

SOUTH AFRICA / JUDGMENT

National Credit Regulator v AI Wena Cash Loans (Pty) Ltd (NCT-266743-2023-140(1))

[2023] ZANCT 45 (1 August 2023)

[2023] ZANCT 45

COURT

National Consumer Tribunal

BEFORE

P Manzi-Ntshingila, C Sassman, S Hockey

CASE / FILE NUMBER

NCT-266743-2023-140(1)

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Policy

IN

THE NATIONAL CONSUMER TRIBUNAL

HELD

AT CENTURION

Case

No: NCT-266743-2023-140(1)

In

the matter between:

NATIONAL
CREDIT REGULATOR APPLICANT
And
AI WENA CASH LOANS (PTY)
LTD RESPONDENT
(Registration
Number: 2[....]7)
(NCR
Registration Number: NCR[....]0)

Coram: Ms P Manzi-Ntshingila
- Presiding
Tribunal member
Adv C Sassman
- Tribunal
member
Mr S Hockey
- Tribunal
member
Date
of the hearing: - 23 June 2023

JUDGMENT

AND REASONS

THE PARTIES

1. The applicant in this matter is the National Credit Regulator (hereinafter referred to as the applicant), a juristic person established by section 12 of the National Credit Act 34 of 2005 (the Act) with its physical address at 127 15th Road, Randjiespark, Midrand, Gauteng.
2. At the hearing, Mr. Moosa Vardalia, a legal advisor in the applicant's Investigations and Enforcement Department, represented the applicant.
3. The respondent is Ai Wena Cash Loans (Pty) Ltd with registration number: 2[....]7) (the respondent), a private company duly registered as such in terms of the company laws of the Republic of South Africa and a previously registered credit provider registered as from 08 October 2019 under registration number NCR[....]0, with its principal registered physical and postal address situated at 21 De Waal Street, La Hoff, Klerksdorp, North West, 2571.
4. The respondent was neither present nor represented at the hearing.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section in the Act.
6. A reference to a regulation refers to the National Credit Act Regulations, 2006 (the regulations).[1]
7. A reference to a form refers to a form prescribed in the regulations.
8. A reference to a rule in this judgment refers to the Rules of the National Consumer Tribunal.
[2]

APPLICATION TYPE

9. This is an application made in terms of section 140(1)(c) whereby the applicant seeks an order declaring that the respondent has repeatedly contravened certain sections of the Act and that such contraventions be declared prohibited conduct. The applicant further seeks additional orders as a consequence of the respondent's alleged prohibited conduct. These are addressed further below.

JURISDICTION

10. The Tribunal has jurisdiction to hear this matter in terms of section 27(a)(ii) and has powers conferred upon it in terms of section 150 to make orders concerning alleged contraventions of the Act.

PROCEEDING ON A DEFAULT BASIS

11. On 31 March 2023, the application was served on the respondent by registered mail at its registered address, and in terms of Rule 13(2). The respondent had 15 business days to serve an answering affidavit and file the same with the Registrar. However, the respondent failed to do so.
12. The applicant did not file an application for a default order in terms of Rule 25(2).
13. On 15 May 2023, the Registrar issued a notice of set down to all the parties, setting the matter down for hearing on 23 June 2023.
14. When this matter was heard, 15 business days had elapsed from the time that the first notice was sent to the respondent by the post office concerned notifying it that a parcel was available for collection. The respondent has therefore suffered no prejudice as a result of the premature setting down of the matter, which the Tribunal accordingly condones in terms of Rule 23(11).
15. Rule 13(5) states that any fact or allegation in the application or referral not explicitly denied or admitted in the answering affidavit will be deemed admitted by the respondent.
16. Therefore, in the absence of any answering affidavit filed by the respondent, the applicant's application and the allegations contained therein are deemed to be admitted.

FACTUAL BACKGROUND

17. This complaint stems from information received by the applicant's complaints department from a consumer, Mrs. Adele Coetzee, regarding the business practices of the respondent. The complainant alleged that the respondent was overcharging her on interest, charging an administration fee and an immediate payment fee, thus extending credit recklessly in contravention of the Act. She also attached copies of the purported credit agreement of the respondent, which was not completed or drafted in the manner prescribed by the regulations.

