

National Consumer Tribunal shows red card to non-compliant debt counsellors

For Immediate Release

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The National Credit Regulator (NCR) is concerned over several instances of non-compliance with the requirements of the National Credit Act (NCA), its Regulations and conditions of registration by NCR-registered debt counsellors. Adv Jan Augustyn, Manager of Investigations and Prosecutions, said that such non-compliance could cause further prejudice to already over-indebted consumers and the NCR is proceeding with numerous investigations to ensure debt counsellors do comply with legislation. Augustyn said a number of these investigations have already been referred to the National Consumer Tribunal for adjudication.

In one such matter, the National Consumer Tribunal has ordered debt counsellor Ralph Zulu, of GNR and Associates CC, Kwazulu-Natal, not to take on any new clients for the six month period to February 2010.

Gideon Mashamaite, Senior Prosecuting Officer at the NCR says Zulu was not adhering to several NCA and Regulations requirements with regard to deadlines, keeping of proper records, and following the debt counselling process through to the end. The NCR therefore requested the Tribunal to cancel the registration of Zulu.

The Tribunal also ordered Zulu to allow the NCR to conduct monthly investigations into his business to ascertain whether he is complying with relevant legislation, with all reasonable costs of the investigations to be borne by Zulu. During this investigatory period, the registration of Zulu with the NCR as a debt counsellor remains valid and in effect.

On completion of the investigations, if Zulu is found to be non-compliant, the Tribunal will order his registration with the NCR as a debt counsellor to be cancelled. The Tribunal also ordered Zulu to hand over any debt counselling matters in progress where consumers are at risk of losing crucial property such as homes, should credit providers proceed with legal action. The NCR would prioritise and hand over these matters to other debt counsellors.

For his remaining clients, the Tribunal ordered Zulu to deal with these matters urgently, to avoid legal action being taken by the relevant credit providers. For debt counselling clients who no longer want to remain with Zulu, the NCR would reallocate them to other counsellors.

For all reallocated cases, Zulu is required to pay over to the NCR any fees already received, in order to cover the fees of the new counsellors.

Where credit providers are insisting on proceeding with their legal rights against Zulu's clients, the Tribunal has requested the NCR to discuss the matter with these lenders, in the hope that they will continue with the debt counselling route rather than take legal action.

Mashamaite highlights several instances of legislative violations by the debt counsellor in this matter. "The relevant provisions are NCA Section 86 and Regulation 24. The debt counsellor was not issuing the required documentation to relevant credit providers and credit bureaux on receiving an application for debt review; was not making determinations as to whether an applicant was over-indebted or not; where an applicant was found to be over-indebted the counsellor was not submitting credit providers with debt rearrangement proposals; where credit providers did not accept debt restructuring recommendations, the counsellor was then not referring the matter to court, as is required by legislation; and because the counsellor was exceeding the 60 day limit allowed for debt review applications, credit providers were exercising the right to terminate the debt review process, depriving consumers of a much-needed debt counselling opportunity."

The Tribunal, in its decision, highlighted that debt counsellors play a key role in the debt review function and that if debt counsellors do not perform effectively, their clients are placed at great risk. Credit providers can also be adversely affected, as by participating in debt counselling, they have chosen not to pursue their legal rights to recover - only to then face uncertainty on the status and progress of the debt counselling process if the counsellor does not follow correct procedure.

In yet a another case, an investigation into Barry Kotze, a registered debt counsellor and Centurion-based attorney, revealed instances of non-compliance, including charging fees in excess of guidelines; failing to timeously process debt review applications and/or taking the necessary steps to effect restructuring of consumers' debts; not applying to the Magistrates' Courts for restructuring approval, particularly regarding consumers who had started to make repayments in accordance with restructuring agreements; failing to make use of NCR-approved Payment Distribution Agencies; failing to maintain adequate controls and accounting records; and not paying over monies received from consumers to the relevant credit providers.

These actions similarly were leading to prejudicial early termination of the debt review process by credit providers and legal action being taken against consumers.

Adv Jan Augustyn indicated that the investigation remains ongoing but has been referred to the National Consumer Tribunal in order to obtain interim relief for consumers. The Tribunal ordered that although Kotze's registration as a debt counsellor remains in force during the investigation, he is prohibited from accepting further applications for debt review and that existing debt review applications must be transferred to other registered debt counsellors if requested by his clients.

Full details of all clients must be handed over to the NCR as well as an audited statement of all receipts and disbursements. He was also instructed to pay over all amounts received from consumers to an approved payment distribution agency and recover amounts as not yet paid out from non-approved payment distribution agencies.

The orders in these cases point to the Tribunal's approach of rehabilitation rather than penalisation through fines or immediate deregistration.

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

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