (such as via a laptop belonging to Dalma or Elysium, or a specific trading terminal).
156. Dalma responded to that notice on 20 May 2018 ("the Second Dalma Response"). The Second Dalma Response stated that with regard to Mr Allsop's employment: *"Mr. Allsop was given a Dalma email address and access to Dalma's premises in April 2016 in order to facilitate his transition to Dalma and for training purposes (ahead of being given direct access to the Dalma Fund portfolio). This was done in good faith, in order to minimise disruption to Dalma Fund and its investors. The principal reason for the delay in signing the contract was the fact that negotiations of certain personal benefits (e.g., medical insurance) took much longer than expected. Mr. Allsop did not receive any remuneration prior to 1 June."* Dalma said that it was awaiting a further response from brokers and would update the DFSA.
157. The DFSA says that the implication of this continued to be that Mr Allsop did not have 'direct access' until 1 June 2016, when he started to receive remuneration. On Mr Cefaratti's current evidence, that is false. On the DFSA's case it is true, but conceals the fact that Mr Dean had been trading, in a way likely to mislead or deceive the DFSA. The Response omitted any reference to Mr Dean or (on Mr Cefaratti's evidence) Mr Allsop placing trades prior to 1 June 2016, and the fact that they had done so from Dalma's offices, despite being asked directly for names and trading locations. Again, this amounts to the concealment of information in a way likely to mislead or deceive the DFSA, in contravention of Article 66 of the Regulatory Law.

158. It follows from our findings of fact that what the DFSA says is correct.
159. Mr Cefaratti says that he assigned the company's new Head of Compliance to perform an independent review and to issue the Second Dalma Response. Mr Leedham, Mr Anwar and Mr Cefaratti all contributed to the Second Dalma Response. Mr Anwar and Mr Cefaratti believed that they had provided truthful and accurate answers to all the issues raised in the notice. He also says that Mr Allsop, who by then had left and was making threats, suggested for the first time that Mr Dean had been trading too, contradicting his statements made a few months earlier. He also refers to the WhatsApp exchanges with Mr Leedham. He also listed a number of steps that he had taken, including requesting and reviewing the Exante records, reviewing the Apex records and looking through all other relevant sources.¹² Mr Cefaratti concluded by saying, "*we didn't see a single fingerprint, we didn't see any indication...*".
160. Mr Cefaratti knew personally that there had been trading. He may not have wished to disclose this to Mr Leedham. It is unlikely that Mr Allsop would only have mentioned Mr Dean's trading at that late stage. The sources such as emails do contain 'fingerprint' indications that Mr Dean did trades.
161. **The Third Dalma Response.** On 28 June 2018, the DFSA issued a third notice to Dalma seeking an update on Dalma's requests for the information from its brokers, the reasons why Dalma's systems had not captured the relevant information, and a list of all individuals that Dalma allowed and/or authorised to trade on the Dalma Fund between 1 March 2016 and 1 June 2016. Dalma responded to that notice on 5 July 2018 ("the Third Dalma Response"). In the Third Dalma Response, Dalma stated:
- "...in practice, at any given time there was only one senior portfolio manager who was responsible for trading – any other individuals who were authorised for done so for support only. Initially, the SPM was Ryan Mahoney with Zachary Cefaratti providing support and back-up; following his departure and Nick [Allsop]'s joining, the SPM was Nick.*
- Consequently, we believe that, prior to Nick joining, all trades (as shown in the spreadsheet submitted previously) were made by Ryan (supported by Zachary) and, following the commencement of Nick's employment, all trading was done by Nick. ... Between 1 March and 1 June, the only individuals*

¹² (Tr3/148/10-12)

authorised to trade were (at different times) Ryan Mahoney, Zachary Cefaratti (in a support capacity) and Nick Allsop (following Ryan's departure)."

