

National Consumer Tribunal cancels credit provider's registration for retaining bank cards and pin codes

For Immediate Release

October 2008

Non-compliance with the National Credit Act (NCA) can land a credit provider in hot water. This became apparent in a landmark ruling on 9 October 2008 by the National Consumer Tribunal – which resulted in the cancellation of the registration of credit provider Frabert (Pty) Ltd.

This was a first ruling of its kind since the advent of the National Credit Act and it sends signals that consumer rights will no longer be trampled upon with ease.

Jan Augustyn, Manager: Investigations & Prosecution at the National Credit Regulator (NCR), says the Tribunal gave an order in favour of the Regulator to cancel the registration of Frabert (Pty) Ltd t/a Cashwise ("Frabert") whose loan book is valued at about R3.1 million and has 9900 borrowers, for retaining consumers' bank cards and pin codes as a mechanism for collecting or enforcing credit agreements.

"The NCA prohibits this practice. Any person who contravenes this is guilty of an offence", explains Augustyn.

Frabert is a credit provider operating in the Northern Cape and has 11 registered branches throughout the Northern Cape region.

Augustyn further explains that the NCR conducted investigations at the premises of the credit provider and discovered numerous bank cards and pension cards in possession of the credit provider. The NCR subsequently issued a compliance notice to Frabert to correct these practices. A follow-up investigation revealed continued non-compliance. The NCR then referred the matter to the Tribunal.

The Tribunal ruled that the registration of the credit provider be cancelled as from 9 October 2008.

Significantly, Augustyn points out that in terms of the NCA once a credit providers' registration is cancelled, the credit provider must not engage in any formerly registered activities as from the effective date of cancellation. Essentially, the credit provider is not allowed to extend credit to consumers as of the date of cancellation.

“Any credit agreements entered into after the cancellation of registration have the effect of being declared unlawful in terms of the Act,” says Augustyn.

Augustyn, however, emphasized that all other agreements lawfully entered into before cancellation of registration remains enforceable.

The NCR has already served the credit provider with a notice that its registration has been cancelled, concludes Augustyn.

Non compliance with an order of the Tribunal is a criminal offence punishable with a fine or imprisonment for a period not exceeding 10 years, or both a fine and imprisonment.

Issued by:
Bullion PR & Communication
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