

**IN THE NATIONAL CONSUMER TRIBUNAL**  
***HELD VIA MICROSOFT TEAMS VIDEO AND AUDIO TECHNOLOGY***

**CASE NO: NCT/213199/2021/57(1)**

In the matter between:

**THE NATIONAL CREDIT REGULATOR**

**APPLICANT**

and

**PANGOLIN LOANS (PTY) LTD**

**RESPONDENT**

CIPC Registration number: 2018/524600/07

NCR Registration number: NCRCP12222

**TRIBUNAL PANEL:**

Ms D Terblanche - Presiding Tribunal Member

Mr T Bailey - Tribunal Member

Adv F Manamela - Tribunal Member

**DATE OF HEARING:**

07 March 2022

**DATE OF JUDGMENT:**

24 March 2022

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**JUDGMENT AND REASONS**

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**THE APPLICANT**

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- 1) The Applicant in this matter is the National Credit Regulator, a juristic person established in terms of section 12 of the National Credit Act, 34 of 2005 ("the NCA" or "the Act"), ("the Applicant" or "the NCR").

#### **THE RESPONDENT**

- 2) The Respondent is PANGOLIN LOANS (PTY) LTD, a registered credit provider with registration number NCRCP12222 ("the Respondent").
- 3) The Applicant registered the Respondent as a credit provider on 19 June 2019.
- 4) The Respondent's principal place of business is at Corso Building, Stand No 777 Lumphisi, SIBUYILE, 1218.

#### **THE APPLICATION TYPE**

- 5) This is an application to the Tribunal in terms of section 57(1) of the NCA to cancel the Respondent's registration as a credit provider.

#### **THE HEARING**

- 6) The Tribunal held the hearing on 7 March 2022 *via* Microsoft Teams video and audio technology.
- 7) Mr R Stocker represented the Applicant at the hearing.
- 8) This Respondent did not attend the hearing, nor did it send a representative to appear on its behalf.

#### **BACKGROUND**

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- 9) This application has its genesis in a desktop compliance monitoring exercise on the credit granting activities of the Respondent the Applicant conducted during March 2021.
- 10) The Applicant's desktop monitoring report revealed that the Respondent was likely –
  - a) Contravening the reckless credit provisions of the NCA;
  - b) Levying costs of credit exceeding the maximum prescribed rates;
  - c) Failing to submit annual returns; and
  - d) Including unlawful provisions in its credit agreements.
- 11) The Applicant's information from the compliance monitoring created a reasonable suspicion that the Respondent was committing prohibited conduct as defined by the NCA.
- 12) The Applicant initiated a complaint against the Respondent on 19 March 2021 and appointed an investigator, Thinandavha Phalanndwa (Phalanndwa), on 29 April 2021.
- 13) Phalanndwa conducted the investigation remotely. Phalanndwa conducted a telephonic interview with Vezumusa Goodenough Mgwambi (Mgwambi), the Respondent's Director, on 12 May 2021.
- 14) On 17 May 2021, Mgwambi provided Phalanndwa with the records relating to ten (10) randomly selected credit agreements.
- 15) Following the assessment of the records provided by the Respondent, Phalanndwa prepared an investigation report, annexure FA6 to the Applicant's founding affidavit.

#### **CONSIDERATION THE APPLICATION ON A DEFAULT BASIS**

- 16) The Respondent did not oppose the application by filing an opposing affidavit.
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17) Rule 25(3) of the Tribunal Rules<sup>1</sup> states –

*"The Tribunal may make a default order— after it has considered or heard any necessary evidence; and if it is satisfied that the application documents were adequately served."*

18) Rule 30(1)(b) of the Rules of the Tribunal states -

*"A document may be served on a party by sending it by registered mail to the party's last known address."*

19) The Respondent gave the Applicant written consent to file the application *via* email. The Applicant served the application documents on the Respondent *via* email on 14 December 2021.

20) On 27 January 2022, the Registrar of the Tribunal issued a notice of set down for a hearing to be held on 7 March 2022.

21) On the day of the hearing, the Tribunal panel was satisfied that the application documents and the Notice of Set Down had been properly served on the Respondent and the hearing of the application proceeded on a default basis.