162. The DFSA says that the Third Dalma Response falsely or misleadingly stated that prior to Mr Allsop joining Dalma, all trades had been conducted by Mr Mahoney or Mr Cefaratti. When read against the First and Second Dalma Responses, it continued to suggest that Mr Allsop 'joined' on 1 June 2016 and did not therefore trade prior to that date. It failed to include Mr Dean within the list of those who were authorised or allowed to trade. It was opaque as to who was trading between the departure of Mr Mahoney and Mr Allsop joining. The natural implication was that Mr Cefaratti (the only other person authorised to trade, albeit in a 'support capacity') carried out all trades. That was false, if it is accepted that Mr Dean was trading during that period.
163. Mr Cefaratti says that he had been unaware during the Trading Period in 2016 that Mr Allsop had or may have had access to conduct live trades without having formalised his contractual arrangements with Dalma. By 5 July 2018, he believed this may have been the case. Mr Cefaratti was not aware of the discussions related to Mr Dean and Mr Allsop's employment contracts. Years after the fact he understandably could not recall exactly when Mr Allsop had commenced live trading, when Mr Allsop's contract became effective and whether or not there was a period of time between the two events. Mr Cefaratti asked Mr Leedham about the matter on 28 June 2018, given that it was Mr Leedham who had undertaken the contractual discussions with Mr Allsop and Mr Dean. Mr Leedham confirmed to Mr Cefaratti that Mr Cefaratti, Mr Mahoney and Mr Allsop "*would have been allowed to trade at some point*" in the period between 5 April 2016 and 6 June 2016 (which the DFSA refers to as the Trading Period). In relation to Mr Dean, Mr Leedham wrote: "*I don't recall Lyle having specific permissions, but he was under Nick's supervision to do with the Fund, as we onboarded them both prior to ...the decision not to keep Lyle, which as I recall was probably just over a month..... If I need to check my files, I will have to do it over the weekend*".
164. The Applicants invite the Tribunal to conclude that Mr Cefaratti did everything he could to ensure that the DFSA was provided with all relevant information, whilst dealing at the time with the affairs of his recently deceased father. There was no intention on his part to mislead the DFSA about events which occurred 2 years prior, and it is clear that Dalma's Third Response informed the DFSA that Mr Allsop had commenced trading prior to the effective date of his employment contract.

165. Dalma's Third Response was plainly wrong particularly in its omission of reference to Mr Dean. We accept that Mr Cefaratti was not familiar with the contract discussions at the time and that these had occurred over a protracted period a long time before. He was also under severe personal pressure at the time of the response. This failure to give some information seems more that of Dalma than of Mr Cefaratti personally. The last sentence of the Response however was incomplete without mention of Mr Dean. It must have been on Mr Cefaratti's mind because Mr Leedham had just mentioned it on 28 June.
166. Overall, we therefore conclude that the Applicants did provide information that they knew was false or misleading and omitted to disclose the highly relevant fact that Mr Dean had been trading during the Trading Period.
167. **False and misleading statements in interview.** Between 18 April 2019 and 31 July 2019, in interviews with the DFSA did Mr Cefaratti provide false, misleading, and deceptive information and/or conceal information such as to mislead or deceive the DFSA?
168. The DFSA interviewed Mr Cefaratti on three occasions, each a continuation of the last: 18 April 2019, 20 May 2019, and 31 July 2019. The notice requiring Mr Cefaratti to attend for interview made it clear that the DFSA was investigating whether Dalma's responses were false, misleading or deceptive, or intended to obstruct the DFSA in the exercise of its powers.
169. Ms Paddon's introduction near the start of the first interview stated:
- "the purpose of this interview is to obtain information relating to an investigation the DFSA is conducting into Dalma Capital Management Limited, which we will refer to as Dalma. The investigation is mainly concerned with Dalma and its senior management arranging for an individual who was not employed by Dalma to manage its Unified Return Fund, which we may refer to as DURF, and with the accuracy of information provided by and on behalf of Dalma to the DFSA concerning those events."*
170. We read the interviews as a whole as it is important for individual remarks in a long discussion to be seen in context and not isolation.
171. **The First Interview.** The DFSA asked Mr Cefaratti whether Mr Allsop started his employment on 1 June 2016 (the date on his employment contract). Mr Cefaratti stated:

"I think that there could be a possibility that he may have started sooner. ... Like, the -- to me, the effective date was, you know, he's getting paid from that day. But if there's ... like, there have been instances where ... you know, you sign an employee midmonth or at the end of the month and the effective date is the beginning or end of that month for a payment perspective. I don't know. I really don't know. I just -- ... you know, if Nick physically, actually started on June 1st or if he might have started a few days earlier or a few days later".

