



national consumer tribunal

**IN THE NATIONAL CONSUMER TRIBUNAL, HELD IN PRETORIA**

**CASE No: NCT/20/2008/57(1)**

**In the matter between**

**National Consumer Regulator**

**Applicant**

**and**

**Frabert (Pty) T/A Cashwise**

**Respondent**

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**JUDGEMENT**

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**1 Introduction**

The Applicant is the National Credit Regulator and the Respondent is Frabert (Pty) Ltd T/A Cashwise, a company registered as a credit provider on 10 August 2007 in terms of section 40 of the National Credit Act 34 of 2005 (the Act).

The Applicant has applied to the Tribunal for the registration of the Respondent as a credit provider to be cancelled. This application is in terms of section 57 (1) (c) of the Act. The application for cancellation was received by the Tribunal on 22 July 2008 and was rendered complete on 25 July 2008. The Respondent's answering affidavits were due on 27 August 2008 but the Respondent failed to file these answering affidavits. Consequently, the Applicant filed an application for a default order on 9 September 2008. In terms of Rule 25 (2) (of the Rules for the conduct of matters before the Tribunal) the Applicant may apply for a default order against a party, if no response to the application was filed within the time stated in the application. In terms of Rule 25 (3) the Tribunal may grant 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.

## 2. Summary of complaint

On or about 19 September 2002 the Respondent was charged with four counts of breaching the rules of the Micro Finance Regulatory Council ("MFRC"). These charges related to retaining borrowers' bank cards and personal information numbers (pin numbers) as security or for collection purposes. This conduct was a contravention of rules 5.1 and 5.4 of the Exemption Notice No 713 of June 1999, issued in terms of the Usury Act 73 of 1968. The Respondent pleaded guilty to the charges and the MFRC Disciplinary Committee imposed a fine on the Respondent. Further, the Respondent was instructed by the Disciplinary Committee of the MFRC to cease the practice of retaining borrowers' bank cards and pin numbers by the 31<sup>st</sup> October 2002 and to furnish confirmation to the MFRC that such practice had been discontinued.

During November 2006 the Applicant conducted an investigation in terms of section 25 of the Act. It was established that the Respondent was continuing to retain borrowers' bank cards and pin numbers as security for loans or for collection purposes. This is a contravention of sections 90(2)(1) and 133 of the Act. A compliance notice was issued in terms of section 55 of the Act on the 3<sup>rd</sup> January 2008. The Respondent was instructed to comply with the Act by the 31<sup>st</sup> January 2008. The Respondent was instructed to return all borrowers credit or debit cards, bank accounts or automatic teller machine access cards and pension cards and to delete/destroy all records of pin numbers or codes.

Another investigation was conducted by the National Credit Regulator on 20 February 2008. Again it was established that the Respondent was retaining borrowers' cards and pin numbers in contravention of sections 90(2) (1) and 133 of the Act. The Applicant therefore applied to the Tribunal for the registration of the Respondent to be cancelled.

## 3. The National Consumer Tribunal:

The matter was heard by the Tribunal on 9 October 2008.

The Tribunal received correspondence in the form of a fax from Messrs Becker Bergh & More Ing, a firm representing the Respondent. This was a request for a postponement of the matter. This was sent to the Tribunal on 9 October 2008, the day the matter was set down for hearing. The Tribunal therefore had to deal with 2 matters, namely: (1) whether the matter should be postponed and (2) if the matter was not postponed, whether the application for a default order should be granted.

### 3.1 The request for a postponement

It was noted by the Tribunal that neither the Respondent nor its representative had appeared for the hearing. The Respondent had simply,

through its representative, sent a fax requesting a postponement. The Respondent was therefore not before the Tribunal. The Tribunal confirmed with the Registrar that the various processes which had to be followed in the matter had been communicated timeously to the Respondent in line with the prescripts of the Act. The following Annexures were acknowledged by the Tribunal and accepted into evidence:

Annexure 1: correspondence dated 26 August 2008-10-28

Annexure 2: correspondence dated 07 October 2008 from one Poen Bergh

Annexure 3: correspondence from Becker Bergh & More

Annexure 4: correspondence from Applicant to the Respondent dated 20 August 2008.

After considering the evidence the Tribunal was satisfied that the Applicant and the NCT had complied with the Act and that the Respondent had been properly informed of the matter including the date on which the matter was set down for the application for a default order. Further, the Tribunal noted that according to Annexure 4 the Respondent had indicated that it would be attending the hearing. In view of the seriousness of the allegations against the Respondent, and in the interests of consumers the Tribunal decided that the matter should proceed.

### 3.2 Application for default judgement

The Applicant addressed the Tribunal regarding its application for a default order and requested that the registration of the Respondent as a credit provider be cancelled as provided for in section 57(1) of the Act. For the application to succeed, the Applicant had to prove that the Respondent (1) contravened the Act and (2) did so repeatedly.

The Applicant provided the following documents as evidence of the alleged contraventions:

- (1) Reasons for the judgement by the Disciplinary Hearing of the MFRC dated 31 January 2003;
- (2) Appeal judgement of the Disciplinary Hearing of the MFRC dated 23 March 2003;
- (3) Compliance Notice in terms of section 55 of the Act dated 3 January 2008
- (4) Investigation Report by Pieter Greyling dated 18 March 2008; and
- (5) Copies of registration certificates and conditions attached at the time of registration.

The Applicant addressed the Tribunal on the question of "repeated offences" committed by the Respondent in disregard of the directives of the Applicant. The Applicant demonstrated a pattern of "repeated offences" by the Respondent. Since the National Credit Act has been in effect the Respondent has had two inspections by the Applicant and has been served with a

compliance notice. The Respondent has failed to cease its practices of retaining bank cards and pin numbers.

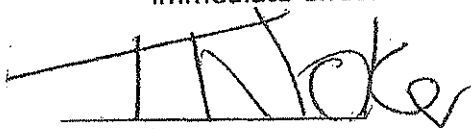
The Tribunal engaged the Applicant on whether alternative remedies had been considered before this final step of cancellation of registration was taken. The Applicant addressed the Tribunal on the fact that the Respondent has been fined before and the sentence had not served to deter the Respondent. The Applicant addressed the Tribunal on all the alternatives that had been considered but maintained that deregistration remained the most appropriate order especially since the Respondent was flagrantly disregarding the law and that consumers were being seriously disadvantaged. It was also noted that the Rules of the MFRC which the Respondent had disregarded in 2002 corresponded closely with the relevant sections of the Act and that the sanction of de-registration applied in respect of those Rules.

#### 4. Conclusion

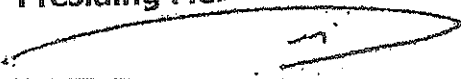
The evidence presented by the Applicant showed that the Respondent had been aware of the law for a lengthy period of time. The history of this matter therefore demonstrates that the Respondent knowingly and flagrantly disregarded the Act and continued to do so despite a number of investigations by the Applicant and after having received a compliance notice. The Tribunal was therefore satisfied that that the Respondent had contravened the Act and had done so repeatedly.

The Tribunal grants the following order:

The Respondent's registration as a credit provider is cancelled with immediate effect.



**T. Woker**  
Presiding Member



**B Dumisa**  
Member  
National Consumer Tribunal

and



**N. Sephoti**  
Member  
National Consumer Tribunal

**Concurred**