

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Bornman and Others (NCT/656/2010/57(1)(a)(c) (P)) [2010] ZANCT 14 (30 November 2010)

[2010] ZANCT 14

COURT

National Consumer Tribunal

BEFORE

Y Carrim, T Woker, P Beck

CASE / FILE NUMBER

NCT/656/2010/57(1)(a)(c) (P)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN PRETORIA

CASE No: NCT/656/2010/57(1)(a)(c) (P)

DATE:30/11/2010

In the matter between

NATIONAL CREDIT REGULATOR..... Applicantand

CHRISTOPHER BORNMAN..... 1st Respondent

BORNMAN & ASSOCIATES ATTORNEYS..... 2nd Respondent

PROPERITAS BENE CARPE CC..... 3rd Respondent

JUDGMENT

1.

INTRODUCTION

1.1 The applicant is the National Credit Regulator (NCR) and the respondents are Mr. Christopher Bornman a debt counsellor with registration

number NCRDC 284 registered with the NCR in terms of section 44 of the National Credit Act, 34 of 2005 (the Act), Bornman &

Associates Attorneys, a practising firm of attorneys, and Prosperitas Bene Carpe CC, a close corporation which provides assistance and advice to clients on various aspects of daily financial advice.

1.2 On 15 October 2010 the applicant commenced proceedings before the National Consumer Tribunal (the Tribunal) for various orders

including an order to cancel the registration of the first respondent in terms of section 57 (1) (a) and (c) of the Act on the grounds that the respondent had repeatedly contravened the Act and his conditions of registration as a debt counsellor and an order declaring the third respondent to be in contravention of the Act because it was providing debt counselling services.

1.3 The application was as a result of an investigation into the activities of the respondents conducted on 27 August 2009 by Mr. Mark Whale, an inspector employed by the applicant. This investigation was conducted because of nineteen complaints which the applicant had received from consumers regarding the first respondent.

1.4 At the outset of the hearing, the applicant pointed out that Bornman & Associates Attorneys operates as a sole proprietorship with the first respondent as the practising attorney. So for all intents and purposes, the first respondent and the second respondent are one and the same person. The applicant did not therefore seek a separate order to be imposed on the second respondent.

1.5 The respondents were all represented by the first respondent at the hearing.

2.

BACKGROUND

2.1 The facts of this matter are to a large extent, common cause. The applicant therefore requested that the matter be decided on the papers without the leading of formal evidence. The respondents did not object to this.

2.2 The first respondent is a registered debt counsellor who provides debt counselling services to consumers and for these services he takes the full fee permitted in terms of the Act.¹

2.3 As at 17 February 2010, the first respondent had 4 808 clients under debt review but the applicant had received 1 674 termination letters in respect of these clients. The applicant reported that this was the greatest number of termination letters which have been received by the applicant in respect of one debt counsellor.²

2.4 During his investigation, Mr. Whale perused the files of the complainants. He established that the first respondent did not follow the procedures set out in the Act when a consumer approaches a debt counsellor for assistance.³ In terms of s86(6) the first respondent is required to establish whether a consumer is over-indebted for the purposes of debt restructuring and whether there has been any reckless credit granting by creditors. Once the determination is made, the Act obliges a debt counsellor to follow certain procedures. The procedure which must be followed

depends on whether the debt counsellor has determined that the consumer is over-indebted or merely debt stressed.⁴ The process should culminate in either a consent order in terms of section 138 of the Act,⁵ or the debt counsellor must refer the matter to the Magistrate's Court with a recommendation.⁶ These procedures were not followed by the first respondent. Instead the first respondent formulated his own procedure. The procedure

followed by the first respondent was to make an informal determination of the amounts owed by the debtors and to submit this to the debtor's creditors with the following notice:

"This notice serves to advise you that the abovementioned consumer(s) offer an informal payment arrangement to all creditors listed per annexure. See section 86 (7) (b) of the act. If no written correspondence is received within 7 days from date on this notice, the consumers) and the debt counsellor will have assumed the offer to be deemed acceptable."