## **ISSUES TO BE DECIDED**

22) The Tribunal has to decide whether –

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<sup>1</sup>Regulations for Matters Relating to the Functions of the Tribunal and Rules for the Conduct of Matters before the National Consumer Tribunal, 2007 (as amended).

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- a) The Respondent has repeatedly engaged in prohibited conduct by contravening the provisions of the Act, the Regulations, and the conditions of its registration, and
- b) To grant the relief the Applicant seeks.

23) Section 150 of the NCA provides for '*Orders of the Tribunal*':

*"In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order concerning prohibited or required conduct in terms of this Act, ... "*

24) In deciding these issues, the Tribunal has to first determine the individual foundational claims by the Applicant as canvassed in the notice of motion, relating to the following alleged contraventions of –

- a) Section 81(2)(a)(ii) and (iii) of the NCA read with Regulation 23A by entering into credit agreements without first taking reasonable steps to assess proposed consumers' debt repayment histories as consumers under credit agreements and their existing financial means prospects and obligations;
  - b) Section 81(3) read with section 80(1)(a) of the NCA by concluding reckless credit agreements with a prospective consumer due to failure to consult and assessment as required by section 81(2);
  - c) Section 92(1) read with Regulation 28(1)(b) and Form 20 of the NCA by its failure to provide consumers with pre-agreement statements and quotations in the prescribed form;
  - d) Section 93(1) & (2) read with regulation 30(1) by its failure to deliver to the consumers a document that records the terms of a credit agreement in the prescribed form;
  - e) Section 90(1)(2)a)(b) read with section 90(3) by including an unlawful a provision in a credit agreement;
  - f) Section 100(1)(c) and section 101(1) (d)(ii) and regulation 42 of the NCA by levying interests above the prescribed maximum allowed amounts that the Respondent may charge per month;
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- g) Section 100(1)(b) and section 101(1)(c) of the NCA read with Regulation 44 of the Act by levying service fees above the maximum allowed amount the Respondent may charge per month;
- h) Section 100(1)(b) and (c) and 101(1)(b)(i), (c)(iii) and (d)(ii) of the Act read with Regulations 42(1) and (2), 43 and 44 by levying total costs of credit that exceed the prescribed maximum Total Costs of Credit;
- i) Section 170 read with regulation 55 of the Act; by its failure to retain records of credit provision activities the Respondent must keep in terms of the Act; and
- j) Regulation 64 and 66 and Section 52(5)(c) read with condition 3 of the Respondent's condition of registration by its failure to submit annual reports.

#### **THE APPLICANT'S SUBMISSIONS AND EVIDENCE**

- 25) The Applicant alleges the contraventions of the NCA, Regulations promulgated under the NCA, the Respondent's Conditions of Registration, the factual and the evidentiary bases for its allegations of the Respondent's contraventions as set out in paragraphs 26) to 35) below.

#### **Contravention of Section 81(2)(a)(ii) and (iii) of the Act read with Regulation 23A**

- 26) The factual basis for the allegation of this contravention is that the Respondent entered into credit agreements with consumers without first taking reasonable steps to assess the proposed consumers' debt repayment histories as consumers under credit agreements and their existing financial means, prospects, and obligations. The Applicant alleges that there is no evidence that the Respondent assessed consumers' affordability. When the investigator requested proof – credit reports, bank statements, pay slips / proof of income, and income and expenses statements - from the Respondent, the Respondent neither provided and could not point the investigator to any in any of the sampled files.

#### **Contravention of Section 81(3) read with section 80(1)(a) of the NCA.**

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- 27) The factual basis for the allegation of this contravention is that the Respondent concluded reckless credit agreements with prospective consumers. The Respondent allegedly failed to conduct an assessment as Section 81(2) required. The evidence the Applicant relies on is that in Annexures E1 – E10, there are no records or proof that the Respondent conducted affordability assessments.

**Contravention of Section 92(1) and regulation 23(1)(b)**

- 28) The factual basis for the allegation of this contravention is that the Respondent failed to provide consumers with a pre-agreement statements and quotations in the prescribed form. The Applicant's evidence is that the Respondent was unable to provide the investigator with the pre-agreement statements and quotations; and secondly, the Respondent failed to provide consumers with written credit agreements with the prescribed content. These facts appear on paginated pages 91 to 100 of the paginated bundle before the Tribunal.

