

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

Case No: NCT/7321/2013/57(1)

In the matter between:

NATIONAL CREDIT REGULATOR

Applicant

and

VAIDRO 178 CC t/a VULEKA CASH LOANS

Respondent

Coram:

Prof T Woker	-	Presiding Member
Prof J M Maseko	-	Member
Mr X May	-	Member

Date of Hearing: 30 May 2013

JUDGMENT AND REASONS

1. The Parties

1.1. The Applicant in this matter is the National Credit Regulator ("the NCR"); an organ of state within the public administration established in terms of Section 12 of the National Credit Act 34 of 2005 ("the NCA"). The NCR is situated in Randjespark, Midrand, ("the Applicant").

- 1.2. The Founding Affidavit of the Applicant is deposed to by Adv. Zwelithini Ronald Zakwe, Acting Manager of Investigation and Enforcement Department of the Applicant who claims (at page 9 of the file) in the Affidavit to be duly authorised to act on behalf of the Applicant.
- 1.3. Applicant was represented by Ms. Soobrayan at the hearing.
- 1.4. The Respondent is the Vaidro 178 CC t/a Vuleka Cash Loans, a close corporation incorporated in South Africa under Registration number 2009/193376/23; on 16 October 2009 by CIPC (the Companies and Intellectual Property Commission).
- 1.5. The Respondent was also registered as a Credit Provider with the NCR under Number NCRCP 4781 since 12 January 2011¹.
- 1.6. The Respondent's principle place of business is situated in Dundee.
- 1.7. There was no answering affidavit from the Respondent on file and the Respondent also did not attend, nor was it represented at the hearing of 30 May 2013.

2. Jurisdiction

- 2.1. This National Consumer Tribunal ("Tribunal") has jurisdiction to hear this matter in terms of section 57(1) of the NCA.
- 2.2. Section 57(1) of the NCA provides that:

"...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 this Act."*

¹ pages 28 and 29 of Bundle

3. Issues to be Decided

The issues to be decided in this matter included whether the registration of the Respondent should or should not be cancelled by this Tribunal in line with section 57(1) of the NCA as prayed for by the Applicant. And in deciding this question, this Tribunal had to first decide the individual underpinning claims by the Applicant on:

- (1) Whether the Respondent contravened section 91(b) and (c) read with section 90(2)(l) and section 133(1) and (2) of the NCA;
- (2) Whether the Respondent contravened section 81(2) read with section 1 of the Act, alternatively contravened Regulation 55(1) of the NCA;
- (3) Whether the Respondent contravened section 100(1) read with section 101(1)(b)(i) and with Regulation 43(3) of the Act;
- (4) Whether the Respondent contravened section 100(1) read with section 1101(1) (d) and with Regulation 42(1) of the Act;
- (5) Whether the Respondent contravened section 52(5)(d) of the Act; and
- (6) Whether the Respondent contravened Section 40(3) read with Sections 52(4) (b) of the Act.

4. Background

It was alleged in the *unopposed* evidence of the Applicant in the said Founding Affidavit, and in Form T1.57 (1) that:

- (1) Between 4 January 2011 and 1 August 2012, the credit provider unlawfully retained instruments and used prohibited collection methods. These are both prohibited under section 91(b) and (c) read with section 90(2)(l) and section 133(1) and (2) of the NCA.