When asked about Mr Dean's lack of contract, Mr Cefaratti stated:

"WILLIAM SAHELI: So he undertook, so, with Lyle, undertook all the training but never actually did any work or -- as in worked for Dalma and their funds?

ZACHARY CEFARATTI: Yeah. I mean, like, he didn't ... yeah, the idea was that he was just doing training during that period."

172. When viewing Mr Dean's email about whether Dalma was "able to trade now on the Interactive Brokers account" Mr Cefaratti stated: "... so far as I understand, Lyle's not -- he's not been given access to trade on the Dalma Unified -- or the Dalma Unified Return Fund account." Mr Cefaratti said in a discussion about Interactive Brokers "I didn't give Lyle permission to actually instruct his own trades." As regards the Trades Document that formed the basis for the 'test trades' on Exante, Mr Cefaratti stated:

"the systems that -- and permissions that I gave them or that Howard gave them were the instructions for them to give -- to be given access to -- to actual live accounts was not until after Nick ultimately joined. ... And signed his contract.... They weren't given access to the -- to -- they weren't given permission to actually trade on a -- on a live account and I don't think they had access or I -- my position is that they didn't have access to a system that would have allowed them to trade on a live account."

173. In relation to the 'test trades' and Mr Dean's request that products be added to Exante, Mr Cefaratti stated that Mr Dean was referring to "a paper trading account on Exante" and, later, "he has access to the sandbox system. He doesn't have access to my live account". When commenting on the 'Mention in Dispatches' email Mr Cefaratti stated: "the only thing I could think of is that he's referring to trades that I made in consultation with him and Lyle..." and "Nick's not aware of who's actually trading". (Mr Cefaratti's current position is that Mr Allsop was trading throughout the Trading Period). Mr Cefaratti later stated: "it's not the case that Lyle was instructing trades on -- to our broker and

I certainly didn't give him access to a system or permission to access a system that would allow him to do so... he doesn't have access to a system that's allowing him to trade on the live Dalma Unified Return Fund". When asked about the trades that he put on himself, Mr Cefaratti said he believed he would have used his own account:

"FIONA PADDON: Do you remember logging in under your own details to carry out the trades that you carried out?

ZACHARY CEFARATTI: I believe so. I don't see why I would log in ... I mean, I don't see why I would log into Ryan's account, but –

FIONA PADDON: Did you know his log-in details?

ZACHARY CEFARATTI: I don't think so. I don't recall. We were -- I think we each had our own -- our own accounts on the system and our own sets of permissions."

174. **Second Interview.** The DFSA draws attention to answers by which Mr Cefaratti moves from seeing Mr Allsop as trading just before 1 June to trading throughout the Trading Period. He also says this:

"Lyle was given access to several systems that were not connected to our live accounts.... And that's what I gave him access to. I have records that can verify that as well so. He was given access to the Ezz [sic] system that was connected to any of our brokers which I explained in detail previously. And he was given--I believe he was given access to multiple demo accounts in Exante and I was able to find records that those demo accounts were set up. That several demo accounts had been set up the months—during these months. So I found a correspondence with Exante that confirms that."

175. No such correspondence was produced even when asked for, apart from one email that does not give that confirmation.

176. **Third Interview.** Mr Cefaratti appeared to be suggesting that all trades in April and May 2016 were placed by "myself and Nick", though as to the trades on 5 April: *"I really have no way of knowing when specifically, he started. I'm sorry. I wish I could plot something that gave you a clear, definitive answer to that, but I'm -- I just don't have anything."* When asked how Mr Allsop placed trades, Mr Cefaratti stated that Mr Allsop did so through the computers physically in Dalma's office:

“ZACHARY CEFARATTI: ... So he would have traded using the trading -- one of the trading terminals that was authorised to trade on the account.

WILLIAM SAHELI: And how did he get access to those trading terminals?

ZACHARY CEFARATTI: He could have accessed them at our office.

FIONA PADDON: He could of. Did he?

ZACHARY CEFARATTI: During this period ... I just don't know when he started. Yes, eventually he definitely traded, sat at the trading terminal in our office in a room right next to me.”

...