**Contravention of Section 93(1)&(2) read with regulation 30(1)**

- 29) The Applicant alleges that the Respondent failed to deliver to the consumers a document that records the terms of their credit agreements in the prescribed form. The Respondent's credit agreements the Applicant sampled are not compliant as it appears from the credit agreements on paginated pages 91 to 100 of the paginated bundle before the Tribunal.

**Contravention of Section 90(1), ((2)(a)&(b) read with section 90(3)**

- 30) The factual basis for the allegation of this contravention is that the Respondent included an unlawful provision in the credit agreements. The last paragraph of the each credit agreement provides that the borrower agrees to pay the Respondent an additional 30% (thirty percent) of the loan amount if the borrower fails to settle the debt within 30 days; and will pay litigation costs and attorney-and-client legal costs. According to the Applicant, this means that the borrower agrees to repay the entire loan amount, pay the
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costs of credit, an additional 30% of the loan amount, plus litigation and collections fees. The NCA does not authorize this additional amount.

**Contravention of Section 100(1)(c) and section 101(1)(d)(ii) read and regulation 42(1)**

- 31) The factual basis for the allegation of this contravention is that the Respondent levied interests above the maximum allowed amount. The credit agreements are short-term credit transactions as defined in the Regulations. The prescribed maximum interest rate the Respondent is entitled to charge is 5% interest per month for a first loan or 3% interest per month for a second (repeat) loan within a calendar year. The Respondent charged consumers 30% interest per month. From paginated page 9 of the paginated record before the Tribunal, the agreement expressly provides for interest payable at a rate of 30% per month.

**Contravention of Section 100(1)(b) and 101(1)(c) read with Regulation 44 of the Act.**

- 32) The factual basis for the allegation of this contravention is that the Respondent levying service fees from the agreement itself of 10%, more than the prescribed maximum allowed amount the Respondent may charge per month. This appears from all the credit agreements in Annexure E1 – E10.

**Contravention of Section 100(1)(b) and (c) and section 101(1)(b)(i), c(ii) and (d)(ii) of the Act read with Regulation 42(1) and (2), 43 and 44**

- 33) The factual basis for the allegation of this contravention is that the Respondent levies Total Costs of Credit that exceeds the prescribed maximum Total Costs of Credit. Total Costs of Credit consists of the total amounts of the maximum allowed initiation fee, maximum allowed service fee, and the maximum allowed interests charges. For one consumer, E2, according to the NCA and the Regulations, the maximum allowable Total Costs of Credit amount to R 355,50. The Respondent charged R600,00. The Respondent substantially overcharged this consumer with more than R 255,00 considering that for
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the loan amount of R 1 500,00, the Respondent required the consumer to repay R2100. For another consumer, E3, according to the NCA and the Regulations, the maximum allowable Total Costs of Credit amount to R 444,50. The Respondent charged this consumer an amount of R 1 000,00 for a loan of R 2 500,00 over a loan period of 21 days. The Respondent charged this consumer more than double what the Respondent was entitled to charge.

**Contravention of Section 170 read with regulation 55 of the Act.**

- 34) The factual basis for the allegation of this contravention is that the Respondent failed to retain records of credit provision activities that must be kept in terms of the Act. The credit provider must retain certain records for a period of three years. Aside from keeping a copy of the credit agreement itself, the Respondent, amongst others, did not retain the affordability assessment documentation, records of payments made as well as documentation in support of any steps taken after default.

**Contravention of Regulation 64 and 66 of the Act as well as section 52(5)(c) read with condition A3 of the Respondent's condition of registration**

- 35) The factual basis for the allegation of this contravention is the Respondent's failure to submit annual financial statements and statistical returns.

**CONSIDERATION AND ANALYSIS OF THE APPLICANT'S EVIDENCE**

- 36) Rule 13(1) and (2) of the Rules of the Tribunal states –

*"(1) Any person required by these Rules to be notified of an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:*

*the Applicant; and*

*every other person on whom the application was served.*

*(2) An answering affidavit to an application or referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of the date of the application."*

37) Though the Applicant served the application on the Respondent under rule 30 of the Tribunal Rules, the Respondent did not file an answering affidavit under rules 13(1) and (2) of the Tribunal Rules.

