

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

Case number: **NCT/19294/2014/140(1)NCA**

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

and

AKUDLE KUTSHIYELE

RESPONDENT

Coram:

Adv N Sephoti - Presiding member

Adv F Manamela - Member

P Beck - Member

Date of Hearing - 15 December 2015

JUDGMENT AND REASONS

APPLICANT

1. The Applicant in this matter is the National Credit Regulator ("the NCR" or "the Applicant"), a juristic person established in terms of section 12 of the National Credit Act, 2005 ("the Act").

2. The Applicant was represented at the hearing by Ms Senyarelo and Mr J Selolo.

RESPONDENT

3. The Respondent is Akudle Kutishiyele with a physical address of 1166 Msongwana Trust, Nelspruit., hereinafter referred to as the Respondent. There was no appearance by the Respondent or a representative of the Respondent at the hearing.

APPLICATION TYPE

4. The Application in terms of Section 140(1)(b) of the Act is for an order declaring that the Respondent is in repeated contraventions of specific sections of the Act, engaged in prohibited conduct and for an administrative fine to be imposed on the Respondent.

SUMMARY OF THE APPLICANTS SUBMISSIONS

5. The Applicant's Founding Affidavit is deposed to by Nthupang Magolego in her capacity as Manageress of the Investigation and Enforcement Department of the Applicant.
6. On 1 November 2013 Mary Kgwele Chalira was appointed by the Chief Executive Officer of the Applicant in terms of Section 25 of the Act to conduct a Section 15(c) investigation into the cash loan business activities of Akudle Kutishiyele.
7. The investigation at the premises of the Respondent was duly conducted by Mary Kgwele Chalira on 5 November 2013 at the Nelspruit offices of the Respondent.
8. The investigation of the premises revealed that during the period when the Respondent was registered and after the lapse of the Respondents registration, the Respondent conducted its business in a manner which contravened certain Sections and Regulations of the Act.
9. The Applicant alleges that the Respondent contravened the following sections of the Act:-
 - 9.1 The Respondent offered, made available or extended credit and entered into credit agreements with consumers whilst not registered to do so. This is in contravention of Section 40(3) of the Act.
 - 9.2 The Respondent continued to conduct business as a credit provider after the lapse of the Respondents registration as a credit provider due to non-payment of the Respondents annual registration fees.
 - 9.3 The Respondent did not conduct affordability assessments prior to granting consumers loans in contravention of Section 81(2) of the Act.

- 9.4 The Respondent failed to keep proper records of affordability assessments, should the Respondent allege that it has conducted such affordability assessments, as none could be found by the Applicants inspectors. The Respondent is thus in contravention of Regulation 55(1)(b)(vi) of the Act.
- 9.5 In failing to conduct affordability assessments the Respondent has engaged in reckless credit granting and is thus in contravention of Section 81(3) read with Section 81(1)(a).
- 9.6 The Respondent has not furnished consumers with pre-agreement statements and quotations prior to the conclusion of credit agreements and is thus in contravention of Section 92(1) read with Regulation 28(1).
- 9.7 No pre-agreement statements with quotations were furnished to consumers as none were found in the consumer files sampled. The Respondent is thus in contravention of Section 92(1) of the Act.
- 9.8 Documents utilised by the Respondent to conclude credit agreements with consumers are not in the prescribed format as specified in Form 20.2. The Respondent is thus in contravention of Section 93(2) read with Regulation 30.
- 9.9 The Respondent requires that consumers give temporary or permanent possession of consumer's bank cards and identity documents for purposes other than identification or to make a copy of such instruments. The Respondent is thus in contravention of Section 91(b) of the Act.
- 9.10 The Respondent is making use of or relying on consumer's bank cards and identity documents when collecting or enforcing a credit agreement and or permitting or directing another person to do so. The Respondent is thus in contravention of Section 133(1) and (2) of the Act.

THE HEARING

10. There was no appearance by the Respondent or a representative at the hearing.
11. At the hearing the Applicant made the following submissions which are summarised below:-
 - 11.1 The Applicant highlighted the areas of contravention as set out in the founding affidavit.
 - 11.2 The Applicant addressed the Tribunal on the order sought for an administrative fine.
12. The Applicant prayed for the following orders to be granted:-
 - 12.1 Declaring the Respondent to be in repeated contravention of the Act and Regulations;
 - 12.2 Declaring the repeated contraventions to be prohibited conduct in terms of Section 150(a) of the Act;
 - 12.3 The imposition of an administrative fine in terms of Section 151 of the Act and

- 12.4 That the Tribunal grant the Applicant such further and/or alternative relief as the Tribunal may consider appropriate to give effect to the consumer's rights in terms of the Act.

