

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Chisevhe Trading Enterprise (Pty) Ltd (NCT/223352/2022/57(1))

[2022] ZANCT 45 (1 July 2022)

[2022] ZANCT 45

COURT

National Consumer Tribunal

BEFORE

T Bailey, A Potwana, M Peenze

CASE / FILE NUMBER

NCT/223352/2022/57(1)

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IN

THE NATIONAL CONSUMER TRIBUNAL

HELD AT CENTURION

Case

number: NCT/223352/2022/57(1)

In

the matter between:

NATIONAL
CREDIT
REGULATOR APPLICANT
and
CHISEVHE TRADING
ENTERPRISE (PTY) LTD RESPONDENT

Coram: Mr
T Bailey – Presiding Tribunal member
Mr
A Potwana – Tribunal member
Dr
M Peenze – Tribunal member
Date
of hearing – 3 June 2022 via the Teams
digital platform
Date
of judgment – 1 July 2022

JUDGMENT

AND REASONS

APPLICANT

1. The Applicant is the National Credit Regulator (the applicant), a juristic person established in terms of section 12 of the National Credit Act, 2005 (the Act) to regulate the consumer credit market and ensure compliance with the Act. The applicant's principal business address is 127 - 15th Road, Randjespark, Johannesburg, Gauteng.
2. Mr M Mathivha, a legal adviser in the applicant's investigations and enforcement department, represented the applicant at the hearing of this matter.

RESPONDENT

3. The Respondent is Chisevhe Trading Enterprise (Pty) Ltd (the respondent). It is a company duly registered in terms of the company laws of the Republic of South Africa under registration number 2014/194016/07. The respondent's registered address is 136 Siloam Village, Nzhelele, Limpopo. The respondent is also a registered credit provider in terms of section 40 of the Act with registration number NCRCP10751.
4. The respondent did not file an answering affidavit opposing the application and did not attend the hearing of this matter.

TERMINOLOGY

5. A reference to a section in this judgment refers to a section in the Act. A regulation refers to the National Credit Regulations, 2006 (the regulations)[1], and a rule to the Tribunal rules.[2] A condition or general condition refers to the respondent's registration conditions as a credit provider in terms of section 40 (the conditions).[3] Moreover, a form refers to a form prescribed in schedule 1 of the regulations.

JURISDICTION

6. In addition to its other powers in terms of the Act, section 150 gives the National Consumer Tribunal (the Tribunal) the power to make appropriate orders concerning prohibited or required conduct in terms of the Act or the Consumer Protection Act, 2008. This power includes declaring conduct to be prohibited in terms of the Act; interdicting prohibited conduct; confirming an order against an unregistered person to cease engaging in an activity requiring registration in terms of the Act; requiring payment to the consumer of an excess amount charged together with interest set out in an agreement, or any appropriate order required to give effect to the Act.

APPLICATION TYPE AND THE RELIEF SOUGHT

7. This application is in terms of section 57 (1), which empowers the Tribunal to cancel a registrant's registration if the registrant, among other things, contravenes the Act or a condition of its registration.
8. The applicant sought orders declaring the respondent's conduct as prohibited conduct[4] in terms of section 150 (a) because it contravened the Act and the regulations. It also sought orders cancelling the respondent's

registration, interdicting the respondent from breaching the Act in the future, imposing an administrative fine on the respondent and granting remedial measures to affected consumers.

9. The allegations of prohibited conduct and the detailed order the applicant requests in this matter will become apparent in this

judgment.

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

10. On 31 March 2022, the applicant filed this application with the Tribunal Registrar (the registrar). The applicant served this application on the respondent by registered post on 30 March 2022. The registrar issued a notice of filing to the parties on 1 April 2022 and sent it by registered post to the respondent on 13 April
2022. Subsequently, the registrar issued a notice of set down to the parties on 12 May 2022.
11. Rule 13 (2) requires the respondent to respond within 15 business days of receiving the application by serving an answering affidavit on the applicant. The respondent did not do so. The applicant did not apply for a default order in terms of rule 25 (2). Consequently, the registrar correctly set the matter down for hearing on a default basis because the pleadings had closed.
 12. Rule 13 (5) provides that a factual allegation in the application or referral not specifically denied or admitted in the answering affidavit is deemed to have been admitted. Since the respondent did not file an answering affidavit, the respondent is deemed to have admitted the allegations in the applicant's application.

