

SOUTH AFRICA / JUDGMENT

Manzi v Barnard and Another (NCT/315894/2024/141(1)(b)) [2024] ZANCT 68 (4 December 2024) [2024] ZANCT 68

COURT

National Consumer Tribunal

BEFORE

C Sassman, CJ Ntsoane, Z Ntuli

CASE / FILE NUMBER

NCT/315894/2024/141(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT/315894/2024/141(1)(b)

In the matter between: SANDILE DERRICK MANZI APPLICANT and ALICE DAWN BARNARD (NCRDC3277) FIRST RESPONDENT NATIONAL CREDIT REGULATOR SECOND RESPONDENT

Coram:

Adv C Sassman

- Presiding Tribunal member

Mr CJ Ntsoane

- Tribunal member

Ms Z Ntuli

- Tribunal member

Date of hearing

- 22 November 2024

Date of judgment

- 4 December 2024

(Last documents received on 29 November 2024)

JUDGMENT AND REASONS

THE PARTIES

1. The applicant is Sandile Derrick Manzi (the applicant), an adult male, defined as a consumer in section 1 of the National Credit Act 34 of 2005 (NCA). At the hearing, the applicant represented himself.
2. The first respondent is Alice Dawn Barnard (the first respondent), an adult female registered as a debt counsellor with registration number NCRDC3277.
3. The second respondent is the National Credit Regulator (NCR), a state organ and a juristic person established in terms of section 12 of the NCA to regulate the consumer credit market and ensure compliance with the NCA.
4. Neither respondent has opposed this application, and the Tribunal was satisfied that it had been properly served on each of them.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section of the NCA.
6. A reference to a rule in this judgment refers to the Rules of the Tribunal[1] (the rules).

APPLICATION TYPE

7. This is an unopposed application in terms of section 141(1)(b), in which the applicant, with leave granted by the Tribunal, seeks redress against the first respondent. The applicant alleges that the first respondent placed him under debt review without his consent.

BACKGROUND

8. The applicant alleges that he was telephonically contacted by one of the first respondent's employees, who claimed that she was authorised to assist government employees in lowering the interest rates on their credit agreements. The applicant cooperated with the first respondent by providing an account of his income and expenses but denied that he was informed that he was applying for a debt review. The applicant avers that the first respondent misled him and that he never consented to be placed under debt review. The applicant seeks an order to release him from debt review and to remove the listing from his credit profile. He further seeks an order for compensation from the first respondent for the distress she has caused him. The respondents have not opposed the application, and it is considered unopposed. On 26 November 2024, the panel requested a copy of the first respondent's conditions of registration as a debt counsellor from the NCR through a summons. The same was received on 29 November 2024 and was considered with all documents in the case record.

THE APPLICANT'S

SUBMISSIONS

9. The applicant submitted that he was under the impression that his interest rates would be reduced, allowing him to pay a lower monthly instalment on his credit agreements. He noticed that his monthly instalments were lowered, and his repayment terms had been extended, but he could not confirm whether the interest rate on each credit agreement was reduced as promised. The applicant denies having applied for debt review and maintains that he was not over-indebted when the first respondent placed him under debt review. The adverse listing on his credit profile has prevented him from accessing credit, which he often relies on to fund various business activities.

CONSIDERATION OF THE EVIDENCE

10. The Tribunal is seized with the applicant's documentary evidence and oral arguments. The first respondent, by failing to file an answering affidavit and opposing the application, lost the opportunity to put a proper defence against the allegations levelled against her and placed herself in the hands of the Tribunal. Without any contradictory evidence and in line with rule 13(5), the

Tribunal accepts the applicant's version that he did not knowingly apply for debt review with the first respondent.

11. The NCR primarily holds the information the applicant seeks to remove from its Debt Help System (DHS). The system records all consumers who have applied for debt review and are in the different stages of the debt counselling process. The credit bureaus receive data from this system and record debt review listings on consumers' credit profiles. This is because only the NCR, as custodian of the DHS, can add or remove information from its system.
12. The allegations against the first respondent are serious. Section 52(5)(c) prescribes that a registrant, such as the first respondent, must comply with her conditions or registration. Condition A2 of the first respondent's conditions of registration as a debt counsellor specifies that she is required, in all instances, to act professionally and reasonably in providing debt counselling services to consumers in a fair manner that does not bring the NCR or debt counselling into disrepute. Condition A3 further requires the applicant to fully inform a consumer of the consequences of a debt restructuring order.
13. The Tribunal is persuaded that the applicant did not freely and voluntarily apply for debt review and was not informed of the consequences of such an application. The first respondent acted in a manner inconsistent with the purposes and requirements of the NCA. She was driven by greed for profit instead of the applicant's best interest.