In the files investigated by Mr. Whale the first respondent:

- (1) failed to do a proper determination of the debtor's position as required by s86 and regulation 24. Regulation 24 (6) of the Act states that within 30 business days after receiving an application in terms of s86(1) of the Act, a debt counsellor must make a determination in terms of s86(6).
- (2) failed to complete a form 17.2 or issue a proposal for repayment to creditors. Regulation 24 (10) states that after completion of the assessment, the debt counsellor must submit a form 17.2 to all the affected credit providers and all registered credit bureaux within 5 days.
- (3) failed to submit any of the matters to the Tribunal or Magistrate's courts for finalisation of the process.

Instead the first respondent attempted to rely on section 86 (7) (b) of the Act which states that if, as a result of an assessment conducted in terms of subsection (6) a debt counsellor reasonably concludes that the consumer is not over indebted but is nevertheless experiencing, or is likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement. This section must be read in conjunction with the provisions of s86 (8) which states that if a debt counsellor makes a recommendation in terms of subsection 7 (b) and, (a) the consumer and each creditor concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, file it as a consent order in terms of s138 or (b) if paragraph (a) does not apply, the debt counsellor must refer the matter to the Magistrates Court with the recommendation.

2.5 As stated above, the first respondent is also an attorney and practices as a sole proprietor under the name Bornman & Associates Attorneys. Once the first respondent had established an informal payment arrangement with consumers and creditors, consumers paid a monthly amount into the trust account of Bornman & Associates Attorney for distribution to their creditors. The firm then deducted a fee of 10% from the amount deposited by consumers. This

was recorded as "collection commission" by the first/second respondent. The remainder of the monthly amount (i.e. less 10%) was then paid to DC Partners, which is a NCR approved Payment Distribution Agency for distribution amongst the consumer's creditors. DC Partners also paid the first/second respondent after care fees which are permissible in terms of the applicant's approved fee guidelines.

2.6 The third respondent is a registered close corporation.⁷ It is also known as PBC although this is used on emails and other documentation without the required letters "CC" after its name. The letters "CC" are required in terms of the Close Corporations Act, 26 of 1997, in order to indicate to consumers that it is a close corporation. Instead PBC uses the following sign at the end of its name, ©. This sign is the sign indicating that something is subject to copyright protection. It is not apparent why this sign is used. The letters PBC are also used in conjunction with the name Bornman & Associates Debt Counsellors Attorneys. An employee of PBC, known as Sean Nicholas, has sent emails to consumers signed as follows:

Sean Nicholas Department Head P.B.C

Bornman & Associates Debt Counsellors Attorneys

2.7 The third respondent promotes PBC as a national consulting group providing assistance and advice to clients on various aspects of daily financial advice. It states that it aims to refer clients to the best panel of service providers including attorneys, debt counsellors or relevant institutions. PBC's website displays the first respondent's NCR registration number NCRDC284.

2.8 The first respondent and one other person are the members of the third respondent.

2.9 A Law Society search and the PBC website indicate that the first/second respondent and PBC share the same business address in

Bellville.⁸ In addition PBC has offices in Gauteng, Durban and Bloemfontein.

3. RESPONDENT'S RESPONSE

3.1 One of the main issues in the applicant's application relates to the 10% which the first/second respondent claimed from the debtor's monthly payments before the remaining amount was paid over to the PDA. The first respondent indicated that the fee was wrongly titled and was instead a periodic deduction which was intended to build up a retained amount for an eventual court application.⁹ During the hearing the Tribunal asked the first respondent the following question:

Annexure C, D and F of the Founding Affidavit.⁹ Para 40.5.1.5 of the Opposing Affidavit and pages 32 - 34 of the transcript of the hearing.

Chairperson: So on that score, who is making the decision to firstly collect 10% commission from the consumer and then put that in trust account and then remove that from trust account? Is it the attorney or is it the debt counsellor?

To which the first respondent replied:

The debt counsellor, its debt counselling fees and the debt counsellor makes that determination.¹⁰

3.2 At the beginning of 2010 the first respondent decided not to take any new debt counselling cases and the first respondent stopped

taking the 10% collection commission from consumers.¹¹ At the hearing the first respondent indicated that he has decided to stop acting as a debt counsellor and he offered to refund the 10% commission to those consumers who had complained to the applicant.¹²

3.3 The first respondent denied that the first and third respondent were closely connected and stated that the first respondent was merely one debt counsellor to whom the third respondent could refer matters. The first respondent stated that the third respondent acted on a consultancy basis. Its employees would take down information from clients and would forward this information to him in Cape Town where a determination would be made.¹³ He admitted however, that employees of PBC, including a Mr. Nicholas negotiated with both consumers and credit providers.¹⁴ He argued as follows:

I can't see why a debt counsellor can't employ people to do certain functions on his behalf. In the large practice as mine had been, it's impossible to do all that yourself ¹⁵ ... they (Chantal and Shaun Nicholas who were not registered debt counsellors) were delegated certain duties to perform by myself as debt counsellor.