- (2) Between 4 January 2011 and 1 August 2012, the credit provider failed to conduct affordability assessments and engaged in reckless lending. Both of these are prohibited under section 81(2) read with section 1 of the Act, alternatively contravened Regulation 55(1) of the NCA.
- (3) Between 4 January 2011 and 1 August 2012, the credit provider charged an initiation fee in excess of the prescribed amount. This is prohibited conduct in terms of section 100(1) read with section 101(1)(b)(i) and with Regulation 43(3) of the Act.
- (4) Between 4 January 2011 and 1 August 2012, the Credit provider charged interest in excess of the prescribed amount. This contravened section 100(1) read with section 101(1) (d) and with Regulation 42(1) of the Act.
- (5) Between 4 January 2011 and 1 August 2012, the Credit provider failed to pay the prescribed annual renewal fees within the prescribed time. This is in contravention of section 52(5)(d) of the Act.
- (6) Between 4 January 2011 and 1 August 2012, the Credit provider offered and availed extended credit or entered into credit agreements while its registration had automatically lapsed. This was in contravention of Section 40(3) read with Section 52(4)(b) of the Act.
- (7) Between 4 January 2011 and 1 August 2012, the Credit provider failed to comply with Specific Conditions of its Registration B(1); B(2); and B(3.3).

5. Default Application

- 5.1. There was an application for a default judgment on file from the Applicant, to have the matter concluded in the absence of the Respondent, and based on its failure to oppose the matter. This was on the failure of the Respondent to file any opposing papers to the main application. This is under Rule 25(2) of the Rules of the Tribunal.
- 5.2. There was no answering affidavit contained in the case file. And since no opposing papers had been filed by the Respondent, and since the Applicant had applied for a default order to be issued against the Respondent, this Tribunal assessed the requirements for the submission of a default application. This Tribunal has concluded that the Applicant had complied with the requirements of such an application - hence a notice of complete filing was issued by the Tribunal to the Applicant.

5.3. This Tribunal has satisfied itself that the Respondent has been served with the main application before the Tribunal, as proof of service was found on file (at page 176 of the bundle/case file).

5.4. However, the Tribunal has been of the view that even though the matter has not been opposed, the Tribunal, as a creature of statute, would wish to ensure that the order it makes is one that is justifiable in law given the substantive grounds of the application. Therefore, before concluding the matter, the Tribunal went on to consider the merits of the matter. This was in recognition of the fact that mere failure to oppose by a party does not necessarily make a case of an applicant automatically valid in law and in fact. The merits of the matter still had to be considered in the view of this Tribunal.

6. The Law on the Matter

The law on the matter is such that:

6.1. Regarding the application for a default judgement, Rule 25(2) of the Tribunal Rules ("the Rules")², this Tribunal is empowered by Rule 25(3) of the Tribunal which effectively provides that:

"The Tribunal may make a default order:

(a) after it has considered or heard any necessary evidence; and

(b) It is satisfied that the application documents were adequately served."

6.2. Default order applications are regulated under Rule 25(2) of the Rules. Rule 25(3) provides that the Tribunal may grant a default order:

(1) after it has considered or heard any necessary evidence; and

(2) If it is satisfied that the application documents were adequately served.

6.3. The General Condition 1 of the Conditions of Registration referred to, provide that:

² Regulations for matters relating to the Functions of the Tribunal and Rules for the Conduct of matters before the National Consumer Tribunal, 2007 as published under GN789 in GG30225 of 28 August 2007 and as amended by GenN 428 in GG 34405 of 29 June 2011.

"The registrant must comply with all applicable legislation relating to the operation of the business of a credit provider, including but not limited to the Act, the regulations and any subsequent amendment or substitution of the applicable legislation and regulations."