38) The Tribunal has only the Applicant's uncontroverted documentary and oral evidence before it. The Tribunal admits the facts the Applicant alleged in its founding affidavit under Rule 13(5) of the Rules of the Tribunal.

39) Rule 13(5) of the Rules of the Tribunal states –

*"Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit will be deemed to have been admitted."*  
(Emphasis added)

40) The evidence before the Tribunal the Applicant alleged in its founding affidavit; the investigation report and its annexures; and the oral submissions the Applicant made point to the Respondent's repeated contraventions of the NCA, Regulations, and Respondent's Conditions of Registration set out in paragraph 24) above.

41) Rule 25(3) of the Tribunal Rules states –

*"The Tribunal may make a default order—  
after it has considered or heard any necessary evidence; and*

42) Based on the evidence, the Tribunal is satisfied that it may make a default order in terms of Rule 25(3) of the Tribunal Rules.

- 43) The Tribunal finds that -
- a) The Respondent repeatedly contravened the sections of the NCA, the Regulations, and the Respondent's conditions of registration alleged;
  - b) The Respondent repeatedly contraventions of the sections of the NCA, the Regulations, and the Respondent's conditions of registration, is prohibited conduct.
  - c) The Respondent contravened the reckless credit provisions of the NCA as the Applicant alleged. They include Section 81(2)(a)(ii) and (iii) and Regulation 23A, and Section 81(3) read together with section 80(1)(a) of the NCA.

## **CONSIDERATION OF AN APPROPRIATE ORDER**

### ***THE ORDERS THE APPLICANT SOUGHT***

- 44) The Applicant prayed for the following orders from the Tribunal, namely –
- a) Declaring that the Respondent's conduct is in repeated contravention of the following Sections of the Act and its Regulations:
    - i) Section 81(2)(a)(ii) and (iii) and Regulation 23A;
    - ii) Section 81(3) read together with section 80(1)(a) of the NCA;
    - iii) Section 92(1) read with Regulation 28(1)(b);
    - iv) Section 93(1) & (2) read with regulation 30(1);
    - v) Section 90(1)(2)(a)(b) read with section 90(3);
    - vi) Section 100(1)(c) and section 101(1)(d)(ii) of the Act read with Regulation 42(1);
    - vii) Section 100(1)(b) and section 101(1)(c) read with Regulation 44 of the Act;

- viii) Section 100(1)(b) and (c) and 101(1)(b)(i), (c)(iii) and (d)(ii) of the Act read with Regulations 42(1) and (2), 43 and 44;
  - ix) Section 170 read with Regulation 55 of the Act;
  - x) Regulation 64 and 66 as well as Section 52(5)(c) read with general condition 3 of the Respondent's condition of registration.
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- b) Declaring that the contraventions referred hereinabove are prohibited conduct in terms of Section 150(a) of the Act;
  - c) Cancelling the Respondent's registration as a credit provider in terms of section 57 of the Act;
  - d) Interdicting and restraining the Respondent from engaging in prohibited conduct in the future;
  - e) Imposing an administrative fine upon the Respondent, in the amount of R1 million or 10% of the Respondent's turnover, whichever is the greater;
  - f) Declaring the Respondent's credit agreements contained in Annexures E1 to E10 of the investigation report are reckless in terms of Section 80(1)(a) of the Act and to –
    - i) set aside all of the consumers' obligations in respect of those agreements;
    - ii) order the Respondent to, at its costs, to
      - (1) Refund all the credit costs charged and recovered from consumers under all such agreements.
      - (2) Refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action, which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal cost where the action is defended or opposed.

- (3) take all such steps as may be reasonably necessary to ensure that –
    - (a) Any adverse credit bureau records which may have arisen because of the consumer having concluded such credit agreements with the Respondent are removed.
    - (b) Any civil judgments taken by the Respondent against such consumers in respect of such agreements are rescinded or, if rescission is not possible, abandoned.
  