4. EVALUATION

4.1 The first respondent failed to follow the process set out in the Act when debtors approach debt counsellors for debt review. Although the first respondent attempted to rely on s86(7) (b) to justify the procedure which he followed, there is no indication that;

- (1) creditors agreed to the repayment plans developed by the first respondent or
- (2) the first respondent followed through with the procedure set out in s86(8).

The procedure adopted by first respondent is highly problematic and it opens debtors up to severe risks. This is borne out by the fact that in a number of instances, the debt review process was terminated by creditors.

4.2 The first respondent attempted to explain the fact that the 10% collection commission was in order to build up legal fees to

compensate the attorney when the matter proceeded to court, however in all the instances reviewed by Mr. Whale this in fact never occurred and matters were not properly finalised through a process authorised in terms of the Act. In addition, the first respondent's explanation is not supported by his documentation. This documentation clearly states that an additional collection fee of 10% of the monthly instalment will be collected by Bornman & Associates, with a maximum of R1 000.00 per month.

Nowhere in the documentation does it state that this 10% fee is in order for the consumer to build up a fund which can be used to pay legal fees if and when such fees became due. A careful consideration of the discussion which took place between the Tribunal and the first respondent indicates that the first respondent was very confused about whether the 10% was for legal fees, or fees earned by the debt counsellor.¹⁶ In the circumstances we are satisfied that the first respondent intended this to be a collection fee and not a fee for legal services.

4.3 The first respondent's specific conditions of registration state that the debt counsellor may not receive payments from consumers who have applied for debt review or receive payments in respect of debt obligations that were re-arranged in terms of the Act or distribute such payments to credit providers, in addition paragraph 9 of his conditions of registration state that the debt counsellor may only charge fees or recover fees from consumers as provided for in the Act and Regulations. The debt counsellor may not receive fees, commission or any other remuneration where such income may compromise the independence of the debt counsellor in respect of debt counselling services provided to consumers. The collection of the 10% commission charge was clearly in contravention of these conditions of registration. The respondent attempted to justify the fees that were paid by arguing that he performed two distinct roles, one as the debt counsellor and one as the attorney. The first respondent clearly saw these as two distinct roles and therefore argued that he was justified in charging both debt counselling fees and attorney fees.¹⁷ This can be compared to the situation in *African Bank Limited v Weiner*¹⁸ which dealt with the situation where an attorney who was

performing the functions of administrator also claimed collection commission. The court stated the following:¹⁹

It is obvious that an attorney who is appointed as an administrator in terms of s74 E(1) acts in the capacity of an attorney throughout: he or she does not dispense with professional functions or duties at any point in the administration. The attorney administrator takes both the benefits and burdens of a practitioner's professional position and responsibility ...A quite different question is whether the attorney-administrator is entitled to levy a collection fee under s65 and its associated provisions and claim it as a cost under s74 ... Neither principle nor the wording of the statute in my view countenance an attorney-administrator levying a collection fee under s65 in addition to the expenses and remuneration that may be claimed.... Against this background it would be unconscionable on any basis if the 10% collection fee permitted in Part III or s74 administrations. There is only one co-operative collection and that is the collection under s74 ... There can be only one collection commission, claimed only once. There can be no double-levying.

The applicant argued that these same principles can apply to the fees taken by the first respondent purporting to act as a debt counsellor and then purporting to act as an attorney. However in this case, Bornman as debt counsellor imposed charges on the consumer, qua lawyer, which he is not allowed to do as a debt counsellor. The first respondent acting as a debt counsellor may only claim those fees which he is entitled to claim as set out by the applicant. He cannot therefore don another hat and state that because he is also an attorney he is entitled to

claim fees as an attorney for performing what are essentially the functions of a debt counsellor. As was clear from his evidence, first respondent's independence was seriously compromised by his conduct to the detriment of the consumer. He could no longer distinguish between himself as debt counsellor or as attorney and imposed charges on the debtor which he was not legally entitled to, not for the benefit of the debtor but for his own benefit qua attorney.

