

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

Case number: NCT/6752/2012/57(1)(P)

In the matter between:

THE NATIONAL CREDIT REGULATOR

APPLICANT

and

LOUHEN CONSULTANTS CC

RESPONDENT

Coram:

Prof T Woker – Presiding member

Prof J Maseko – Member

Mr X May – Member

Date of Hearing – 30 May 2013

JUDGMENT AND REASONS FOR THE JUDGMENT

APPLICANT

1. The Applicant in this matter is the National Credit Regulator, a body established in terms of Section 12 of the National Credit Act 34 of 2005 (the "NCA" or the "Act") (hereinafter referred to as "the Applicant").
2. At the hearing of 30 May 2013, Ms. Soobrayan represented the Applicant.

RESPONDENT

3. The Respondent is Louhen Consultants CC, Thohoyandou, a close corporation previously registered in terms of the Close Corporations Act¹ (hereinafter referred to as “the Respondent”). During the investigation by the Applicant it was found that the Respondent was deregistered as a Close Corporation by the CIPC,² however it remained registered under the Applicant and continued acting in such capacity. The Applicant was never notified of the Respondent’s change in status.
4. The Respondent was registered under Registration number 2001/16100/23; on 22 November 2010; and subsequently **de-registered** by CIPRO / CIPC. And at the time of this hearing, the Respondent was still registered as a Credit Provider by the NCR under Number NCRCP 2665.
5. There was no answering affidavit on file from the Respondent; and, at the hearing of 30 May 2013, the Respondent neither attended nor were represented.

JURISDICTION

6. The substantive application in this case was made in terms of section 57(1) of the National Credit Act, 34 of 2005 (hereinafter referred to as “the Act”) for the cancellation of the Respondent’s registration in terms of the Act due to the Respondent’s repeated failure to comply with its conditions of registration or repeated contraventions of the Act.
7. This National Consumer Tribunal (Tribunal) has jurisdiction to hear this matter in terms of section 57(1) of the NCA.

¹ 69 of 1984.

² See page 29 of the paginated documents.

8. 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.”*

ISSUES TO BE DECIDED

9. The issue to be decided then was whether the Respondent did indeed repeatedly fail to comply with its conditions of registration or repeated contraventions of the Act. And in the advent that this Tribunal finds against the Respondent, whether the registration of the Respondent as a credit provider under the NCR, should be cancelled or not.
10. The procedural aspect of this application was on whether a default judgment should be granted against the Respondent. This aspect is amplified on further down in this judgment.

BACKGROUND

11. The Respondent is a juristic person who was previously registered as a close corporation. The sole member of the Respondent is Mr. A.P. van der Walt.³
12. The Respondent applied for registration with the Applicant and was registered as a credit provider with registration number NCRCP 2665 subject to General and Specific Conditions of Registration.⁴

³ A copy of the Respondent's certificate of registration is annexed to the founding affidavit and marked "Annexure A1".

⁴ See "Annexure A2".

13. In response to a complaint, the Applicant's Investigations and Enforcement Department was mandated to conduct an investigation ("the investigation") into the credit provision practices of the Respondent's business.
14. On or about 16 March 2010 an investigation was conducted by Mr. Russel Willoughby, an inspector duly appointed in terms of section 25 of the National Credit Act 34 of 2005 ("the NCA") at the business premises of the Respondent situated at Shop 9, Vhenda Building Society, Thohoyandou.⁵
15. According to the report, the investigation revealed that the Respondent, in conducting its credit provision business, repeatedly contravened the Act.
16. The Applicant alleged that the Respondent:
 - (a) Contravened section 91(b)(i) and (ii) read with sections 90(2)(l)(i) and 90(2)(l)(ii) and sections 133 of the Act by requesting or demanding that consumers give possession of certain instruments or reveal their PIN numbers to the Respondent.
 - (b) Contravened section 81(2) read with section 1 of the Act by failing to perform the required pre-agreement assessments. Alternatively, the Respondent contravened regulation 55(1)(b)(vi) of the Act by failing to keep records of documentation to show support for the steps which were taken to assess the financial position of consumers.
 - (c) Contravened section 93(1) and (2) read with Regulation 30 of the Act by failing to record small credit agreements in the prescribed form, that is, Form 20.2.
 - (d) Contravened section 92(1) read with Regulation 28(1) of the Act by failing to provide consumers with pre-agreement statements and quotations in the prescribed form which is Form 20.