FACTUAL

BACKGROUND

Anonymous tip-off

13. The respondent registered as a credit provider on 7 May 2019. The applicant received an anonymous tip-off that the respondent's

sole director, Fhatuwani Siphoro (Siphoro), retained consumers' instruments such as identity documents, bank cards or South African Social Security Agency cards (SASSA cards) to enforce the respondent's credit agreements. Consequently, the applicant

reasonably suspected that, if true, the respondent had likely engaged in prohibited conduct.

Investigation and report

14. On 4 October 2021, the respondent initiated a complaint against the respondent. It appointed Matimba Hatlane (the inspector) to investigate the respondent. On 9 February 2022, the Dzanani Magistrate's Court granted the applicant a search and seizure warrant to search the respondent's premises and seize prohibited instruments.
15. On 8 March 2022, the inspector and members of the South African Police Service conducted a raid exercise and an on-site investigation at the respondent's premises. The investigation located two SASSA cards, seven bank cards, an identity document, a speed point machine, a laptop computer and 49 copies of credit agreements.
16. The inspector questioned Siphoro about the respondent's credit granting business conduct. Siphoro told the inspector that the respondent offered short-term loans to working consumers and SASSA beneficiaries. It charged 30% to 35% interest per loan and did not conduct formal credit checks. Nor did it charge service or initiation fees. The inspector randomly selected 10 credit agreements (the sample files) from the located credit agreements. The South African Police Service members arrested Siphoro for contravening sections 133 and 90 (2) (i) and registered criminal case number 53/03/2022 against him.
17. Subsequently, the inspector assessed the information he gleaned from the sample files and compiled an investigation report (the investigation report).[5] The investigation report detailed the alleged contraventions. The 10 sample files are annexed to the investigation report to support the conclusions in the investigation report.[6]
18. The Tribunal considers the alleged contraventions appearing in the investigation report.

CONTRAVENTIONS OF THE ACT

Affordability assessments

The Act

Reckless credit

19. Section 80 deals with reckless credit. Section 80 (1) (a) provides that a credit agreement is reckless if, when concluding the agreement, the credit provider failed to conduct an assessment as required by section 81 (2).
20. Section 80 (1) (b) (i) provides that a credit agreement is reckless if the credit provider concluded the credit agreement despite the preponderance of information available to the credit provider, indicating that the consumer did not understand the consumer's risks, costs or obligations under the proposed credit agreement.
21. Section 80 (1) (b) (ii) renders the credit agreement reckless if entering into it would make the consumer over-indebted.

Prevention of reckless credit

22. Section 81 deals with the prevention of reckless credit. Section 81
 - (2) (a) (ii) and (iii) read together with Regulation 23A, provides that a credit provider may not enter into a credit agreement without first taking reasonable steps to assess the proposed consumer's debt repayment history as a consumer under credit agreements; and the proposed consumer's existing financial means, prospects and obligations. Section 81 (3) precludes a credit provider from entering into a reckless credit agreement with a prospective consumer.
23. Regulation 23A sets out the criteria for conducting an affordability assessment. Regulation 23A (3) requires a credit provider to take practical steps to assess the consumer's discretionary income to determine whether the consumer has the financial means and prospects to pay the proposed credit instalments.
24. Regulation 23A (8) requires a credit provider to calculate the consumer's existing financial means, prospects and obligations as envisaged in sections 78 (3) and 81 (2) (a) (iii).
25. Regulation 23A (9) requires the credit provider to utilise the minimum expense norms table in regulation 23A, broken down by monthly gross income when calculating the existing financial obligations of consumers.
26. In regulation 23A (10), the methodology requires credit providers to ascertain gross income, statutory deductions and minimum living expenses to arrive at a net income for allocation of payment of debt instalments. When considering existing debt obligations, the credit provider must calculate discretionary income to enable the consumer to satisfy the new debt.
27. Regulation 23A(12) (a) requires the credit provider to calculate the consumer's discretionary income when assessing affordability.
28. Similarly, regulation 23A 12 (b) requires the credit provider to consider all the consumer's monthly debt repayment obligations under credit agreements reflected on the consumer's credit profile with a registered credit bureau.