According to the fee guidelines issued by the applicant, a debt counsellor who fails to submit proposals to creditors or to refer matters to the Tribunal or Magistrate's Court within 60 days from the date of the debt review application the debt counsellor must refund 100% of the fee paid by the debtor.²⁰

4.4 The first respondent failed to follow the procedures set out in the Act and failed to finalise debt counselling matters appropriately and yet he was paid after care fees by the PDA.

4.5 The first respondent denies that there is a close connection between the first respondent and the third respondent and argues that the first respondent is merely one debt counsellor to whom the third respondent may refer work. However, no evidence of this was presented to the Tribunal. We are of the view therefore, that the first respondent is the only debt counsellor who is connected with the third respondent. His registration number is the only one that appears on the documentation and advertisements used by the third respondent. In addition, the employees of the third respondent are also employees of the first respondent. In order to deal with so many debtors, it is clear that the first respondent relies on the services of other persons who are not registered debt counsellors. These people clearly provide debt counselling services and are not merely employed in administrative positions. This is in contravention of the Act which states that only registered debt counsellors may perform the services of a debt counsellor. In addition, consumers in Gauteng, Durban and Bloemfontein must be misled into believing that the people with whom they are dealing are registered debt counsellors because they never meet the first respondent who is the only registered debt counsellor in this elaborate set up, and he is stationed in

Cape Town. The Act states that a person must not offer or engage in the services of a debt counsellor in terms of the Act, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered in terms of the Act.²¹ The elaborate business set-up which has been established by the respondents to obtain clients around from South Africa clearly

defeats the purposes of the legislation which purpose includes providing debt counselling advice to consumers by natural persons who have been registered by the applicant.

5.

CONCLUSION

5.1 The first respondent has repeatedly contravened the Act and his conditions of registration in that he-

- (1) failed to follow the procedures set out for debt review in the Act and instead devised his own procedures;
- (2) failed to keep adequate records and keep relevant copies of documentation in order to demonstrate compliance with the Act;²²
- (3) deducted a 10% commission from money which was paid by consumers for distribution to creditors which he was not entitled to do;
- (4) was paid after care fees for continuing debt review services which he did not provide.

5.2 The third respondent has contravened the Act in that the third respondent has purported of offer debt counselling services in

circumstances where the third respondent and/or its employees are not registered debt counsellors in terms of the Act. In addition it is contrary to the Act for the third respondent, which is not even a natural person to create the impression that it is a registered debt counsellor by using the first respondent's registration number.

6 RELIEF

The relief sought by the applicant against the respondents was as follows:

- (1) The first respondent should be declared to be in repeated contravention of the provisions of his conditions of registration and section 86(6) read with regulation 24(6), 86(8) read with regulation 24(8) and (10) and in repeated contravention of regulation 24 (9) in failing to reduce the arrangements to writing (signed by the parties).
- (2) The abovementioned contraventions must be declared prohibited conduct in accordance with section 150(a) of the Act;
- (3) The first respondent's registration with the applicant as a debt counsellor must be cancelled in accordance with section 150(g) of the Act;
- (4) The first respondent must be ordered to repay all his clients or consumers the amounts taken from the trust account as collection fees or retainer or future legal fees or under any other description;
- (5) The third respondent must be prohibited from providing debt counselling services on behalf of the first respondent;
- (6) The third respondent must desist from holding itself out as a debt counsellor;
- (7) The first respondent must surrender all of his client files to the applicant and must furnish the applicant with a list of all past and present clients within 10 days of the Tribunal's order;
- (8) The applicant, in its discretion, must refer all consumers under debt review or purportedly under debt review by the first respondent to a suitable, reliable and competent debt counsellor.

At the hearing the Presiding Member requested the applicant to clarify how the relief in para (4) could be implemented. In this regard, there are two types of refunds involved. One refund relates to the 10% collection commission which each client was charged and which the applicant submitted should not have been charged and the other refund relates to fees which can be charged under the applicant's guidelines but which consumers should not have been charged because the work was not done at all or only a certain percentage of the work was done. The applicant undertook to provide the Tribunal with a draft order which would include specific mechanisms or procedures whereby the order could be effectively implemented.

