

SOUTH AFRICA / JUDGMENT

National Credit Regulator v Finbond Mutual Bank (NCT/26629/2015/140(1))

[2017] ZANCT 97 (23 August 2017)

[2017] ZANCT 97**COURT**

National Consumer Tribunal

BEFORE

T Woker, J M Maseko, B Dumisa

CASE / FILE NUMBER

NCT/26629/2015/140(1)

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Source record**IN****THE NATIONAL CONSUMER TRIBUNAL****HELD****IN CENTURION****CASE****NUMBER: NCT/26629/2015/140(1)****In****the matter between:**

THE
NATIONAL CREDIT REGULATOR
APPLICANT
And
FINBOND
MUTUAL
BANK
RESPONDENT

Coram:

Prof
T Woker (Presiding Member)
Prof
J M Maseko (Member and Chairperson)
Prof
B. Dumisa (Member)

JUDGMENT**APPLICANT**

1. The Applicant in this matter is the National Credit Regulator, a juristic person established by section 12 of the National Credit Act 34 of 2005 (the Act).
2. The Applicant is an independent, juristic person responsible for inter alia monitoring the consumer credit market to ensure that prohibited conduct (as defined in the Act) is prevented or detected and prosecuted.
3. At the hearing held on 19 July 2017, the Applicant was represented by N Magolego the senior legal advisor employed by the Applicant assisted by L Mashapa, the company secretary of the Applicant.

RESPONDENT

4. The Respondent is Finbond Mutual Bank, a mutual bank as contemplated in the Mutual Banks Act 124 of 1993 and a registered credit provider with registration number NCRC6172 whose physical address is at Bank Forum Building, Cnr Vearle and Fehrsen Streets, New Muckleneuk, Pretoria.
5. The Respondent arranges credit life insurance for its customers with Guardrisk Insurance Company Limited (Guardrisk) which was originally
the 2nd Respondent in this matter.
6. Following a hearing held on 13 September 2016 the Tribunal found that Guardrisk was not a credit provider under the National Credit Act and that the Tribunal has no jurisdiction to deal with matters against insurers.
7. At the hearing held on 19 July 2017, the Respondent was represented by JP Vorster (SC) and CP Wesley instructed by Mr Stolp of Friedland Hart Solomon & Nicolson.

APPLICATION

8. The Applicant has referred complaints of prohibited conduct to the National Consumer Tribunal (Tribunal) in terms of Section 140
(1) of the National Credit Act, 2005 (the Act).
9. The complaints relate to the cost of credit life insurance which the Respondent offers or demands that consumers pay when they obtain

loans from the Respondent and to the disclosure of commission which is being earned by the Respondent.

10. The Applicant is of the view that the cost of this credit life insurance is unreasonable as contemplated in section 106 (2) of the Act and that the Respondent failed to disclose the true extent of the commission which was paid by Guardrisk when the Respondent referred consumers to Guardrisk.

APPLICABLE SECTIONS OF THE ACT

11. The Applicant alleges that the Respondent has engaged in prohibited conduct because it has contravened section 106 (2) and section 106
- (5) (b) (ii) of the Act

Section 106 (2)

12. S 106 (1) of the Act provides that a credit provider may require consumers to maintain credit life insurance during the term of their credit agreement.
13. S 106 (2) then provides that a credit provider must not offer or demand that the consumer purchase or maintain insurance that is unreasonable (s106 (2) (a)) or at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement (s106 (2) (b)).
14. At the hearing the Applicant conceded (following points raised by the Respondent) that it was not alleging that the insurance which the Respondent offered or demanded was unreasonable but rather that it was the cost of the insurance which was problematic. The application therefore relates only to s106 (2) (b).

Section 105 (5) (b) (ii)

15. This section provides that a credit provider must disclose to the consumer in the prescribed manner and form the amount of any fee, commission, remuneration or benefits receivable by the credit provider in relation to that insurance.

BACKGROUND

16. On 2 and 8 February 2014, the Applicant received certain emails from a journalist, Ms Maya Fisher-French concerning the Respondent.

