

SOUTH AFRICA / JUDGMENT

National Credit Regulator and Others v Kotze (NCT/96/2009/57(1)(P)&149(1)(P)) [2009] ZANCT 11 (1 September 2009)

[2009] ZANCT 11

COURT

National Consumer Tribunal

CASE / FILE NUMBER

NCT/96/2009/57(1)(P)&149(1)(P)

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IN THE NATIONAL CONSUMER TRIBUNAL

SETTLEMENT ORDER

REF NO : NCT/96/2009/57(1) (P)&149(1)(P)

DATED : 1 SEPTEMBER 2009

In the matter between:

NATIONAL CREDIT REGULATOR.....1st Applicant
FM DE BEER..... 2nd Applicant
S DU PLESSIS..... 3rd Applicant
AT NIEMAND.....4th Applicant
F SWART..... 5th Applicant
T MAGANO.....6th Applicant
M ABRAM.....7th Applicant
M VERMEULEN.....8th Applicant
B MOLEFE.....9th Applicant
F VENABLES.....10th Applicant
P JORDAAN..... 11th Applicant
T BERRIMAN.....12th Applicant

R RUPPING..... 13th Applicant
C GREYLING.....14th Applicant
E VAN HEERDEN.....15th Applicant
L RAUTENBACH..... 16th Applicant
and
BARRY KOTZE..... Respondent

WHEREAS

A. The Applicants have commenced proceedings before the National Consumer Tribunal for an interim order for relief pending the hearing of the principal matter described in the application; and

B. the parties have settled the dispute and wish to make it an order of the Tribunal.

NOW THEREFORE an order is made in the following terms :

1. The Respondent's registration as debt counsellor under registration no NCRDC 436 is not suspended pending the finalization of the matter;
2. Respondent is prohibited from accepting any new or further applications for debt review from consumers as of date of this order;
3. Respondent is directed to comply with the obligations in terms of Section 57(9)(a), including strict compliance with applicable

provisions for Debt Councillors as contained in the National Credit Act 34 of 2005 [the Act], the Regulations in terms of the Act and the conditions of registration of the Respondent.

4. That Respondent is directed to within 24 hours after receipt of instruction from the consumer, transfer such consumer's file to another registered debt counsellor nominated by such consumer;
5. Respondent is prohibited from, directly or indirectly, intimidating, inducing or enticing consumers not to transfer or request to transfer their files to another registered debt counsellor;
6. Respondent is directed to supply the following schedules to the National Credit Regulator not later than 30 days of date of this

order, to wit:

6.1 A schedule containing the full names, identification number, residential- and work address and contact details of each and every

consumer who has applied for debt review with the Respondent;

6.2 Schedules containing the full names, identification numbers, residential- and work address, contact details of all consumers who applied to the Respondent for debt review but whose applications were rejected;

6.3 A schedule containing the full names, identification numbers, residential and work address and contact details of each and every

consumer who is presently under debt review with the Respondent;

6.4 Schedules containing particulars with regards to each and every amount paid by consumers, including the full names, identity numbers, dates of payments and contact details of such consumers regarding payment of the application and cancellation fees levied by Respondent;

6.5 A schedule containing information with regards to each and every payment received by Respondent from consumers in lieu of his

appointment as debt counsellor (e.g. recalculated monthly instalments), including names, identity numbers of consumers, amounts

and dates of payments;

6.6 Schedules containing full particulars of the payment distribution agents used by Respondent as well as full particulars with regards to each and every amount that has been paid over by Respondent to such payment distribution agencies and/or each and every amount received by such agents from consumers;

6.7 An audited statement reflecting all amounts received by Respondent and Payment Distribution Agents appointed by him including all disbursements or charges and setting out distribution and payments of all amounts:

6.7.1 The audit must include but is not limited to, full particulars with regards to each and every consumer with regards to which charges were claimed as well as the amounts and dates of disbursements and costs and charges;

6.7.2 The audit must also set out clearly all distributions that have already been made to creditors on behalf of each and every consumer;

6.7.3 The audit must also confirm the veracity of all the schedules contemplated in 6.1 -6.6 above.

6.8 The Respondent confirms that his auditor is Jan Erasmus of Jan Erasmus Auditors, contactable on 012-361 7755 and operating from Rosemary Avenue, Lynnwood. Pretoria. The applicant's attorneys are entitled to meet with Jan Erasmus Auditors to discuss their mandate in relation to the audit contemplated in 6.7 above. The Respondent shall bear all costs regarding this audit.

7. Respondent is directed to pay over all amounts paid over to him by consumers to a Payment Distribution Agency, which has been approved by the National Credit Regulator by not later than 11th September 2009.

8. Respondent is directed to instruct any and all non-approved payment distribution agents to pay over any and all amounts currently in trust with them, before 11th September 2009, to a Payment Distribution Agency which has been approved by the National Credit

Regulator. The Respondent must ensure that the monies are properly distributed by such Payment Distribution Agency and must assist such Payment Distribution Agency with proper payment schedules.

9. The National Credit Regulator is to give the Respondent 48 hours notice in writing to his email address, of date on which its ongoing investigation, in relation to this matter, is to be conducted. Respondent confirms that he is not available for the week of 14 - 18 September 2009.

Dated and signed at CENTURION on this 1st day of September 2009.

PRESIDING MEMBER

PANEL MEMBER

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