

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION**

Case No: NCT/8271/2013/57(1)

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

and

BUCKSAVER BELEGGINGS CC

RESPONDENT

Coram:

Prof. J.M. Maseko	-	Presiding Member
Adv. J. Simpson	-	Member
Adv. F. Manamela	-	Member

Date of Hearing: 20 March 2014

JUDGMENT AND REASONS

[1] Application for cancellation of registration of Credit Provider in terms of Section 57(1) of the National Credit Act, Act 34 of 2005 ("the Act") – Where Respondent contravened Section 93(2) read with Regulation 30(1) of the Act by failing to comply with provisions of the Act and Conditions of Registration as Credit Provider – Where the Respondent failed to make credit agreements conform to the prescribed format as required by the Act.

[2] Where the Respondent charged interest on Credit Agreements in excess of the prescribed rates – Contravention of Section 100(1)(c) of the Act read with Regulation 42(1).

[3] Where the Respondent failed to keep records of documents for consumers applications for credit and steps taken in respect of affordability assessments – Contravention of Section 170 of the Act with Regulation 55(10)(b)(i).

[4] Where the Respondent failed to comply with legislation applicable to the operation of a business as Credit Provider – Contravention of Clause 1 Part A of General Conditions of Registration.

[5] Application for Default Judgment in terms of Rule 25(3) – Where draft order lacks content on factual aspects to be considered – Tribunal may make own order in respect of issues put before it.

[6] Respondent's Registration as Credit Provider cancelled with immediate effect. No order as to costs.

1. The Parties

- 1.1. The Applicant in this matter is the National Credit Regulator ("the NCR"), an organ of state within the public administration established in terms of Section 12 of the National Credit Act, 34 of 2005 ("the NCA" or "the Act"). The NCR is situated in Randjespark, Midrand ("the Applicant").
- 1.2. The Founding Affidavit (dated 22 March 2013) of the Applicant is deposed to by Mr. Obed Tongwane, the Chief Operations Officer of the Applicant who claims (at Para 1) in the Affidavit to be duly authorised to act on behalf of the Applicant.
- 1.3. At the hearing of 20 March 2014, the Applicant was represented by Ms. D. Govender, an employee of the Applicant.
- 1.4. The Respondent is Bucksaver Beleggings CC, a Close Corporation incorporated in South Africa under Registration Number 2000/067388/23; as well as registered as a Credit Provider by the NCR under Number NCRCP 1515 since 15 June 2007.
- 1.5. The Respondent is situated in Ceres.
- 1.6. There was no answering affidavit from the Respondent on file, at the time of the hearing, and the Respondent was also not represented at the hearing.

2. Jurisdiction

- 2.1. This National Consumer Tribunal ("Tribunal") has jurisdiction to hear this matter in terms of section 57(1) of the NCA.
- 2.2. Section 57(1) of the NCA provides that:

"...a registration in terms of this Act may be cancelled by the Tribunal on request by the National Credit Regulator, if the registrant repeatedly-

- (a) *Fails to comply with any condition of its registration;*
- (b) *Fails to meet a commitment contemplated in section 48(1); or*
- (c) *Contravenes this Act.”*

3. Issues to be Decided

3.1. The issue to be decided in this matter is whether the registration of the Respondent should be cancelled by this Tribunal in line with section 57(1) of the NCA as prayed for by the Applicant. And in deciding this question, this Tribunal has to first decide the individual underpinning claims by the Applicant on:

- (a) Whether since June 2007, to the date of the Application (at least) repeatedly contravened section 93(2) read with Regulation 30(1) of the NCA, for allegedly:
 - (i) failing to comply with the provisions of the Act and the conditions of registration as a credit provider; and
 - (ii) failing to make credit agreements conform to the prescribed format as required by the Act.
- (b) Whether since June 2007, to the date of the Application (at least) the Respondent repeatedly contravened section 100(1)(c) of the NCA, read with Regulation 42(1), by allegedly charging interest on all credit agreements in excess of the prescribed rates;
- (c) Whether since June 2007, to the date of the Application (at least) the Respondent repeatedly contravened section 170 of the NCA, read with Regulation 55(1) (b) (i) and (iv), by allegedly failing to keep records of documents of consumers' applications for credit, as well as the steps taken in respect of affordability assessments conducted on consumers.