“ZACHARY CEFARATTI: I mean, I think it's important to say that he was using a terminal that was set up and that terminal had Ryan Mahoney's -- as -- that's one of the reasons that I submitted that email, is Ryan was instructed to leave all of the systems running on his terminal. So the fact that that terminal registers those trades as Ryan Mahoney is because that's the terminal that had been set up, so far as Exante was concerned, for Ryan Mahoney.”

177. The DFSA says that any suggestion, now, that Mr Allsop was trading remotely, from Elysium’s offices, contradicts these statements. Mr Cefaratti also said that:

“...my position has remained consistent that Nick -- I believe Nick was authorised to trade and may have undertook trades between March and June 1... But I did say in the last interview -- do you recall in the last interview when I said that I believe that he may have started working before the date on the employment agreement?”

178. Later in the same interview, Mr Cefaratti relied on an email dated 30 May 2016 asking Exante to add Mr Allsop and Mr Dean as users on Exante: *“...this to me is clear evidence that I am not giving Nick and Lyle access or authorisation to trade on Exante's platform directly until May 30th and only Nick's authorisation ends up being processed by Exante. So if it was my view to give Nick or Lyle access prior to that date, I could have sent the instruction to Exante before, and with Howard's authorisation they would've done it.”* The DFSA says that Mr Cefaratti’s position appeared to come almost full circle, to suggest that Mr Allsop was not trading until 30 May 2016.

179. Mr Cefaratti was shown Mr Dean’s statements in interview and maintained that:

“I think Lyle bears a grudge that he wasn't hired by the company, and that he may inaccurately recall -- there's a possibility also that he inaccurately recalls or misrepresents what systems he was given access to. I've admitted that he was given access to systems, but they were set up as sandbox systems, not live trading. ‘...my position [is] that Lyle did not trade and was not given access or authorisation to trade by me”.

180. **The response of Mr Cefaratti** is largely at Paragraph 11 of his first statement. He says that as the Article 73 notices clearly informed him of the potential risk of misleading the DFSA, he would never risk committing a grievous contravention by misleading the regulator. His response is again to refer to his previous record of probity and of candour with the regulator. The DFSA had failed to understand that he arranged all the sandbox trading systems for Mr Dean: *“It was inconceivable that I would have done so if I had been aware that Mr Dean was already live trading.”* Their employment status was the same during the period in question. There was therefore no reason for him to admit that Mr Allsop had traded but not Mr Dean.
181. Mr Cefaratti says that he went into the first two interviews on 18 April 2019 and 20 May 2019 without the benefit of legal advice or the attendance of a lawyer. He did not understand why he would need to be represented when speaking to the DFSA.
182. Given his lack of involvement with Mr Leedham’s dealings with Elysium and the fact he had nothing to do with hiring Mr Allsop or Mr Dean, he says that he had no reason to think that Dalma had done anything wrong. He considered his role in the investigation to be peripheral. He remained convinced that once the DFSA had a full picture of the situation, any wrongdoing allegations against him would be dropped. He refers to a variety of practical difficulties with the interviews and his lack of legal representation. It was only during the second interview on 20 May 2019, that he saw transcripts of Mr Dean’s interview, which contained information which contradicted his own understanding of events. It was only at this stage that he began to piece together some understanding of the nature and scope of the DFSA’s investigation. He maintains that he still does not know whether Mr Dean ever traded on the Dalma platform.
183. He says that he made every effort to answer questions fully and truthfully, based on his best memory of events which had taken place approximately three years earlier as well as his interpretation of documentary evidence to which he had

access. He also feels that he was misled by the DFSA as to the nature of those interviews.