18. Based on this information and complaint, the applicant drew a reasonable suspicion of the possibility of the respondent contravening the Act.
19. Accordingly, the applicant's CEO initiated a complaint in terms of Section 136(2) and authorized an investigation into the activities of the respondent in terms of Section 139(1)(c).
20. On 31 October 2022, two employees of the applicant were duly appointed in terms of section 25 as inspectors to investigate the conduct of the respondent.
21. During a verification process, the applicant established that the respondent's registration had lapsed on 31 July 2022 in terms of Section 52(4)(b)(iii) as it failed to pay its prescribed renewal fee for 2022. The respondent also changed its address without informing the applicant as required.
22. When the investigations were conducted, the respondent confirmed to the applicant that its business as a credit provider was being conducted at new premises.
23. At the beginning of the investigations, ten (10) sample files were sought for assessment of the alleged indiscretions, but only nine (9) were ultimately provided and assessed, and the applicant concluded that there was non-compliance with the Act.

APPLICANTS SUBMISSIONS

24. Below is a summary of the alleged contraventions by the respondent, which the applicant deems repeated conduct as appears from the investigation report.

24.1. Failed to update records

Section 52(5)(c) read with General Condition 7:

The Act prescribes peremptory conditions of registration, which in this instance, obliges the registrant to update the applicant of any change in contact details or any occurrence relevant and significant to the respondent's registration as a credit provider or which affects its compliance. This failure to notify the applicant immediately is a contravention of the Act. During the investigations, the applicant discovered without prior notification that the respondent was now conducting business at 23 Smit Avenue, Studio 12, Flamwood, Klerksdorp, 2571, despite being registered with the applicant as conducting its business at 21 De Waal Street, La Hoff, Klerksdorp, North West, 2571.

24.2. Failure to pay annual renewal fees

Section 52(5)(c-d), 52(4)(b)(iii) read with General Conditions 2

The Act requires a registrant to pay the annual renewal fees within the prescribed time. In this instance, the respondent failed to renew its registration by 31 July 2022, having the last valid certificate issued in the previous financial year, and this non-compliance was confirmed both by the respondent and the applicant's Finance Department. According to the applicant, this action is inconsistent and a contravention of the purpose and requirements of the Act. If a registrant fails to pay its annual renewal fees, its registration

lapses. The respondent's registration lapsed on 31 July 2022, this being the last day on which its prescribed renewal fee should have been paid. As of this date, the respondent ceased to be a registered credit provider, and in terms of section 40(3) became disqualified from trading as a registrant, i.e., to offer, make available or extend credit, enter into a credit agreement, or agree to do any of those things. This contravention is found in three (3) of the nine (9) sampled files.

24.3. Granting of credit when it was not registered as a credit provider Section 40(1) read with section 40(3), 40(4) read further with Section 89(2)(d):

The following contracts were allegedly granted to consumers after the respondent's registration lapsed:

In Annexure "G1", -the credit agreement was entered into on 13 December 2022 after the respondent's registration had lapsed.

In Annexure "G4" the credit agreement was entered on 09 November 2022 after the respondent's registration had lapsed.

In Annexure "G7", the credit agreement was entered on 23 November 2022 after the respondent's registration had lapsed.

24.4. Failure to conduct proper affordability assessments

Section 81(2)(a)(ii), read with Regulation 23A(12)(b) and 23A(13) and 81(2)(a)(iii) read with Regulation 23A(3), 23A(8) and 23A(12)(a) and (c) and 23A(9) and 23A(10):

The applicant alleges that section 81(2)(a)(ii), read with section 80(1)(a) and 81(3) and Regulation 23A requires the credit provider to conduct assessments before granting credit which includes and is not limited to considering all the consumer's monthly debt repayment obligations, debt repayment history on credit bureaus, monthly living expenses, discretionary income and considering the minimum expenses norm table, salary advice, bank statements, and declarations. The applicant additionally submitted that obtaining bank statements were merely for a tick-box exercise and not compliance because some of the bank statements found were older than three (3) months and or over a year old, which were not valid.

24.5. Reckless lending

Section 81(3) read together with section 80(1)(a):

As a result of the respondent's failure to conduct proper affordability assessments as set out in the preceding paragraph, the respondent has extended credit recklessly to consumers and has consequently repeatedly contravened the above sections.

