

SOUTH AFRICA / JUDGMENT

National Credit Regulator v K2014241715 (South Africa) Ltd t/a Quick Bucks Cash Loans (NCT/267093/2023/57(1)) [2025] ZANCT 26 (28 March 2025)

[2025] ZANCT 26

COURT

National Consumer Tribunal

BEFORE

Z Ntuli, S Hockey, S Mbhele

CASE / FILE NUMBER

NCT/267093/2023/57(1)

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case number: NCT-267093-2023-57(1)

In the matter between: NATIONAL CREDIT REGULATOR APPLICANT and K2014241715 (SOUTH AFRICA) (PTY) LTD RESPONDENT T/A QUICK BUCKS CASH LOANS

Coram:

Ms Z Ntuli

- Presiding Tribunal Member

Mr S Hockey -

Tribunal Member

Mr S Mbhele -

Tribunal Member

Date of Hearing - 7 March 2025

Date of

Judgment

- 28 March 2025

JUDGMENT AND REASONS

PARTIES

1. The applicant in this matter is the National Credit Regulator (the applicant or the NCR), a juristic person established by section 12 of the National Credit Act, 34 of 2005 (the NCA). The applicant was represented at the hearing by its legal adviser, Mboniseni Mathivha.
2. The respondent is K2014241715 (South Africa) (Pty) Ltd t/a Quick Bucks Cash Loans (the respondent), duly incorporated under the company laws of South Africa, with registration number 2014/241715/07. The respondent is a registered credit provider with the NCR under registration number NCRCP

7257. Dennis van Rooyen, from Lezanne Swanepoel Attorneys, represented it at the hearing.

TERMINOLOGY

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

BACKGROUND

4. The matter was brought to the applicant's attention through a scouting exercise conducted in Klerksdorp, North-West, to prevent and detect prohibited conduct. During this exercise, the respondent was identified, and informal inquiries revealed that the respondent charged 30% interest on loans, whereas its advertising material displayed at its premises included the statement "FREE: R500.00 Loans NO CHARGES AT ALL!".
5. This information raised a reasonable suspicion that the respondent was conducting business contravening the NCA and its Regulations. Specifically, it indicated potential overcharging of interest and engaging in prohibited advertising practices. Consequently, on or about 6 December 2022, the applicant initiated a complaint against the respondent under section 136(2) and authorized an investigation under section 139(1)(c). The scope of the investigation was to determine, inter alia:

5.1 whether the branch of Quick Bucks Cash Loan, as identified during the scouting exercise, is a registered branch, including requesting the registration certificate to confirm;

5.2 the cost of credit charged in respect of credit agreements and whether it is in line with the provisions of the NCA;

5.3 whether the advertising material of the entity is misleading, specifically in respect of the no charges application;

5.4 whether pre-agreement statements and quotations are in the prescribed form and provided to consumers; and

5.5 whether credit agreements are in the prescribed form and provided to consumers.

6. On or about 8 December 2022, Bongiwe Tyutu (Tyutu) and Qhamani Loni (Loni), hereinafter referred to as “the inspectors”, were appointed in terms of section 25 to investigate the business practices of the respondent. The inspectors also requested a list of approved credit agreements and randomly selected ten consumer files as part of the investigation mandate. After the investigation, the inspectors prepared the investigation report annexed to the application as Annexure “QBK6” with the sampled files annexed thereto as Annexures “E1” to “E10”.
7. The applicant subsequently referred the complaint to the Tribunal for adjudication, alleging various contraventions of the NCA by the respondent in terms of section 57(1), and seeks cancellation of the respondent’s registration. The applicant’s cause of action is outlined fully in its founding affidavit, read with the investigation report. The applicant’s founding papers were filed on 11 April 2023. The respondent filed its answering affidavit on 25 April 2023. The applicant filed its replying affidavit on 16 May 2023.
8. The Registrar issued a notice of set down on 10 June 2023 for the hearing to be held on 25 July 2023. On 24 July 2023, the matter was removed by agreement between the parties pending settlement negotiations. On 9 November 2023, the applicant informed the Registrar that it intended to file a section 138 application by 30 November 2023. After several follow-ups with the applicant in vain, the Registrar issued a notice of set down on 4 February 2025 for the matter to be heard on 7 March 2025. The hearing took place virtually via MS Teams.