7. Analyses of the Evidence and Arguments

- 7.1. Regarding the question whether the Respondent contravened section 91(b) and (c) read with section 90(2)(l) and section 133(1) and (2) of the NCA, the answer has to be in the affirmative in the absence of any denials or opposing evidence from the Respondent.
- 7.2. Regarding the question whether the section 81(2) read with section 1 of the Act, alternatively contravened Regulation 55(1) of the NCA, the answer has to be in the affirmative in the light of the unopposed evidence presented.
- 7.3. Regarding the question whether the Respondent contravened section 100(1) read with section 101(1)(b)(i) and with Regulation 43(3) of the Act, the answer has again to be in the affirmative in the light of the unopposed and corroborated evidence submitted.
- 7.4. Regarding the question whether the Respondent contravened section 100(1) read with section 101(1) (d) and with Regulation 42(1) of the Act, the answer has to be in the affirmative in the light of the unopposed and corroborated evidence presented.
- 7.5. Regarding the question whether the Respondent contravened section 52(5)(d) of the Act, the answer has to be in the affirmative in the light of the unopposed and corroborated evidence submitted.
- 7.6. Regarding the question whether the Respondent contravened Section 40(3) read with Sections 52(4)(b) of the Act, the answer has to be in the affirmative in the light of the unopposed and corroborated evidence presented.
- 7.7. Regarding the question whether the Respondent contravened section 101(1) (d) (ii) of the Act, the answer has to be in the affirmative in the light of the unopposed and corroborated evidence submitted.

8. Cancellation or Lapse of Registration

8.1. In the course of the hearing, the question of whether the registration of the Respondent had lapsed or should be cancelled arose. The Applicant had averred that the Respondent had failed to pay the renewal fees when these fell due on 12 January 2013 (page 155 of Bundle). There was then also a question of whether the Tribunal should cancel the registration that had in any case lapsed by operation of law.

8.2. When this question was canvassed with the Representative of the Applicant, it was her view that much as the registration may be deemed lapsed by the Applicant, up to the point of this hearing, the Applicant had not yet taken any action to activate such lapsing. She further implored the Tribunal to act on the prayers of the Applicant and actually cancel the registration based on this and all the other grounds catalogued above.

8.3. In considering this line of argument, the Tribunal noted that the automatic lapse of registration may not necessarily be concluded by abstract means or the mere non-renewal of the registration. This is taking into account that the registrants would still be reflecting on the database of the Applicant as a registrant and the public would be misled by this. The public is not going to automatically be in the know that a registrant whose name still appears on the register has had their registration lapse if no active move is made to actually remove such registrant.

8.4. The Tribunal then ordered, *ex tempore*, (and now reiterates that order in writing) that:

- (a) The Respondent had indeed been proven to have engaged in prohibited conduct as enumerated above; and had hence, been declared as such – per section 150(a) of the NCA; and
- (b) The registration of the Respondent be cancelled with immediate effect pursuant to the failure to renew its registration as well as based on the above violations.

9. Further or Alternative Relief

9.1. While the Applicant, in its application had also prayed for any further and alternative relief, this further or alternative relief was not spelt out (page 26 of Bundle). And the Tribunal went to some length exploring what this component could have entailed to the Applicant, including a need to be addressed on the possible issue of an administrative penalty.

9.2. The Applicant plainly indicated that it would be satisfied with the cancellation of the Respondent's registration and did not pray for any administrative penalty indicating that:

- (a) There had been no real preparation or submission, in any case in this light;
- (b) The Applicant had not really prepared any further submission to address the possibility of further or alternative relief;
- (c) Should the Tribunal deem anything additional as further or alternative relief, the Applicant would abide by the order of the Tribunal.

10. Order

10.1. For the reasons interwoven in the above sections of this judgment, it is accordingly ordered that:

- (a) The Respondent's conduct as set out above is declared as prohibited conduct per section 150(a) of the NCA;
- (b) Regarding the prayer that the Respondent's registration should be cancelled, in terms of section 150(g) of the Act; it has already been ordered and now being reiterated that the registration of the Respondent remains cancelled; and
- (c) No further relief is ordered.

Thus done and handed down on this 3rd day of July 2013.

[signed]

Prof. Joseph M. Maseko
Member

Prof T Woker (Presiding member) and Mr X May (Member) concurring

Authorised for issue by the National Consumer Tribunal

Case number _____

Date: 2013 / 09 / 04
Ccyy mm dd

National Consumer Tribunal
Ground Floor Building B
Lakefield Office Park
272 West Avenue, Centurion 0157
www.thenct.org.za