14. The Tribunal finds that the first respondent acted with a disregard for the applicant's consumer rights and the effect that being placed under debt review would have on his standard of living and credit profile. In doing so, the first respondent contravened section 52(5)(c), read with conditions A2 and A3 of her conditions of registration as a debt counsellor. The contravention is declared prohibited conduct and warrants the imposition of an administrative fine as a punitive measure.
15. Section 150(i) empowers the Tribunal to make an appropriate order regarding prohibited conduct to give effect to consumers' rights. Section 150(c) empowers the Tribunal to impose an administrative fine on a respondent who engaged in prohibited conduct. Section 151(3) outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate subheadings below.

The nature, duration, gravity, and extent of the contravention

The evidence shows that the contravention is serious, disregarding the NCA and the applicant's rights as a consumer. The applicant was a victim of the first respondent's unlawful conduct.

Any loss or damage suffered as a result of the contravention

The applicant submitted that due to the listing on his credit profile, he has been unable to apply for credit for his various business activities, causing him financial prejudice.

The behaviour of the first respondent

The first respondent acted with complete disregard for consumer rights. The evidence proves that she had full knowledge of her requirements as a debt counsellor and willingly chose not to comply with them.

The market circumstances in which the contravention took place

The first respondent's conduct illustrates that the market within which the contraventions occurred is where consumers trust debt counsellors and do not expect to be misled or exploited. These consumers are often not fully aware of their rights relating to debt counselling and are vulnerable to such exploitation.

The level of profit derived from the contravention

The applicant did not provide evidence of the level of profit derived by the first respondent. However, any fees paid by the applicant resulted in a profit for the first respondent.

The degree to which the first respondent has cooperated with the NCR and the Tribunal The applicant submitted documents to the NCR upon request but chose not to provide an answer to the allegations levelled against her at the Tribunal.

Whether the first respondent has previously been found in contravention of the NCA The Tribunal is unaware of any prior investigations or enforcement action instituted against the first respondent.

16. Regarding the abovementioned factors, the factual evidence, and the conduct displayed, it is in the interests of justice for an administrative fine to be imposed on the first respondent. Regarding the quantum of the administrative fine, section 151(2) provides that an administrative fine imposed may not exceed the greater of 10% of the first respondent's annual turnover during the preceding financial year or R1 000 000.00 (one million rand). Without knowing the first respondent's annual turnover, the Tribunal can still impose a fine limited to a maximum of R1 000 000.00 (one million rand).
17. The Tribunal finds that a fine of R250 000.00 (two hundred and fifty thousand rand) will be appropriate.
18. The applicant also seeks an order for compensation for the distress that the first respondent has caused him. However, such an order would amount to a claim for damages, which the Tribunal is not empowered to make in this instance.

CONCLUSION

19. The Tribunal finds that the respondent acted contrary to her conditions of registration as a debt counsellor and has contravened section 52(5)(c) read with conditions A2 and A3 of her conditions of registration as a debt counsellor. The contravention amounts to prohibited conduct and warrants the imposition of an administrative fine as a punitive measure. The applicant is further entitled to the relief that he seeks to be removed from the DHS.

ORDER

20. Accordingly, the Tribunal makes the following order:
- 20.1 The first respondent has contravened section 52(5)(c) of the NCA, read with conditions A2 and A3 of her conditions of registration as a debt counsellor;
- 20.2 The first respondent's contravention of section 52(5)(c) read with conditions A2 and A3 of her conditions of registration as a debt counsellor is declared prohibited conduct in terms of section 150(a) of the NCA;
- 20.3 Within ninety calendar days of the issuing of this judgment, the first respondent is ordered to pay the amount of R250 000.00 (two hundred and fifty thousand rand) into the National Revenue Fund referred to in section 213 of the Constitution[2], the details of which are as follows:
- Bank:
- Nedbank
- Account Holder: Department of Trade, Industry and Competition
- Account type: Current Account
- Branch Name: Telecoms and Fiscal

Branch code: 198765

Account number: 1[...]

Reference: NCT/315894/2024/141(1)(b) and the name of the person or business making the payment;

20.4 The second respondent is ordered to, within seven business days of the issuing of this judgment, remove the applicant's debt review status from its Debt Help System and inform all registered credit bureaus of the removal; and

20.5 There is no cost order.

Adv C Sassman

Presiding Tribunal member

Tribunal members Mr CJ Ntsoane and Ms Z Ntuli concurring.

[1] Published under GN 789 in GG 30225 on 28 August 2007 as amended by GN 428 in GG 34405 on 29 June 2011, GN R203 in GG 38557 on 13 March 2015 and GN 157 in GG 39663 on 4 February 2016.

[2] Constitution of the Republic of South Africa, Act 108 of 1996.

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