ALLEGED CONTRAVENTIONS OF THE NCA AND THE TRIBUNAL’S FINDINGS

9. According to the applicant, the respondent is still in business. However, its registration has since lapsed due to non-renewal. The applicant’s oral submission mirrored what is contained in its papers. Essentially, the applicant submits that the respondent contravened the NCA because it failed to provide pre-agreement statements, quotations, and credit agreements in the prescribed form, failed to conduct proper affordability assessments, charged excessive interest, overcharged initiation fees, charged prohibited undisclosed fees, extended credit recklessly and engaged in prohibited advertising practices. The applicant asserts that the respondent’s non-renewal of its registration was an attempt to evade accountability. The lapsing of the respondent’s registration does not detract from the relief sought.
10. The respondent referred the Tribunal to its written submissions in its oral submission. It submits that the respondent has ceased trading as a credit provider and that it will abide by any decision the Tribunal makes. In its answering affidavit, the respondent denies

contravening the NCA, stating that it relied on WEBFIN to calculate loan charges. It asserts that the R500.00 'no charges' loan promotion was a marketing tool for first-time customers, which has since been discontinued. It maintains that the R50.00 card fee was optional and denies any misrepresentation. It claims all required documents for affordability assessment were obtained but not printed to reduce costs, with the credit agreement reflecting the final assessment. It asserts that its actions were bona fide, and a fine is not warranted as it could lead to liquidation, affecting employees. Emphasising that it has taken

corrective measures, including refunding consumers, the respondent reaffirms its commitment to compliance.

11. The Tribunal considered the submissions and is of the view that the applicant has demonstrated that the respondent failed to operate its business in a manner consistent with the purposes and requirements of the NCA, including contravening section 52(5)(c) read with General Condition 2 of its General Conditions of Registration. The respondent's conduct amounts to prohibited conduct, which occurred repeatedly. Based on the investigation report, the following contraventions are evident.

Prohibited Advertising Practices

12. Section 76(4)(c)(ii) prohibits advertisements related to credit from being misleading, fraudulent, or deceptive. Additionally, Regulation 21(6) forbids advertisements containing statements such as "no credit checks required," "blacklisted consumers welcome," and "free credit."
13. The applicant submits that the respondent engaged in prohibited advertising practices by displaying promotional material indicating "FREE: R500.00 Loans NO CHARGES AT ALL!" valid from March 2022 to December 2022. Despite this claim, consumers were still charged service fees, initiation fees, interest, and credit life insurance, as demonstrated in Annexure "E8".
14. This conduct contravenes Section 76(4)(c)(ii) read with Regulation 21(6).

Failure to conduct affordability assessments

15. Section 81 (2)(a)(ii) provides that a credit provider must not enter into a credit agreement without first taking reasonable steps to assess the proposed consumer's debt re-payment history as a consumer under credit agreements. Regulation 23A(12)(b) obliges a credit provider, when conducting the affordability assessment, to consider all monthly debt repayment obligations in terms of credit agreements as reflected on the consumer's credit profile held by a registered credit bureau.
16. Regulation 23A(13) stipulates that a credit provider must take into account the consumer's debt repayment history as a consumer under credit agreements, as envisaged in section 81(2) (a) and must ensure that the requirement is performed within seven business days immediately before the initial approval of credit or the increasing of an existing credit limit.

17. The respondent failed to assess the debt repayment history of consumers it entered into agreements with; specifically, it failed to obtain the credit bureau reports. There was no evidence of such reports in Annexures "E1" to "E10" of the sampled files. The panel is cognisant of the court's judgment in *Truworthe's Limited and Others v Minister of Trade and Industry and Others*[3] in which regulation 23A(4) was set aside, with the remainder of regulation 23A applicable to all credit agreements. All credit

providers are obligated to adhere to regulation 23A.

18. The Tribunal finds that the respondent contravened section 81(2)(a)(ii) read with Regulation 23A(12)(b) and 23A(13).

Failure to take reasonable steps to assess financial means, prospects, and obligations

19. Section 81(2)(a)(iii) prohibits a credit provider from entering into a credit agreement without first taking reasonable steps to assess a consumer's financial means, prospects, and obligations. The respondent failed to conduct such an assessment, contravening section 81(2)(a)(iii) read with Regulations 23A(3),

23A(8), and 23A(12)(a) and (c).

