

SOUTH AFRICA / JUDGMENT

## National Credit Regulator v Mobimoola Financial Services (Pty) Ltd (NCT/18256/2014/140) [2016] ZANCT 50 (4 April 2016) [2016] ZANCT 50

COURT

National Consumer Tribunal

BEFORE

B Dumisa, T Woker, F Sibanda

CASE / FILE NUMBER

NCT/18256/2014/140

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IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case No: NCT/18256/2014/140

In the matter between:

THE NATIONAL CREDIT REGULATOR

APPLICANT

AND

MOBIMOOLA FINANCIAL SERVICES (PTY) LTD

RESPONDENT

Coram:

Prof B Dumisa -

Presiding Member

Prof T Woker - Member

Mr F Sibanda - Member

Date of Hearing: 04 March 2016

Date of Judgment: 04 April 2016

## JUDGMENT AND

## REASONS

## PARTIES

1 The Applicant in this matter is the National Credit Regulator ("hereinafter referred to as either the "NCR" or

the "the Applicant"), a juristic person established in terms of Section 12 of the National Credit Act 34 of 2005 (hereinafter referred to as "the Act").

2 The Respondent is Mobimoola Financial Services (Pty) Ltd, a company duly registered in terms of the company laws of the Republic (hereinafter referred to as "the Respondent").

3 At the hearing the Applicant was represented by Mr Joseph Selolo an employee of the Applicant and the Respondent was represented by Mr Louis Wessels from VGV Attorneys.

## INTRODUCTION

4 The Applicant applied to the National Consumer Tribunal ("the Tribunal") in terms of section 140(1) of the Act, seeking

various orders against the Respondent for alleged repeated contraventions of the Act and its regulations.

5 Section 140(1) of the Act provides that –

*"After completing an investigation into a complaint, the National Credit Regulator may –*

- (a) ...
- (b) ....
- (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act;..."

6 The Tribunal has jurisdiction to hear this matter in terms of section 27(a)(i) of the Act, which provides that the Tribunal may adjudicate in relation to any application made to it in terms of the Act, and make any order provided for in the Act in respect of such application.

7 The matter was heard on 4 March 2016.

8 At the hearing the Tribunal was informed that the Respondent had applied for condonation for the late filing of its answering affidavit and the application had not been adjudicated.

9 The Respondent had applied for condonation for the late filing of its answering affidavit in June 2015. The condonation was granted in December 2015, with an order that the answering affidavit must be filed within 15 business days of the date of the order. However, the Respondent filed its answering affidavit four days late and then applied for another condonation which was served on the Applicant but not on the Tribunal.

10 Subsequently, the Applicant did not file a replying affidavit, labouring under the impression that it is waiting for the Tribunal to issue a judgement on the latest condonation application.

11 The Tribunal took the liberty to hear the parties on the condonation application.

12 The Respondent argued that its consultation with Senior Counsel on the answering affidavit was finalised on 2 December 2015, the day on which it was due to be filed. However, the Applicant could not get the affidavit to be signed, resulting in an unsigned document being sent instead. A signed copy was finally dispatched on 8 December 2015, four (4) days later.

13 The Applicant opposed the condonation application on the basis that the Respondent was in possession of the main application and the Applicant's founding affidavit since October 2014. As such, the Respondent had ample time to prepare its answering affidavit.

Moreover, the Respondent did not demonstrate the difficulty encountered in meeting the 15 business-day timeframe stipulated in

the order of the Tribunal.

14 The Tribunal had to make a decision and in doing so considered whether justice would be served by granting or not granting the application.

The degree of lateness of the answering affidavit was found not to be excessive. Moreover, the allegations levelled against the Respondent are very serious and warrant that it is given an opportunity to put forward its case and can only do so if condonation is granted.

15 Thus after hearing both parties the Tribunal decided to grant the Respondent condonation for late filing of its answering affidavit.