29. Regulation 23A (12) (c) also requires the credit provider to consider maintenance obligations and other expenses.
30. Regulation 23A (13) requires a credit provider to consider the consumer's debt repayment history as a consumer under credit agreements. The credit provider must do so within seven business days before the initial approval of credit or increasing an existing credit limit.

Contravention 1: Failure to assess the consumer's debt repayment history by failing to obtain their credit bureau reports in contravention of section 81 (2)

- (a) (ii) read with regulations 23A (12) (b) and 23A (13)

Alleged contravention and

analysis

31. The applicant alleges that the respondent concluded credit agreements without first taking reasonable steps to assess the consumer's

debt repayment history and other existing financial means, prospects and obligations. It appears not to have conducted assessments at all. It failed to assess the consumer's debt repayment history because it failed to obtain credit bureau reports before concluding the credit agreements. [7]

32. The Tribunal is satisfied that the absence of credit bureau reports in at least eight of the 10 sample files meant the respondent could not have considered open loans or adverse credit records reflected on the consumer's credit profile with a registered credit bureau.
33. Consequently, the respondent contravened section 81(2)(a)(ii) and regulations 23A (12) and 23A (13).

Contravention 2: Failure to take reasonable steps to assess the consumer's existing financial means, prospects and obligations in contravention of section 81 (2) (a) (iii) read with regulations 23A (3), 23A (8) and 23A (12) (c)

34. The applicant alleges that the respondent failed to take reasonable steps to assess the consumer's existing financial means, prospects and obligations. It concluded credit agreements without obtaining current salary advices or proof of income.[8] It also failed to obtain current bank statements.[9]
35. The Tribunal is satisfied that the absence of current salary advices or proof of income meant that the respondent could not verify or establish the consumer's monthly income. So too, the respondent's failure to obtain current bank statements meant the respondent could not verify or establish the consumer's income or expenses. The respondent could not, therefore, determine the consumer's current financial position when extending credit to them.

36. Consequently, the respondent contravened section 81 (2) (a) (iii) read with regulations 23A (3), 23A (8) and 23A (12)(c).

Contravention 3: Failure to calculate the consumer's discretionary income in contravention of regulations 23A (3), 23A (8) and 23A (12) (a)

37. The applicant alleged that the respondent failed to calculate the consumer's discretionary income before extending credit to them because no such calculations were in any sample files.[10]
38. The Tribunal is satisfied that the absence of such calculations in the sample files shows overwhelmingly that the respondent did not calculate the consumer's discretionary income.
39. Consequently, the respondent contravened regulations 23A (8) and 23A (12) (a).

Contravention 4: Failure to use the minimum expense norms table when calculating the consumer's existing financial obligations in contravention of regulations 23A(9) and 23A (10)

40. The applicant alleged that the respondent concluded credit agreements without utilising the minimum expense norms tables, broken down by monthly gross income, when calculating the consumers' existing financial obligations.
41. The Tribunal has found that the respondent failed to calculate the consumer's discretionary income. Its failure means it could not have used the minimum expense norms table.
42. Consequently, the respondent contravened regulations 23A (9) and 23A (10).

Contravention 5: Granting of reckless credit in contravention of section 80 (1) (a) read with section 81 (3)

43. The applicant alleged that the respondent entered into reckless credit agreements because it did not conduct proper affordability assessments as required by section 81 (2) or at all.

Analysis

44. The Tribunal found earlier in this judgement that the respondent failed to conduct proper affordability assessments. Its failure renders the respondent guilty of granting reckless credit.
45. Consequently, the respondent contravened section 80 (1) (a) read with section 81 (3).