⁵ A copy of the inspector's report is annexed to the founding affidavit marked "Annexure B".

- (e) Contravened section 100(1) (c) read with sections 101(d)(ii) and 105 and Regulation 42(1) of the Act by charging interest on outstanding debts which exceeded the amount that may be charged as per the Act.

THE SUBSTANTIVE APPLICATION

- 17. On 6 November 2012, the Applicant filed Form T1.57 (1) with the Tribunal and a copy of the application was served on the Respondent indicating that the Applicant had commenced proceedings before the Tribunal for an order to cancel the registration of the Respondent.
- 18. A notice of complete filing of the application was issued by the Tribunal on 8 November 2012.
- 19. The Respondent was required to serve its answering affidavit within 15 (fifteen) business days from the date of the notice of complete filing which was the 29th of November 2012.
- 20. The Respondent failed to file an answering affidavit.
- 21. On 11 December 2012 the Applicant filed an application for a default order with the Tribunal requesting that the Tribunal to:
 - (a) Declare the repeated contraventions of Section 93(1) and (2) read with Regulation 30 of the Act by the Respondent to be prohibited conduct in terms of Section 150(a);
 - (b) Declare the repeated contraventions of Section 92(1) read with Regulation 28(1) of the Act by the Respondent to be prohibited conduct in terms of Section 150(a);
 - (c) Declare the repeated contraventions of Section 133(1)(a) read in conjunction with Section 91(b)(i) and Section 90(2)(l)(ii) and Section 90(2)(k)(iii) of the Act by the Respondent to be prohibited conduct in terms of Section 150(a);

- (d) Declare the repeated contraventions of Section 81(2) read with Section 80(1)(a) alternatively Regulation 55(1)(b)(vi) of the Act by the Respondent to be prohibited conduct in terms of Section 150(a);
 - (e) Declare the repeated contraventions of Section 100(1)(c) read in conjunction with Section 101(1)(d)(ii), Section 105(1)(a) and Regulation 42(1) and 42(1)(aa) of the Act by the Respondent to be prohibited conduct in terms of Section 150(a);
 - (f) Cancel the Respondents registration with the Applicant in terms of Section 150(g) of the Act;
 - (g) Impose an administrative fine against the Respondent in terms of Section 151 of the Act; and/or
 - (h) Grant the Applicant such further or alternative relief as the Tribunal may consider appropriate to give effect to the consumer's rights in terms of the Act.
22. As already indicated above, the application for a default judgment was also considered at the hearing of 30 May 2013. The Respondent did not appear at the hearing and a default judgment was granted *ex tempore* (as set out below). This judgment sets out the reasons for that default order and is based on the written submission before the Tribunal as well as the arguments advanced on behalf of the Applicant at the hearing.

ISSUES SUBSEQUENTLY DECIDED BY THE TRIBUNAL

23. With regard to the **preliminary issue**, the Tribunal determined first was whether the requirements for a default judgment had been met.
24. And with regard to the **main application** the Tribunal then determined whether the Applicant has made out a case for the deregistration of the Respondent.

25. A related issue which the Tribunal considered is whether it can deregister the Respondent which was close corporation in circumstances where in terms of the Close Corporations Act the Respondent was de-registered as a close corporation. The juristic entity therefore ceased to exist in terms of the Close Corporations Act but it continued to exist as a registrant in terms of the Act and its name continued to appear on the register.