On 22 October 2010 the applicant filed its draft order ("the revised order"). The respondents were given an opportunity to make submissions on the revised relief. On 15 November 2010, the respondents filed a response to the applicant's revised order. In this response the respondents argued that:

- (1) The applicant's use of a tiny fraction of the first respondent's client base to penalise him in respect of all the clients was grossly unfair, unreasonable and grossly arbitrary;
- (2) The applicant did not represent any of the first respondents clients before the Tribunal since none of these clients were cited as parties to the proceedings therefore the applicant had not locus standi or mandate to claim any relief in the form of compensation or reimbursement on behalf of any complainant (or non-complainant);
- (3) The complaints levelled against the first respondent had been addressed and rectified and the applicant's insistence on the

Tribunal meting out the harsh and unreasonable punishment on the basis of historical events appears vengeful and "reeks of ulterior motive";

- (4) As far as the third respondent is concerned, the applicant stated that there was in principle no objection to a number of debt

counsellors organising themselves in a partnership or legal juristic person.

The respondents referred the Tribunal to the precedent of *NCR v Ralph Zulu* NCT/53/2008/57(1) (P) in which the Tribunal had opted to follow a rehabilitory approach instead of a punitive one. The respondents rejected the applicant's draft order in its entirety as being grossly unfair, unreasonable and contrary to substantive and procedural judicial principles.

8. CONSIDERATION OF THE DRAFT ORDER AND RESPONDENT'S RESPONSE

The Tribunal's concern regarding the relief requested by the applicant at the hearing relates specifically to the repayment of moneys taken from consumers which the first respondent was not entitled to. In its revised order the applicant has set out a mechanism for dealing with this process. The applicant has suggested a process which would ensure that the first respondent refunds the money which he was not entitled to or which he has not earned and the applicant will

monitor this process. The refunds relate specifically to fees and commission which the respondent should not have charged any of his clients, not just those clients who have submitted complaints to the applicant. The respondents have argued that the applicant has no locus standi to deal with matters where no complaints have been received. However, the applicant acts in the public interest and does not have to wait to receive a complaint before it takes action against a registered entity. In these circumstances, the applicant is requesting that the first respondent be ordered to repay money to consumers to which it was not entitled. This applies not only to those consumers who have complained to the applicant, but also to all those consumers who have had this collection commission deducted from the money they paid over to the first respondent, money which should have been used to pay the consumers' debts and which should not have been deducted as collection commission. In addition, the first respondent is being asked to refund legal fees to consumers in circumstances where those legal fees have not been earned and the applicant has suggested a process whereby legal fees which have been charged but which have not been earned by the first respondent can be identified.

In our view, the Tribunal decision in *NCR v Zulu* can be clearly distinguished from this matter in that at no stage did Zulu, a registered debt counsellor with the applicant, charge fees or collection commission to which he was not entitled.

In our view the revised order proposed by the applicant adequately addresses the concern raised by this Tribunal that in order to

effectively implement the relief granted further details needed to be fleshed out. The revised order does not contain any new matters of substance but merely makes provision for how the substantive relief granted by this Tribunal is to be implemented.

Accordingly,

The Tribunal issues the following order:

1. The first respondent is declared to be in repeated contravention of the following general conditions of his registration:-
 - (a) general condition A.1;
 - (b) general condition A.2;
 - (c) general condition A.5;
 - (d) general condition A.7;
 - (e) general condition A.9; and
 - (f) general condition A.11;
2. The first respondent is declared to be in repeated contravention of specific condition B.1 of his conditions of registration;