184. We bear all these considerations in mind. It is however clear to us, having concluded that Mr Dean did trade and that Mr Cefaratti was aware of it, that, he did make false and misleading statements to the DFSA in interview as alleged. He was not misled by the DFSA as the interviews when read in their entirety make clear. The absence of a lawyer cannot be a reason for him not telling the truth. It was open to him at any time afterwards to approach the DFSA and seek to correct recollections that may have been faulty. He has never done so. It is right that a considerable time elapsed between the events in issue and the interviews but the WhatsApp exchange with Mr Leedham on 26 April 2018 shows that the issue of Mr Dean was live. Furthermore, Mr Cefaratti was taken to the relevant documents in interview and had an opportunity to refresh his memory about what would have been an obvious fact at the time.
185. It is surprising that someone in Mr Cefaratti's position would knowingly mislead the DFSA and we therefore hesitate before concluding that he did. He has an unblemished record and we have referred to and have regard to the testimonies to his integrity. It might be that he was tempted to brush aside what was seen as a comparatively minor breach of regulations and this got out of control. These matters arose only because of the acts of Mr Allsop and Mr Cefaratti may have been too incensed and too keen to counter what he saw as threats of blackmail to stick to the truth. There may have been pressures within his employment. People sometimes do improbable or unexpected things. The reasons are not for us to determine. While questions of motive and probability are very important, they are less so when the facts are plain as they are in this case.
186. We accordingly conclude that Mr Cefaratti did provide false information and conceal matters from the DFSA in the course of his interviews and was knowingly concerned in the breaches by Dalma.

CONCLUSIONS.

187. The Tribunal concludes, by a majority (see Paragraphs 105 and 106 above), as follows.
188. For the reasons given in Paragraphs 140 to 147 above, there was a failure by Dalma to conduct its business activities with due skill, care, and diligence,

contrary to Principle 2 of the DFSA’s Principles for Authorised Firms as set out in Rule 4.2.2 of the General Module of the DFSA Rulebook.

189. For the reasons set out in Paragraphs 148 to 166 above, Dalma in its three responses, provided false, misleading, and deceptive information to the DFSA and concealed information such as to mislead or deceive the DFSA in breach of Article 66 of the Regulatory Law.
190. For the reasons given between Paragraphs 148 to 186 above, Mr Cefaratti was knowingly concerned in the contraventions committed by Dalma and provided false, misleading, and deceptive information to the DFSA in breach of Article 66 of the Regulatory Law and broke Principles 1 and 4 of the DFSA’s Principles for Authorised Individuals, as set out in GEN Section 4.4.

PENALTY

191. The Applicants sought a hearing on the question of penalty and this took place on 16 December 2022 online. The parties served submissions. The Applicants also served a skeleton argument and a fourth witness statement of Mr Cefaratti. At the hearing, we were also addressed briefly by Mr Cefaratti. As time was short at the end of the hearing, we agreed that each side could submit a further note if it wished. The Applicants did this but the DFSA did not. The extensive written submissions address the competing positions of the parties on many issues and we bear all these in mind but mention only those particularly relevant to the penalties we impose.
192. **Fine – the DFSA’s powers.** Article 90 of the Regulatory Law empowers the DFSA to impose certain sanctions and directions. Under Article 90(2), the DFSA may, among other things, “*fine the person such amount as it considers appropriate in respect of the contravention*” (Article 90(2)(a)); and/or “*make a direction prohibiting the person from holding office in or being an employee of any Authorised Person ...*”. Article 90(6) of the Regulatory Law requires the DFSA to prepare, publish and maintain a statement of policy as to how the power to impose fines is to be exercised. That statement is set out in the ‘Regulatory Policy and Process’ Sourcebook (“RPP”).
193. RPP 6 prescribes the manner in which that process will be applied in the case of a financial penalty. RPP 6-2 provides that the decision as to penalty will be made with regard to a number of factors such as (i) the nature, seriousness and impact of the contravention, (ii) the difficulty involved in detecting and investigating the contravention, (iii) any benefit gained or loss avoided as a

result of the contravention, and (iv) the need for the penalty to serve as a deterrent for others. RPP 6 is lengthy and we have at each point had regard to the detail as well as the summary. The detail has to be read subject to the general requirements in 6-4-3: *“The DFSA recognises that a penalty must be proportionate to the contravention. These steps will apply in all cases, although the details of 1 to 4 will differ for cases against firms (section 6-5), and cases against individuals (section 6-6)”* and 6-4-4: *“The lists of factors and circumstances in sections 6-5 and 6-6 are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.”*