APPLICATION FOR DEFAULT JUDGMENT

26. Rule 3(2)(c)(vi) of the Tribunal Rules provides that the Tribunal may consider applications for default judgment in terms of Rule 25. The said Rule 25(3) provides as follows:

“The Tribunal may make a default order –

- (a) After it has considered or heard any necessary evidence; and*
- (b) If it is satisfied that the application documents were adequately served.”*

27. The Tribunal was satisfied that the Applicant placed sufficient evidence before the Tribunal in order for the Tribunal to make a determination on the matter. The Tribunal was also satisfied that there had been proper service of the main application on the Respondent.⁶

THE MAIN APPLICATION

28. The Respondent failed to oppose the application and the application was therefore dealt with on the basis of an application for default judgment as provided for in Rule 25(3) of the Rules. The Rules also provide (as per Rule 13 (5)) that any fact or allegation in the application which is not specifically denied in an answering affidavit will be deemed to have been admitted. In the absence of an answering affidavit on behalf of the Respondent, the entire application is admitted. However, in addition there is a sworn statement by the Respondent’s Branch Manager which was attached to the investigation report and marked **Annexure “C”** thereto. This affidavit sets out the

⁶ See page 1 of the paginated pages. The amendment of the Rules by Government Notice 428 of 29 June 2011 provides that the Tribunal need only be satisfied that the application documents were adequately served on the Respondent.

procedure followed by the Respondent from receiving an application for a loan to granting loans to clients.

ANALYSIS OF LEGAL PROVISIONS AND FACTS

29. The provisions of the Act which are relevant to this application are as follows:

Section 57: Cancellation of registration

“(1) Subject to subsection (2), 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 the Act.*

(2) ...”

Section 80(1)(a) Reckless credit

(1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4) –

- (a) The credit provider failed to conduct an assessment as required by section 81(2), irrespective of what the outcome of such an assessment might have concluded at the time; or...*

Section 81(2) Prevention of reckless credit

“(1)...

(2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess-

- (a) The proposed consumer’s-*
 - (i) General understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;*
 - (ii) Debt re-payment history as a consumer under credit agreements;*
 - (iii) Existing financial means, prospects and obligations; and*

- (b) *Whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement...*

Section 90(2)(l)(i); (ii) and Section 90(2)(k)(iii)

Unlawful provisions of a credit agreement

"(1) ...

(2) A provision of a credit agreement is unlawful if-

(a)...

(k) it expresses, on behalf of the consumer-

(iii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time that it is signed.

(l) it expresses an agreement by the consumer to-

(i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or

(ii) provide a personal identification code or number to be used to access an account..."

Section 91(b)(i) and (ii)

Supplementary requirements and document

"A credit provider must not-

(a)...

(b) request or demand a consumer to-

(i) give the credit provider temporary or permanent possession of an instrument referred to in section 90(2)(l)(i) other than for the purpose of identification, or to make a copy of the instrument ;

(ii) reveal any personal identification code or number contemplated in section 90(2)(l)(ii).."

Section 92(1)

Pre-agreement disclosure

"(1) A credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form."

Section 93(1) and (2)

Form of credit agreements

- "(1) The credit provider must deliver to the consumer, without charge, a copy of a document that records their credit agreement, transmitted to the consumer in a paper form, or in a printable electronic form.*
- (2) A document that records a small credit agreement must be in the prescribed form.*

Section 133(1)(a)

Prohibited collection and enforcement practices

- "(1) A credit provider must not-*
- (a) Make use of any document, number or instrument referred to in section 90(2)(l) when collecting on or enforcing a credit agreement; or.."*

Section 100(1)(c)

Prohibited charges

- (1) A credit provider must not charge an amount to, or impose a monetary liability on the consumer in respect of-*
- (a)...*
 - (b)...*
 - (c) an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act; or.."*

Section 101(1)(d)(li)

Cost of credit

- (1) A credit agreement must not require payment by the consumer of any money or other consideration, except-*
- (c) Interest, which*
 - (i)..*
 - (ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105..."*

Section 105(1)(a)

Maximum rates of interest, fees and charges

- "(1) The Minister, after consulting the National Credit Regulator, may prescribe a method for calculating –*

(a) A maximum rate of interest..”