ISSUE TO BE DECIDED

13. The following must be decided by the Tribunal:

- 13.1 The Tribunal must consider whether the Respondent is in repeated contravention of the Act and Regulations;
- 13.2 The Tribunal must consider whether the conduct of the Respondent constitutes prohibited conduct and
- 13.3 The Tribunal must further consider whether the contraventions of the Act warrant the relief sought by the Applicant.

CONSIDERATION OF THE FACTS

14. Akhudle Kutishiyele Cash loans predominantly grants one month cash loans and charges 30% interest per month on short term credit agreements. The agreements sampled includes that of consumers employed as mine workers, civil servants, a general administrative worker, control room co-ordinator and a gardener all of whom earn less than R5000.00 per month.
15. The agreement does not disclose the loan amount nor does it disclose the cost of credit. The investigation report states that no pre-agreement statements or quotations were found on any of the consumer files inspected and that the credit agreement includes a clause authorising the Respondent to repossess the consumer's assets should consumers default on their loan agreements. The loan agreement also discloses the assets that could be attached by the Respondent such as the consumer's fridge, television set, dvd player and radio. The loan agreement further states that should the consumer go under administration the loan with Akudle Kutishiyele should not be included in the administration process. Bank cards and identity documents (248 in total) were found on the business premises of the Respondent and the Applicant. In the latter regard the Applicant has opened a criminal case against the Respondent under case number SAPS Barberton CAS 84/11/2013.
16. As stated previously, the Respondent did not submit an answering affidavit and did not appear at the hearing. The evidence submitted by the Applicant is therefore uncontested. The Tribunal accepts the evidence placed before it as proven on a balance of probabilities.
17. The Tribunal must then consider the application of the relevant law to these facts.

CONSIDERATION OF THE APPLICABLE LAW AND THE TRIBUNAL'S FINDINGS

Jurisdiction

17.1 Section 136(2) of the Act provides for the National Credit Regulator to initiate a complaint in its own name.

Process to be followed by the Regulator

17.2 Section 140 of the Act relates to the outcome of a complaint received by the Regulator and details the process to be followed by the Regulator, should the Regulator be of the view that a person has engaged in prohibited conduct and that the matter should be referred to the Tribunal. The relevant portion states the following:

“(1) After completing an investigation into a complaint, the National Credit Regulator may –

(a) ...

(b) make a referral in accordance with subsection (2), if the National Credit Regulator believes that a person has engaged in prohibited conduct;

(c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act.

(d) ...

(2) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter –

(a) ...

(b) to the Tribunal.”

The Tribunal derives its jurisdiction to hear this matter based on the above sections in the Act.

Registration as a credit provider

17.3 Section 40 of the Act states that “ A person must apply to be registered as a credit provider if:

17.3.1 that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or

17.3.2 the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of Section 42(1).”

Applicability of the Act

17.4 Section 4 of the Act states the following:

“(1) Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm’s length and made within, or having an effect within, the Republic, except:-

17.5.1 a credit agreement in terms of which the consumer is-

- (i) a juristic person...
- (ii) the state; or
- (iii) an organ of state;

17.5.2 a large agreement is described in section 9(4)...

- (i) a credit agreement in terms of which the credit provider is the Reserve Bank of South Africa; or
- (ii) a credit agreement in respect of which the credit provider is located outside the Republic, approved by the Minister on application by the consumer in the prescribed manner and form.

The Act further defines a credit provider as " in respect of a credit agreement to which this Act applies, means- ...

"the party who advances money or credit to another under any other credit agreement;.."

Pre-agreement disclosure

17.5 Section 92 (1) in respect of pre-agreement disclosure states as follows:

"(1) A credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form."

17.5.1 Read with Regulation 28 which provides the following:-

"28(1) The pre-agreement statement and quotation given to a consumer in terms of Section 92(1) of the Act must comply with the following requirements:

- (i) The pre-agreement statement and quotation may be contained in one document or in two separate documents
- (ii) The pre-agreement statement and quotation must be in the format set out in Form 20;
- (iii) or purposes of electronic or telephone originated pre-agreement statement and quotation for small agreements, the electromagnetic recording and transcribing of documents will be sufficient,

- (iv) provided that the consumer is supplied with copies of the documents within a reasonable time.
- (v) If any section of the pre-agreement statement and quotation as prescribed in this section does not apply to particular type of credit agreement, such section may be omitted from the statement.
- (vi) If any category of fee or charge that is provided for is not levied by the credit provider, or if no security, insurance or similar requirements are made by the credit provider, the sections dealing with such matters may be omitted.