Pre-agreement disclosure

Contravention 6: Failure to provide the consumer with a pre-agreement statement and quotation in the prescribed form in contravention of section 92 (1) read with regulation 28 (1) and form 20

The Act

- 46. Section 92 concerns pre-agreement disclosure. Section 92 (1) provides that a credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a preagreement statement and quotation in the prescribed form.
- 47. Regulation 28 concerns pre-agreement statements and quotations for small agreements. Regulation 28 (1) provides that the pre-agreement statement and quotation given to a consumer under section 92
 - (1) must comply with the form and content provided in form 20.
- 48. Regulation 23A (15) (a) requires a credit provider to disclose to the consumer the credit cost multiple and total cost of credit in the pre-agreement statement and quotation. In addition, regulation 23A
 - (15) (d) requires a credit provider to disclose the total cost of credit, including, amongst others, the principal debt, interest, interest fees and service fees.

Alleged contraventions and analysis

- 49. The applicant alleged that the respondent acted unlawfully because the respondent failed to provide consumers with pre-agreement statements and quotations in the prescribed form.
[11]
- 50. The Tribunal is satisfied that the respondent failed to provide consumers with pre-agreement statements and quotations in the prescribed form before concluding the credit agreements because the inspector did not locate statements or quotations in the sample files, and the respondent subsequently failed to provide them.
- 51. That failure meant the respondent contravened section 92 (1) read with regulation 28 (1).

Credit agreements

Contravention 7: Failure to provide a credit agreement in the prescribed form in contravention of section 93 (2) read with regulation 30 (1) and form 20.2

Contravention 8: Failure to provide the consumer with a copy of the credit agreement in contravention of section 93 (1) read with regulation 30 (1) and form 20.2

- 52. Section 93 concerns the form of credit agreements. Section 93 (1) requires the credit provider to deliver a copy of a document that records their credit agreement to the consumer.
- 53. Section 93 (2) provides that a document that records a small credit agreement must be in the prescribed form. Moreover, Regulation 30 (1) provides that the document recording a small credit agreement must contain all the information reflected in form 20.2.

54. The applicant alleged that the respondent's small credit agreements failed to meet the standards in form 20.2 because essential

information was lacking.[12]

55. The Tribunal agrees with the applicant. The respondent's small credit agreements are wholly inadequate. They do not provide essential information concerning, amongst others, the type of agreement, credit provider's identity, physical address and credit provider registration number. The service fee, whether the interest rate is fixed or variable, collection costs and the consumer's right to elect an early settlement are also glaringly omitted. So too, the number and frequency of repayments,

the frequency with which the respondent will provide the consumer with a statement of account, default administration charges and the right to terminate the credit agreement.

56. These omissions meant that the respondent contravened sections 93 (1) and (2) read with regulation 30 (1) and form

20. 2.

Excessive costs of credit

Contravention 9: Levying interest exceeding the prescribed maximum amount in contravention of sections 100 (1) (c) and 101 (1) (d) (ii) read with regulation 42 (1)

57. Sections 100 and 101 deal with prohibited charges and the cost of credit. Sections 100 (1) (b) and (c) respectively preclude a credit provider from requiring the consumer to pay a fee, charge or interest exceeding the amount consistent with the Act.
58. Section 101 (1) (d) (ii) precludes a credit provider from requiring the consumer to pay interest exceeding the maximum prescribed interest rate. Regulation 42 (1) deals with the maximum prescribed interest rates. It stipulates that the maximum monthly short-term agreement interest rate on the first loan is 5% and 3% on subsequent loans within a calendar year.
59. The applicant alleged that all the agreements were short-term agreements. However, in one sample file, the respondent charged interest of 10, 5%, [13] in two sample files 30%, [14] in five sample files 35%, [15] and did not note the interest in two sample files. [16]
60. The Tribunal is satisfied that the respondent charged interest exceeding the maximum prescribed interest rates in at least eight of the 10 sample files. The respondent's contravention is no more apparent than in consumer Avhasei Maanda's case. [17] The respondent loaned him R5 000.00. The credit agreement records an interest rate of 30% and interest in monetary terms of R1 500.00, resulting in him having to repay the respondent R6 500.00.
61. Consequently, the respondent contravened sections 100 (1) (c) and 101

- (1) (d) (ii) read with regulation 42 (1) in at least eight of the 10 sample files.