16 The Applicant indicated that it is ready to proceed with the matter without filing a replying affidavit.

17 Rule 14(4) of the Rules for the Conduct of Matters before the National Consumer Tribunal[1] (Tribunal Rules), which provides that –

*“If the Applicant does not file a replying affidavit, the Applicant will be deemed to have denied each new issue raised in the answering*

*affidavit and each allegation of fact relevant to each of those issues.”*

18 Therefore the Tribunal proceeded to hear the matter in accordance with the above mentioned Rule.

## BACKGROUND

19 The Applicant received two complaints from consumers on 20 and 27 August 2013 respectively. The complaints related to representatives of the Respondent telephonically contacting the complainants and offering them loans. However, the complainants never received the loans despite subsequently having their bank accounts debited by the Respondent for loan repayments.

20 In September 2014 the Applicant conducted an investigation into the alleged contraventions of the Act.

21 The investigation revealed that the Respondent was involved in various breaches of the Act including –

21.1 Failure to register as a credit provider;

21.2 Failure to conduct affordability assessments;

21.3 Failure to keep records of steps taken when conducting affordability assessments;

21.4 Charging consumers costs of credit in excess of the maximum allowed by the Act;

21.5 Charging fees and costs not permitted by the Act;

21.6 Failure to provide consumers with pre-agreement quotations; and

21.7 Failure to provide consumers with copies of the credit agreements.

22 The Applicant then made a referral to the Tribunal on 02 October 2014 in terms of section 140(1) of the Act.

## ISSUES

### TO BE DECIDED

23 The Tribunal must decide whether:

23.1 the Respondent was required to register as a credit provider, in terms of the Act;

23.2 the Respondent breached the various other sections of the Act and its regulations as alleged by the Applicant; and

23.3 the Tribunal can order the prayers asked by the Applicant.

### APPLICANT'S CASE

24 The investigation uncovered various contraventions of the Act, which are outlined hereunder.

#### Failure to Register as a Credit Provider

25 The Respondent, whilst being unregistered, granted loans to consumers in excess of the number stipulated in section 40 (1)[2] of the Act and as such contravened section 40(3) of the Act.

26 Consequently, in terms of section 40(4) of the Act, all credit agreements entered into by the Respondent with consumers after exceeding the registration thresholds in section 40(1) are unlawful agreements and void to the extent provided in section 89 of the Act.

#### Failure to Conduct Affordability Assessments

27 The Respondent failed to take reasonable steps to assess consumers' financial means, prospects and obligations, relying instead on each consumer's word, without requiring proof of income in the form of payslips and/or bank statements. This is a contravention of section 81(2)(a) (iii) of the Act and also constitutes reckless credit in terms of section 81(3) of the Act.

#### Failure to Keep Records of Steps Taken When Conducting Affordability Assessment

28 To the extent that the Respondent conducted proper affordability assessments, it failed to keep records of proof of income in the form of copies of payslips and/or bank statements in contravention of Regulation 55(1)(b)(vi) read with Section 170 of the Act.

#### Charging Consumers Costs of Credit in Excess of the Maximum Allowed by the Act and/or Charging Fees and Costs not Permitted by the Act

29 The Respondent charges a 'registration' fee, which for all intents and purposes is an initiation fee as defined in section 1 of the Act. This initiation fee is charged without the establishment of a credit agreement with consumers and thus constitutes a contravention of section 101 (b) (ii) of the Act.

30 If it is contended that this is indeed a 'registration' fee then it constitutes a contravention of section 100(1) (a) read with section 101 (1) of the Act, in that a 'registration' fee is not one of the costs of credit permitted to be charged in terms of section 101(1).

31 The Respondent requires consumers to pay a returned debit order fee which when added to the monthly service fee, causes the monthly service fee to exceed the prescribed maximum. Accordingly, the Respondent has contravened section 101(1) (c) (iii) of the Act, read with Regulation 44.

32 The Respondent also levies service fees in advance and not at the end of the month as required by Regulation 41(2).

#### Failure to Provide Consumers with Pre-Agreement Statements and Quotations

33 The Respondent has failed to provide consumers with pre-agreement statements or quotations prior to entering into credit agreements

with consumers, in contravention of section 92(1) of the Act read with Regulation 28(1).

#### Failure to Provide Consumers with Copies of the Credit Agreements

34 Furthermore, the Respondent entered into credit agreements without providing the consumers with copies of the credit agreements. This is a contravention of section 93(1) of the Act.

