

National Consumer Tribunal continues to cancel registrations of non-compliant debt counsellors

For Immediate Release

November 2009

The registration of Zolile Senior Njokweni, a registered debt counsellor with the National Credit Regulator (NCR) has been cancelled with immediate effect. In response to an application brought by the NCR, the National Consumer Tribunal (NCT) cancelled the registration of Njokweni, who has been registered as a debt counsellor since June 2007. Adv. Jan Augustyn, Manager of Investigations and Prosecutions at the NCR said that an investigation into Njokweni's practices was provoked by complaints from several of his clients who were undergoing debt review. "The NCR then found that Njokweni was repeatedly failing to comply with the administrative duties of debt counsellors as prescribed by the National Credit Act (NCA) and its Regulations and with certain of conditions of his NCR registration."

Instances of NCA contravention included failure to provide consumers with proof of receipt of their debt review application; failure to obtain all required information from consumer applicants; and failure to notify relevant credit providers and credit bureaux of such an application within five days of receiving it.

Also, Njokweni repeatedly failed to determine in the prescribed manner and time period (being 30 days after receipt of the application) whether a consumer was over-indebted or not.

Augustyn says that debt counsellors registered with the NCR are required to perform debt counselling in a manner that is consistent with the purpose and requirements of the NCA, act professionally and reasonably in offering debt counselling services to consumers, provide such services in a timely, fair and non-discriminatory manner, and not bring the NCR or debt counselling into disrepute. "Several instances of Njokweni's practices did not comply with these requirements and conditions."

One specific NCR registration requirement is that a debt counsellor must have access to adequate infrastructure with which to provide professional debt counselling services. Njokweni did not have a permanent office and operated from several temporary offices, including in the Parliamentary buildings in Cape Town, also keeping some client files at his private house. The lack of a central and permanent office made it very difficult for Njokweni's clients to contact him.

On Monday, 02 November 2009, the NCT cancelled Njokweni's registration with the NCR. He is no longer permitted to practice as a debt counsellor. The Tribunal also ordered that Njokweni hand over to the NCR all debt review client files and these would be reallocated to new debt counsellors as soon as possible, and that any fees received should be refunded by Njokweni to consumers.

Augustyn highlights some of the comments of the NCT in its orders. "The NCT emphasised that it is very important for debt counsellors to conduct their business in a professional way. Because of a lack of infrastructure, it concluded that Njokweni was not in a position to conduct his business professionally and was unable to properly perform the functions of a debt counsellor.

"The NCR cautions all registered debt counsellors to ensure that they have sufficient resources and capacity in order to practice effectively, serving their clients with commitment and as the law requires them to. Debt counselling is a mechanism for resolving over-indebtedness, based on the principle of the consumer being able to satisfactorily discharge financial obligations. The debt counsellor must therefore act professionally and reasonably in providing debt counselling services to consumers and provide such services in a manner that is timely, fair, and non-discriminatory and does not bring the NCR or debt counselling into disrepute."

Issued by:
Bullion PR & Communication
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