The following definitions will apply to Form 20, in respect of credit facilities that meet the criteria for small agreements..."

- (i) Section 93(2) states: "A document that records a small credit agreement must (own emphasis) be in the prescribed form". This section must be read with Regulation 30, which states that:

"30(1) A document that records a small credit agreement must (own emphasis) contain all the information as reflected in Form 20.2.

(2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider."

17.6 Prevention of reckless credit

Section 81(2)- A credit provider must not enter into a credit agreement without first taking reasonable steps to assess—

(a) The proposed consumer's —

(i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;

(ii)

(iii) Existing financial means, prospects and obligations;" A credit provider must not enter into a reckless credit agreement with a prospective consumer.

(4) For all purposes of this Act, it is a defence to an allegation that a credit agreement is reckless if-

(a) the credit provider establishes that the consumer failed to truthfully answer any requests for information made by credit provider as part of the assessment required by this section; and

(c) a court or the Tribunal determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper assessment."

17.7 Unlawful provisions

Section 90(2)(b)(i), (ii) and (iii) states as follows:

"(2) A provision of a credit agreement is unlawful if-

(a)...

(b) it directly or indirectly purports to –

(i) waive or deprive a consumer of a right set out in this Act;

(ii) avoid a credit provider's obligation or duty in terms of this Act;

(iii) set aside or override the effect of any provision of the Act"

Section 90(2)(k)(iii) states:-

"A provision of a credit agreement is unlawful if it expresses, on behalf of a consumer an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed."

The Applicant has provided evidence of the Acknowledgement of debt agreements that are signed by the consumers, prior to any default under the Act.

Section 90(2)(b)(i), (ii) and (iii) in respect of unlawful provisions of a credit agreement;

"(2) A provision of a credit agreement is unlawful if-

(a)...

(b) it directly or indirectly purports to –

(i) waive or deprive a consumer of a right set out in this Act;

(ii) avoid a credit provider's obligation or duty in terms of this Act;

(iii) set aside or override the effect of any provision of the Act"

"Section 91 states that :

A credit provider must not-

(a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement;"

17.8 **Excessive Interest**

Section 100(1)(c) of the Act states :

"A credit provider must not (own emphasis) charge an amount to, or impose a monetary liability on, the consumer in respect of an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act."

Section 101(a) of the Act states:

"A credit agreement must not (own emphasis) require payment by the consumer or any money or other consideration, except the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 102;"

17.9 **Cost of credit**

Section 101(1)(b) states that:

"(1) A credit agreement must not require payment by the consumer of any money or other consideration, except-

(a)...

(b)

(c)

(d) interest, which—

(ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105;"

Section 101(1)(d) of the Act further states that:

"A credit agreement must not (own emphasis) require payment by the consumer of any money or other consideration, except interest, which must be expressed in percentage terms as an annual interest rate calculated in the prescribed manner; and..."

17.10 **Prohibited collection and enforcement practices**

Section 133(1) and (2) states that:

A credit provider must not-

17.10.1 Make use of any document, number or instrument referred to in section 90(2)(l) when collecting on or enforcing a credit agreement; or;

- 17.10.2 Direct or permit any other person to do anything contemplated in this subsection on behalf, or as an agent, of the credit provider.
- 17.10.3 When collecting money owed by a consumer under a credit agreement or when seeking to enforce a credit agreement, a credit provider must not use, or rely on, or permit any person to use or rely on, any document, instrument or contract provision referred to in section 90(2)(l).
- 17.10.4 A person who contravenes this section is guilty of an offence."

17.11 **Keeping of records by the Credit Provider**

Section 170 states as follows:

- 17.11.1 Section 170 of the Act relates to the keeping of records by the credit provider. This section states: "A credit provider must (own emphasis) maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time."

APPLICABLE REGULATIONS OF THE NCA

18. Regulation 30 states states that:

"30(1) A document that records a small credit agreement must (own emphasis) contain all the information as reflected in Form 20.2.

(2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider."