  - g) Ordering the Respondent to –
    - i) Within thirty (30) days, appoint an independent auditor at its own cost, whose appointment shall be subject to the prior written approval of the Applicant, to identify all credit agreements which the Respondent concluded in the past three years to identify or consumers who were overcharged interest and / or on service fees and / or total cost of credit, and provide a list of such consumers as well as the amount by which each such consumer was overcharged;
  
    - ii) Once the aforesaid auditor has compiled the abovementioned report, the Respondent will, within 30 days from the date of the auditor's report -
      - (1) refund the consumers all costs of credit which exceeded the prescribed maximum amount allowed by the Act;
      - (2) take the same steps as set out in paragraphs above, in respect of all such consumers who were overcharged as identified in the audit report;
  
    - iii) Once the refunds have been made as stated above, the Respondent is to provide the auditor's report together with a written report to the Applicant detailing the identity of the consumers, the refunds made, and the further steps taken as contemplated in paragraph f) ii)(2) and (3) above. These reports are to be provided to the Applicant within 120 days after the tribunal order has been obtained.
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- h) The appointed auditor must also, as part of the report referred to above, identify all credit agreements which the Respondent entered into without properly conducting assessments in terms of section 80(2)(a)ii) and / or (iii) of the Act and, once so identified, the Applicant is authorized to approach the Tribunal again on the same papers (supplemented where necessary) and under the same case number to seek an order declaring those agreements as reckless in terms of section 80(1)(a) of the Act and –
- i) Setting aside all the consumers' obligations under those agreements; and
  - ii) ordering the Respondent to, at its own cost, take the same steps as set out in paragraph f) ii)(2) and (3) above. above in respect of the agreements identified by the auditor.
- i) In terms of section 150(i), any other appropriate order required to give effect to consumers' rights in terms of the Act; and
- j) Grant further and / or alternative relief.

## ***DISCUSSION***

### **Cancellation of the Respondent's registration**

- 45) The Applicant prayed for an order from the Tribunal cancelling the Respondent's registration.
- 46) Section 57(1) of the NCA empowers the Tribunal to cancel a registrant's registration if that registrant had repeatedly contravened the provisions of the Act and the Regulations.
- 47) Section 57(1) states that –
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*"(1) Subject to subsection (2), a registration in terms of this Act may be cancelled by the Tribunal on request by the National Credit Regulator if the registrant repeatedly—*

*fails to comply with any condition of its registration;*

*fails to meet a commitment contemplated in section 48 (1); or*

*contravenes this Act."*

- 48) Based on the Tribunal's findings in this matter, the Tribunal is empowered to cancel the Respondent's registration.

### **Interdict**

- 49) Regarding the Applicant's prayer that the Respondent be interdicted from continuing to operate as a credit provider, the Tribunal is inclined to grant the prayer in the light of the Respondent's conduct.

### **Administrative fine**

- 50) The NCR asked the Tribunal to impose an administrative fine on the Respondent. The Applicant submitted the factors for the Tribunal to consider under section 151(3) of the NCA. This Respondent registered his credit granting business on 10 June 2019 and extended loans throughout the COVID19 Pandemic when consumers were even more vulnerable. It is clear to the Tribunal that the Tribunal must send a strong message that contravening the NCA will result in credit providers' forfeiting their unlawful financial rewards. The Tribunal will impose an administrative fine in this instance. The NCR submitted a return for 2020, requesting the maximum penalty that the Tribunal can consider, i.e., R1 million or 10% of the Respondent's turnover.

### **Nature, duration, gravity, and extent of the contraventions**

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- 51) Based on the evidence presented, the Applicant registered the Respondent during 2019. From the papers before the Tribunal, the Respondent entered into 6310 (six thousand three hundred and ten) credit agreements to the value of R 9 465 000 to consumers during 2019. The Tribunal notes that in every single transaction sampled, the Respondent breached its obligations under the Act. The Respondent's failure to adhere to the Act indicates a complete disregard for the rights of the consumers and, ultimately, the industry within which the Respondent conducts business and the South African economy. The Tribunal views that the Applicant found reckless lending, excessive interests, and overcharging of the total costs of credit and unlawful provisions in each sampled file as extremely serious. A significant factor in this regard for the Tribunal is the extent to which the Respondent overcharged consumers in initiation fees, service fees, interests, and total costs of credit (see paragraph 58 below).