APPLICABLE REGULATIONS OF THE NCA

Regulation 30

Prescribed form for small agreements

- (1) A document that records a small credit agreement must contain all the information as reflected in Form 20.2*
- (2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider*
- (3) For purposes of electronic or telephone originated small agreements, the electromagnetic recording and transcribing of the agreement will be sufficient, provided that the consumer is supplied with a copy of the agreement within a reasonable time.*

Regulation 28(1)

Pre-agreement statement and quotation for small agreements

- (1) The pre-agreement statement and quotation given to a consumer in terms of section 92(1) of the Act must comply with the following requirements:*
 - (a) The pre-agreement statement and quotation may be contained in one document or in two separate documents;*
 - (b) The pre-agreement statement and quotation must be in the format set out in Form 20 ;*
 - (c) For purposes of electronic or telephone originated pre-agreement statements and quotation for small agreements, the electromagnetic recording and transcribing of documents will be sufficient, provided that the consumer is supplied with copies of the documents within a reasonable time...”*

Regulation 55(1)(b)(vi)

Record of registered activities to be retained by registrants

(1) In addition to any records that must be kept in terms of the Act, a registrant must maintain the following records relating to its registered activities, which records may be kept in electronic format:

(a)...

(b) Credit providers, in respect of each consumer:

(vi) record of payments made..."

30. The Act does not provide for the lapsing of registration or for the removal of registrant's names by the Applicant in circumstances where the registrant is still paying its registration fees, even though it has ceased to exist as a legal entity. Therefore the only manner in which such a registrant's name may be removed from the register is when the Applicant applies to the Tribunal, for that name to be removed from the register in terms of section 57 or when a registrant voluntarily cancels its registration in terms of section 58. It appears also in these circumstances, that the Respondent continued to act as credit provider and it continued to pay its annual registration fees, notwithstanding the fact that it has ceased to exist as a close corporation.
31. The Applicant's investigation revealed that the following practices which were in contravention of the Act, were entrenched in the Respondent's business:

Contravention of Section 93(1) and (2) of the Act read with Regulation 30

32. Credit agreements being utilised by the Respondent did not contain all the information as reflected in Form 20.2 of the Act as prescribed by Regulation 30(1). The Branch Manager of the Respondent, Ms. Khoza, deposed to an affidavit, in which she stated that the Respondent had stopped issuing contracts to its clients in 2008 and that it had started issuing them with a "specific client report" instead. This "specific client report" lacks the following information which is required by Regulation 30(1) of the Act:⁷

- It does not disclose the type of agreement;

⁷ The affidavit was annexed to the Investigation Report and is marked Annexure "C" thereto

- It does not disclose the parties who are entering into the agreement, more specifically, it does not disclose the credit provider's name, NCR Registration number, physical address or contact number;
- It does not contain a payment schedule indicating the credit extended to the consumer;
- It does not set out any of the information listed in paragraph 1 to 17 of the Form 20.2 as prescribed by the Act which includes information such as payments (frequency and number of payments), insurance, statements and default administration costs, amongst others;
- It does not disclose the date on which the agreement was entered into as well as the amount of credit advanced, the number of instalments, the initiation fee and the monthly service fee.

Contravention of Section 92(1) read with Regulation 28(1) of the Act

33. The Respondent does not furnish consumers with a pre-agreement statement and quotation which is a contravention of Section 92(1) and Regulation 28(1).⁸

Contravention of Section 91(b)(i) and (ii) read with Sections 90(2)(l)(i) and Section 90(2)(l)(ii) of the Act

34. Three boxes of envelopes containing inter alia identity documents, debit cards, personal identification numbers (PINS) and savings account passbooks were found by the Applicant's Inspector at the offices of the Respondent. The details on and inside the envelopes were matched to applications for loans and loan agreements of consumers.⁹ According to Ms Khosa, the instruments and PINS were obtained from consumers as part of the loan application process (either requested or demanded) and were used by herself or staff members to withdraw amounts

⁸ See Annexure C (Ms Khosa's affidavit).

⁹ The inspector copied these items and annexed them as Annexure "B" to his investigation report.

to settle loans at a later stage, or were held at the office until the day that consumers settled their loans. These documents were not just used for the purpose of identification or to make copies.¹⁰

Contravention of Section 81(2) read with Section 80(1)(a) of the Act alternatively in contravention of Regulation 55(1) of the Act

35. The Inspector examined and copied a number of client files¹¹. His examination revealed that the Respondent does not perform any assessment of any kind with respect to a consumer's debt repayment history as a consumer under credit agreements or a consumer's existing financial means and obligations. The computer generated loan application form reflects only the income of the consumer. In the absence of any document reflecting such an assessment, it can be concluded that no assessment was done and that the Respondent therefore contravened Section 81(2). The consequence of not conducting assessments is that the Respondent entered into reckless credit agreements with consumers, in contravention of Section 81(3) of the Act. Alternatively, even if such assessments had been conducted, the Respondent would in any event be in contravention of Regulation 55(1)(b)(vi) of the Act because it failed to keep a record of such assessments.