The two emails indicated that the Respondent charged credit life insurance premiums of R56 and R57 per R1 000 credit which it granted to consumers.[1]

17. The Applicant then initiated a complaint in its own name in terms of section 136 (2) of the Act. As stated in a memorandum from Ms Magolego (Manager: Investigations and Enforcement) to Ms Mothshegare (CEO of the Applicant) the complaint was initiated because “it had come to the attention of the NCR that Finbond is charging its consumers excessive credit life insurance”.[2]

18. Following the approval of the investigation, Ms Lekoko (an inspector) was appointed in terms of section 25 of the Act to conduct an investigation into the activities of the Respondent.[3]
19. The investigation was conducted on 6 May 2015.[4]
20. The Respondent was requested to provide a sample of eleven consumer files in order for the inspector to establish whether the Respondent
complies with section 106 of the Act.
21. Following a review of the eleven credit agreements, the inspector concluded that the average insurance amount for the sample is R149 per R1 000 for both short term and unsecured loans. These amounts were compared to the figures collated by the Applicant's statistics department for the last quarter of 2014. The figures showed that all other credit providers charge credit life insurance premiums of between R2.19 to R17.50 per R1 000 and that the average premium for short term and unsecured loans across the South African credit market is R24.43.
22. Based on this analysis the inspector concluded that the credit life premiums charged by the Respondent were excessive and unreasonable
and at an unreasonable cost to consumers when compared to other credit providers.
23. The inspector also compared the Respondent's insurance loss ratio according to their financial statements published on their website for the 2014 year. He found that insurance premiums written amounted to just over R56 million and that the insurance premiums paid out amounted to just more than R1.7 million. He concluded that this very low loss ratio illustrates that the Respondent's consumers are not that high risk and that therefore the Respondent was not justified in charging consumers approximately six times more than the average rate charged by other credit providers.
24. After considering the following factors:
 - (1) The average credit life insurance premiums charged in the short-term credit industry;
 - (2) The credit life premiums charged by the Respondent in eleven credit agreements;
 - (3) The average loss ratio in the short term insurance industry for credit life insurance; and
 - (4) The Respondent's loss ratio the Applicant concluded that the Respondent was offering or demanding that consumers pay credit life insurance which was unreasonable.
25. The Inspector also concluded that the Respondent was contravening section 106 (5) (b) in that it did not categorically disclose on the credit agreement what it was receiving as

intermediary and binder's fees. The Respondent indicated that its intermediary fee for the insurance was 15% however, the inspector established that its annual statement indicated that binder's fees were also received. Binder's fees are funds that the insurer pays credit providers for performing activities such as determining the premiums, wording value and settling of claims under a policy. The inspector could not establish whether the binder's fees included the 15% commission disclosed in the credit agreements.

ORDERS

SOUGHT BY THE APPLICANT

26. The Applicant sought the following orders from the Tribunal:

- (1) The credit life insurance charged by the Respondent to Ms Charlie, Mr Nkosi, Mr September and Ms Hammerslaght[5] and to those consumers listed in the Inspector's Report[6] be declared unreasonable and at an unreasonable cost to consumers as contemplated in section 106 (2) of the Act.
- (2) Certain refunds be ordered to those specific consumers listed by name in (1) above.

In this regard the Respondent be ordered to refund all consumer who were, from 1 June 2007 to date charged credit life insurance in excess of the short term credit industry average the amounts of such excess. The Respondent be ordered to conduct an independent audit at its cost on all of its consumers who had taken out insurance since 1 June 2007 in order to identify those consumers who were also entitled to refunds. [7] The report be filed with the Tribunal within 60 days of the order and must contain the following information:

- (i) The full name, address and ID number of any consumer who may be entitled to a refund;
- (ii) The loan amount in terms of each loan of each consumer;
- (iii) The total credit life premiums payable or paid by each consumer.

- (3) The Respondent be interdicted and restrained from, in the future, charging consumers credit life insurance in excess of the short-term

credit industry average premium, excluding the Respondent's premiums.

- (4) An administrative penalty of R1 million be imposed on the Respondent.
- (5) The matter be postponed sine die for consideration of the independent auditor's report.

RESPONDENT'S POINTS IN LIMINE

27. The Respondent raised the following points in limine:

- (1) The referral of the application to the Tribunal was invalid because the Applicant did not have a reasonable suspicion that the Respondent was engaged in the prohibited conduct.
- (2) The Applicant failed to observe the audi alteram partem rule.