20. The respondent neither assessed consumers' financial positions nor properly calculated their discretionary income as it lacked appropriate and current documentation. This is evidenced in Annexures "E1" to "E10" as follows:

20.1 In Annexures "E1" to "E10," the respondent did not obtain current salary advices or proof of income, making it impossible to verify consumers' earnings before extending credit.

20.2 In Annexures "E4", "E5", and "E9", the bank statements were outdated at the time of the credit agreements. For example, in Annexure "E4", the loan agreement was concluded on 3 December 2022, but the bank statement provided was from 5 September to 5 October 2022, rendering it unreliable. Further, in Annexure "E5", the loan agreement was signed on 28 October 2022, but the bank statement covered 16 August to 15 September 2022, making it outdated. Annexures "E1" and "E6" lack the latest three deposits, preventing an accurate income assessment. In Annexures "E6" and "E8", the bank statements postdate the loans and could not have been used to assess affordability at the time of lending.

21. The respondent also failed to consider consumers' existing debt obligations, as evidenced in Annexure "E1" where no debts were recorded, yet the bank statement reflected a Nedbank debit order. In Annexure "E2", no obligations were indicated, yet the statement showed multiple debit orders, including ABSA VAF, ABSA Life, Sanlam Sky, and Avbob. In Annexure "E4",

no debts were recorded, but the bank statement revealed debit orders for GB Linkage and Debt Review, highlighting that the respondent

granted credit to a consumer under debt review.

22. In Annexure "E5", R332.00 in obligations was listed, but the bank statement showed additional unpaid debit orders for FNB Funeral, MiWay, and Discovery Insure, demonstrating financial distress. In Annexure "E6", no obligations were listed, yet the bank statement showed payments to Old Mutual, SAHL, Hollard, Metlife, and Sanlam, among others. In Annexures "E8" and "E10", similar failures were observed.
23. The panel is satisfied that the applicant demonstrated that the respondent's failures contravene section 81(2)(a)(iii) and Regulations 23A(3) and 23A(12)(c). Additionally, the respondent's inability to accurately calculate discretionary income violates Regulations 23A(8) and 23A(12)(a).

Extension of reckless credit by failing to conduct proper affordability assessments prior to granting credit

24. Section 81(3) stipulates that a credit provider must not enter into a reckless credit agreement with a prospective consumer. Section 80(1)(a) states that a credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119 (4), the credit provider failed to conduct an assessment as required by section 81(2), regardless of what the outcome of such an assessment might have concluded at the time.
25. The respondent failed to conduct the required affordability assessments in accordance with section 81(2) read with Regulation 23A. In the absence of the required documentation, the Tribunal concludes that the respondent extended credit recklessly to consumers, specifically those identified in Annexure "E1" to "E10" in contravention of section 81(3) read together with section 80(1)(a).
26. In terms of section 88(4), if a credit provider enters into a credit agreement with a consumer who has applied for a debt re-arrangement and that re-arrangement still subsists, all or part of that new credit agreement could be declared reckless credit, regardless of whether the circumstances set out in section 80 apply. By entering into the agreement annexed as Annexure "E4", the respondent contravened section 81(3) read with section 88(4).
27. Further, by extending credit to consumers who clearly reflected an inability to sustain their own financial needs and obligations and a consumer who has applied for or is under debt review, the respondent extended credit recklessly in contravention of section 81(3) and section 80(1)(b).

Charging a rate of interest which exceeds the maximum rates prescribed in terms of the act and the regulations

28. Section 100(1)(c) stipulates that a credit provider must not charge an amount to, or impose a monetary liability on, the consumer in respect of an interest charge under a credit agreement exceeding the amount that may be charged consistent with the NCA.

29. Section 101(1)(d)(ii) states that interest charged must not exceed the maximum prescribed rate determined in terms of section 105. Regulation 42(1), Table A stipulates the maximum prescribed interest per month on a short-term transaction as 5% interest per month on the first loan and 3% interest per month on subsequent loans within a calendar year.
30. The evidence before the Tribunal shows that the respondent exceeded the maximum rate of interest prescribed. For instance, in Annexure "E1", the maximum interest rate on the 18-day loan at 3% interest, according to the applicant's calculations, is R59.57 (Initial loan + allowed maximum initiation fee $\times 3\%$ / 31 days $\times$ 18 days), but the respondent charged R113.82 at a rate of 5%. Previous loans were extended in the same calendar year to the consumer, which means the current loan is defined as a subsequent loan restricted to a maximum prescribed rate of 3% interest. The respondent overcharged interest of R54.25.
31. Further, in Annexure "E2", the loan is extended over 19 days, and the maximum interest that could be charged at 3% interest is R32.54, whereas the respondent charged R34.33. This equates to an overcharge of R1.79. In Annexure "E3", the loan is extended over 29 days and the maximum interest that could be charged at 3% interest according to the applicant's calculations