**Loss or damage suffered as a result of the contravention.**

- 52) When consumers receive loans, they cannot afford, that places them in tough situations that can have far-reaching consequences for their families. The consumers in this matter have been paying fees far above what is allowed, and they can ill afford it.

**The behaviour of the Respondent**

- 53) From the evidence before the Tribunal, the Respondent had no regard for the requirements of the NCA and the Regulations. The Respondent did not even attempt to comply with the law, considering that, for example, standard templates and prescribed forms for contracts, pre-agreement statements, and quotations are readily available to apply and use in his credit-granting operations. The Respondent did not adhere to the Act, Regulations, and his conditions of registration regarding the fees and charges he may levy, and recording and retaining the steps he took in his credit-granting activities, though the NCA and the Regulations are transparent and set out clear guidance in those regards.



**The market circumstances in which the contravention took place**

- 54) This Respondent registered his credit granting business on 10 June 2019 and extended loans throughout the COVID19 Pandemic when consumers were even more vulnerable. Consumers remained over that period under severe financial pressure. The fact that so many consumers are overindebted and yet still apply for loans indicates the level of desperation that exists. That consumers have been overcharged on the cost of credit is a clear indication that the consumers are unaware that such practices are unlawful and contrary to legislative requirements and / or desperate.

**The level of profit the Respondent derived from the contravention**

- 55) The Respondent has benefitted substantially financially from its unlawful operations. Extrapolating the below examples across the ten (10) sampled files and further across the more than 6000 loans the Respondent extended during 2020, it is clear that the Respondent has benefitted substantially financially from its unlawful operations. For one consumer, Frans, according to the NCA and the Regulations, the maximum allowable Total Costs of Credit amount to R355,50. The Respondent charged R600. The Respondent substantially overcharged this consumer with more than R255, considering the loan amount of R1500. For another consumer, Skosanna, according to the NCA and the Regulations, the maximum allowable Total Costs of Credit amount to R444,50. The Respondent substantially overcharged this consumer an amount of R1000 for a loan of R2500 over a loan period of 21 days. The Respondent charged this consumer more than double what the Respondent was entitled to charge. Credit providers cannot be perceived and allowed to benefit financially from contravening the NCA for as long as they can until the Regulator catches them.

**The degree to which the Respondent has co-operated with the National Credit Regulator**

- 56) The Respondent showed no interest in the investigation or engaged with the Regulator throughout the investigation.

**Whether the Respondent has previously been found in contravention of this Act**

57) The Applicant had not previously instituted investigations or enforcement action against the Respondent.

**Conclusion regarding awarding and amount of an administrative fine**

58) The Tribunal considered all the above factors the Applicant set out in its papers, and the factors set out above. The Tribunal finds that an administrative fine of R1m (one million Rands) is appropriate under the circumstances.

**Declaring that the Respondent's credit agreements contained in Annexures E1 to E10 of the investigation report are reckless in terms of Section 80(1)(a) of the Act, and consequential relief**

59) Section 83(1) of the NCA empowers the Tribunal to declare credit agreements reckless. Section 83(2) of the NCA empowers the Tribunal to make specific orders if the Tribunal declares credit agreements reckless.

60) Section 83(1) of the NCA provides that –

*(1) "(1) Despite any provision of law or agreement to the contrary, in any court or Tribunal proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be, may declare that the credit agreement is reckless, as determined in accordance with this Part."*

61) Section 83(2) of the NCA provides that –

*"(2) If a court or Tribunal declares that a credit agreement is reckless in terms of section 80 (1) (a) or 80 (1) (b) (i), the court or Tribunal, as the case may be, may make an order—*

*(a) setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or*

*(b) suspending the force and effect of that credit agreement in accordance with subsection (3) (b) (i)."*

62) The Tribunal declares the credit agreements in Annexures E1 to E10 of the investigation report reckless in terms of section 83(1) of the NCA. The Respondent entered into these credit agreements with the consumers identified in Annexures E1 to E10 in contravention of the reckless credit provisions of the NCA.