Unlawful possession of consumers' instruments

Contravention 10: Unlawful possession of the consumer's instruments in contravention of sections 133

- (1) (a), 133 (2) and 90 (2) (1)

62. Section 133 concerns prohibited collection and enforcement practices. Section 133 (1) (a) prohibits the credit provider from using a document or instrument referred to in section 90 (2) (1) when collecting on or enforcing a credit agreement.
63. Section 133 (2) precludes a credit provider when collecting money from a consumer under a credit agreement or seeking to enforce the agreement from relying on a document, instrument or contract provision in section 90 (2) (1)
64. Section 90 (2) (1) provides that a provision in a credit agreement is unlawful if it expresses the consumer's agreement to deposit with the credit provider, identifying documents such as an identity document, credit or debit card, bank account or automatic teller machine access card.
65. The applicant alleged that the investigator found the respondent possessed at least two SASSA cards, seven bank cards and one identity document.[18] The Tribunal is satisfied that those 10 instruments fall within the meaning of section 90 (2) (1). The respondent's possession of those instruments resulted in the respondent contravening sections 133 (1) and (2) and 90 (2) (1).

Failure to keep records

Contravention 11: Failure to keep records in contravention of sections 52 (5) (e) and 170 and regulations 55 (1) (b) and 56

66. Section 52 (5) (e) requires a registrant to keep prescribed records concerning its registered activities in the prescribed manner and form. Section 170 requires a credit provider to maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time.
67. Regulation 55 (1) (b) requires a credit provider to maintain, amongst others, records concerning the consumer's application for credit, credit declined, and reasons therefor, pre-agreement statement and quote, affordability assessment documentation, payment records and supporting documentation of steps taken on default.
68. Regulation 56 requires the credit provider to keep the documents from the agreement termination date or credit refusal for five years.

69. The applicant submitted that the respondent failed to provide the consumers' documents concerning the financial application, proof of financial assessment, copy of agreements or payment records. In the absence of providing those documents, the Tribunal is satisfied that the respondent failed to keep them.
70. Consequently, the respondent contravened sections 52 (5) (e) and 170 and regulations 55 (1) (b) and 56.

Contravention 12: Failing to submit financial and operational returns in contravention of sections 52 (5) (c) and (f) read with general condition 3 and regulations 64 (2) and 66

The Act, regulations and conditions

71. Section 52 (5) (c) requires a registrant to comply with its registration conditions and the Act. Section 52 (5)
- (f) requires a registrant to file prescribed reports with the applicant in a prescribed manner and form.
72. Regulation 62 (1) (b) and (c) read with regulations 64 and 66, respectively, require a credit provider to submit statistical returns in form 39 within specified periods and annual financial and operational returns in form 40 within six months after the credit provider's financial year-end.
73. General condition 3 requires the respondent to submit the reports and returns required in the regulations within the specified period.
74. The applicant alleged that the respondent had failed to submit the prescribed statistical and annual financial and operational returns as required by section 52 (5) (c) read with condition 3 and regulation 66.
75. The respondent's failure to oppose this application and show that it submitted the returns means it did not do so. Consequently, it contravened section 52 (5) (c) and (f) read with regulations 62
- (1) (b) and (c), 64 and 66 and general condition 3.

CONCLUSION

76. Consequently, the Tribunal is satisfied that the respondent repeatedly contravened the sections, regulations, and conditions in the preceding paragraphs. Therefore, it committed prohibited conduct, which justifies declaring the respondent's credit agreements with the consumers in the sample files reckless.

CONSIDERATION OF AN APPROPRIATE ORDER

Declaring the respondent to have repeatedly contravened the Act, committed prohibited conduct and declaring the respondent's credit agreements as reckless

77. The Tribunal deems it appropriate to order that the respondent's repeated contraventions amount to prohibited conduct and justifies declaring the respondent's credit agreements with consumers in the sample files reckless. The Tribunal proceeds to consider the applicant's other wide-ranging requested relief.