(d) Whether since June 2007, to the date of the Application (at least) the Respondent repeatedly contravened the general conditions of its registration as a credit provider, in particular Clause 1 of Part A by allegedly failing to comply with all legislation applicable to the operation of a business as a credit provider.

4. Background

4.1. The evidence of the Applicant centred around an investigation report of an inspector of the Applicant appointed to investigate in terms of section 25 of the Act. The duly appointed inspector, Ms. Sphiwe Mashaba, concluded the investigation on 3 December 2012.

4.2. In the investigation report, Ms. Mashaba indicated, amongst others, that the Respondent:

- (a) charged interest in excess of the maximum rate allowed by the Act;
- (b) failed to keep records of its registered activities; and
- (c) failed to utilise the prescribed form for credit agreements.

4.3. In the investigation report, Ms. Mashaba also indicated that by the above commissions and omissions, the Respondent had contravened the sections and Regulations listed in paragraph 3(1) above.

4.4. As already stated above, there was no evidence of an answering affidavit from the Respondent contained in the case file. And in accordance with Rule 13(5) of the Rules of the Tribunal¹ will deem the facts as alleged to be admitted.

5. The Evidence of the Applicant

5.1. It was the evidence of Ms. Mashaba in the investigation report that:

- (a) She had interviewed Mr. Willem Albertus, the sole owner of the Respondent;
- (b) Mr. Albertus had indicated to her that:

¹ Rules for the Conduct of Matters before the Tribunal, 2007

- (i) The Respondent provides short-term loans to consumers with a single month repayment term;
- (ii) The maximum loan amount is R5000.00 with 5% interest rate;
- (iii) When a consumer applies for a loan, the Respondent requests and retains copies of:
 - The Consumer's Identity Document;
 - The Consumer's recent pay slip;
 - The Consumer's bank statement; and
 - The Consumer's proof of residence.
- (c) When a Consumer applies for credit, the Respondent enters his / her information into the Pro Loan system to check the amount that the consumer can borrow. The loan is then granted to the consumer in cash, provided the consumer qualified for the loan.
- (d) The Respondent does not provide consumers with credit agreements to be signed. The only document consumers sign is a pre-agreement statement and quotation – which occurs prior to them being granted the loan.
- (e) The Respondent has a fixed number of permanent consumers, who make their repayments in cash on the due dates; and they had never defaulted up to that point of the investigation.
- (f) The Respondent does not retain the identity documents of the consumers and their debit cards or their *personal identification numbers* (PIN)².

5.2. After conducting a physical inspection of the premises of the Respondent, however, Ms. Mashaba reported that she had found, in summary, that:

² Paragraph 3.5.8 of the Investigation Report on page 31 of the Case File.

- (a) The Respondent does not keep individual files for each client;
- (b) The pre-agreements signed by the consumers are kept in a paper tray on the desk of the owner in a pile and not filed;
- (c) She sampled 15 of the consumer documents³ found in a pile on the Respondent's desk. The ensuing scrutiny of these documents showed that:
 - (i) The Respondent does not provide consumers with credit agreements;
 - (ii) Whilst the Respondent does not charge consumers service fees, it charges them the correct initiation fee; and
 - (iii) Contrary to what the owner had claimed in the interview, the Respondent actually was charging consumers 15% interest per month. This assertion was supported by documentary evidence in the pleadings.