is R157.72 (Initial loan + allowed maximum initiation fee $\times 3\%$ / 31 days $\times$ 29 days) whereas the respondent charged R303.56 at a rate of 5%. Previous loans were extended in the same calendar year by the respondent to the consumer, which means it is a subsequent loan with the maximum prescribed rate of 3% interest. The respondent overcharged interest in the amount of R145.84.

32. In Annexure "E10", the loan is extended over 64 days the maximum interest that could be charged was 3% interest. Previous loans were extended in the same calendar year by the respondent to the consumer. As such, the current loan is defined as a subsequent loan and restricted to a maximum prescribed rate of 3% interest. The respondent charged interest at 5% and the overcharge is therefore evident. The Tribunal finds that the respondent has contravened section 100(1)(c) and 101(1)(d)(ii) read with Regulation 42(1).

Overcharging initiation fees

33. Section 101 (1) prescribes the cost of credit that a credit provider may charge in a credit agreement. Section 100(1)(b) prohibits a credit provider from charging an amount or imposing a monetary liability on the consumer in respect of an amount of a fee or charge exceeding the amount that may be charged consistent with the NCA.
34. Section 101(1)(b)(i) stipulates that the initiation fee may not exceed the maximum amount relative to the principal amount. Regulation 42(2) sets out the maximum initiation fee that can be charged. Regulation 43(3) informs an initiation fee may never exceed 15% of the principal debt.

35. The respondent calculated its interest at a flat rate of 15%, failing to have due regard to Regulation 42(2). The overcharge has been observed in Annexures “E1” and “E3” to “E10”. In Annexure "E1", for example, the respondent charged an initiation fee of R457.50, whereas the maximum initiation fee that could be charged is R370.00, overcharging by R87.50. In Annexure "E2", the respondent charged an initiation fee of R725.05, whereas the maximum initiation fee that could be charged is R570.00, an overcharge of R155.05.
36. In Annexure "E5", the respondent charged the consumer an initiation fee of R478.25, whereas the maximum initiation fee that could be charged is R420.00, an overcharge of R58.25. In Annexure "E6", the respondent charged the consumer an initiation fee of R706.08, whereas the maximum initiation fee that could be charged is R570.00, overcharging by R136.08.
37. The Tribunal finds that the respondent exceeded the prescribed maximum amount, thereby contravening section 100(1)(b) read with section 101(1)(b)(ii) read with Regulation 42(2) and 43(3).

Prohibited undisclosed fee

38. In terms of section 100(1)(a), a credit provider must not charge an amount to, or impose a monetary liability on, the consumer in respect of a credit fee or charge prohibited by the NCA.
39. The respondent charged a mandatory NuPay Bank Card fee of R50.00 which is not a fee allowed in terms of section 101(1). Further to this, the respondent included this amount in the monthly repayable amount yet failed to disclose it in its pre-agreement statements and quotations or credit agreements. There were other additional fees or amounts not disclosed as demonstrated in the following:
- 39.1 In Annexure “E4”, a loan of R2,050.00 was granted, with disclosed costs (initiation fee, service fee, interest, and insurance) totalling R404.04, bringing the total to R2,454.04. However, the repayable amount was R2,623.83, indicating undisclosed fees of R169.79, which constitute prohibited charges under the NCA.
- 39.2 In Annexure “E6”, a loan of R5,050.00 was granted, with disclosed costs of R1,122.21, totalling R6,172.21. The repayable amount was R6,594.55, revealing undisclosed fees of R422.34, in violation of the NCA.
- 39.3 In Annexure “E10”, a loan of R3,050.00 was granted, with disclosed costs of R1,012.27, totalling R4,062.27. The repayable amount was R4,397.00, exposing undisclosed fees of R334.73, which are prohibited under the NCA.
40. The Tribunal is satisfied that the applicant has demonstrated that the respondent's conduct contravenes section 100(1)(a) read with section 101(1) read further with Regulation 42 to 44.

