



DEBT COUNSELLORS REFERRED TO THE TRIBUNAL DUE TO CONTRAVENTIONS OF THE NATIONAL CREDIT ACT 34 OF 2005

CIRCULAR NO. 18 OF 2016: DEBT COUNSELLORS REFERRED TO THE TRIBUNAL DUE TO CONTRAVENTIONS OF THE ACT

The purpose of this Circular is to update all registered Debt Counsellors about various matters referred to the National Consumer Tribunal by the National Credit Regulator.

These cases confirmed the National Credit Regulator's stance on the following issues:

1. That it is prohibited conduct for Debt Counsellors to continue to trade, while registration has lapsed, due to the non-payment of registration fees;
2. That it is prohibited conduct for Debt Counsellors not to refer matters to court within the prescribed period of time;
3. That it is prohibited conduct for Debt Counsellors to allow unregistered persons to conduct the business of a Debt Counsellor on their behalf.

Debt Counsellors must take heed of the above and are reminded that they at all times need to conduct their business in line with the prescriptions of the National Credit Act and their conditions of registration.

The highlights above relate to the following cases:

NCT/22678/2015/57(1) National Credit Regulator // Celleste Sullivan

The full case can be found here: <http://www.saflii.org/za/cases/ZANCT/2016/6.pdf>

Contraventions:

- Debt counselling conducted by unregistered persons namely call centre agents;
- DCs failure to deliver Form 17.1 to credit providers;
- DCs failure to refer matters to court;
- DCs failure to keep and maintain records of debt counselling processes.

As a result of the above the debt counsellor's registration was cancelled.

Disclaimer:

While the NCR has taken reasonable care to ensure the factual accuracy of this Circular, it cannot guarantee such accuracy, especially with regards to future events. Accordingly, NCR does not accept any liability for damages incurred by any party as a result of decisions or actions taken on the basis of information supplied in this Circular.

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NCT/22129/2015/140(1) National Credit Regulator // Zahid Adams

Contraventions:

- Engaged in services of a DC while registration had lapsed;
- Issued Form 17s before Form 16s;
- Failed to verify expenses of consumers;
- Failed to refer matters to court.

Various orders were granted, which included:

- Refund any amounts still outstanding to credit providers within 3 months of order;
- Administrative fine of R250 000.00.

NCT/38601/2016/57(1) National Credit Regulator // Zodumo Lupoko

Contraventions:

- Failed to submit completed Form 16s;
- Issued Form 17s before Form 16s;
- Failed to deliver completed Form 17.1s to all relevant credit providers;
- Failed to submit Form 17.2s;
- Failure to refer matters to court.

As a result of the above the debt counsellor's registration was cancelled.

It is also important for debt counsellors to note that the Tribunal has also previously confirmed the NCR's stance that it is a prohibited conduct for an unregistered person to use a debt counsellor's registration number. The full judgment on this issue relates to the case NCT/13914/2014/57(1) (P) National Credit Regulator // Amanda Johnson.

The full case can be found here: <http://www.saflii.org/za/cases/ZANCT/2014/50.pdf>

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