Regulation 42(1) in respect of the maximum prescribed interest and initiation fees

Table A: Maximum Initiation Fee

The following maximum limits will apply to initiation fees

Sub Sector	Maximum Initiation Fee
Mortgage Agreements	(a) R 1 000 per credit agreement, plus, 10% of the amount of the agreement in excess of R 10 000 (b) But never to exceed R 5 000
Credit Facilities	(a) R 150 per credit agreement, plus 10% of the amount of the agreement in excess of R 1 000 (b) But never to exceed R 1 000

Unsecured credit transaction	<p>(a) R 150 per credit agreement, plus, 10% of the amount of the agreement in excess of R 1000</p> <p>(b) But never to exceed R 1000</p>
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Developmental credit agreements	
For the development of a small business	<p>(a) R 250 per credit agreement, plus 10% of the amount of the agreement in excess of R 1000</p> <p>(b) But never to exceed R 2 500</p>
For low income housing (unsecured)	<p>(a) R 500 per credit agreement plus 10% of the amount of the agreement in excess of R 1000</p> <p>(b) But never to exceed R 2 500</p>
Short terms credit transactions	<p>(a) R 150 per credit agreement plus 10% of the amount of the agreement in excess of R 1000</p> <p>(b) But never to exceed R 1000</p>
Other credit agreements	<p>(a) R 150 per credit agreement plus 10% of the amount in excess of R 1000</p> <p>(b) But never to exceed R 1000</p>
Incidental credit agreements	Nil

19. Regulation 55(1) in respect of the records of registered activities to be retained by registrants states as follows:

(1) In addition to any records that must be kept in terms of the Act, a registrant must maintain the following records relating to its registered activities, which records may be kept in electronic format:

(a)...

(b) Credit providers, in respect of each consumer:

(i)

(ii)

(iii)

(iv) Documentation in support of steps taken in terms of section 81(2) of the Act;"

20. Regulation 55(1)(b)(vi) further supports the requirement of conducting the pre-assessment as well as retaining the required supporting documentation as it states that "In addition to any records that must be kept in terms of the Act, a registrant must (own emphasis) maintain the following records relating to its registration activities, which records may be kept in electronic format: (b) Credit Providers, in respect of each consumer: documentation in support of steps taken in terms of Section 81(2) of the Act."

APPLICABLE GENERAL CONDITIONS OF REGISTRATION

General Condition Part A Clause 1

21. "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"
22. The Tribunal has considered the above mentioned sections of the Act and it is satisfied that whilst the Respondent was not registered for the entire period when loans were granted to consumers, the Act however is still applicable to the Respondent and as such the Respondent must comply with the relevant sections of the Act applicable to credit agreements. The Act makes specific reference to sections that Registrants must comply with under the Act, and in other sections, reference is made to credit providers. The Tribunal is therefore only considering those sections of the Act which the Respondent, as a credit provider (not as a Registrant), is required to comply with.
23. It is clear from the evidence put forward by the Applicant that the Respondent failed to comply with the requirement of ensuring that the consumers were provided with pre-agreements and quotations. No assessment forms were completed by consumers, but instead the Respondent granted loans to consumers on the basis of considering the consumers' payslips. In the absence of any formal assessments being found during the investigation, the conclusion reached by the Tribunal is that the Respondent has not complied with the sections relating to affordability assessments. The Applicant's investigation revealed further that there were no records on the files that met the requirements of Regulation 55 and thus the Respondent has not met the requirement to keep proper records as required by the Act, in conducting pre-assessments of the consumers affordability.
24. Further, the Applicant has shown that the information the Respondent kept of a loan application form does not meet the requirements of the Act and is unlawful in that it requires the consumer, at the outset, prior to being in default in terms of the Act, to agree to the repossession of specific goods of the consumer.
25. The Tribunal considered the element of prohibited conduct on the part of the Applicant. The Act defines prohibited conduct as " An act or omission in contravention of this Act, other than an act or omission that constitutes an offence under this Act". The Applicant made submissions that the Respondent retained the bank cards and identity documents if consumers, the act of which is unlawful and prohibited by the Act.
26. Based on the evidence before the Tribunal, the Tribunal concludes that the Respondent has contravened various sections of the Act as well as the Regulations. In such instances where a determination has been made by the Tribunal on prohibited conduct, Section 164(3)and (4) is applicable to the affected consumers. Section 164(3) states:

"A person who has suffered loss or damage as a result of prohibited conduct or dereliction of required conduct-

- 26.1 may not commence an action in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or
- 26.2 if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form-
- 26.2.1 certifying that the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;
- 26.2.2 stating the date of the Tribunal's finding; and
- 26.2.3 setting out the relevant section of this Act in terms of which the Tribunal made its finding.