3. The first respondent is declared to be in repeated contravention of the following sections and regulations of the National Credit Act, 2005 :-
 - (a) section 86(6) read with regulation 24(6);
 - (b) section 86(7) and section 86(8) read with regulation 24(7) and regulation 24(8);
 - (c) section 86(8) read with regulation 24(10); and
 - (d) regulation 24(9);
4. The first respondent's conduct in repeatedly contravening the general conditions and the specific conditions of his registration, and also his conduct in repeatedly contravening the Act, is declared to be conduct prohibited in terms of section 150(a) of the Act;
5. The first respondent's registration with the applicant as a debt counsellor is cancelled, with immediate effect, in terms of section 150(g) of the Act;
6. The first respondent is ordered to refund all of his past and current clients, or consumers, all amounts taken from his trust account as collection commission, or retainer, or legal fees, or under any other description as well as any other charge not provided for in terms of the fee guidelines. The refund shall be paid to each client or consumer within thirty (30) days of the date of this order. If any client or consumer cannot be traced, then in that event, the money shall be paid into (or it shall remain in, as the case may be) the first respondent's trust account where it shall be kept until it is paid to the client or consumer. The first respondent is ordered to use his best efforts, in good faith, to locate every client or consumer for the purpose of effecting the refund.
7. Pursuant to the order in paragraph 6, the first respondent is ordered to submit a report to the applicant within 60 days of the date of this order. The report shall detail:-
 - 7.1 the amount of all repayments made by the first respondent;
 - 7.2 the recipients of all repayments; and
 - 7.3 the steps taken by the first respondent to locate any client or consumer that he was unable to trace.
8. The first respondent is ordered to refund all of his past and current clients, or consumers, the amounts paid by them as debt counselling fees. To the extent that the first respondent contends that he is not obliged to refund a specific consumer, then in that event, the first respondent is ordered, by reference to each such consumer, to substantiate his reasons therefore. If, in the discretion of an investigator appointed by the applicant, such consumer was properly charged a debt counselling fee, then in that event, the first respondent shall not be required to refund that consumer. The refund shall be paid within thirty (30) days of the date of this order and the mechanism for payment shall be the same as that set out in

paragraph 6.

9. Pursuant to the order in paragraph 8, the first respondent is ordered to submit a report to the applicant within 60 days of the date of this order. The report shall detail:-
 - 9.1 the amount of all repayments made by the first respondent;
 - 9.2 the recipients of all repayments; and
 - 9.3 the steps taken by the first respondent to locate any client or consumer that he was unable to trace.
10. The third respondent is prohibited from providing debt counselling services on behalf of the first respondent or on behalf of any debt counsellor;
11. The third respondent is ordered to desist from holding itself out as a debt counsellor;
12. The third respondent is declared to be in repeated contravention of sections 44(1) and 44(2) of the Act;
13. The first respondent is ordered to surrender all of his client files to the applicant within ten (10) days of the date of this order. He is furthermore ordered to furnish the applicant with a list of all past and present clients within ten (10) days of the date of this order;
14. The applicant shall take reasonable steps to furnish each of the first respondent's erstwhile clients and consumers who were under debt review with contact details of registered debt counsellors who are willing to continue each consumer's respective debt review; and
15. There is no order as to costs.

Signed at CENTURION this 30th day of November 2010

MS Y CARRIM

Presiding member

PROF T WOKER

Member

MS P BECK

1 Para 40.5 of the Founding Affidavit and para 40.5 of the Opposing Affidavit.

2 Para 40.27 of the Founding Affidavit.

3 The procedures relating to an application for debt review are set out in 586 of the Act. This section must be read with regulation 24 which prescribes the times within which certain conduct must be done.

4 Sees 86(7)(a) and (b).

5S86(8).

6S86(7) (c) and 86(9).

7Annexure O to the Founding Affidavit page 115 and para 8 and 9 of the Opposing Affidavit.

8Annexure C, D and F of the Founding Affidavit.

9 Para 40.5.1.5 of the Opposing Affidavit and pages 32 - 34 of the transcript of the hearing.

10See pages 32 of the transcript.

11Page 2 of the transcript.

12 Page 3 of the transcript.

13See pages 36 - 39 of the transcript.

14See pages 37 - 38 of the transcript.

15 See page 38 - 39 of the transcript.

16See interchange between the first respondent and the Tribunal which is recorded on pages 32 - 35.

17Pages... of the transcript and Opposing Affidavit 16.4 (iv) where the first respondent argued that acting a debt counsellor he exercised 'the democratic right to appoint an attorney of his choice and instruct such attorney to receive money on his behalf.

182005

(4) SA 363 SCA.

19At 21-27.

20Para 1.4 of the fee guidelines.

21S44. S44 (1) states that only a natural person may be registered as a debt counsellor.

22 This ts said because in each case, the first respondent should have made a determination regarding whether a consumer was over-indebted

and he should have kept a record of his determination.

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