

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

Case Number: NCT/8312/2013/57(1)(P)

In the matter between:

THE NATIONAL CREDIT REGULATOR

APPLICANT

and

GODFREY MEGALANE T/A GM FINANCIAL SERVICES

RESPONDENT

Coram:

Prof B Dumisa	–	Presiding member
Mrs H Devraj	–	Member
Prof J Maseko	–	Member

Date of Hearing	–	27 March 2014
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JUDGMENT AND REASONS

[1] Application for cancellation of Respondent's registration as a Debt Counsellor in terms of Section 57(1) of the National Credit Act, Act 34 of 2005 ("the Act") – Cancellation sought on the basis of repeated failure to comply with conditions of registration and repeated contraventions of the Act.

[2] Where the Respondent had inter alia fraudulently advised a complainant that he had referred his debt review matter to the Magistrate's Court, whereas this was in fact not true – Where the Respondent had absconded from and/or abandoned his debt counselling practice.

[3] Where the Respondent continuously failed to co-operate with the Inspector who had been mandated by the Applicant to investigate the business activities of the Respondent - Where the Respondent even failed to meet the Inspector after a summons had been issued in terms of Section 139(3) of the Act- Where the matter proceeded in the absence of the Respondent in terms of Rule 24(b)(i) of the Rules of the Tribunal.

[4] Respondent's Registration as Debt Counsellor cancelled with immediate effect. No order as to costs.

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 the matter the Applicant was represented by Mr Joseph Selolo, the legal representative and employee of the Applicant.
3. The Applicant's Founding Affidavit is deposed to by Zwelithini Ronald Zakwe, Senior Legal Advisor Executive in the employ of the Applicant.

RESPONDENT

4. The Respondent (and the Registrant) is Godfrey Megalane, a major male, registered with the Applicant as a Debt Counsellor under registration number NCRDC 432, with effect from 30 June 2008, subject to General and Specific Conditions of Registration and trading as GM Financial Services (hereinafter referred to as "the Respondent").
5. There was no answering affidavit from the Respondent.
6. At the hearing the Respondent did not appear in person and was not represented. Proof was provided to indicate that the Respondent had been properly served with all the necessary documents pertaining to the set-down for 27 March 2014.

APPLICATION TYPE

7. This Tribunal derives the jurisdiction to hear this matter from Section 57(1) of the NCA.
8. This is an application in terms of Section 57(1) of the NCA for the cancellation of the Respondent's registration as a debt counsellor due to the Respondent's alleged repeated failure to comply with its conditions of registration and/or repeated contraventions of the Act.

BACKGROUND

9. According to the Applicant –

- 9.1 The Respondent was registered by the Applicant as a debt counsellor with registration number NCRDC 432, with effect from 30 June 2008, subject to General and Specific Conditions of Registration.
- 9.2 During the period between January and May 2012, complaints were lodged with the Applicant by two consumers namely Mr TPA Heynecke and KW Rushmer ("the Complainants") against the Respondent. Both of the Complainants had applied to the Respondent for debt review. Both Complainants transferred funds into the Respondent's account, so that funds could be distributed by the Respondent amongst their respective credit providers.
- 9.3 The Complainants realised that the Respondent had not distributed the funds when they became inundated with phone calls from their credit providers for payment of their outstanding debts.
- 9.4 On 31 January 2012, Mr Lesley Odendaal ("the Inspector") was appointed by the Chief Executive Officer of the Applicant in terms of Section 25(1)(a) of the Act to conduct an investigation into the Respondent's business. The Inspector encountered numerous problems in trying to interview the Respondent in order to solicit his response to the allegations made by the Complainants. The Respondent, however, could not be reached despite the inspector's numerous attempts to meet him.
- 9.5 On more than one occasion the Inspector found the Respondent's business premises locked despite having an appointment with the Respondent at the site. It is alleged that the Respondent could not be reached on the cell phone number displayed on the window at his business premises. The Respondent had failed to inform his clients and the Applicant of his current location. The clients and the Inspector thus found themselves always faced with closed / locked premises whenever they tried to contact the Respondent.