6. Default Application

- 6.1. On the 11th of June 2013, the Applicant launched an application for a default order against the Respondent.⁴ This application was made in terms of Rule 25(2) of the Rules of the Tribunal.
- 6.2. In support of the default application, the Applicant submitted the grounds for this application as being that:
 - (a) The application in the main matter had been filed on the 26th of March 2013;
 - (b) The Tribunal had issued a notice of complete filing on 2nd of April 2013;
 - (c) The time period within which the Respondent was required to file a response expired on the 23rd of April 2013;

³ Names detailed on page 31 – 32 of the Case file.

⁴ Page 61 of the Case file.

- (d) The Respondent had failed to deliver a response to the application within the required period.

6.3. This Tribunal is empowered by Rule 25(3) of the Tribunal which provides that:

"The Tribunal may make a default order:

- (i) after it has considered or heard any necessary evidence; and*
- (ii) It is satisfied that the application documents were adequately served."*

6.4. In assessing the Applicant's application for a default order, the Applicant has complied with the requirements for the submission of a default application, hence a notice of complete filing had been issued by the Tribunal to the Applicant.

7. The Law on the matter

The law on the matter is such that:

- (1) Sections 52(5)(c) and (d) of the Act provide that:

"A registrant must ... comply with its conditions of registration and provisions of this Act; ... pay the prescribed annual renewal fees within the prescribed time..."

- (2) The General Condition 1 of the Conditions of Registration referred to, provide that:

"The registrant must comply with all applicable legislation relating to the operation of the business of a credit provider, including but not limited to the Act, the regulations and any subsequent amendment or substitution of the applicable legislation and regulations."

8. Analyses of the Evidence and Arguments

(1) In the **Default Application**:

- (a) The rationale and build up to the default application has been adequately considered above. However, it has been accompanied by a draft default order for this Tribunal to make an order of the Tribunal in the event that we agree with its contents.
- (b) Tribunal agrees that an order should be made in the absence of any response from the Respondent, since there is ample evidence on file that the Respondent had the opportunity to respond but elected not to use it. However, the current form of the Draft Order is such that it lacks the content on the factual aspects that need to go into making such a decision.
- (c) Because of the above, this Tribunal then makes its own order in this regard and it becomes the order in respect of all issues put before the Tribunal as discussed below.

(2) In the **main application**:

- (a) Regarding the question whether the Respondent contravened section 93(2) read with Regulation 30(1) of the NCA, for allegedly failing to comply with the provisions of the Act and the conditions of registration as a credit provider; the answer appears to be in the affirmative based on the evidence canvassed above.
- (b) Regarding the question whether the Respondent contravened section 93(2) read with Regulation 30(1) of the NCA, for allegedly failing to make credit agreements conform to the prescribed format as required by the Act; the answer, once again, appears on the affirmative based on the evidence canvassed above.

- (c) Regarding the question of whether since June 2007, the Respondent repeatedly contravened section 100(1)(c) of the NCA, read with Regulation 42(1), by allegedly charging interest on all credit agreements in excess of the prescribed amounts; the answer seems to be the affirmative based on the evidence canvassed above.
- (d) Regarding the question whether since June 2007, the Respondent repeatedly contravened section 170 of the NCA, read with Regulation 55(1) (b) (i) and (iv), by allegedly failing to keep records of documents of consumers' applications for credit, as well as steps taken in respect of affordability assessments conducted on consumers; the answer is in the affirmative based on the evidence canvassed above.
- (e) Regarding the question whether since June 2007, the Respondent repeatedly contravened general conditions of its registration as a credit provider, in particular Clause 1 of Part A by allegedly failing to comply with all legislation applicable to the operation of a business as a credit provider, the answer is yes based on the evidence canvassed above.

9. Order

- (a) In the main application, it is ordered that registration of the Respondent as a Credit Provider is cancelled with immediate effect;
- (b) There is no order as to costs.

Thus done and handed down at Centurion on this 21st day of March 2014.

Prof. Joseph M. Maseko
Presiding Member

Adv. J. Simpson (Member) and Adv. F. Manamela (Tribunal Member) concurring.