#### RESPONDENT'S CASE

35 The Respondent concedes, after taking legal advice, that it should have been registered as a credit provider in terms of the Act. However, this does not mean that the Respondent has acted unlawfully since it has on two occasions applied to be registered as a credit provider. In terms of section 89(4) of the Act it is not illegal to act as a credit provider without being registered as such where an application is pending.

36 The Respondent denies that it entered into reckless credit agreements. Consumers are subjected to a comprehensive telephonic interview and questionnaire to ascertain the consumer's housing expenditure, telephone accounts and insurance costs.

37 Given the nature of the product that is provided by the Respondent, that is, loans with a maximum value of R2 000, it is reasonable to simply enquire from clients what their income and expenses are. It would not make business sense to require proof of income and expenditure under those circumstances. The Act does not require credit providers to obtain payslips and bank statements or conduct credit checks on every occasion.

#### Failure to Keep Records of Steps Taken When Conducting Affordability Assessments

38 The Respondent does keep records of the applications for credit in that electronic records are kept of the information provided by consumers when they are interviewed telephonically by the Respondent's employees. There are no other records of credit applications created as part of the Respondent's process and it accordingly has not acted in contravention of the relevant provisions.

#### Levying initiation fees in excess of limit

39 The Respondent concedes that the registration fee amounts to an initiation fee. However, the Respondent supplies other services

as part of the agreement and the registration fee is payable also in respect of the other services.

#### Levying of service fees before the due date

40 While the Respondent admits that it claims the monthly service fees at the beginning of the month as opposed to the end thereof as contemplated in terms of Regulation 41(2) it is of the view that this provision is permissive only and that in as far as the regulations attempt to be prescriptive of a date for payment it would be ultra vires the powers of the Minister in terms of section 171 of the Act to make such a regulation.

41 The Respondent admits that it did not comply with section 92 of the Act and Regulation 28(1).

42 The Respondent admits that it did not comply with section 93 of the Act.

## ANALYSIS

### OF THE LAW AND THE FACTS

43 Section 40(3) of the Act states that –

*“A person who is required in terms of subsection (1) to be registered as a credit provider, but who is not so registered, must not offer, make available or extend credit, enter into a credit agreement or agree to do any of those things.”*

44 Section 40(1) requires a person to register as a credit provider if that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements[3].

45 It is common cause that the Respondent entered into more than 100 credit agreements between 2013 and 2014 and therefore should have been registered as a credit provider in terms of the Act.

46 However, section 89 of the Act provides that –

*“(2) Subject to subsections (3) and (4), a credit agreement is unlawful if –*

(a)...

(b)...

(c)...

(d) at the time the agreement was made, the credit provider was unregistered and this Act requires that credit provider to be registered; or

(e)...

(3)...

(4) Subsection (2)(d) does not apply to a credit provider if –

(a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application”

47 In the investigation report attached to the founding affidavit the Applicant indicates that the Respondent applied for registration,

which is currently pending.

48 However, at the hearing the Applicant argued that the investigation had revealed that as at June 2014 the Respondent had 4 498 credit

agreements in its books. Therefore at the time that the Respondent applied for registration in July 2014, the threshold of 100 credit agreements had already been exceeded and thus the protection granted by section 89 of the Act was no longer applicable.

49 Moreover, according to the Applicant the application made by the Respondent dated 12 February 2014 was unsuccessful, hence the Respondent submitted another application dated 9 July 2014.

50 What is missing in the Applicant's case is evidence suggesting that the application dated 12 February 2014 was unsuccessful, hence the second application dated 9 July 2014. Instead, the Applicant makes this assertion based on an inference that the Tribunal is also expected to accept.

51 Thus, given the paucity of information provided, the Tribunal is unable to find a contravention of section 40(1)(a) of the Act by the Respondent.

52 Section 81 of the Act states that –

- (1) “When applying for a credit agreement, and while that application is being considered by the credit provider, the prospective consumer must fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section.
- (2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess –
  - (a) the proposed consumer's –
    - (i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
    - (ii) debt re-payment history as a consumer under credit agreements;
    - (iii) existing financial means, prospects and obligations; and
  - (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.
- (3) A credit provider must not enter into a reckless credit agreement with a consumer.”

