

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

Case number: **NCT/18272/2014/57(1)**

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

and

TAPEISI CASH LOANS CC

RESPONDENT

Coram:

Adv J Simpson	–	Presiding member
Ms D Terblanche	–	Member
Ms H Devraj	–	Member

Date of Hearing: 12 March 2015

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is the National Credit Regulator (“the NCR” or “the Applicant”), a juristic person established in terms of Section 12 of the National Credit Act, 34 of 2005 (“the Act”).
2. At the hearing the Applicant was represented by Ms Du Plooy, an employee of the Applicant.

3. The Respondent is Tapeisi Cash Loans CC, a close corporation registered in terms of the laws of the Republic of South Africa and a registered credit provider with the registration number NCRCP5339 (hereinafter referred to as “the Respondent”).
4. The Respondent was not present at the hearing and was not represented.

APPLICATION TYPE

5. This is an application in terms of Section 57(1)(a) of the Act for an order to cancel the Respondent’s registration as a credit provider and for certain alternate relief as set out more fully in the Applicant’s pleadings.

BACKGROUND

6. The Applicant’s Founding Affidavit is deposed to by Nthupang Magolego in the capacity as Manager: Investigations and Enforcement of the Applicant.
7. During October 2011, the Applicant authorised an investigation into the lending practices of the Respondent based on a reasonable suspicion that the Respondent was granting credit in contravention of the Act.
8. The Applicants’ investigation revealed that the Respondent had -
 - 8.1 Granted credit to consumers without taking reasonable steps to conduct an assessment;
 - 8.2 Failed to provide consumers with a pre-agreement statement and quotation;
 - 8.3 Failed to provide consumers with a copy of the small credit agreement;
 - 8.4 Charged consumers interest in excess of the applicable maximum rate; and
 - 8.5 Failed to keep and maintain records of applications for credit, credit agreements, pre-agreement statements and quotations.
9. The Applicant submits that the conduct exhibited by the Respondent constitutes repeated contraventions in terms of the Act and conditions of registration. The specific contraventions as raised by the Applicant relate to the following:-

- 9.1 The Respondent granted credit to consumers without taking reasonable steps to conduct an affordability assessment in terms of Sections 81(2)(a) of the Act. The Respondent therefore consequently granted credit recklessly to these consumers. The Applicant submits that the Respondent is in contravention of Sections 81(2)(a), 81(3) and 80(1)(a) of the Act.
- 9.2 The Respondent failed to provide consumers with a pre-agreement statement and quotation in the prescribed form. The Applicant submits that in respect of the list of consumers to whom credit was granted, there was no evidence that pre-agreement statements and quotations were provided as the documents were not available to be provided to the Applicant during the course of the investigation. The Applicant submits that the Respondent is in contravention of Section 92(1) read with Regulation 28(1)(b) of the Act.
- 9.3 The Respondent failed to provide the consumer with a copy of the small credit agreement in the prescribed form. The Applicant submits that the Respondent has therefore contravened sections 93(1) and 93(2) read with Regulation 30(1) of the Act.
- 9.4 The Respondent has requested or demanded that consumers give the Respondent their bank cards for the purpose of using those cards when collecting on or enforcing credit agreements. The Applicant therefore submits that the Respondent has therefore contravened Sections 91(b)(i) and 133(1)(a) of the Act.
- 9.5 The Respondent failed to keep and maintain records of applications of credit, credit agreements, pre-agreement statements and quotations and documentation in support of the steps taken in terms of Section 81(2) of the Act. The Applicant submits that the Respondent is in contravention of Section 170 and Regulation 55(1)(b)(i), (iv), (v) and (vi) of the Act.
- 9.6 The Applicant argues that the above mentioned practices of the Respondent, defeats Section 3(c) of the Act which is to encourage responsible borrowing and

prevent reckless lending. Section 3(e)(ii) and (iii), is also defeated in that consumers are also not provided with adequate disclosure of standardised information in order to make informed choices and in protecting consumers from unfair conduct by credit providers.