24.6. Charging cost of credit over the maximum prescribed rate

Section 100(1)(c) read with 101(1)(d)(ii) read with Regulation 42(1) and section 100(1)(a) read with section 101(1):

The applicant submits that the Act stipulates that a credit provider must not charge an amount to, or impose a monetary liability on, the consumer in respect of an interest charge under a credit agreement exceeding the permissible rate, which is consistent with this Act. In this instance, the respondent charged interest rates of approximately 20-38 % per month. Allowable interest on shortterm loans should not exceed 5% per month on the first loan and 3% interest per month on subsequent loans within the same calendar year. The respondent has by far exceeded the prescribed rates, in that it charged a flat rate of 30%, which is 25% over the loans which were extended for a period of one month. The respondent conceded to charging these rates. The respondent also charged a 15% VAT fee which is prohibited because it is not a VAT vendor. Other additional fees charged are administrative and immediate payment fees at 10% and 5%, respectively. These are repeated prohibited charges levied in contravention of the Act.

24.7. Failure to provide pre-agreement statements and quotations in the prescribed Form and containing the prescribed content

Section 92(1) read with Regulation 28(1)b and Form 20 and 92(2) read with Regulation 29 and Form 20.1 and Regulation 23A(15):

The applicant submits that the credit provider must not enter into a credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in either the prescribed Form 20 or 20.1. No such agreements were found in the files assessed during the investigations. No preagreements were found in the files that meet the prescribed criteria, nor was the actual Form 20 or Form 20.1 found. By failing to provide adequate disclosure of the cost of credit to consumers, the respondent has further contravened Regulation 23A(15).

24.8. Failure to provide credit agreements containing the prescribed content Section 93(2) read with Regulation 30(1) and Form 20.2:

The applicant submits that a document that records a small credit agreement must be in the prescribed format of Form 20.2. Regulation 30(1) states that a document recording a small credit agreement must contain all the information as reflected in Form 20.2. The respondent does not record the credit agreements concluded with consumers in the prescribed format of Form 20.2, nor does the document contain all the required and critical information as reflected and specified in the Form. This shortcoming is evident in eight of the nine files.

24.9. Failure to provide consumers with credit agreements containing all the prescribed information – intermediate agreement

Section 93(1) read with section 93(3) and Regulation 31 further read with Regulation 31(2)(c):

Section 93(1) stipulates that the credit provider must deliver to the consumer, without charge, a copy of a document that records their credit agreement transmitted to the consumer in a paper form or a printable electronic form. Section 93(3) and Regulation 31 provides the information required to be contained in an intermediate credit agreement, for example, details relating to the cost of credit as required in terms of Regulation 31(2)(c).

Of the received and sampled files, the documents purporting to be credit agreements did not contain the following information as required: (a) Specific on the type of agreement entered into,

(b) It did not contain the Respondent's NCR registration number, the consumer's rights to rescind and/or terminate the agreement,

the consumer's right, and obligation when electing to settle the agreement early,

(c) The consumer's marketing options and the right to be excluded therefrom and

(d) Was not signed by the representative of the Respondent.

24.10. Unlawful and prohibited clauses in a credit agreement

Section 90(1) read with section 90(2)(b)(ii), read with section 101(1)(d)(ii), read further with Regulation 42(1) and section 90(2)(a)(ii) and (iii) and section 90(2)(b)(i) and (iii) read with Regulation 32 and 90(2)(b)(ii) and (iii) read with section 129 and 130 and section 90(1) and section 90(2)(b)(iii) read with section 101 and section 90(2)(k)(iv):

The applicant submits that the respondent must ensure no prohibited or unlawful clauses are contained in the credit agreement, and their investigations showed that the respondent's credit agreements include several unlawful provisions found in clauses 4, 5, 10, and 15 of the agreements. In clause 4, the credit agreements contain a provision that interest rates will be levied at 30% per month.

In clause 5, consumers were also called to waive the benefits of the exception. The provision causes consumers to waive and renounce their rights in terms of sections 129 and 130 and although a person can renounce these common law rights contractually, what the respondent cannot do is require the consumers to renounce their statutory rights contained in sections 129 which sets out the procedure which the credit provider must follow before trying to enforce a debt and 130 whilst here the process followed when the debt is being enforced at court or the process to be followed after section 129 has been enforced or failed.