Contravention of Section 100(1)(c) and Section 101(1)(d)(ii) read with Regulation 42(1) of the Act

36. Regulation 42(1) of the Act states that the maximum prescribed interest rate applicable to short term credit transactions is 5% per month. The "client detail report" indicates that a monthly interest rate of 30% is levied on all loans/credit agreements.
37. The evidence submitted by the Applicant, which is uncontested, clearly indicates that the requirements of section 57 have been met in that the Respondent has repeatedly contravened the provisions of the Act. The specific contraventions alleged by the Applicant are supported by documentary evidence as well as an affidavit by an employee of the Respondent.

¹⁰ See her affidavit marked Annexure "C" to the investigation report.

¹¹ See Annexure "D" to "N" to his report.

38. In addition the Respondent has contravened its conditions of registration in that it failed to inform the Applicant of its change in status regarding its registration as a close corporation. Section 6 and 7 of its conditions of registration read as follows:

Any significant change in shareholding, ownership company structure or control of the registrant, or acquisitions and mergers, must be reported to the National Credit Regulator, if such changes or events impact on the criteria for registration as a credit provider, as per section 40 of the Act.

The registrant must further notify the National Credit Regulator of any material change in the information provided at the time of registration where such change is significant to the registrant's ability to conduct the business of a credit provider, or ability to comply with the Act or regulations.

AN APPROPRIATE ORDER

39. When deciding on an appropriate order, the Tribunal must take the following factors in consideration:¹²

- (a) The seriousness of the contraventions;
- (b) The position of the Respondent; and
- (c) The rights of the consumers.

40. Even though these factors were identified in matters dealing with the deregistration of a debt counsellor, the test can also be applied to matters in which the deregistration of a credit provider is sought.

¹² These factors were identified by the Tribunal in the matter of *NCR v Van Dyk* NCT/2017/2011/57(1). The same factors were considered in other matters such as *NCR v Kibogo* NCT/2881/2011/57(1) and *NCR v Njokweni* NCT/70/2009/57(1)

Seriousness of the contraventions

41. In the matter of the *National Credit Regulator v Piet Cash Loans*¹³ the Tribunal held that the contraventions by the Respondent, which were similar to the contraventions in this matter, are extremely serious. The Tribunal ordered that the practice of the Respondent in that matter, to demand or request consumers to give possession of prohibited instruments such as PIN numbers and bank cards, is a contravention of Section 91(b)(i) and (ii) of the Act. This conduct was declared to be prohibited. Furthermore, in the same matter, the Tribunal ordered that the Respondent contravened the provisions of Section 81(2) by failing to conduct pre-agreement assessments, alternatively contravened Regulation 55(1)(b) of the Act by failing to keep proper record of such. This was also declared to be prohibited conduct.¹⁴
42. The Tribunal also considered the issue of retention of bank cards in one of its very early judgments, *National Credit Regulator v HD Finance Group*¹⁵. In that matter the Tribunal held as follows:

“A prohibition against the taking of bank cards and PIN codes from borrowers has been in existence since 1999. Although the enactment containing the prohibition may have changed over the years, the message has remained the same”
43. The Tribunal found that the Respondent in that matter repeatedly contravened the Act and cancelled the Respondent’s registration as a credit provider.
44. By failing to conduct the necessary pre-agreement assessments, the Respondent entered into reckless credit agreements. This, in turn, is also an extremely serious contravention of the Act.
45. As for the remaining contraventions of the Act as alleged and proven by the Applicant, each of the contraventions set out above is in fact a contravention of the Act and each of these contraventions occurred on more than one occasion. Each of the contraventions is serious in nature.

¹³ NCT/654/2010/57

¹⁴ Paragraph 2 of 2 *supra*

¹⁵ NCT/23/2008/57(1)

46. The final point which must be noted in this regard is that the Respondent has ceased to exist as a legal entity and therefore its name must be removed from the register of registrants. The Tribunal is of the view that the Respondent could have been deregistered on this basis alone.

