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IN THE NATIONAL CONSUMER TRIBUNAL HELD IN PRETORIA

CASE No: NCT/710/2010/57(1)(P)

In the matter between

National Consumer Regulator

Applicant

And

Barry Kotze

Respondent

ORDER

Having read the papers filed of record and heard the parties, the Tribunal hereby makes the following ruling:

The Applicant requested that the registration of the Respondent be cancelled and that the files of the Respondent's existing clients be handed to the Applicant so that it could arrange for other debt counsellors to take over the matters. The Applicant also requested that the Respondent be ordered to refund existing clients who had paid debt counselling fees. On the other hand the Respondent requested that he be given a further opportunity to prove that he could provide professional services as a debt counsellor. In arriving at an appropriate order in this matter the Tribunal takes a number of factors into consideration:

- (1) The seriousness of the contraventions;

- (2) The position of the Respondent; and
- (3) The rights of the Respondent's existing clients.

The Tribunal considers the contraventions by the Respondent to be extremely serious. The Respondent's failure to keep proper records and his failure to comply with the procedures set out in the Act place his clients at serious risk.

The Tribunal therefore grants the following orders/prayers:

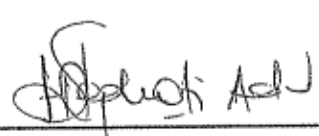
1. Prayers a – f and prayer k;
2. Prayer (g) is modified to include that the cancellation of the registration of the Respondent is with immediate effect;
3. Prayer (h) is granted but should be subject to a full audit of the files and accounts used for debt counselling fees by the Respondent to ensure that all monies that the Respondent received in the execution of its duties as a Debt Counselor, are refunded to the relevant consumers; and
4. Prayers (j) is amended to order the Applicant to immediately take possession of all the files that are in the custody of the Respondent, within a period of 48 hours and to ensure that these are distributed to Debt Counsellors who can immediately assist consumers. The Applicant must inform all such consumers of the order of the Tribunal as well as to furnish details of the Debt Counselors assigned to their matter. The Respondent is to fully co-operate with the Applicant in carrying this out.
5. Prayer (l) is not granted – each party is to carry its own legal costs.

The parties are informed that the Tribunal will furnish full reasons for the order in due course.

Signed at CENTURION this 11th day of November 2010



ADV FATI MANAMELA



ADV NEO SEPHOTI



PROF BONKE DUMISA