The applicant further alleges that in clause 10, the agreement does not correctly prescribe the process to be followed in the event of a default, as prescribed by the Act. Also, including a signed consent to judgment without including all the necessary information makes it prone to misuse and conflicts with sections 129 and 130. The applicant further alleges that clause 15 of the respondent's

credit agreements contain a provision that makes a consumer liable for costs that are not allowed in terms of section 101(1), which are Admin and Upfront fees.

24.11. Supplementary agreements

Section 91(2) read with section 90(2)(a), read with section 90(2)(k)(iii) and section 90(2)(m) and section 90(2)(k)(vi)(bb):

In certain instances, the respondent directly or indirectly requires or induces, or causes consumers to sign a supplementary document titled: “CONSENT TO JUDGMENT IN TERMS OF SECTION 58 OF ACT 1944 AND CONSENT TO

AN EMOLUMENT ATTACHMENT ORDER”. The document further has the potential of being misused to include a court jurisdiction outside

the area where the consumer resides or works.

24.12. Failure to submit statistical and annual financial and operational returns. Section 52(5)(c) (d) and (f) read with general condition 3, Regulation 62(1)(b) and (c) and further read with Regulation 64(2) and 66:

The applicant submits that in terms of the Act, each registrant must submit to the applicant Statistical Returns and Annual Financial and Operational Returns following the format of Form 39 and Form 40 by no later than 15 February each year. Confirmation that the respondent has not complied with this requirement is supported by correspondence received by the applicant’s Compliance Department.

APPLICANT’S RELIEF SOUGHT

25. The applicant seeks the following:

25.1. An order declaring that the respondent has repeatedly contravened the sections and regulations of the Act as detailed above in paragraph 24.

25.2. An order declaring the conduct of the respondent to be prohibited conduct in terms of section 150(a).

25.3. An interdict restraining the respondent from, in the future, engaging in similar prohibited conduct.

25.4. An order declaring that the respondent, by its conduct, has brought the consumer credit industry into disrepute and acted with a disregard for consumers’ rights in general.

25.5. An order declaring all credit agreements identified in the applicant’s investigation report as reckless and setting aside the consumers’ rights and obligations under any such agreements as deemed just and reasonable.

25.6. In the event of the agreements identified in annexures G1 to G9 to have been repaid in full, an order directing the respondent to refund the cost of credit to the consumers.

- 25.7. An order directing the respondent to refund all fees, interest rates, and amounts charged over the maximum prescribed fees, rates, and amounts to the consumers identified in annexures G1 to G9.
- 25.8. An order to rescind any judgments obtained against the consumers marked as annexures G1 to G9 where applicable, for all credit agreements entered into without conducting any/or proper affordability assessments and for the respondent to clear any adverse listing of such judgments obtained with all credit bureaus.
- 25.9. An order directing the respondent to, within thirty (30) days upon the judgment being rendered, appoint an independent auditor, at its own costs, to identify all loans entered into since the inception of the respondent's business as a credit provider.
- 25.10. After the appointment, the auditor has to identify all loans which were extended without proper affordability assessments. All such identified loans where affordability assessments were not conducted as per section 81(2) and Regulation 23A, are to be referred to the applicant for assessment and consideration and a subsequent referral to the Honourable Tribunal for an appropriate order.
- 25.11. An order for the independent auditor to further determine and compile a list of all the consumers who were charged interest that exceeded the prescribed maximum amounts and the amounts they were overcharged with.
- 25.12. Once the aforesaid auditor has compiled the abovementioned list, an order for the respondent to refund the amounts to each consumer so identified within thirty (30) days from the date of the auditor's report and provide the necessary proof of such refunds to the applicant.
- 25.13. An order for the above audit to be conducted within one hundred and twenty (120) days from the date of the appointment.
- 25.14. An order that within ten (10) days of completing the audit, the auditor's report, together with the respondent's report, is to be provided to the applicant, detailing the identity of the consumers, the identified credit agreements, the overcharges, and refunds made. The credit agreements upon which findings were made, are to be attached to the report.
- 25.15. An order for a copy of the audit report is to be presented to the Tribunal within ten (10) days of the audit being completed.
- 25.16. An order indicating that following receipt of the audit report and supporting credit agreements, the applicant, will, upon an appropriate assessment and consideration, apply to the Tribunal for an order declaring such identified agreements as reckless in terms of section 80(1)(a) and for further appropriate redress to the identified consumers.
- 25.17. The imposition of an administrative fine on the respondent in the amount of R1 000 000.00 (one million rands) as contemplated in section 150(c).