Failure to provide pre-agreement statements and quotations in the prescribed form and containing the prescribed content

41. Section 92(1) stipulates that a credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form. Regulation 28(1)(b) provides that a pre-agreement statement and quotation given to a consumer in terms of Section 92(1) must comply with the format set out in Form 20.
42. The evidence shows that the pre-agreement statements and quotations did not contain all the prescribed information as listed in Form 20. Specifically, the respondent omitted to specify whether the amounts charged are payable monthly/weekly/other; the full address of the respondent; full disclosure of all fees charged, although in some an incorrect monthly interest rate was indicated; and the applicable annual interest rate. The documents were also not signed by the credit provider and consumers. These omissions are evident in Annexures "E1" to "E10."
43. The Tribunal finds that the respondent has contravened section 92(1) read with Regulation 28(1)(b) and Form 20.

Failure to provide credit agreements containing the prescribed content to consumers

44. Section 93(2) stipulates that a document recording a small credit agreement must be in the prescribed form. Regulation 30(1) states that a document recording a small credit agreement must contain all the information reflected in Form 20.2.
45. The credit agreements in Annexures "E1" to "E10" did not contain all prescribed contents in accordance with Form 20.2. Omitted information includes the type of loan entered into; the consumer's right to rescind or terminate the agreement; whether the amounts charged are payable monthly/weekly/other; the full address of the respondent; proper disclosure of all fees charged although in some an incorrect monthly interest rate was indicated; the annual interest rate applicable; marketing options and the right to be excluded therefrom; and the documents were not signed by the credit provider and consumers.
46. The Tribunal finds that the respondent's conduct has contravened section 93(1) and section 93(2) read with Regulation 30 and Form 20.2.
47. In addition, the respondents' agreements in all the sampled files "E1" to "E10" contain an unlawful provision in clause 8, which allows for the payment of penalty service fees. The penalty fee is not permitted under the NCA, nor does it fall within the definition of penalty interest, default administrative charges, or collections costs.
48. Accordingly, the Tribunal finds that the provision is unlawful and directly or indirectly sets aside or overrides the effects of section 101(1)(c), (f) and (g). The respondent has accordingly contravened section 90(2)(b)(iii) read with section 101(1)(c), (f) and (g).

RELIEF SOUGHT

49. The Tribunal has already found that the respondent contravened the NCA. Such contraventions are serious and occurred repeatedly. All sampled files were found to be grossly non-compliant. The Tribunal is of the view that declaring these contraventions prohibited conduct is warranted.
50. The NCA explicitly prohibits reckless lending to promote responsible borrowing, prevent over-indebtedness, and ensure consumers meet their financial obligations while discouraging credit providers from reckless lending. The respondent's failure to conduct proper affordability assessments undermines the objectives of the NCA. Consequently, the Tribunal is persuaded that the credit agreements in Annexures "E1" to "E10" should be declared reckless.
51. The request for an audit is justified since only ten of the respondent's credit agreements were investigated. Given the gross contraventions found in the ten sampled files, the interest of consumer protection warrants the appointment of an independent auditor, at the respondent's cost, to determine the extent of reckless credit and consumers that could be entitled to the relief sought by the applicant. However, the Tribunal believes that the audit must be limited to a period of three years preceding the date of this

judgment.

52. The Tribunal is also requested to interdict the respondent from engaging in prohibited conduct in the future and from extending credit to consumers. The interdict applied for appears to be of a final nature. It is well established that the grounds for a final interdict are (a) a clear right; (b) an injury actually committed or reasonably apprehended, and (c) the lack of an adequate alternative remedy.[4] Given that the respondent may not, by law, engage in prohibited conduct, an interdict along the lines applied would serve no purpose,

more so if one considers the other remedies prayed for by the applicant.

53. The applicant seeks an order to cancel the respondent's registration as a credit provider due to its egregious conduct. The respondent contends that it ceased trading as a credit provider during the investigation in July 2023, a position reiterated in its letter dated 12 February 2025. It further asserts that it voluntarily surrendered its registration certificate to the applicant. However, section 58 of the NCA requires a registrant seeking voluntary cancellation to submit written notice to the NCR in the prescribed manner and form, stating its intention to cancel and specifying an effective date at least five business days after the notice. The respondent admits it did not comply with this procedure, meaning its registration was not lawfully cancelled. Accordingly, the

Tribunal concurs with the applicant that a formal cancellation order is warranted.