Cancelling the respondent's registration as a credit provider

78. In the Tribunal's view, the respondent's contraventions appearing in this judgment are egregious. The respondent danced to its own tune. It wholly disregarded consumers' interests and the Act justifying its deregistration as a credit provider.

Administrative fine

79. The applicant has requested the Tribunal to impose an administrative fine. 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.
80. The Act was introduced into the South African legislative landscape to curb precisely the types of excesses that the Tribunal has found the respondent to have perpetrated. Therefore, the Tribunal would fail in its duty to not send a clear message to the respondent and other credit providers that the Tribunal will not tolerate credit providers contravening the Act.
81. Section 151 (3) provides the factors the Tribunal must consider when determining an appropriate fine. The Tribunal proceeds to consider each in turn.

Nature, duration, gravity, and extent of the contraventions

82. The contraventions show the respondent failed to provide consumers with pre-agreement statements and quotations in the prescribed form and containing the prescribed contents. It failed to conduct proper affordability assessments. It also granted credit recklessly and contravened its conditions as a credit provider. These contraventions of the Act are severe. In particular, the respondent's failure to conduct proper affordability assessments placed consumers at severe risk of over-indebtedness.

Loss or damage suffered as a result of the contraventions

83. The applicant did not place specific evidence before the Tribunal concerning the actual loss or damage consumers suffered. Since the Tribunal has found reckless lending, it is satisfied that it may reasonably conclude that consumers suffered loss through their exorbitant interest rate payments.

Respondent's behaviour

84. There is no plausible reason why the respondent should not have complied with its obligations as a credit provider under the Act. The respondent has brought the consumer credit industry into disrepute and disregarded consumers' rights.

Market circumstances under which the contraventions occurred

85. The respondent ignored its obligations in terms of the Act. It could do so because it operates in an environment where consumers are ill-educated about their rights concerning access to and cost of credit. It appears that the respondent's prohibited conduct mainly impacted vulnerable consumers.

Level of profit derived from the contraventions

86. The respondent charged consumers excessive interest rates. The Tribunal can safely assume that it derived a significant profit from its unlawful activities.

The degree to which the respondent co-operated with the applicant

87. The Tribunal has considered that the respondent provided the inspectors with the required information and co-operated with them during the investigation.

Respondent's prior contraventions

88. The respondent has not been the subject of prior investigations or enforcement measures.

Amount of the fine

89. The applicant did not produce evidence concerning the respondent's financial turnover during the previous financial year. Consequently, the Tribunal may impose a fine limited to a maximum of R1 000 000.00.
90. Although the respondent appears to have been a relatively small credit provider, it is crucial to send a strong message to all credit providers, including their employees, that they cannot escape complying with the Act.
91. These considerations persuade the Tribunal that it is appropriate to impose an administrative fine of R150 000.00.

Appointment of an auditor

92. The Tribunal is aware that the investigation that led to this application comprised a small sample of the respondent's

consumer files. The Tribunal has found, among other things, that the respondent has extended reckless credit. The evidence placed before the Tribunal means that the Tribunal cannot establish the extent of this practice. Therefore, it is appropriate to appoint an independent auditor registered as a chartered accountant to assess the situation and establish the facts.[19]

Other requested orders

93. The applicant requested that the Tribunal make an order interdicting the respondent from engaging in prohibited conduct in the future. The interdict will serve no purpose because the respondent may not engage in prohibited conduct given the provisions of the Act.[20]

ORDER

94. Accordingly, the Tribunal makes the following order:

Contraventions

94.1. The respondent has repeatedly contravened the following sections of the Act, regulations and

conditions:

94.1.1. section 81

(2) (a) (ii) read with regulations 23A (12) (b) and 23A (13);

94.1.2. section 81 (2)

(a) (iii) read with regulations 23A (3), 23A (8) and 23A (12) (c);

94.1.3. regulations 23A (3), 23A (8) and 23A (12) (a);

94.1.4. regulations 23A(9) and 23A (10);

94.1.5. section 80 (1)

(a) read with section 81 (3);

94.1.6. section 92 (1) read with regulation 28 (1) and form 20;

94.1.7. section 93 (2) read with regulation 30 (1) and form 20.2;

94.1.8. section 93 (1) read with regulation 30 (1) and form 20.2;

94.1.9. sections 100 (1)

(c) and 101 (1) (d) (ii) read with regulation 42 (1); 94.1.10. sections 133 (1) (a), 133 (2) and 90 (2) (l);

94.1.11. sections 52 (5)

(e) and 170 and regulations 55 (1) (b) and 56; and

94.1.12. sections 52 (5)

(c) and (f) read with general condition 3 and regulations 64 (2) and 66.