25.18. Any other appropriate order required to give effect to the consumers' rights in terms of Section 150(j) and

25.19. Further alternative relief.

CONSIDERATION AND ANALYSIS OF THE APPLICANT'S EVIDENCE

26. The Tribunal considered the applicant's written submissions regarding the basis upon which it formulated a reasonable suspicion that the respondent was engaging in prohibited conduct. The Tribunal is satisfied that the applicant provided sufficient argument and basis for establishing that there was reasonable suspicion. The Tribunal is seized only with the applicant's documentary evidence and oral arguments. In terms of Rule 13(5), The Tribunal deems the facts alleged by the applicant as admitted by the respondent because it elected not to attend the proceedings or oppose the matter.

27. After considering the evidence, the Tribunal finds that the respondent has repeatedly contravened the Act and its regulations. These contraventions amount to prohibited conduct and are serious. Since the respondent has elected not to oppose or answer the allegations, it has lost the opportunity to put up a proper defence against the allegations levelled against it. It has placed itself in the hands of the Tribunal. The Tribunal views all these factors in a serious light, as they have the character of undermining the Act, its purpose, the aggrieved consumers, and the applicant.

28. When considering whether there was reckless lending or not,

28.1. The lack or absence of documents or evidence or paper trail confirms the respondent did not consider the financial health of their consumers nor consider pertinent information required which resulted in reckless lending. When the nine files were assessed, they contained no credit reports, which let one know about open loans, adverse credit records, or arrear status of the consumer's accounts; the absence of that information confirms elements of reckless lending.

28.2. The applicant alluded to the respondent considering old bank statements or none at all but failed to provide a clear description of what constitutes a valid bank statement. The Act itself has never stipulated how old a bank statement or salary advice has to be to be classified as valid. With that being mentioned, the majority of South Africans have neither bank accounts nor salary advice and cannot be excluded by the respondent. It would be unreasonable to expect such consumers to be in have financial statements.

28.3. During the submissions the Tribunal drew the applicant's attention to the *Truworths v Minister of Trade and Industry*[3] judgment, where summarily the court decided that the Act itself has never decided on how old a bank statement or salary advice must be, to be valid. Therefore, this validity cannot subsequently be claimed by the applicant in the application unless the Act is amended.

28.4. Until the regulator has dealt with this requirement or the amendment of the Act, the applicant was cautioned about the unlawfulness of expecting respondents to comply in isolation with the requirement of assessing a specific type of document when the court has dealt with this issue. However, cumulatively we still have to consider what means were implored to assess the consumers' finances in addition to “stale”

bank statements.

28.5. So it was when that was done that we found that the Respondent had no working of what information was considered to make an informed decision about the financial capability of the consumers. This is why in this regard, those agreements G2-3, G5-6, and G8-9 can be found to have been reckless.

29. An agreement entered into by a person who is required to register but fails to do so is unlawful and void.[4] With regards to annexures G1, G4, and G7 these were concluded during a period when the respondent's registration had lapsed and was therefore not allowed to grant credit. These contracts are unlawful and cannot be enforced by the respondent.

FINDINGS AND THE ADMINISTRATIVE FINE

30. The evidence before the Tribunal, including what is averred in the founding affidavit, the contents of the investigation report, and its annexures, together with the oral submissions point to the respondent's continuous and repeated conduct which has contravened the Act which justifies the imposition of an administrative fine as a punitive measure.

31. The applicant requested the Tribunal to impose an administrative fine on the respondent. The Tribunal is satisfied that the nature of the respondent's contraventions and the consequent financial implications for consumers justify the Tribunal imposing an administrative fine on the respondent. A vital purpose of the Act is to promote responsible credit granting and to prevent and prohibit reckless credit granting. The types of contraventions perpetrated by the respondent are undoubtedly the type of conduct the Act seeks to prohibit. Once it finds the respondent has engaged in prohibited conduct, the Tribunal has a duty to exercise its powers by sending a clear and strong message to the credit industry that such conduct will not be permitted. Section 151(3) outlines the factors the Tribunal must consider when determining an appropriate fine. These are listed and discussed under separate sub-headings below.

