

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Edwards (NCT/218082/2022/138(1)(b)) [2022] ZANCT 14 (29 March 2022) [2022] ZANCT 14

COURT

National Consumer Tribunal

BEFORE

H Alwar

CASE / FILE NUMBER

NCT/218082/2022/138(1)(b)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT/218082/2022/138(1)(b)

In the matter between:

NATIONAL CREDIT REGULATOR

APPLICANT

AND

AZMI EDWARDS

RESPONDENT

NCRDC 3298

Coram:

Ms H Alwar - Presiding Tribunal member

Date adjudicated in chambers – 29 March 2022

Date of judgment and order – 29 March 2022

JUDGEMENT AND ORDER

APPLICANT

1. The Applicant is the National Credit Regulator (the Applicant), a juristic person established by section 12 of the National Credit Act, 2005 (the Act) with its physical address at 127 15th Road, Randjiespark, Midrand, Johannesburg, Gauteng.

RESPONDENT

2. The Respondent is Azmi Edwards (referred to as the Respondent), a registered Debt Counsellor with registration number NCRDC 3298, with his business address at 10 Maprin Road, Southfield, Cape Town.

APPLICATION TYPE

3. This is an application in terms of section 138 (1) (b)[1] of the Act for the Tribunal to confirm a settlement agreement as a consent order.
4. The Applicant has submitted a Settlement Agreement that the parties wish to be confirmed as a consent order (the settlement agreement). A reference to a section in this consent order refers to a section in the Act.

BACKGROUND

5. The application arises out of a consumer MC Mabitsela (referred to as the consumer), having complained to the Applicant that the Respondent had failed to reject his debt review application; and failed to terminate the process as requested by the consumer.
6. The settlement agreement records that the Respondent's failure to reject the debt review application is inconsistent with Section 86(6)(a) and 86(7(a). Consequently, the Respondent had contravened the purposes of the Act as set out in section 3 (g) and (i)[2] and Section 52 (5) (c)[3] read with his conditions of registration.
7. The settlement agreement also records that the consumer suffered damages as a result of the prohibited conduct; and that the Respondent undertakes to carry out his debt counselling duties in accordance with the purpose and requirements of the Act.
8. The Applicant and the Respondent agree that the settlement agreement may be confirmed as a consent order in terms of section 138 (1)(b).

ANALYSIS

9. Section 138 (1) (b) must be read with section 150, which empowers the Tribunal to make an appropriate order in relation to prohibited or required conduct and in subsection (d) includes confirming a "consent agreement" as an order of the Tribunal.

10. The Tribunal is satisfied that the settlement agreement correctly records the Respondent's failure to reject the debt review application; and that the Respondent has undertaken to perform a range of remedial actions. The Tribunal has considered that the Applicant and the Respondent have agreed that the settlement may be confirmed as a consent order in terms of section 138(1)(b).

CONCLUSION

11. Consequently, the Tribunal is persuaded that it is appropriate to grant the application and confirm the settlement agreement as a consent order.

ORDER

12. Accordingly, the Tribunal makes the following order:

12.1. The Settlement Agreement that the Applicant and the Respondent concluded on 11 February 2022; which is annexed to this consent order as Annexure A to NCR v Azmi Edwards NCT/218082/2022/138(1)(b), is confirmed and made an order of the National Consumer Tribunal in terms of section 138 (1)(b) of the National Credit Act, 2005; and

12.2. There is no order as to costs.

DATED ON THIS 29th DAY OF MARCH 2022 [SIGNED]

MS H ALWAR PRESIDING MEMBER

- [1] Section 138 (1) (b) provides that if a matter has been investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the proposed terms of an appropriate order, then the Tribunal without hearing evidence, may confirm the resolution or agreement as a consent order
- [2] Section 3 deals with the purposes of the Act. The purposes of the Act are to promote a fair credit market and industry and to protect consumers

by, amongst other things: (g) preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness

based on the principle of satisfaction by the consumer of all responsible financial obligations; and (i) providing for a consistent system of debt restructuring, enforcement and judgement, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.

- [3] Section 52 (5) (c) requires a registrant to comply with its conditions of registration and the provisions of the Act.

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