194. **Restriction and Prohibition – the DFSA’s powers.** Under Article 59 of the Regulatory Law the DFSA may restrict persons from performing functions in the DIFC if it believes on reasonable grounds that a person is not a fit and proper person to perform any functions in connection with the provision of financial services in or from the DIFC. A restriction can be imposed whether or not the individual has committed any contraventions, whereas a prohibition depends upon a finding that there has been a contravention. The DFSA’s power to impose a prohibition arises under Article 90(2)(g) of the Regulatory Law where a person has been found to have committed a contravention.
195. The DFSA’s policy regarding its power to restrict individuals is set out in the RPP. The DFSA may have regard to all relevant matters including, but not limited to, the criteria for assessing the fitness and propriety of Authorised Individuals as set out in chapter 7 of GEN and RPP section 2- 3. The RPP does not directly consider the power to impose a prohibition. In either case, the DFSA submits (and we agree), the key question is whether the misconduct demonstrates a lack of fitness and propriety. Key to this is the integrity of the individual. That is because persons who perform functions in relation to financial services must, in practice, be trusted to discharge their duties and comply with the rules with integrity. Once it is shown that a person is prepared to act otherwise, there will be a strong public interest in ensuring that they are not permitted to carry on in that position of trust.
196. **Disposal Direction – the DFSA’s powers.** Article 64 of the Regulatory Law contains various provisions in relation to ‘Controllers’ (defined in GEN 11.8.2 as any person who holds more than 10% of an Authorised Firm or a Holding Company of that firm), including that the DFSA may object to an existing controller of an Authorised Person where it has reasonable grounds to believe that such a person is no longer an acceptable controller...and may require that the controller and the Authorised Person take such action as specified by the

DFSA. RPP 3-2-34 explains that: *‘The DFSA’s assessment of a proposed acquisition or increase in control of a Domestic Firm is a review of such a firm’s continued fitness and propriety and ability to conduct business soundly and prudently’*. Accordingly, the DFSA takes into account the considerations specified in paragraph 2-2-13 relating to Controllers when making such an assessment including *‘where the Controller will exert significant management influence over the Authorised Person, the reputation and experience of the Controller or any individual within the Controller.’* The DFSA says that these provisions are concerned with protecting the public from Authorised Firms who become unfit as a result of the lack of fitness and propriety of their Controllers.

197. **Must the FMT impose the same penalties as the DMC?** As we see it, obviously not. The DFSA contends that *‘In this case the FMT has reached substantially the same conclusions as the DMC, and the sanctions should stand.’* The DFSA suggested that this was an approach established by the Tribunal in the cases of Waterhouse (FMT 17004, 12/08/2019) at [267] and Dr Sheikh (FMT 19006, 20/10/2020) and Al Masah (FMT 1900, 27/10/2020). The DFSA’s argument depends on distinguishing the statement in the first case and overlooking the words ‘may well’ in the others. The argument does not sit well with the Tribunal’s clear power to decide appeals on penalty only.
198. The argument also overlooks the wide wording of Article 29 (4) of the Regulatory Law which empowers the Tribunal to -
- a) affirm the original decision of the DFSA which is the subject of the reference;
 - b) vary that original decision;
 - c) set aside all or part of that original decision and make a decision in substitution;
 - d) decide what, if any, is the appropriate action for the DFSA to take and remit the matter to the Chief Executive;
 - e) make such order in respect of any matter or any of the parties which it considers appropriate or necessary in the interests of the DFSA’s regulatory objectives or otherwise in the interests of the DIFC.
199. Further the facts relevant to penalty have changed somewhat as a result of our findings about the underlying contraventions and Mr Cefaratti’s latest witness statement, now admitting that he misled the DFSA, which his lawyers describe as him being *‘wholly reconciled to the Decision and recognising the importance*

of confronting and learning from its findings, particularly the conclusions reached in respect of his involvement in misleading the DFSA'. This acceptance of responsibility vindicates the decision of the DFSA rightly to press the case and the vigilance of the individuals concerned with pursuing it.