53 An affordability assessment is a crucial step in the process of granting credit. It is no wonder that the legislature deemed it fit to place an obligation on a credit provider, in section 81(2) of the Act, to take reasonable steps to assess, among others, the consumer's debt repayment history under credit agreements and the existing financial means, prospects and obligations. Section 81(2) of the Act is written in peremptory language to indicate the weight placed on the process of determining whether a consumer is in a position to service the debt should credit be granted.

54 Should a credit provider fail to conduct an assessment as contemplated in section 81(2) of the Act the resultant credit agreement entered into with a consumer is regarded as reckless in terms of section 80 of the Act.

55 Whilst section 82(1) of the Act allows a credit provider to determine for itself any evaluative mechanism to be used for conducting

affordability assessments, any such mechanism, model or procedure should result in a fair and objective assessment.

56 For a mechanism, model or procedure to result in a fair and objective assessment in accordance with section 81 of the Act, it should

evaluate among others (a) the consumer's debt repayment history; (b) existing financial means and prospects; and (c) the

consumer's financial obligations.

57 Although the Applicant did not raise the issue of the consumer's debt repayment history in the founding affidavit, it was raised by the Applicant at the hearing. However, in its response the Respondent confined itself to issues raised in the founding papers only.

58 As such, there is no indication that the Respondent enquired into the consumers' debt repayment history.

59 Insofar as existing financial means and prospects are concerned, the Respondent relies on the consumer's verbal response to the telephonic interview and questionnaire regarding its income and expenditure.

60 When asked why proof of income such as a bank statement or salary advice is not required, the Respondent pointed to the fact that a consumer is obliged in terms of the Act to answer truthfully. Moreover, the Respondent grants loans up to a maximum of R2000, the size of which does not justify the cost of obtaining additional proof of income from a consumer.

61 As already indicated, the Respondent is expected by law to ensure that it uses reasonable and objective measures to assess the consumer's

credit worthiness. Therefore the question before the Tribunal is whether merely asking a consumer about his or her income and relying

on a verbal response only, results in a fair and objective assessment.

62 Regulation 24(8) deals with the determination, by a debt counsellor, of reckless lending. It provides that in addition to section 80 of the Act, the debt counsellor must also consider, among other things, the consumer's bank statement, salary advice and records obtained from a credit bureau.

63 It is clear that in order to ascertain whether reckless lending occurred, a fair and objective measure must be used. A salary advice

and bank statement show the consumer's existing financial means, prospects and obligations, whilst credit bureau records show a consumer's debt repayment history. This is the same information required in terms of section 81(2) of the Act, although there's no prescription of how to assess same.

64 Neither section 81(2) of the Act nor Regulation 24(8) take into account the size of the loan that is the subject of the credit agreement. As such, it cannot be a defence therefore that the small size of the loan does not warrant the consumer providing proof of income.

65 With respect to the consumer's obligations the Respondent's enquiry is limited to the consumer's housing, telephone and insurance obligations. Despite the fact that questions about the consumer's housing expenditure are asked, the Respondent argues that "we do not know what housing expenses entail"[4]. That being the case, it is the Respondent's responsibility to then place before the Tribunal information shedding light on the kind of questions asked of consumers on what housing expenditure entails. This was not done.

66 The enquiry on affordability should consider the factors in section 81

(2) of the Act as a conspectus and in a fair and objective manner before coming to a determination as to whether a particular consumer will afford the loan being applied for. Against this background, the Tribunal finds that the mechanism, model or procedure employed by the Respondent to conduct affordability assessments does not result in a fair and objective assessment.

67 The Respondent conceded that the initiation fee charged consumers is in excess of the maximum permissible amount.

68 With respect to the monthly service fee the Respondent demonstrated that it charges an amount of R50 plus 14% value added tax giving a total of R57.00 per month.

69 On the question of when the monthly service fee should be charged the Respondent argues that the Minister has no power to determine a date on which service fees should be paid and that the language of Regulation 41 (2) is permissible, allowing the Respondent to charge monthly service fees at the beginning of the month.

70 The Tribunal has no jurisdiction on the matter of the Minister's powers to stipulate a date for the payment of monthly service fees.