- 9.6 Even after the Inspector had been able to contact the Respondent, the Respondent continuously failed to co-operate with the Inspector who had been mandated by the Applicant to investigate the business activities of the Respondent and to establish whether he had been conducting his business in compliance with the Act.
10. Due to all these problems with the Respondent even failing to meet the Inspector after a summons had been issued in terms of Section 139(3) of the Act, the Inspector was thus finally restricted to rely only on the documents provided by Nedbank, one of the relevant credit providers, and those of the complainants.
11. This resulted in the investigation report, dated 29 June 2012, ("the investigation report") being submitted to the Applicant.
12. The investigation report revealed that the Respondent is a former employee of the Applicant who was employed as a Debt Relief Programme ("DRP") Officer during the period 1 July 2007 to 29 June 2008. The Applicant asserts, therefore, that as a former employee of the Applicant, the Respondent is familiar with the provisions of the Act, its Regulations, the conditions of his registration as a debt counsellor as well as the duties of a registered debt counsellor.
13. In summary the Investigation Report states that the Respondent conducted his business in a manner which contravened the General and Specific Conditions of his Registration in addition to certain Sections and Regulations of the Act.
14. The Respondent is alleged to have contravened the following sections of the Act, during the period June 2008 to at least the point of the investigation by the Applicant on 8 March 2012:
- 14.1 Contravention of Regulations 24(1) and 55(1)(a)(i): Failure to keep record of any Form 16, which relates to an Application for Debt Review;
- 14.2 Contravention of Regulation 24(2): Failure to deliver a completed Form 17.1 to all credit providers that are listed in the application and every registered credit bureau;
- 14.3 Contravention of Section 86(4)(b)(i): Failure to notify all listed credit providers of the debt review application in the prescribed manner and form;
- 14.4 Contravention of Section 86(6)(a) and Regulation 24(6) and 24(10) read with Section 86(8)(b) of the Act: Failure to make a determination whether the consumers were over-indebted; failure to notify the relevant credit providers and / or refer the matter to the Magistrates Court with

recommendations. The Respondent also fraudulently claimed to have referred the matter to the Magistrate's Court, whereas this was proved not be the case when the Inspector investigated the matter.

- 14.5 Contravention of Section 52(5)(c) read with Regulation 11 of the Act: Failure to comply with his conditions of registration and provisions of the Act, in that he received funds from consumers while being specifically prohibited from such conduct.
- 14.6 Failure to comply with Condition B1 of Specific Conditions of Registration: Receipt of payments from consumers in respect of debt obligations; and having such funds paid into his personal account, which he was expressly prohibited from doing by this Specific Condition of his Registration. He also failed to distribute such funds to the credit providers.
- 14.7 Failing to inform the Applicant of the change in his personal circumstances, thereby contravening Part A6 of the General Conditions of Registration as a Debt Counsellor, in that he abandoned his debt counselling practice without informing the Applicant.

15. In light of these repeated contraventions of the Act, the Regulations and the Respondent's Conditions of Registration, the Applicant applied for the following from the Tribunal:

- 15.1 In terms of Section 150(a) of the Act, declaring the conduct of the Respondent a contravention of the following sections of the Act, Regulations and Conditions of Registration:
 - (i) Contravention of Regulation 55(1)(a)(i) of the Act;
 - (ii) Contravention of Regulations 24(1), 24(2), 24(6) and 24(10) of the Act;
 - (iii) Contravention of Sections 86(4)(b)(i), 86(6), 86(7), and 86(8) of the Act;
 - (iv) Contravention of Sections 52(4)(b) and 52(5)(c) read with Section 44(2) and Regulation 11 of the Act, respectively;
 - (v) Contravention of Section 139(3) of the Act;
 - (vi) Failure to comply with General Conditions, Parts A1, A2, A6, A8, of the Respondent's Conditions of Registration;
 - (vii) Failure to comply with Specific Condition B(1) of the Respondent's Conditions of Registration.
- 15.2 Cancellation of the Respondent's registration as a debt counsellor in terms of Section 57(1)(a) of the Act;
- 15.3 In terms of Section 150(i), make any other appropriate order required to give effect to the consumers' rights in terms of the Act.

APPLICABLE SECTIONS OF THE NCA

16. 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) ..."

17. Section 86(7)(c)

Application for debt review

"(7) If, as a result of an assessment conducted in terms of sub-section (6), a debt counsellor reasonably concludes that-

(a)..

(b)...

(c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders:

(i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and

(ii) that one or more of the consumer's obligations be re-arranged by-

(aa) extending the period of the agreement and reducing the amount of each payment due accordingly ;

(bb) postponing during a specified period the dates on which payments are due under the agreement ;

(cc) extending the period of the agreement and postponing during a specified period the date son which payments are due under the agreement, or;

(dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6."