Validity of the referral

28. The Respondent is of the view that the referral of the complaint to the Tribunal was invalid for the following reasons:

- (1) In order to initiate a complaint and sustain an investigation the Applicant must have a reasonable suspicion that a person is engaged

in prohibited conduct. This is a jurisdictional requirement for the valid initiation of a complaint as well as for the ensuing

investigation and referral. The Respondent referred to the case of National Credit Regulator v Capitec Bank

- [8] where the Court held that the NCR in initiating a complaint exercises a public power which must comply with the Constitution and the doctrine of legality... The NCR accordingly cannot arbitrarily without a reasonable suspicion initiate a complaint generally against what it perceives to constitute a prohibited practice. The sanctioning thereof will widely open the doors to all kinds of abuse.[9]

- (2) Apart from referring to the two emails received from Ms Fisher-French, the Applicant does not, in its founding affidavit, address the jurisdictional requirement that it had a reasonable suspicion that the Respondent was engaged in prohibited conduct. The two emails only showed that in two instances the Respondent had charged credit life premiums of R56 and 57 per R1000 credit. They do not contain any further information regarding the actual risks and liabilities involved in the credit agreements concerned.

- (3) The two emails were incapable by themselves of giving rise to a reasonable suspicion that the Respondent offered or demanded that

consumers purchased or maintained insurance that was an unreasonable cost to consumers.

- (4) In addition, Ms Fisher-French did not allege in the emails that the credit life insurance that the Respondent was excessive and therefore the two emails alone could not support the conclusion reached by the Applicant (that the Respondent was charging consumers excessive credit life insurance).

Failure to observe the audi alteram partem rule

29. The Respondent is of the view that the Applicant should have raised these issues with the Respondent before referring the matter to the Tribunal for the following reasons:

- (1) In the past, when the Applicant received a complaint about the Respondent's conduct, it referred the matter to the Respondent

for an explanation before proceeding to a formal investigation. The Respondent therefore had a legitimate expectation that complaints

would be referred to it before the matter was formally investigated or referred to the Tribunal.

- (2) The Applicant is a statutory body to which the constitutional requirements of just administrative action apply.
30. The Respondent again referred to the Capitec Bank case where the Court held that the
- “NCR is required, as far as reasonably possible, to achieve the correction of noncompliance with the provisions of the NCA by credit providers impartially, while at all times observing audi alteram partem up to the state that the unresolved issues inevitably are to be referred to the Tribunal. A unilateral fault finding mission with the sole purpose of securing a hearing by the tribunal Is at odds with constitutional values and principles and is therefore to be deprecated”.*
31. In the Capitec matter the Court was of the view that had the perceived transgressions by the credit provider been addressed by mutual co-operation and in the spirit of the bettering of the interest of the credit consumer industry as whole, as set out in section 3 (a) of the Act, a hearing before the tribunal could have been averted

THE APPLICANT’S REPLY TO THE POINTS IN LIMINE

Reasonable suspicion

32. The Applicant pointed out that the test to be applied in determining whether a suspicion is reasonable is an objective test and the Applicant must have sufficient grounds to believe that prohibited conduct has taken place. In this regard the Applicant referred to the case of *Woodlands Diary (Pty) Ltd v Competition Commission*.^[10]
33. The Applicant argued that on the face of it, the cost of insurance that was mentioned in the emails from the journalist seemed high and once the investigation was concluded, the Applicant came to the conclusion that the cost of the insurance was high and unreasonable, taking to consideration the Respondent’s loss ratio, the average industry premium, its loan book performance and the short term industry loan book performance.

Audi alteram partem

34. The Applicant argued that there was no need for the Applicant to refer the matter back to the Respondent for an explanation because the Respondent would have an opportunity to explain its position before the Tribunal. In other words the Tribunal hearing ensured that the audi alteram partem rule was observed.

MERITS OF THE MATTER - APPLICANT’S ARGUMENTS

The cost of the insurance was unreasonable

35. The Applicant’s arguments to support its finding that the cost of insurance was unreasonable can be summarised as follows:

- (1) the legislature has not defined the factors which need to be taken into consideration in assessing the reasonableness of the cost of insurance but that this is helpful because it does not restrict those factors which can be referred to.
- (2) The reasonableness of the cost of the premiums must be assessed having regard to the actual risk and liabilities involved in the credit agreement.
- (3) The loss ratio and average industry premiums are appropriate factors to assess the reasonableness of the cost of credit insurance for the purpose of section 106 (2). These are supported by the performance of the Respondent's short term loan book and the short-term loan industry book.
- (4) The risk profile of the consumer is important in determining pricing for credit insurance. In this regard the loss ratio of the insurer provides a reflection of the risk profile of its policy holders.
- (5) The loss ratio is the ratio of the total losses incurred in claims relative to the premiums collected. It provides a gauge for both the financial health of the insurer and whether the insurer is overcharging its policy holder.
- (6) A low loss ratio shows that the insurer paid out few claims in relation to the premiums it collected. The insurer did not have many claims.
- (7) This is an indication that the risk profile of the respondent's customers is low and that the consumers were being overcharged

insurance.