10 The Applicant therefore prays for an order in the following terms:

10.1 Declaring the Respondent to be in contravention of the following Sections of the Act and Regulations:

- (i) Sections 81(2) (a)(ii), 81(3) and 80(1)(a);
- (ii) Sections 92(1), 93(1), 93(2) and Regulations 28(1)(b) and 30(1);
- (iii) Sections 91(b) (i) and 133 (1)(a); and
- (iv) Section 170 and Regulation 55(1)(b)(i), (iv), (v) and (vi)

10.2 Declaring the Respondent to be in repeated contraventions of the Act and Regulations in terms of Section 150(a) of the Act.

10.3 Cancellation of the registration of the Respondent as a credit provider with the Applicant;

10.4 In the event of the Tribunal not cancelling the registration of the Respondent, the Applicant prays for the following order:

10.4.1 The suspension of the registration of the Respondent as a credit provider with the Applicant for a period of five(5) years;

10.4.2 The imposition of an administrative fine on the Respondent in the amount which is the greater of R1 000 000.00 or 10% of the annual turnover of the Respondent;

10.4.3 Directing that the Respondent to remove all credit bureau listings recorded by and/or on behalf of the Respondent on the credit records of all consumers who were granted credit by the Respondent without conducting an assessment required by Section 81(2) of the Act; and /or

10.4.4 Further and/or alternative relief as the Tribunal may consider appropriate to give effect to the rights of consumers as contemplated in section 150(i) of the Act.

THE HEARING

- 11 At the hearing, the Applicant's representative addressed the Tribunal on the issues raised in the Founding Affidavit.
- 12 The Applicant referred to a letter that was sent by the Respondent to the Applicant shortly before the date of the hearing, in response to the allegations made by the Applicant. The Applicant wished to hand up the letter to the Tribunal. The Tribunal's response to this was that it could not be taken up as evidence, as this letter was not filed with the Tribunal in accordance with the Regulations for Matters Relating to the Functions of the Tribunal and the Rules for the Conduct of Matters before the National Consumer Tribunal.
- 13 The Applicant submitted that a cancellation of registration would be an order in the first instance that is prayed for. Should the Tribunal find that the Respondent's registration should not be cancelled, then the alternate prayer of suspension of registration together with an administrative penalty should be considered. The Applicant addressed the Tribunal on some of the factors to be considered on the administrative penalty.
- 14 The Tribunal asked the Applicant to address it on the power of the Tribunal to suspend a credit provider's registration. The Applicant submitted that Section 150(g) of the Act provides for the Tribunal to suspend or cancel the registrant's registration, subject to Section 57(2) and (3) of the Act. The Applicant argued that the suspension can be lifted once the Respondent has complied with the provisions of the Act and Regulations.
- 15 The Applicant cited the matter "*NCR vs Van Dyk*"¹ whereby the Tribunal found that in arriving at an appropriate order some of the factors to be taken into account are the seriousness of the contravention, the position of the Respondent and the right of the Respondent's existing

¹ NCT/2017/2011/57(1)

consumers. The Applicant was of the view that the Tribunal should consider these factors as well in determining whether the appropriate order should be a cancellation or a suspension.

- 16 The matter was then adjourned for a written judgment to be prepared and issued by the Tribunal.

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

- 17 The Applicant filed the Section 57(1) application with the Tribunal on 08 October 2014. The Applicant attached a copy of a courier waybill and a registered post slip as proof that the application was served on the parties. There is a signature on the courier waybill confirming the receipt of the documentation. To date the Respondent has not filed any answering affidavit or a response to the application.

- 18 Rule 13(5) 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”

- 19 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 APPLICABLE LAW AND THE TRIBUNAL'S FINDINGS

Application for a default judgment

- 20 Rule 25(2)(3) provides as follows:

“(3) 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”.

- 21 The Tribunal is satisfied that the Applicant served the application on the Respondent. Furthermore, the Tribunal is satisfied with the necessary evidence that was considered

during the hearing and on the papers that were filed by the Applicant, that the requirements for a default order were met.