200. Since February 2022, Mr Cefaratti has under the provisions of an Enforceable Undertaking to the DFSA been able to carry out activities, and participated in the management of Dalma. The terms of the undertaking have included participating in management meetings to keep cohesion with the team, supporting existing clients in an advisory capacity and initiating the recruitment of key executive personnel of proven standing and experience. He submits that he should be permitted to continue to do this. He also has the support and confidence of the Dalma board and of distinguished financial services professionals.
201. **Fines.** The Applicants submit that there is no need to impose deterrent penalties in this case to deter Mr Cefaratti or others from committing future contraventions, and thereby to protect others and point to the following mitigation features as regards the contraventions-
- a) the underlying contravention caused no loss or undue risk to investors, the results being consistent with general market performance at the relevant time. The DFSA disagrees and puts the loss at more than USD400,000. The evidence is mixed without more detailed investigation and study of the overall market conditions and complicated by our findings about Mr Dean's suitability to trade.
 - b) There is no reasonable basis to suppose that Mr Cefaratti is ever likely mislead the DFSA again. The DFSA says that is an open question.
 - c) There is no criminal conduct or motive involved which would make misleading conduct more serious. That is correct.
 - d) The DFSA's claim that Mr Cefaratti's failure to be open with the regulator about minor matters, makes him more likely to mislead in relation to more serious matters is specious. As we see it, this might be said to be a neutral factor as the underlying misconduct would itself be judged. Nevertheless, we do consider that the minor nature of the underlying misconduct does mitigate to a degree.

202. The Applicants also point to the roles of others, particularly Mr Leedham, a very forceful superior, in running the company and the influence he exerted on Mr Cefaratti (who blames himself for weakness, not Mr Leedham for being overbearing). They rely on Mr Cefaratti's age and maturity at the time of the contraventions – 28 in 2016, 35 now. The Applicants also point to his previous good character which we take into account but we bear in mind the DFSA submission that in this field most offenders will be in that position.
203. The Applicants point to Mr Cefaratti's achievements as Dalma's SEO, and his contribution to Dalma's trading success and profitability. They point to his attitude to compliance shown by the breach report he made to the DFSA in 2017 against the advice of Mr Leedham. They set out details of his educational and charity work, his poor health and family challenges at the time of his interviews and his responsibilities for others including a domestic employee and her family. They also rely on Mr Cefaratti's contrition expressed in his fourth witness statement and his remarks to the Tribunal. The DFSA disputes the relevance of any personal mitigation and points out that Mr Cefaratti has not explained what has happened for him only now to accept responsibility for his acts.
204. The penalties imposed by the DMC are summarised at Paragraphs 23 and 24 above. USD20,000 of Dalma's fine of USD150,000 was attributable to the breach of Principle 2. USD18,000 of Mr Cefaratti's fine related to his knowing involvement in the breach of Principle 2, before the adjustment for deterrence, being the need to deter others from committing similar contraventions.
205. There are numerous countervailing considerations urged by the parties and we bear them all in mind. In particular we have regard to the relatively minor nature of the underlying contravention and the fact that the misleading conduct was out of character by someone with no previous record of regulatory infringement.
206. Less relevant are the personal considerations. People are aware of the need to tell the truth well before the age of 28. Poor health or personal distractions are less of an excuse when the contravention has been committed over a period of years and denied for years after that until the Tribunal has given judgment. Mr Cefaratti is an intelligent and educated man with access to the best legal advice. The Dalma requests from the DFSA were in July 2017 and April and June 2018, Mr Cefaratti attended DFSA interviews from April to July 2019. He knew from the first and second Dalma notices of the risks of misleading the DFSA. If it was not clear already, he knew from the letter asking him for interview that the DFSA was concerned that the truth was not being told. He took an oath at each

of the interviews. He had years to try to put things right but decided to take a risk instead.

207. As we have observed before there is a risk that the step system of reaching a fine, which has many advantages, can give an illusion of accuracy as so much depends on the figure one first comes up with. By following this path the DMC arrived at figures for Mr Cefaratti which are about double those imposed in the past in roughly comparable cases. The DMC did this by doubling Mr Cefaratti's fine (including that proportion which related to the Principle 2 breach). We are urged to maintain that '*on the basis of the need to deter others from committing similar contraventions*' as the DFSA's submissions put it.

208. The DFSA (unlike the Applicants) does not refer to the wording of Step 4 (RPP 6-6-9) and did not mention this in oral submissions. The wording is this:

'If the [DFSA](#) considers the figure arrived at after [Step 3](#) is insufficient to deter the individual who committed the contravention, or others, from committing further or similar contraventions then the [DFSA](#) may increase the financial penalty. Circumstances where the [DFSA](#) may do this include:

(a) where the [DFSA](#) considers the absolute value of the penalty too small in relation to the contravention to meet its objective of credible deterrence;

(b) where previous [DFSA](#) action in respect of similar contraventions has failed to improve industry standards. This may include similar contraventions relating to different products;

(c) where the [DFSA](#) considers it is likely that similar contraventions will be committed by the individual or by other individuals in the future; and

(d) where the [DFSA](#) considers that the likelihood of the detection of such a contravention is low.'