Prohibited conduct

94.2. The repeated contraventions are prohibited conduct in terms of section 150 (a) of the Act.

Cancellation of registration

94.3. The respondent's registration as a credit provider is cancelled immediately.

Reckless credit agreements

94.4. The respondent's credit agreements with consumers in annexures D1 to D10 of the investigation report are reckless in terms of section 80 (1) (a) and set aside.

94.5. The respondent must refund all the credit costs charged and recovered from those consumers within 30 days of the audit report referred to in the following paragraph.

94.6. The respondent is, at its own cost, within 30 business days of the date of issue of this judgment to appoint an independent auditor registered as a Chartered Accountant to conduct an audit and submit a report to the respondent (the audit report).

94.7. The auditor must determine and compile a list of all the consumers with whom the respondent concluded credit agreements within three years of the date of issue of this judgment without properly conducting affordability assessments in terms of section 81 (2) (a) (ii) and/or (iii) of the Act read with regulation 23A (the credit agreements).

94.8. The auditor must assess whether the respondent correctly calculated the interest under the Act on the credit agreements.

94.9. The respondent must reimburse the excess interest the respondent charged to the relevant consumers under the credit agreements.

94.10. The auditor must identify those credit agreements not containing an affordability assessment and include those credit agreements' details in the audit report.

94.11. The auditor must complete the audit within 90 business days of the auditor's appointment.

94.12. The auditor must submit the audit report to the respondent within 120 business days of the auditor's appointment.

94.13. The respondent is within 60 business days of the date of issue of this judgment to pay an administrative fine of R150 000.00 (one hundred and fifty thousand rand) into the National Revenue Fund's following bank account:

Bank: The Standard Bank of South Africa

Account holder: Department of Trade and Industry

Branch name: Sunnyside

Branch code: 05100

Account number: [...]

Reference: NCT/223352/2022/57(1) and name of person or business making the payment.

94.14. There is no cost order.

Mr T Bailey - Presiding Tribunal member

Tribunal members Mr A Potwana and Dr M Peenze concur with this judgment.

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- [1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.
- [2] Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007.
- [3] Section 40 empowers the National Credit Regulator to impose conditions on the registration of an applicant as a credit provider.
- [4] The Act defines prohibited conduct as an act or omission in contravention of the Act.
- [5] Annexure FA6 of the founding affidavit.
- [6] Annexures D1 to D10 of the investigation report.
- [7] Annexures D1, D3, D4, D6, D7, D8, D9 and D10 of the investigation report.
- [8] Annexures D1, D3, D4, D6, D7, D8, D9 and D10 of the investigation report.
- [9] Annexures D1, D3, D4, D6, D7, D8, D9 and D10 of the investigation report.
- [10] Annexures D1 to D10 of the investigation report.
- [11] Annexures D1 to D10 of the investigation report.
- [12] Annexures D1 to D10 of the investigation report.
- [13] Annexure D1 of the investigation report.
- [14] Annexures D2 and D9 of the investigation report.
- [15] Annexures D3, D4, D6, D7 and D10 of the investigation report.
- [16] Annexures D5 and D8 of the investigation report.
- [17] Annexure D2 of the investigation report.
- [18] Annexure C to the investigation report.
- [19] National Credit Regulator v Dacup Finances CC trading as ABC Financial Services - Pinetown and Another (382/21)
- [2022] ZASCA 104 (24 June 2022).
- [20] Shoprite Investments Ltd v National Credit Regulator (509/2017 dated 18 December 2019).

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