54. Finally, the applicant also seeks an administrative fine against the respondent. Under section 151, the Tribunal has the authority to impose such fines for prohibited conduct, with a maximum set at 10% of the respondent's annual turnover or R1,000,000, whichever is higher. The Tribunal notes that the NCA does not prohibit it from ordering the cancellation of registration and imposition of a fine. The issue is whether an administrative fine is justified in this case and, if so, what the appropriate amount would be.
55. Administrative fines primarily serve a punitive and deterrent function, aiming to prevent the perpetrator and others from engaging in similar unlawful behaviour. This purpose was explored in *Southern Pipeline Contractors and Another v Competition Commission*.^[5] The court underscored that fines should not be used solely for deterrence but must also be imposed with consideration to fairness
- for the offending party, adding that they should not be aimed at destroying a business.
56. The respondent stated that it has ceased operating as a credit provider, cooperated with the investigation, and sought to settle the matter with the applicant. However, it claims that settlement negotiations were delayed by the applicant for reasons unknown to the respondent. Mr. Mathivha asserted that he was unaware of the settlement process due to multiple handovers within the applicant's office caused by staff turnover. He indicated that had he been informed, he would have resumed settlement discussions to resolve the matter. It is common practice for settlement agreements between the applicant and respondents to include provisions for an administrative fine in cases of serious contraventions.
57. In *NCR v Midwicket*,^[6] the Tribunal emphasized that the primary purpose of an administrative fine is to deter offenders from repeating prohibited conduct. However, when an offender's registration is cancelled, prohibiting it from operating as a credit provider, one of the main justifications for imposing a fine no longer applies. In such cases, the fine serves a purely punitive function, which is generally reserved for extreme circumstances.
58. The Tribunal has determined that the respondent's contraventions are sufficiently severe. However, the appropriateness of the fine must be balanced against factors such as the limited scope of the applicant's investigation, the absence of prior violations, and the respondent's cooperation, including its willingness to settle the matter. Additionally, the applicant has not quantified any financial loss suffered by consumers or profits gained by the respondent because of its conduct.
59. The Tribunal acknowledges that the applicant also seeks an order requiring the respondent to refund affected consumers and set aside their debt obligations. These measures are intended to restore fairness and protect vulnerable consumers. While removing the respondent from the market achieves the primary objective of consumer protection, ensuring refunds to affected consumers remains a crucial component of redress.

60. Although the NCA does not establish a strict hierarchy of penalties, the cancellation of a registrant's registration is the most severe sanction available, effectively shutting down its business. A fine adds to the financial strain of an entity that no longer has a means of generating revenue, which may hinder the ability to compensate affected consumers. However, given that 100% of the sampled files were non-compliant, the Tribunal concurs with the applicant that an administrative fine is warranted. However, there is no sufficient justification to impose a maximum or excessive fine.
61. Section 151(3) lists various factors the Tribunal must consider when determining an appropriate fine. These factors are discussed under the sub-headings below.

The nature, duration, gravity, and extent of the contraventions.

62. The respondent's contraventions are serious and repeated. Reckless lending is the most egregious contravention under the NCA as it leads to over-indebtedness, which the NCA seeks to prevent. It also damages the credit industry. The respondent had a duty to abide by the NCA and the conditions of its registration but failed dismally to do so.

Loss or damage suffered as a result of the contraventions.

63. The evidence shows that consumers were charged excessively. Further, failure to conduct a proper affordability assessment may result in or exacerbate over-indebtedness. Such exploitation should not be condoned.

The behaviour of the respondent.

64. As a registrant, the respondent ought to be aware of the statutory obligations. The applicant demonstrated that the respondent overcharged consumers and concealed other charges. The respondent created an illusion of conducting affordability assessments. The respondent stated that it offered to refund affected consumers immediately upon being made aware of it during the investigation. The respondent also offered to settle the matter with the applicant.

The market circumstances in which the contravention took place.

65. The applicant submitted that these contraventions occurred in the context where consumers are uneducated about their rights relating to access to credit and are in a continuous debt spiral, making them vulnerable. These circumstances make consumers prone to exploitation.

The level of profit derived from the contraventions.

66. The applicant did not provide any figures to demonstrate the profit made but assumes that any credit recklessly extended is a gain to the respondent. Further, it said the respondent undoubtedly profited from unlawful charges and undisclosed fees.

