

IN THE NATIONAL CONSUMER TRIBUNAL
HELD AT CENTURION

Case number: NCT/17838/2014/148(1)(P)

In the matter between:

HANS REINHARD PETTENBURGER-PERWALD
OBO
CHRISTINA MARGOT COLLET

APPELLANT

and

JDG TRADING (PTY) LIMITED
WOOLWORTHS (PTY) LIMITED
THE MOTOR FINANCE CORPORATION (PTY) LIMITED t/a MFC
TELKOM SA LIMITED
ABSA BANK LIMITED

FIRST RESPONDENT
SECOND RESPONDENT
THIRD RESPONDENT
FOURTH RESPONDENT
FIFTH RESPONDENT

Coram:

Mr F Sibanda	–	Presiding member
Adv F Manamela	–	Member
Ms P Beck	–	Member
Date of Hearing	–	10 December 2014

JUDGMENT AND REASONS

THE PARTIES

1. The Appellant is Mr Hans Reinhard Pettenburger-Perwald a debt counsellor registered in terms of the National Credit Act, No 34 of 2005 ("the NCA") with registration number

NRDC49 (hereinafter referred to as “the Appellant”). The Appellant is acting on behalf of Ms Christina Margot Collet, a consumer who applied for the restructuring of her debt in terms of the NCA.

2. The First to Fifth Respondents are credit providers registered in terms of the NCA.

JURISDICTION

3. The Appellant lodged an appeal against the decision of a single member of the Tribunal in terms of section 148(1) of the NCA, which states that –

“(1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member to a full panel of the Tribunal”

4. The Tribunal has jurisdiction to hear this matter.

ISSUES TO BE DECIDED

5. The Tribunal must determine whether the single member erred in refusing to make a debt-rearrangement agreement an order of the Tribunal.

BACKGROUND

6. On 7 July 2014 the Appellant lodged an application with the Tribunal in terms of section 86(8) of the NCA, on behalf of Ms Christina Margot Collet to have a debt re-arrangement agreement made an order of the Tribunal in accordance with section 138(1) of the NCA.
7. The application was considered by a single member, Prof J. Maseko on 23 August 2014. Prof Maseko refused to grant the application for the following reasons:

“1. The first Credit Provider is cited in the application as JDG Trading (Pty) Ltd, and yet the acceptance letter was clearly written for HI Finance – and

this is contained in the letter tendered as evidence in support of this application.

2. *The third Credit Provider is cited in the application as The Motor Finance Corporation (Pty) Ltd t/a MFC. But there is no evidence to this effect. The only evidence in the case file, pertaining to the same information, is in the form of an acceptance letter from MFC a Division of Nedbank Limited¹.*
8. On 15 September 2014 the Appellant lodged an appeal against the decision of the single member.
9. A Notice of Complete Filing was sent to the parties on 30 September 2014, followed by a Notice of Set Down dated 19 November 2014. The matter was set down for hearing on 10 December 2014.

THE HEARING

10. At the hearing the Appellant was represented by Mr Rynhard De Lange (hereinafter referred to as "Mr De Lange") who appeared via Skype video and audio transmission. There was no appearance by any of the Respondents or their representatives at the hearing.
11. The Notice of Set Down sent to the parties stated that the Respondents had to respond within 15 days by serving an answering affidavit on the Appellant. The Respondents, however failed to do so.
12. Rule 13(5) of the Rules for the Conduct of Matters before the National Consumer Tribunal ("the Rules of the Tribunal") provides that:

"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"

¹ 'Refusal of an application for a consent order', dated 23 August 2014, page 3.

13. In the absence of any answering affidavit filed by the Respondents, the Appellant's application and all of the allegations contained therein are deemed to be admitted.
14. Rule 24(1)(b) of the Rules of the Tribunal provides that the Presiding member may continue with the proceedings in the absence of the Respondents if the Respondents fail to attend or be represented at the hearing.
15. Rule 24(2) of the Rules of the Tribunal states that the Presiding member must be satisfied that the Respondents were properly notified of the date, time and venue of the proceedings.
16. In this matter the Notice of Set Down issued by the Registrar to all the parties is before the Tribunal and the Presiding member is satisfied that all the parties were properly notified of the hearing.
17. The Tribunal therefore proceeded with the hearing of the matter.
18. Mr De Lange explained to the Tribunal that JDG Trading (Pty) Ltd acts on behalf of Hi Finance and therefore all correspondence should go through JDG Trading (Pty) Ltd. Furthermore the acceptance letter from the Credit Provider clearly states that it is from JDG Trading (Pty) Ltd.
19. In respect of The Motor Finance Company (Pty) Ltd t/a MFC Mr De Lange explained that the entity is the same as MFC a Division of Nedbank Limited.

CONSIDERATION OF THE EVIDENCE

20. The Tribunal considered the oral submissions by the Appellant and the documents filed of record.

21. In respect of JDG Trading (Pty) Ltd, on page 9 of the original application for a debt re-arrangement order, there is an acceptance letter on a JDG Trading (Pty) Ltd letterhead titled "Final Letter of Acceptance of Re-arrangement Proposal". Below that title there is a subtitle that reads: "JDG Trading Financial Services on behalf of Hi Finance". At the bottom of the letter there is a JD Group insignia.
22. Furthermore, on page 30 of the original application for the debt re-arrangement order, there is a letter from JDG Trading (Pty) Ltd addressed to the debt counsellor regarding the receiving of payments and debt review documents. The letter lists a number of chains serviced by JDG Trading Financial Services. Hi Finance is listed as one of the chains. Again, this letter bears the JD Group insignia at the bottom.
23. Therefore, it is evident that there are a number of entities under the JD Group and the acceptance letter indicates that it is written on behalf of Hi Finance by JDG Trading (Pty) Ltd who is cited as the first creditor.
24. In respect of the Third Respondent, the Motor Finance Corporation t/a MFC, there is nothing suggesting that this entity has no relationship with MFC, a division of Nedbank. MFC appears to be a trading name.
25. The acceptance letter from MFC, a Division of Nedbank, on page 12 of the original application for the debt re-arrangement order and the generic letter regarding the service of court documents on page 32 both bear the MFC logo and share the same business address.

CONCLUSION

26. The Tribunal is satisfied that JDG Trading (Pty) Ltd, although cited as the credit provider, acts on behalf of Hi Finance and both belong in the JD Group stable.

27. Similarly, the Tribunal is satisfied that the acceptance letter from MFC, a Division of Nedbank, indicates that The Motor Finance Corporation trades as MFC.

ORDER

28. Under the circumstances and for the reasons stated above, the Tribunal orders as follows:

- a. The appeal against the refusal by Prof Maseko to grant the debt re-arrangement order is upheld;
- b. The debt rearrangement agreement attached hereto and marked "X" is confirmed as an Order of the Tribunal; and
- c. There is no order as to costs.

DATED THIS 11th DAY OF FEBRUARY 2015

[signed]

FK Sibanda
Presiding Member

Adv F Manamela (Member) and Ms P Beck (Member) concurring.

Authorised for issue by the National Consumer Tribunal

Case number NGT/17838/2014/148(1) (A)

Date 2015 03 13
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National Consumer Tribunal
Ground Floor Building B
Lakeland Office Park
272 West Avenue, Centurion 0157
www.thenct.org.za