The position of the Respondent

47. Cancelling the registration of a registrant may have serious consequences. In the present matter, the Respondent is also the employer of various staff members and the deregistration of the Respondent will have a serious impact on such individuals as well.
48. This is however not the only factor to consider and when the seriousness of the contraventions and the prejudice suffered by the consumers are weighed up against the effect of deregistration on the Respondent, it is submitted that the Respondent's position cannot in any way justify the severity of its contraventions and the prejudice that consumers suffer and will continue to suffer as a result thereof.

The rights of the consumers

49. The rights of the consumers are severely prejudiced by the Respondent's practices and its continued contraventions of the Act. The Respondent entered into credit agreements with consumers, without conducting pre-agreement assessments, charges fees in excess of the prescribed rates and then retains bank cards and PIN numbers to ensure that loans are repaid. This is severely prejudicial to consumers and is also in direct contrast with the purpose of the National Credit Act.

Can the Tribunal grant an administrative fine on the evidence before it?

50. As far as the prayer for an administrative fine is concerned, the Applicant has failed to provide the Tribunal with the necessary evidence to consider when granting an administrative fine. Section 151(3) of the NCA provides that, when determining an appropriate fine, the Tribunal must consider the following factors:

- (a) The nature, duration, gravity and extent of the contravention ;
 - (b) Any loss or damage suffered as a result of the contravention ;
 - (c) The behaviour of the respondent ;
 - (d) The market circumstances in which the contravention took place ;
 - (e) The level of profit derived from the contravention ;
 - (f) The degree to which the respondent has co-operated with the NCR ;
 - (g) Whether the respondent has previously been found in contravention of this Act or the CPA.
51. The Applicant has furnished the Tribunal with evidence relating to the conduct of the Respondent, a statement by an employee of the Respondent, documentary evidence supporting the allegations of prohibited conduct and copies of client files made by the Applicant's inspector.
52. The Tribunal is however not in possession of any information or documentary evidence relating to the financial situation of the Respondent or the level of profit that the Respondent derived from the transactions. The Tribunal has not been provided with a comprehensive list of clients and loan agreements or the value thereof, and it is therefore submitted that the Tribunal is not in a position to determine the amount of an appropriate administrative fine. It seems also that such a penalty would in any event be meaningless, given the fact that the Respondent has ceased to exist in law (even though it continues to act in practice).
53. The Tribunal requested the Applicant to address this aspect at the hearing. In particular, the Tribunal was concerned about the conduct of the member of the Respondent who appeared to be the person in practical terms who was responsible for the prohibited conduct.¹⁶ The Tribunal considered whether it would be appropriate to impose an administrative penalty on this member.
54. In terms of Section 140(1) of the Act, the Tribunal may consider whether a credit provider engaged in prohibited conduct and make such a declaration in terms of the Act, only upon investigation by the Applicant into prohibited conduct, and a subsequent referral to the Tribunal.

¹⁶ See affidavit of Ms Khosa.

55. Only the conduct of the close corporation (Respondent) was investigated by the National Credit Regulator and referred to the Tribunal. The Tribunal consequently declared its conduct prohibited and is therefore entitled to impose an administrative penalty on the Respondent only.
56. The Applicant has not cited the member of the Respondent as a second respondent in this matter. Therefore the Tribunal cannot impose an administrative penalty on this member, however, the Tribunal continues to remain extremely concerned about the conduct of the member who appears to be acting as a credit grantor despite the fact that the Respondent has ceased to exist as a juristic person. The Tribunal recommends therefore that the Applicant investigate the conduct of the member of the Respondent in order to establish whether or not he is engaging in prohibited conduct.

ORDER OF THE TRIBUNAL

57. The Respondent's registration with the Applicant was cancelled as from the date of the hearing (30 May 2013).
58. There is no order as to costs.

Handed down at Centurion on 4 July 2013

[Signed]

Prof T Woker
Presiding member

Prof J Maseko (Member) and Mr X May (Member) concurring.

Authorised for issue by the National Consumer Tribunal

Case number _____
Date: 2013 / 07 / 25
Ccy y mm dd

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