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

67. The respondent fully co-operated with the investigation. The Tribunal also noted that the respondent offered to settle the matter and refund consumers during the investigation.

Prior contraventions by the respondents.

68. The respondent does not have any prior contraventions.
69. Having considered all these factors, the Tribunal finds that an administrative fine of R20,000.00 is appropriate under the circumstances.

ORDER

70. In the result, the Tribunal makes the following order:

70.1 It is declared that the respondent contravened the following provisions of the NCA:

- (a) Section 52(5)(c) read with General Condition 2 of its General Conditions of Registration;
- (b) Section 76(4)(c)(ii) read with Regulation 21(6);
- (c) Section 81(2)(a)(ii) read with Regulation 23A(12)(b) and 23A(13);
- (d) Section 81(2)(a)(iii) read with Regulation 23A(3), 23A(8) and 23A(12)(a) and (c);
- (e) Section 81(2)(a)(iii) read with Regulation 23A(3) and 23A(12)(c);
- (f) Regulation 23A(8) and 23A(12)(a);
- (g) Section 81(3) read together with section 80(1)(a);
- (h) Section 81(3) read with section 88(4);
- (i) Section 81(3) and section 80(1)(b)
- (j) Section 100(1)(c) and 101 (1)(d)(ii) read with Regulation 42(1);
- (k) Section 100(1)(b) read with section 101(1)(b)(ii) and Regulations 42(2) and 43(3);
- (l) Section 100(1)(a) read with section 101 (1) read further with Regulations 42 to 44;
- (m) Section 92(1) read with Regulation 28(1)(b) and Form 20;
- (n) Section 93(1) and section 93(2) read with Regulation 30 and Form 20.2. and
- (o) Section 90(2)(b)(iii) read with section 101(1)(c), (f) and (g);

70.2 The contraventions listed in paragraph 70.1 above are declared prohibited conduct;

70.3 The registration of the respondent as a credit provider is cancelled with immediate effect;

70.4 The respondent is directed to immediately remove and retract the advertisements that contains misleading and deceptive information;

70.5 The credit agreements identified in the investigation report, Annexures "E1" to "E10" are declared reckless credit and the consumers' rights and obligations under such credit agreements are set aside;

70.6 In the event of the agreements identified in Annexures "E1" to "E10" to have been repaid in full, the respondent must refund the cost of credit to the affected consumers;

70.7 If any enforcement action has commenced against the consumers identified in Annexures "E1" to "E10", the respondent is directed to rescind any judgments obtained against the affected consumers, for all credit agreements entered without conducting any or proper affordability assessments;

70.8 The respondent is directed to clear any adverse listing of such judgments obtained with all credit bureaus;

70.9 The respondent must immediately refund the overcharged interest, initiation fees and prohibited undisclosed additional fees to the consumers identified in Annexures "E1" to "E10", and present proof of the refunds to the applicant within 30 calendar days of the issuing of this judgment;

70.10 The respondent must, at its own expense, within 30 days of the issuing of this judgment, appoint an independent auditor, who is a chartered accountant, to identify any other credit agreements concluded by the respondent within the preceding three years of this judgment who are entitled to the relief in paragraphs 70.6 to 70.9, and submit a report to the applicant within 120 calendar days of the issuing of this judgment.

70.11 The respondent shall pay an administrative fine of R20,000.00 within 90 calendar days of the issuing of this judgment into the bank account of the National Revenue Fund, the details of which are as follows:

Bank:

Nedbank

Account Holder: Department of Trade, Industry and Competition

Account type: Current Account

Branch Name: Telcoms and Fiscal

Branch code: 198765

Account number: 1[...]

Reference: NCT-267093-2023-57(1)

70.12 There is no order as to costs.

[signed]

Ms Z Ntuli

Presiding Tribunal member

Tribunal members Mr S Hockey and Mr S Mbhele concur.

- [1] Published under Government Notice R489 in Government Gazette 28864 of 31 May 2006.
- [2] GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225).
- [3] 2018
- (3) SA 558 (WCC)
- [4] See Setlego v Setlego 1914 AD 221.
- [5] (105/CAC/Dec10, 106/CAC/Dec10) [2011] ZACAC 6; [2011] 2 CPLR 239 (CAC) (1 August 2011), paragraph 9.
- [6] NCT/7962/2013/57(1), paragraph 34

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