18. **Section 52(4)(b)**

Certificate, validity and public notice of registration

"(4) A registration -

- (a) Takes effect on the date on which the certificate or duplicate certificate of registration is issued; and*
- (b) Subject to timely payment of the prescribed registration renewal fees, remains in effect until-*
 - (i) The registrant is deregistered; or*
 - (ii) The registration is cancelled in terms of this Act"*

19. **Section 44(2)**

Registration of debt counsellors

"(2) A person must not offer or engage in the services of a debt counsellor in terms of this Act, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as such in terms of this Chapter"

20. **Regulation 55(1)(a)**

Records 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) Debt Counsellors, in respect of each consumer:*
 - (i) Application for debt review ;*
 - (ii) Copy of all documents submitted by the consumer ;*
 - (iii) Copy of rejection letter (if applicable) ;*
 - (iv) Debt restructuring proposal ;*
 - (v) Copy of any order made by the tribunal and/or the court ;*
 - (vi) Copy of the clearance certificate"*

APPLICABLE CLAUSES OF THE RESPONDENT'S CONDITIONS OF REGISTRATION

21. **General Condition 2**

"The Debt Counsellor must perform debt counselling in a manner that is consistent with the purpose and requirements of the Act. The Debt Counsellor must in all instances act professionally and reasonably in providing debt counselling services to consumers and provide such services in a

manner that is timely, fair and non-discriminatory and does not bring the NCR or debt counselling into disrepute"

22. Specific Condition 1

"The Debt Counsellor may not receive payments from consumers in respect of debt obligations that were re-arranged in terms of the Act or distribute such payments to credit providers. All payments from consumers in respect of debt obligations and/or debt counsellors' fees must be received and distributed to the respective parties by a Payment Distribution Agency approved by the National Credit Regulator.

The specific conditions are proposed for the following reasons:

To prevent a Debt Counsellor from being involved in payment distribution if such a Debt Counsellor does not have the adequate staff, infrastructure, systems or procedures in order to safeguard the funds, efficiently distribute funds or account for such funds."

THE HEARING

23. At the hearing of the matter the Applicant's was represented by Mr Joseph Selolo.
24. The Respondent was neither present nor represented at the hearing.
25. The matter proceeded in the absence of the Respondent in terms of Rule 24(b)(i) of the Rules of the Tribunal and the Tribunal adjudicated on it on a default basis.

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

26. A Notice of Complete Filing was issued by the Registrar of the Tribunal to both the Applicant and the Respondent on 04 April 2013. The notice stated that the Respondent had to file an answering affidavit within 15 business days. To date the Respondent has not filed any answering affidavit or response to the application.
27. The Applicant filed the Application for Default Judgment with the Tribunal on the 3rd of July 2013, primarily on the grounds that the Respondent had not filed his answering affidavit by the 25th of April

2013, which was the last date available for him to do so in order to comply with the Tribunal's filing requirements.

28. Rule 13(5) of the Rules of the Tribunal¹ provides as follows:

"Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted"

29. The Tribunal is satisfied that the Respondent was given sufficient opportunity to respond to and / or challenge any of the Applicant's allegations, during the investigation stage and / or after being officially notified of the Applicant's Application to the Tribunal for the cancellation of his (Godfrey Megalane's) registration as Debt Counsellor.

30. Therefore, in the absence of any answering affidavit filed by the Respondent, the Applicant's application and all of the allegations contained therein are deemed to be admitted.

CONSIDERATION OF THE EVIDENCE BEFORE THE TRIBUNAL

31. At the hearing of the matter, the Applicant's representative highlighted some of the transgressions by the Respondent, especially the fact that the Respondent had fraudulently claimed, in one of his emails to one of the complainants, that he had referred the complainant's debt review matter to the Magistrate's Court, whereas this was in fact not true.

32. The Applicant's representative spent more time highlighting that the Respondent had absconded from and /or abandoned his debt counselling practice.

33. In the absence of any contrary evidence placed before the Tribunal it is accepted that the Respondent repeatedly contravened the Act, Regulations and the conditions of his registration as alleged.

¹ For the Conduct of Matters before the National Consumer Tribunal published under GN789 in GG30225 of 28 August 2007 as amended by GenN428 in GG34405 OF 29 June 2011 (hereinafter "the Rules of the Tribunal").

CONSIDERATION OF THE ORDERS APPLIED FOR

Cancellation of the Respondent's registration as a debt counsellor in terms of Section 57(1)(a) of the Act

34. Section 57(1) empowers the Tribunal to cancel the registration of a debt counsellor where he/she repeatedly fails to comply with the conditions of registration and/or contravenes the Act.
35. In the matter before the Tribunal the Respondent has, by his conduct, contravened his conditions of registration and is deemed to have absconded and abandoned his clients, which puts debt counselling and the Applicant in disrepute.
36. The facts placed before the Tribunal clearly show that the Respondent repeatedly failed to comply with the Act and this had a serious impact on the consumers who were his clients. In the circumstances, the cancellation of his registration is justified.

ORDER

37. Accordingly, the Tribunal makes the following order:

37.1 The Respondent's registration as a debt counsellor is cancelled with immediate effect.

37.2 No order as to costs.

DATED ON THIS 28th DAY OF MARCH 2014

[signed]

Prof B. Dumisa

Presiding Member

Mrs H Devraj (Member) and Prof J Maseko (Member) concurring

Authorised for issue by the National Consumer Tribunal

Case number

Date 2014 03 28
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