31.1. The nature, duration, gravity, and extent of the contravention:

From the evidence, it is clear that the contraventions are serious, displaying a total disregard for the Act and the rights of the consumers. This conduct has a damaging effect on the entire credit industry. The nature and extent of the contraventions warrant serious action against the respondent. The contraventions exposed consumers to overindebtedness. The consumers were victims of the respondent's unlawful conduct.

31.2. Any loss or damage suffered as a result of the contravention:

Consumers have suffered a loss in that they have been exploited by entering into credit agreements without affordability assessments being conducted, which resulted in reckless credit being granted. The respondent's over-charging of interest caused consumers direct prejudice and financial loss.

31.3. The behaviour of the respondent:

The respondent acted with complete disregard for consumer rights.

31.4. The market circumstances in which the contravention took place:

The respondent's conduct illustrates that the market within which the contraventions occurred is one in which consumers are entrapped in a debt cycle of ongoing credit and repayments. These consumers are desperate for and rely on the type of services the respondent provided. These consumers are often not fully aware of their rights relating to access to credit and are vulnerable to exploitation.

31.5. The level of profit derived from the contravention:

The applicant could not determine the exact profit level derived by the respondent. Each loan extended recklessly with excessive interest levied constitutes a profit gained by the respondent.

31.6. The degree to which the respondent has cooperated with the NCR and the Tribunal:

The respondent cooperated with the applicant's inspectors during the investigation.

32. Though the respondent was found to be in continuous contravention of the NCA during the investigation period, this would be their first sanction or conduct found by the Tribunal or the regulator. There are no prior investigations or enforcements against the respondent.

32.1. 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 respondent. The purpose of an administrative penalty is, in the circumstances of this application, a punitive measure that is warranted. Regarding the quantum of the administrative fine, section 151(2) provides that the administrative penalty imposed may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00 (one million rand). The applicant did not submit any evidence of the turnover of the respondent. The Tribunal can, however, still impose a fine limited to a maximum of R1 000 000.00 (one million rand).

32.2. The Tribunal finds that a fine of R25 000.00 (twenty-five thousand rand) will be appropriate.

32.3. An interdict prohibiting the respondent from, in the future, engaging in prohibited conduct should be granted since the respondent appears to still be conducting business and operating as a credit provider. It must be deterred and interdicted from such action.

33. However, in Para [62],[5] It is essential to highlight that the Tribunal does not declare the specific credit agreement unlawful and void. It is the Act that so declares, and the Tribunal merely pronounces—section 89 lists instances of unlawful agreements. While the orders of the NCT have the status of the High Court and are enforceable as such, the Tribunal acts within the Act's constraints.

ORDER

34. Accordingly, the Tribunal makes the following order:

34.1. In terms of section 150(a), the respondent is declared to have engaged in prohibited conduct by repeatedly contravening the Act and the regulations, and in particular, the respondent is found to have contravened the following provisions of the Act:

- (a) Section 52(5)(c) read with general condition 7 of its conditions of registration;
- (b) Section 52(5)(c) read with section 52(5)(d) and general condition 2 of its conditions of registration;
- (c) Section 40(1) read with section 40(3) and section 40(4) read further with section 89(2)(d);
- (d) Section 81(2)(a)(ii) read with Regulation 23A(12)(b) and 23(13);
- (e) Section 81(2)(a)(iii) read with Regulation 23A(3), 23A(8) and 23A(12)(a) and (c);
- (f) Regulation 23A(9) and 23A(10);
- (g) Section 52(5)(e) read with section 170 read further with Regulation 55(1)(b)(vi);
- (h) Section 81(3) read together with section 80(1)(a);
- (i) Section 100(1)(c) and 101(1)(d)(ii) read with Regulation 42(1);
- (j) Section 100(1)(a) read with section 101(1);
- (k) Section 92(1) read with Regulation 28(1)(b) and Form 20;
- (l) Section 92(2) read with Regulation 29 and Form 20.1;
- (m) Regulation 23A(15);
- (n) Section 93(2) read with Regulation 30(1) and Form 20.2;
- (o) Section 93(1) read with Section 93(3) and Regulation 31 read further with Regulation 31(2)(c);
- (p) Section 90(1) and section 90(2)(b)(iii) read with section 101(1)(d)(ii) and Regulation 42(1);
- (q) Section 90(1) and 90(2)(a)(ii) and (iii) read with section 90(2)(b)(i) and (iii) read with Regulation 32;
- (r) Section 90(1) and section 90(2)(b)(ii) and (iii) read with Section 129 and 130;