(4) A certificate referred to in subsection (3)(b) is conclusive proof of its contents and is binding on a civil court."

27. The Tribunal based on the submissions of the Applicant and the conduct of the Respondent finds that on a balance of probability, the Respondent is guilty of prohibited conduct on terms of the Act.

CONSIDERATION OF THE ADMINISTRATIVE FINE

28. The Applicant made submissions to the Tribunal at the hearing arguing for the imposition of an administrative fine of R1000 000,00 (one million rand) in terms of Section 151 of the Act alternatively in terms of Section 150(i) any other appropriate order to give effect to the consumers rights under the Act.

It is the submission of the Applicant that the Tribunal considers the following:

- 28.1 That the consumers were vulnerable consumers exploited by the Respondent as "as a means to an end.":
- 28.2 That the consumers were "at risk" consumers and could not appreciate the cost of credit which was never disclosed to the consumers;
- 28.3 That the retention of bank cards and identity documents of consumers made consumers more vulnerable and that such conduct was in contravention of the Act;
- 28.4 The conduct of the Respondent was in conflict with the purpose of the Section 3 of the Act to address over indebtedness;
- 28.5 That the only act of compliance of the Respondent was to register and then when the time came to renew the Respondents registration the Respondent failed to renew its registration;

- 28.6 That the Applicant had great difficulty in quantifying the loss or damages suffered by consumers because there was no information of the amounts advanced to consumers or the amounts withdrawn from consumers accounts;
- 28.7 There were no financials available to assess the profit derived of the Respondent;
- 28.8 The case as a whole and the conduct of the Respondent only presents aggravating factors and no mitigatory factors;
29. The Tribunal is referred to the Tribunal judgments Louwen matter, Rufus Afonso and the Cash Convertors (citations to be added.)

RESPONDENTS SUBMISSIONS

30. The Respondent was absent from the hearing and thus there are no submissions of the Respondent to consider.

ANALYSIS OF THE LAW

31. The Tribunal's power to impose an administrative fine is derived from section 151 of the Act.
- 31.1 Section 151(1) of the Act provides as follows –
The Tribunal may impose an administrative fine in respect of prohibited or required conduct in terms of this Act or the Consumer Protection Act, 2008.”
- 31.2 Section 151(2) of the Act provides as follows –
“An administrative fine imposed in terms of the Act may not exceed the greater of-
- (a) 10 per cent of the respondent’s annual turnover during the preceding financial year ;or
- (b) R1 000 000”.
32. Section 151 of the Act does not provide guidance on where the Tribunal should start in making a determination of the amount nor on the weight to ascribe to each of the factors listed. It does however clearly mandate the Tribunal to consider the factors as laid down in the Act and to set an upper cap on the administrative fine that may not be exceeded. When determining an amount, the Tribunal must consider the legislation from which it derives its own mandate and consider the factors in Section 151(3) of the Act which provides as follows:
- 32.1 The nature, duration, gravity and extent of the contravention;

- 32.2 Any loss or damage suffered as a result of the contravention
 - 32.3 The behaviour of the respondent;
 - 32.4 The market circumstances in which the contravention took place;
 - 32.5 The level of profit derived from a contravention
 - 32.6 The degree to which the respondent has co-operated with the National Credit Regulator, or the National Consumer Commission, in the case of a matter arising in terms of the Consumer Protection Act, 2008 and the Tribunal; and
 - 32.7 Whether the respondent has previously been found in contravention of the Act, or the Consumer Protection Act 2008, as the case may be.
33. In the Werlan-case, (citation to be provided) the Tribunal stated that the Tribunal must consider fairness towards both the Applicant and the Respondent when considering what would be a just administrative fine to impose. The Tribunal will also consider any mitigating factors that can be taken into account in arriving at the final amount of the penalty as well as the evidence before the Tribunal of the Respondent's annual turnover. This would be the Tribunal's point of departure and then to apply the factors in section 151(3) of the Act to same.
34. We now turn to whether the Tribunal may impose an administrative fine in this particular matter and in so doing also to section 2 of the Act which requires the Tribunal to interpret the Act in a manner that "gives effect to the purposes set out in section 3." Section 3 of the Act summarised is to promote and advance the social and economic welfare of South Africans, to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market.