Determination in respect of claims of prohibited conduct

- 22 The allegations made by the Applicant regarding the Respondent's conduct have not been disputed by the Respondent and therefore the Tribunal accepts the allegations made as proven on a balance of probabilities.
- 23 The evidence placed before the Tribunal shows that the Respondent was unable to provide documentation of an affordability assessment being conducted and subsequently granted credit recklessly, as prescribed by Sections 81(2)(a), 81(3) and 80 (1)(a) of the Act. The Respondent was also not able to provide copies of pre-agreement statements and quotations in the prescribed Form 20 as prescribed in Section 92(1) and Regulation 28(1)(b) of the Act, in respect of a list of consumers to whom credit was granted. The Respondent did not deliver to consumers a copy of the small credit agreement in the prescribed Form 20.2 as prescribed in terms of Section 93(1) , 93(2) and Regulation 30(1) of the Act. The evidence shows that the consumers were instead required to sign a loan book. The evidence further shows that the Respondent was in possession of consumers bank cards which is in contravention of Section 91(b)(i) and 133(1) (a) of the Act. In the absence of the Respondent being able to provide the Applicant with the necessary documentation during the investigation, the Respondent has failed to keep and maintain documentation and has thus contravened Section 170 and Regulations 55(1)(b)(vi)(v) and (vi) of the Act.
- 24 While the Applicant has stated in its founding affidavit that the Respondent charged consumers interest in excess of the applicable maximum interest rate of 5% per month, this was not pursued further by the Applicant.
- 25 The evidence before the Tribunal is that the Respondent engaged in the prohibited conduct in respect of various consumers over a period of time. The Respondent therefore engaged in prohibited conduct repeatedly, as referred to in Section 57(1) of the Act.

26 The Tribunal therefore finds that the Respondent repeatedly contravened Sections 81(2)(a), 81(3) and 80 (1)(a); Section 92(1) and Regulation 28(1)(b); Section 93(1), 93(2) and Regulation 30(1) and Section 170 and Regulations 55(1)(b)(vi)(v) and (vi) of the Act. The Respondent is therefore guilty of prohibited conduct in accordance with Section 150(a) of the Act.

Dertermination of application for cancellation of registration or suspension of registration

27 Section 57(1) of the Act states *“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 S48(1); or*
- (c) contravenes this Act”*

28 Section 150(g) of the Act states *“In addition to its powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, or the Consumer Protection Act, 2008, including- suspending or cancelling the registrant’s registration, subject to section 57(2) and (3);*

29 In the matter, *“NCR vs KR Zulu²”,* the Tribunal stated the following in the judgment:-
“In this particular matter, the Tribunal considers whether, in its opinion, the Respondent is beyond rehabilitation and so cancellation of registration is the only suitable penalty... At the hearing he admitted that his administrative procedures were sadly lacking and that he had relied too much on his staff. He pleaded for a second chance to prove that he was capable of meeting the requirements of the Act and of providing debtors with a professional service”.
In this particular matter, the Tribunal made an order to suspend the decision to de-register and to provide the Respondent with an opportunity to comply with the Act within a specific period of time.

30 The evidence before the Tribunal is that the Respondent did not even make an attempt to comply with the Act. The manner in which the Respondent conducted its business as a

² NCT/53/2009/57(1)

credit provider displays a total disregard for the Act and the interests of consumers. Furthermore, the Respondent has not opposed the matter and has also not provided any indication of wanting to rectify the situation and ensure compliance with the Act, nor has the Respondent provided any mitigating circumstances that the Tribunal could take into account. Immediate cancellation of the Respondent's registration as a credit provider is therefore justified as opposed to a suspension and administrative penalty.

ORDER

31 The Tribunal accordingly makes the following order:

31.1 The Respondent's registration as a credit provider is cancelled as of the date of this judgment;

31.2 There is no order as to costs

DATED ON THIS 22nd DAY OF JUNE 2015

[signed]

Ms H Devraj

Member

Adv J Simpson (Presiding Member) and Ms D Terblanche (Member) concurring.