71 The Respondent admits that it did not comply with section 92 of the Act and Regulation 28(1).

72 The Respondent admits that it did not comply with section 93 of the Act.

## CONCLUSION

73 The Tribunal finds that the Respondent contravened the following sections of the Act:

73.1 Section 81(2) and (3): Failure to conduct affordability assessments;

73.2 Section 100(1)(b): Charging consumers costs of credit in excess of the maximum allowed by the Act;

73.3 Section 92(1) and Regulation 28(1): Failure to provide consumers with pre-agreement quotations; and

73.4 Section 93(1): Failure to provide consumers with copies of credit agreements.

## CONSIDERATION OF ORDERS PRAYED FOR

74 Once prohibited conduct has been established, it is incumbent upon the Tribunal to make an appropriate order as empowered by section 150 of the Act which states as follows:

*“(150) Orders of the Tribunal*

In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, including –

- (a) declaring conduct to be prohibited in terms of this Act;
- (b) interdicting any prohibited conduct;
- (c) imposing an administrative fine in terms of section 151, with or without the addition of any other order in terms of this section;
- (d) confirming a consent agreement in terms of this Act as an order of the Tribunal;
- (e) condoning any non-compliance of its rules and procedures on good cause shown;
- (f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act;
- (g) suspending or cancelling the registrant’s registration, subject to section 57(2) and (3);
- (h) requiring repayment to the consumer of any excess amount charged, together with interest at the rate set out in the agreement; or
- (i) any other appropriate order required to give effect to a right, as contemplated in this Act.”

## Prohibited conduct

75 The Applicant prays that the Tribunal makes an order declaring the Respondent to be in repeated contravention of the following sections of the Act:

Section 40(3); section 81(2)(a)(iii); section 81(3) read with section 80(1)(a); Regulation 55(1)(b)(vi) read with section 170; section

101(b)(i) read with Regulation 42 (2) and 43(3); section 101(1)(a) read with section 101(1); section 101(c)(iii) read with Regulation

44; Regulation 41 (2); Section 92 read with Regulation 28(1); and section 93(1).

76 It should be noted that some of the alleged contraventions are cited in the alternative. In such instances the Tribunal will have to assess which provision of the Act has been breached.

77 The Applicant also prays for the Tribunal to declare repeated contraventions referred to hereinabove to be prohibited conduct in

terms of the Act and interdicting the Respondent from future breaches of the Act.

Administrative penalty

78 Section 151 empowers the Tribunal to impose an appropriate administrative fine in respect of prohibited conduct, by taking into account the following factors:

- (a) The nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the respondent;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;
- (f) the degree to which the respondent has co-operated with the National Credit Regulator; and
- (g) whether the respondent has previously been found in contravention of this Act.

The nature, duration, gravity and extent of the contravention

79 The Applicant argued that the actions of the Respondent, that of granting reckless credit, go against the stated purpose of the Act, to combat reckless credit granting and to prevent over indebtedness. When looked at from the degree of culpability of the Respondent and the harmfulness of the conduct, the Applicant makes out a case that the gravity and extent of the contravention warrants a high administrative fine.

80 The investigation revealed that the Respondent has been engaged in this conduct since 2013. This can be considered to be a fairly long duration. The Respondent disputes this but offers no counter period to what the Applicant states.

Any loss or damage suffered as a result of the contravention

81 With respect to the loss and damage suffered, the Respondent's modus operandi is that of charging initiation fees in excess of the maximum permissible amount. By not providing pre-agreement quotations consumers are denied the information necessary for them to make informed choices. In the circumstances, consumers get charged fees that are not only impermissible but also they can ill afford.

The level of profit derived from the contravention

82 The level of profit derived from the contravention positively correlates with the excess fees charged and the loss suffered by consumers.

83 The Applicant did a quick calculation of the amount of loss suffered and thus the level of profit derived by taking the initiation fee of R172 and multiplying it by 6 113 which is the number consumers as at July 2014 to arrive at a figure of R1 051 436.

84 The Respondent disputed this amount, arguing that a simple calculation of this nature by the Applicant is not evidence of what profit was made. Profit implies that costs be deducted from income and there is no information before the Tribunal to enable such calculation.

The behaviour of the respondent, degree of cooperation and previous contravention

85 The Applicant argued that the Respondent is a first time offender and cooperated with the investigation. This should count in the

Respondent's favour.

86 Given the above the Applicant prays for an administrative fine of R1 million due to the fact that the Respondent is not registered and therefore the Applicant is not in possession of the requisite financial information.