The nature, duration, gravity and extent of the contravention

35. From the evidence placed before the Tribunal it is clear that the contraventions of the Act are of a serious nature, namely having consumers sign a declaration documents prior to being in default, holding PINS and bank cards. The period of time over which the transgressions took place is not clear and did not form part of the Applicants submissions. The Respondent did not attend the hearing and thus by the Respondents silence admitted to engaging in such prohibited conduct.

Any loss or damage suffered as a result of the contraventions

36. No evidence was placed before the Tribunal on quantifiable loss or damage suffered as a result of the contraventions of the Respondent save for the Applicant to say that consumers are prejudiced because of the

overcharging of interest rates but not to a quantifiable measure. The transgression that is apparent is the gross overcharging of interest at thirty percent (30%) per month. The Respondent failed to assist the Tribunal to quantify any loss to consumers.

The behaviour of the Respondent

37. The Tribunal noted that the Respondent did not attend the hearing. The Respondent continued to grant loans to consumers during a period when the Respondent had not renewed the Respondents registration. This is an aggravating factor.

The market circumstances in which the contravention took place

38. The Applicant made submissions of the vulnerability of consumers and the exploitation of consumers. These submissions were based on the location of the business premises, physical addresses of the consumers and salary information and job descriptions of consumers, but was unable to substantiate these allegations further nor to place additional evidence thereof before the Tribunal beyond these assertions.

Level of Profit derived from the contraventions

39. The extent of the loss suffered by individual consumers is not known by the Tribunal because the Respondent failed to attend the hearing to provide such key information to the Tribunal and the Applicant was during the course of the investigation unable to locate such information. The Tribunal however views the overcharging of interest as an aggravating factor.

The degree to which the Respondent has co-operated with the National Credit Regulator and the Tribunal

40. It was submitted by the Applicant that the Respondent has ceased operating directly after the investigation by the Applicant. The Tribunal considers this to be an aggravating factor.

Whether the Respondent has previously been found in contravention of the Act

41. Other than the Respondent being found by this Tribunal to be in contravention of the Act and the Respondent's Specific Conditions of Registration dating back as far as 2010 by the Tribunal no further evidence of any additional contraventions have been placed before the Tribunal.

CONCLUSION

42. In the light of the above factors taken into account by the Tribunal it is the view of the Tribunal that all of the factors operated in aggravation of the Respondents conduct. There is no doubt that the imposition of an administrative fine is appropriate in the circumstances having regard to the evidence led. However, it is also

appropriate that the Tribunal applies a rational approach to the amount of the administrative fine to be imposed linking such thinking to any evidence in mitigation, to the conduct of the Respondent, the impact on consumers and the annual turnover of the Respondent.

43. It is for these reasons, considering the matter as a whole and the conduct of the Respondent that the Tribunal imposes an administrative fine of R1 000 000.00 (One Million Rand) to reflect the seriousness with which the Tribunal views this type of prohibited conduct and disregard for consumers and the Act by the Respondent.


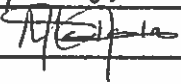
ORDER

44. In the result the Tribunal makes the following order:

- 44.1 In terms of section 150(g) of the Act, the Respondent's repeated contravention of the Act and Regulations and the Respondents conduct is declared to be prohibited conduct in terms of the Act;
- 44.2 The Respondent is declared to be in repeated contravention of sections 81(1)(a) read with Section 81(3) and Regulation 55(1)(b)(vi), Section 92(1) read with Regulation 28(1) alternatively Regulation 55(1)(b)(iv), Section 93 read with Regulation 30 and Section 91(b)(i) read with Section 133 of the Act.
- 44.3 The Respondent is declared to be in repeated contravention of its General Conditions of Registration A1 and of the Act;
- 44.4 The Respondent must pay an administrative fine of R1 000 000.00 (One Million Rand) by no later than
- 44.5 February 2016.
- 44.6 No order as to costs is made.

DATED THIS 14TH DAY JANUARY 2016

P A BECK
MEMBER

 national consumer tribunal	
ACKNOWLEDGE RECEIPT: REGISTRARS OFFICE	
CASE NAME: NCT/19294/2014/14D (1) NCA	
DATE: 09/02/2016	SIGNATURE: 
TIME: 09:12	

Adv F Sephoti (Presiding Member) and Adv Manamela (Member) concurring.