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Legal Risk of a Scathing Letter of Reference

Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd, Court of Appeal of Singapore

| by Amardeep Singh Toor |

HR practitioners are often requested by companies to provide a reference for their former employees. Are there any legal risks in providing a scathing letter of reference?

Ramesh s/o Krishnan was engaged by AXA Life Insurance Singapore Pte Ltd. He was a financial services director and led a group of advisers under his own agency organisation, the Ramesh Organisation. The relationship between the parties deteriorated and Ramesh resigned.

After resigning from AXA, Ramesh applied to Prudential Assurance Company Singapore Pte Ltd. Prudential had then requested a reference check from AXA. AXA had advised Prudential that the Ramesh Organisation had not been providing proper advice to clients and were carrying out improper practices. Prudential later decided not to hire Ramesh.

Ramesh subsequently commenced legal proceedings against AXA but the High Court of Singapore dismissed his claim. Ramesh then appealed to the Court of Appeal of Singapore. The Court of Appeal summarised the applicable standard of care an employer was required to observe when preparing a reference as follows:

- (a) The employer must ensure that:
 - (i) the facts stated in the reference are true; and
 - (ii) any opinions expressed there are based on and supported by facts which are true.
- (b) The employer must ensure that the facts are accurate and are not misleading or unfair because it fails to present the full picture.
- (c) The employer is expected to disclose whatever is relevant and relates to information that has already been disclosed where withholding such information would render the

disclosed information incomplete, inaccurate or unfair. This may be significant where the recipient of the reference seeks further information or clarification pertaining to what has been disclosed;

- (d) A reference need not be full and comprehensive and does not need to contain each and every material fact about the employee concerned as long as the omission to include any fact does not render the reference either unfair or inaccurate;
- (e) The employer should not include in the reference, whether explicitly or implicitly, complaints or other allegations against the employee that the latter had no knowledge of and had not been given an opportunity to explain or defend himself against. Complaints that were not conveyed to the employee because they were found to be baseless should not be disclosed unless the employer is, for some reason, obliged to do so. In such a case, the employer should make it explicit that:
 - (i) the complaint was dismissed as baseless; and
 - (ii) the employee was not informed of it at that time.

The employer should also inform the employee concurrently.

The Court of Appeal ruled that AXA had breached its duty of care which it owed to Ramesh and ordered that the matter be remitted to the High Court for damages to be assessed.^[1] The Court of Appeal judgment may be viewed [here](#). The High Court in August 2017 awarded S\$4.026 million to Ramesh. AXA appealed the decision of the High Court. In October 2018, the Court of Appeal reduced the damages awarded by the High Court by 20% and ordered interest payable on the damages from the date he would have joined Prudential.^[2]

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[1] [2016] SGCA 47

[2] K C Vijayan, "Ex-insurance agent gets to keep \$4m in damages, less 20 per cent" *The New Paper* (4 October 2018) <<https://www.tnp.sg/news/singapore/ex-insurance-agent-gets-keep-4m-damages-less-20-cent>>