- (s) Section 90(1) and section 90(2)(b)(iii) and section 101(1) and section 90(2)(k)(iv);
- (t) Section 91(2) and section 90(2)(a) and section 90(2)(k)(iii) and
- (u) Section 91(2) read with section 90(2)(k)(vi)(b); and
- (v) Section 52(5)(c), (d), and (f), read with general condition 3, Regulation 62(1)(b) and (c), and further with Regulations 64(2) and 66.

34.2. The respondent is declared to have engaged in repeated contraventions of the above provisions of the Act and such conduct is accordingly declared to be prohibited conduct in terms of section 150(a);

34.3. The respondent is found to have acted with a disregard for consumers' rights, and its conduct has brought the consumer credit industry into disrepute;

34.4. The transactions entered into by the respondent and consumers identified and listed as annexures G2; G3; G5; G6; G8 and G9 of the applicant's investigation report are declared as reckless credit in terms of section 80(1)(a), and all the rights and obligations of the consumers in respect of the credit agreements are set aside and annexures G1; G4 and G7 are declared unlawful in terms of section 89(2)(d);

34.5. The respondent is ordered to refund all consumers listed as annexures G1 to G9 in full, including all fees, interest rates, and amounts received in respect of their credit agreements;

34.6. The respondent is ordered to cease any legal action it may have initiated against the consumers identified and listed as annexures G1 to G9 of the applicant's investigation report and to rescind any judgments obtained against the consumers. The respondent is further ordered to take the necessary steps to clear any adverse listings of such judgments obtained with all credit bureaus;

34.7. Within 30 days of the issuing of this judgment, the respondent shall, at its own cost, appoint an independent auditor, who is a chartered accountant, to investigate whether any further transactions (besides those which form part of annexures G1 to G9 referred to above) were concluded contrary to the provisions of the Act within the last three years from the date of the issuing of this judgment. Within six months, the auditor must submit a report to the applicant regarding such transactions and the amounts that should be reimbursed to consumers for the applicant to assess and possibly refer the same to the Tribunal for further relief;

34.8. Once the auditor has compiled the abovementioned list, the respondent is ordered to refund the amounts to each consumer identified within 30 days from the date of the auditor's report and provide the necessary proof to the applicant;

34.9. The above audit is to be conducted within one hundred and twenty (120) days from the date of the appointment;

34.10. Within ten (10) days of completing the audit, the auditor's report and the respondent's own report are to be provided to the applicant, detailing the identity of the consumers, the identified credit agreements, the overcharges, and refunds made. The credit agreements upon which findings were made, are to be attached to the report.

34.11. A copy of the audit report is to be presented to the Tribunal within ten (10) days of the audit being completed.

34.12. The respondent is ordered and interdicted from persisting with its operations until its registration has been reinstated;

34.13. The respondent must, within 90 (ninety) business days of issuing this judgment pay an administrative fine of R25 000.00 (twenty-five

thousand rands) into the National Revenue Fund referred to in section 213 of the Constitution^[6] using the following bank account details:

Bank: The Standard Bank of South Africa

Account holder: Department of Trade and Industry

Branch name: Sunnyside

Branch code: 010645

Account number: 3[....]6

Reference: NCT-266743-2023-140(1)-Ai Wena or the name of the person making the payment; and

34.14. There is no cost order.

Thus prepared and signed on this, 01st day of August 2023.

Presiding tribunal member

Ms. PT. Manzi-Ntshingila

Mr. S. Hockey (concurrent) Tribunal

member

Adv. C. Sassman (concurrent) Tribunal member

[1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.

[2] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters

before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).

[3] Truworths Limited and Others v Minister of Trade and Industry and Others (4375/2016) [2018] ZAWCHC 41; 2018 (3) SA 558 (WCC) (16 March 2018).

- [4] Section 40(4) read with section 89(2)(d).
- [5] The Loan Company (Pty) Ltd v National Credit Regulator and Another (A235/2021) [2022] ZAGPPHC 1031 (11 November 2022).
- [6] Constitution of the Republic of South Africa, Act 108 of 1996.
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