209. The imposition of an additional penalty, particularly a doubling of amount, to deter others involves inflicting punishment not otherwise deserved by the offender's conduct. Justice requires that Step 4 be explicitly addressed and that there be clear grounds and evidence to justify such a step. We have neither. As we see it there is adequate deterrence built into the fine we impose below.

210. We reject the submission that there is unfairness in imposing a penalty both on Dalma and on Mr Cefaratti given the latter's control of the former. There is no basis for Dalma to escape a fine which would have been imposed if it had been

owned by others. Further the acts and omissions of Dalma were not purely those of Mr Cefaratti himself.

211. As we see it the appropriate penalties should be USD12,500 for each applicant in respect of Principle 2 and USD150,000 for each as regards misleading the regulator with regard to matters which in the grand scheme of things were relatively minor. It may be that the knowledge that the starting point (which may go up or down in a particular case) when fixing a fine for misleading the regulator in such circumstances will be USD125,000 to 150,000 will be a more useful tool of regulation than the occasional but unpredictable very high deterrent award.
212. **Restriction and Prohibition.** The DFSA cites our decision in *Al Masah* at [404] for the proposition that: *‘The purpose of the provision is not, as is sometimes thought, to punish the individual but to protect the public. For that reason, the effects on the person concerned of prohibition are, at best, a subsidiary factor; the primary focus must always be on whether any lesser course is adequate for public protection. Nevertheless, the consequences for an approved person of his being prohibited are likely to be severe, and the step should correspondingly not be taken lightly; and it is no doubt for that reason that sub-s (2) provides that the Authority may, rather than must, make a prohibition order.’*
213. The DFSA also relied on cases showing that a lack of candour in evidence can be a factor relevant to this issue and also on the fact that Mr Cefaratti had not (at that point) accepted responsibility for the contraventions of which he is guilty.
214. As we have mentioned this was not some isolated and wild error, it was sustained deceit. As one of us puts it *‘Mr Cefaratti didn’t just lie to the DFSA; he continued to lie to them throughout a lengthy investigation and then he lied to the Tribunal and needlessly dragged us all through a rather expensive appeal process. He could easily have “fessed up” and exercised contrition much earlier. The longer he continued to lie, in effect the harder it became for him to admit to his wrongdoing. We have all made mistakes, particularly in our younger years, but the key is to fix mistakes early and never make the same one again! The DFSA can only operate as a regulator if market participants are wholly honest and support the regulatory framework’.*
215. In some past cases the imposition of restriction and prohibition has caused the individual little real prejudice because the nature of what they have done means

that they will never be authorised to carry out financial services again. The consequences are going to be more severe for a person in the position of Mr Cefaratti. Nevertheless, we recognise that the main consideration is the protection of the public. Mr Cefaratti has accepted his guilt, albeit far too late. He has proceeded for some time under the terms of his Enforceable Undertaking to the DFSA, apparently to the satisfaction of both sides. Those now running Dalma are apparently of high reputation and standing and there is no reason to expect them to conduct its affairs in any way to the prejudice of the public.

216. Sustained deceit would, we accept, usually lead automatically to orders of prohibition and restriction but, as the DFSA emphasises, the issue is protection of the public. We therefore propose to impose orders of restriction and prohibition suspended for two years provided that Mr Cefaratti complies with the terms of his undertaking and of any other restrictions reasonably imposed by the DFSA. The effect of such an order, the terms of which are for agreement between the parties or decision by the Tribunal, will be that if Mr Cefaratti fails to comply, at any point during the next two years, the orders will come into effect. If Mr Cefaratti complies the orders will expire at the end of two years.
217. **Disposal Direction.** For the reasons given above, particularly given the nature and quality of the current management of Dalma, we see no need to make such a direction. We reserve the right to revisit this issue should the orders of prohibition and restriction take effect.
218. **Conclusion as to penalty.** Each Applicant will pay a fine of USD162,500 and Mr Cefaratti will be subject to a restriction and prohibition order suspended for two years as explained above.