- (8) The evidence establishes that the performance of the Respondent's loan book is very good which indicates that consumers are repaying their loans.
- (9) The Respondent can mitigate any risks it may face in the market by product diversification, tighter lending criteria, loan book

insurance and by implementing tighter lending criteria. There was no need for the respondent to overcharge consumers as a strategy to mitigate these risks.

- (10) The Respondent's assertion that its customers are high risk customers is not accurate because this is not supported by the loss ratio which is low. If for example, the economic sector in which the Respondent lends was vulnerable to retrenchments, this would have been borne out by high retrenchment claims and be reflected in the loss ratio accordingly.

Disclosure of commission

36. Section 106 (5) (b) (ii) states that a credit provider must disclose to the consumer in the prescribed manner and form the amount of any fee, commission, remuneration or benefits receivable by the credit provider in relation to that insurance..

MERITS OF THE MATTER - RESPONDENTS'S REPLY

37. The Respondent reply to the allegation that the cost of insurance that the Respondent offered to consumers was unreasonable is summarised as follows:
- (1) The Applicant's papers contain no indication that the words "having regard to the actual risk and liabilities involved in the credit agreement" were considered by it properly or at all at any stage.
 - (2) The Applicant's submission that the Respondent could have mitigated any risks it faced is no answer to the submission that the Applicant failed to take into consideration other factors such as market credit or concentration risks. This is an indication that particular risks were not taken into consideration by the Applicant.
 - (3) In order to prove this one would expect either a reasoned opinion from an expert in insurance or the Respondent's conduct would have been compared to other similar credit providers. In other words apples must be compared to apples otherwise the comparison is worthless. In addition, the facts upon which the comparison is based must be clearly proved.
 - (4) The Applicant's case is built around four cornerstones:
 - (i)The average credit life insurance premiums charged in the short-term credit industry;
 - (ii)The credit life premiums charged by the Respondent;
 - (iii)The average loss ratio in the short term insurance industry for credit life insurance; and
 - (iv)The Respondent's loss ratio
- The average credit life insurance premium charged in the short term credit industry ("the average premium')
38. The Applicant has submitted annexure J which is based on the synoptic reports submitted to the Applicant in terms of section 16
- (2) (a) of the Act. This section requires an insurer to provide periodic synoptic reports of aggregate information relating to credit insurance policies issued by it but such reports must not identify any particular consumer or relate a particular consumer to any information so reported.
39. Annexure J is a very terse annexure and these synoptic reports have not been placed before the Tribunal therefore it is impossible to evaluate the correctness of the reports.
40. It is extremely unlikely that these synoptic reports contain information regarding "the actual risks and liabilities" involved in the credit agreements.

41. The Applicant has failed to provide an explanation as to how it conducted its analysis. Further, its determination of the average premium is fundamentally flawed in that it makes no allowance for market demographics, market risk, concentration risk, credit risk, LSM concentration of customer base, employment of the consumer, structure of the product, specific policy wording, scope of cover, amount of cover, exclusions etc.
42. The Applicant makes a bald assertion that the insurance cover in issue was a standard one without providing any figures or examples to corroborate this assertion.
43. In order to constitute a valid basis for comparison with Guardrisk's premiums, the actual risks and liabilities involved in the credit agreements used for the purposes of comparison must be comparable to the actual risks and liabilities involved in the Respondent's credit agreements. This has not been done.

The credit life premiums charged by Guardrisk Insurance

44. The Respondent disputes the amount of R149 as an average premium charged by Guardrisk as alleged by the Applicant and argues that the figures arrived at by the Applicant are not substantiated. It alleges instead that the premiums vary between R90 per R1000 and R30 per R1000 depending on the risks involved.

Average loss ratio in the industry for this type of insurance

45. The Respondent disputes the correctness of the figures arrived at by the Applicant for the average loss ratio in the industry and argues that the Applicant has failed to provide proper evidence regarding how it arrived at these figures.

The Respondent's loss ratio

46. The Applicant alleges that according to the Respondent's annual financial statements for 2014, the premiums collected amount to R56 371 011.00 and the claims paid out amount to R1 740 356.00.
47. The Applicant has failed to take into consideration that there is a difference between Finbond Mutual Bank (the Respondent) and Finbond Group Limited (FGL). The financial statements relied on by the Applicant are the integrated financial statements for FGL and the Respondent for the year ended 28 February 2014.
48. As far as a contravention of section 106 (5) (b) is concerned the Respondent accepted that it was not disclosing its commission

correctly and informed the Tribunal that since the date of the answering affidavit the matter had been rectified.