87 The Tribunal is not convinced of the Applicant's calculations, given the fact that what is placed before the Tribunal is a figure of 6 113 consumers that are alleged to have been overcharged, but only 20 records are provided to that effect.

88 However the Tribunal has a responsibility to ensure that it levies an administrative fine that acts as a deterrent not only to the

Respondent but other credit providers as well.

89 In *NCR v Werlan Cash Loans t/a Lebathu Finance*[5] the Tribunal held that where the Applicant did not put any evidence before the Tribunal on the Respondent's annual turnover because it did not have such accurate information the Tribunal can impose an administrative fine not greater than or equal to R1 million, in accordance with section 151 (2)(b) of the Act.

90 The Tribunal regards the conduct of the Respondent to be a serious violation of the Act and that in the circumstances an administrative

penalty is warranted despite the lack of information placed before the Tribunal for it to assess a more appropriate penalty.

However, in the circumstances the Tribunal is of the view that a fine of R250 000 is warranted.

Refunds

91 First, the Respondent conceded to charging initiation fees in excess of the maximum limit allowed in terms of the Act. Section 150 of the Act allows the Tribunal to make any other appropriate order required to give effect to a right, as contemplated in the Act.

92 In *Barko v NCR*[6] the court had the following to say on the question of the Tribunal ordering refunds:

*“If one assumes, as one must for the purposes of this enquiry that the Tribunal award was correct in finding that the recovery of the NuPay fee from consumers is unlawful because it constitutes a contravention of the NCA, then it ought to follow logically that it is for Barko to set matters right by repaying the relevant amount. It would be astonishing if, having correctly found that NuPay fee is not payable by the consumer and that its repayment by the consumer was unlawful, for the Tribunal to have simply shrugged its shoulders in circumstances where it is empowered by the NCA to make an appropriate order.”*

93 Similarly, the Tribunal has previously stated that it is empowered to order refunds; for example in *National Credit Regulator v Yasmina Abderof*[7] and *Another* it said that –

*“This Tribunal is empowered to make any other appropriate order required to give effect to consumers’ rights in terms of this Act taking into consideration the loss suffered by the consumers, and appropriate order will be to refund any monies which they took from consumers unlawfully”.*

94 Thus this Tribunal will be failing in its duty if it is aware that consumers have been overcharged and yet does not take steps to remedy the situation.

95 Second, the Respondent also conceded that consumers were not provided with pre-quotation agreements. This is a serious violation of the rights of consumers to make informed choices. On this basis the Tribunal contends that both initiation fees and monthly service fees were deducted without the consent of the affected consumers. Had consumers been given a pre-agreement quotation they would have made a choice whether to go ahead with the agreement or not. Unfortunately they were denied this right.

96 It is thus just that the affected consumers be refunded both the initiation and monthly service fees.

## ORDER

97 Accordingly, the Tribunal makes the following order:

97.1 The Respondent’s conduct in breaching sections 81(2) and (3), 100(1)(b), 92(1) and 93(1) of the Act as well as Regulation 28(1) of the National Credit Regulations is declared to be prohibited conduct.

97.2 An administrative fine of R250 000 is imposed on the Respondent.

97.3 The Respondent must refund all affected consumers both initiation and monthly service fees.

97.3.1 In order to give effect to the refund the Respondent must within three months of this order, and at its own cost, do a full audit of all agreements entered into with consumers telephonically and where no written quotations were provided to consumers. This process must be overseen by the Applicant.

97.4 No order is made as to costs.

DATED THIS 4th DAY OF APRIL 2016

[signed]

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Mr FK Sibanda

(Member)

Prof B Dumisa (Presiding Member) and Prof T Woker (Member) concurring.

[1] 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) as amended by Notice Government Gazette Date GN 428 34405 29 June 2011 GNR.203 38557 13 March 2015

[1] 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)

as amended by Notice Government Gazette Date GN 428 34405 29 June 2011 GNR.203 38557 13 March 2015

[2] This section has subsequently been amended but the contravention occurred before the amendment

[3] This section has been amended by section 10 of the National Credit Amendment Act No 19 of 2014

[4] Hearing transcript

[5] NCT/3887/2012/57(1)(P)

[6] SCA2014-114

[7] NCT/17833/2014

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