Relief sought by the Applicant

49. The Respondent argued that the relief sought by the Applicant is incompetent for the following reasons:

- (1) Section 106 (2) prohibits offering or demanding that consumers purchase insurance that is at an unreasonable cost but it does not prohibit the charging of credit life insurance that is at an unreasonable cost to consumers. Section 150 only empowers the Tribunal to order the repayment of excess amounts that have been charged to consumers. Therefore this section relates to the charging of fees and charges as set out in section 100-105 but does not relate to section 106 (2).
- (2) The above also applies to prayer 3 wherein the Applicant is requesting an interdict.
- (3) The Applicant has not paid any attention to the factors enumerated in section 151 (3) thereby justifying an administrative penalty of R1 million.

ISSUES

TO BE CONSIDERED

50. The following issues need to be considered by the Tribunal:
 - (1) Whether the Applicant had a reasonable suspicion that the Respondent was engaged in prohibited conduct before it decided to institute the investigation and/or refer the matter to the Tribunal.
 - (2) Whether the Applicant should have afforded the Respondent the opportunity to comment on the view of the Applicant that the Respondent was engaged in prohibited conduct before the matter was referred to the Tribunal for a hearing.
 - (3) Whether the Respondent was offering insurance that was at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement.
 - (4) Whether the Tribunal is empowered to make the orders sought by the Applicant.

CONSIDERATION

Reasonable belief

51. The Respondent has raised as a point in limine the fact that the Applicant did not have a reasonable suspicion that the Respondent was engaged in prohibited conduct before it launched its investigation or before it referred the matter to the Tribunal in accordance with 140 (1) (b). This is a jurisdictional fact which needs to be established in its founding affidavit. The Applicant has relied on the emails which were sent by the journalist, to which credit agreements were attached which set out credit life insurance of R56 and R57. As explained by the Applicant, this led to the belief that the Respondent was charging excessive premiums. The Applicant then authorised an investigation into the activities of the Respondent. The subsequent report issued by the Inspector is headed "Investigation into activities of Finbond Mutual Bank". A similar approach was adopted when Capitec Bank was investigated. Three inspectors were appointed and in each case the inspector's certificate was headed "appointment is for the investigation of the activities of Capitec Bank" The Court

went on to say:

In the background section of the mandate, where it plainly should have set out and dealt with the complaint, it is merely stated that “Concerns have been raised relating to the provision of unsecured credit and short term loans by Capitec Bank”. In the NCR’s replying affidavit this sentence is referred to as the basis and reason for the investigation but nothing more is added thereto. It is immediately and without more ado, abundantly clear that the statement does not, even by the wildest stretch of imagination, comply with the requirement of a reasonable suspicion, or any suspicion for that matter. Nor were any facts set out, either in the mandate read as a whole or in the NCR’s affidavits from which a reasonable suspicion can be inferred. On the contrary, the facts alluded to by the NCR show beyond all doubt that it intended nothing more than a fishing expedition.[11]

52. This matter can be distinguished from the Capitec Bank case because the documents in their totality indicate that the intention of the Applicant in this matter was to investigate a contravention of a particular section of the Act, namely section 106. In this regard, the Applicant had received specific information regarding how much the Respondent’s consumers were being charged for credit life insurance. It is perhaps unfortunate that this was not clearly stipulated in the initial mandate for an investigation.

However, the Tribunal pointed out in the case of National Credit Regulator v Lewis Stores[12] that the legislature did not intend that the complaint must be evaluated or tested in any way. What the legislature intended

was that the intention to investigate must not be arbitrary or without foundation. Similarly to the Lewis Stores case, the

Applicant received what appeared to be a legitimate and valid complaint regarding the Respondent’s activities. The difficulty

however is that the Respondent only contravenes section 106 (2) (b) if the insurance is at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement.

53. S 106 (1) is a permissive section in that it allows credit providers to require consumers to obtain and maintain credit life insurance for the duration of the loan. This permission is then qualified by s 106 (2) in that credit providers may not offer or demand that consumers obtain insurance that is unreasonable or at an unreasonable cost to consumers. This section is clearly directed at the conduct of credit providers and places the responsibility on credit providers to ensure that the insurance which they offer to consumers is not unreasonable taking into consideration the actual risks and liabilities involved in the credit agreements.

54. The difficulty here is that Respondent is not an insurance company and is therefore not in a position to offer its own insurance product to consumers. It therefore enters into a binary agreement with Guardrisk which provides the credit life insurance. The Act clearly envisages such a situation because s106 provides that a credit provider must not offer insurance which is unreasonable.

Therefore the legislature made it the responsibility of the credit provider to ensure that the credit life it offers to consumers

who were unable or did not want to provide their own insurance was not unreasonable.

55. This is where the problem lies because there is no evidence before the Tribunal to show what other insurance companies in a similar position to Guardrisk there are. Therefore the Tribunal cannot make a decision that the credit life insurance offered by Guardrisk is unreasonable taking into consideration the actual risks and circumstances of the case. The evidence before the Tribunal regarding the cost of insurance charged by other creditor providers does not indicate whether those credit providers are providing their own “in-house” insurance or whether these credit providers are also entering into binary agreements with independent insurers and are able to obtain more reasonable credit life insurance for similar consumers with similar risks. In other words it is very difficult for the Tribunal to compare “apples with apples”. The Applicant has suggested that the Respondent should change its business model and should spread its risks by offering credit to a wider range of consumers and so there could, in a sense be cross subsidization, where less risky consumers would subsidize more risky consumers. Alternatively the Respondent could take out its own insurance to cover any risks it may face through consumers defaulting on their loan repayments. It is not for the Applicant to suggest how the Respondent should operate its business. The Applicant must demonstrate that the cost of credit life insurance offered by the Respondent to its consumers is unreasonable having regard to the actual risk and liabilities involved in the credit agreement. This is where the evidence before the Tribunal is lacking.
56. The Applicant has relied substantially on the loss risk ratio of the Respondent in order to demonstrate that the Respondent receives very few claims in relation to the insurance premiums which it receives. This, the Applicant argues, demonstrates that the consumers who are entering into credit agreements with the Respondent are low risk consumers. The Respondent has pointed out that the information relied on by the Applicant relates to Finbond Group Limited and not the Respondent. Even so, the insurer in this regard is Guardrisk so if this information was to be relevant to the matter, it would have to be the loss risk ratio of Guardrisk which is important and not the loss risk ratio of the Respondent.
57. In summary therefore the following points are made:
- (1) The Respondent is entitled to require their consumers to have credit life insurance;
 - (2) The Respondent is not an insurance company;

- (3) The Respondent has entered into a binary agreement with an insurance company, Guardrisk;
- (4) The critical issue is whether the insurance premium which Guardrisk charges is unreasonable taking into consideration the actual risks and circumstances of each credit agreement.
- (5) In order to make such a decision, the Tribunal would have to compare the insurance which is offered by Guardrisk against similar products which would be available for the Respondent to offer to its consumers. It is only once it is established that the Respondent could have obtained similar insurance for its consumers from other insurers at a much more reasonable rate, that the Tribunal would be able to conclude that the insurance which the Respondent offers to its consumers is unreasonable.
- (6) Without this evidence the Tribunal is unable to make a finding that the insurance which the Respondent offers to its consumers is unreasonable
58. The Tribunal is of the view that the first point in limine should be upheld and the application should be dismissed. In view of this finding it is not necessary for the Tribunal to consider the further points set out above.

ORDER

The application is dismissed.

There is no order as to costs.

(Signed)

T Woker

Tribunal Member

Dated 23 August 2017

I concur with the Judgment of Prof. Woker

Prof. J.M. Maseko – Tribunal member and Executive Chairperson.

B Dumisa

Tribunal Member

- [1] See Founding Affidavit para 8, pp 34-44 of the documents (annexure “D”); pp 45-50 annexure “E”
- [2] See pps 7-8 of the documents.
- [3] See Annexure F of the Founding Affidavit

- [4] Annexure G of the Founding Affidavit – the inspector’s report headed Investigation into the activities of Finbond Mutual Bank.
- [5] These credit agreement formed part of the Applicant’s founding affidavit
- [6] Annexure G to the Founding Affidavit.
- [7] It was subsequently established that the Respondent was only registered as a credit provider in 2012, therefore the Applicant

conceded that the Respondent should only be ordered to grant such refunds from the date of its registration as a credit provider.

[8]

[2017] JOL 37856 (GP)

[9] See para 10 of the judgment.

[10]

[2011] 3 All SA 192 (SCA).

[11] See para 12 of the Capitec Bank case.

[12] Case No NCT/27651/2015/140(1).

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