63) The Tribunal deems it appropriate to exercise its powers under section 83 (2) (a) of the NCA to -

- a) Set aside ALL the consumers' obligations under the credit agreements in Annexures E1 to E10.
- b) Order the Respondent to within ten (10) days refund the cost of credit to the consumers identified in Annexures E1 to E10.
- c) Refrain from taking any enforcement action against the identified consumers.
- d) Order the Respondent to the extent that the Respondent may already have taken enforcement action, pending against any such consumers, to formally withdraw such action and tender payment of the consumer's legal cost where the action is defended or opposed.

### **Independent audit**

64) The NCR requested that the Tribunal order an independent audit of all the credit agreements to determine instances where the Respondent-

- a) Overcharged consumers of initiation and service fees, interests, and Total Costs of Credit; and
  - b) Extended credit recklessly to consumers without conducting the requisite affordability assessments;
- 65) In the Tribunal's view, the independent audit is justified in this matter. Without such an audit, consumers who had been overpaying monies to the Respondent and who entered into reckless credit agreements will not otherwise be identified and afforded redress.
- 66) The NCR requested that the NCR approve the Respondent's auditor appointed. In the Tribunal's view, this request may lead to allegations of bias and undue preference in appointing an auditor, in the absence of evidence of a transparent and impartial process within the Applicant to ensure independence and impartiality.

**ORDER**

- 67) Accordingly, the Tribunal makes the following order, namely -
- a) Declares that the Respondent's conduct is in repeated contravention of the following Sections of the Act and its Regulations -
    - i) Section 81(2)(a)(ii) and (iii) and Regulation 23A;
    - ii) Section 81(3) read together with section 80(1)(a) of the NCA;
    - iii) Section 92(1) read with Regulation 28(1)(b);
    - iv) Section 93(1) & (2) read with regulation 30(1);
    - v) Section 90(1)(2)(a)(b) read with section 90(3);
    - vi) Section 100(1)(c) and section 101(1)(d)(ii) of the Act read with Regulation 42(1);
    - vii) Section 100(1)(b) and section 101(1)(c) read with Regulation 44 of the Act;
    - viii) Section 100(1)(b) and (c) and 101(1)(b)(i), (c)(iii) and (d)(ii) of the Act read with Regulations 42(1) and (2), 43 and 44;

- ix) Section 170 read with Regulation 55 of the Act;
  - x) Regulation 64 and 66 as well as Section 52(5)(c) read with general condition 3 of the Respondent's condition of registration.
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- b) Declares that the contraventions referred hereinabove are prohibited conduct in terms of Section 150(a) of the Act;
  - c) Cancels the Respondent's registration as a credit provider in terms of section 57 of the Act;
  - d) Interdicts and restrain the Respondent from engaging in prohibited conduct in the future;
  - e) Orders the Respondent to pay an amount of R1m (one million Rands) to the National Revenue Fund within 60 business days of the date of issuing of this judgment. The National Revenue fund account details are as follows;
    - Bank - Standard Bank of South Africa
    - Account name - Department of Trade and Industry
    - Account number - 370650026
    - Account type - Business current account
    - Branch code - 010645 (Sunnyside)
    - Branch code  
for electronic payments - 051001
    - Reference - NCT/213199/2021/57(1)/ (Name of the depositor);
  - f) Declares that the Respondent's credit agreements contained in Annexures E1 to E10 of the investigation report are reckless in terms of Section 80(1)(a) of the Act and -
    - i) sets aside all of the consumers' obligations in respect of those agreements;
-

- ii) orders the Respondent to, at its costs, -
- (1) Refund all the credit costs charged and recovered from consumers under all such agreements.
  - (2) Refrain from taking any enforcement action against such consumers and, to the extent that the Respondent may already have taken enforcement action, which is pending against any such consumers, the Respondent shall formally withdraw such action and tender payment of the consumer's legal cost where the action is defended or opposed.
  - (3) Take all such steps as may be reasonably necessary to ensure that –
    - (a) Any adverse credit bureau records which may have arisen because of the consumer having concluded such credit agreements with the Respondent are removed.
    - (b) Any civil judgments taken by the Respondent against such consumers in respect of such agreements are rescinded or, if rescission is not possible, abandoned.
- g) Orders the Respondent to -
- i) Within thirty (30) days, appoint an independent auditor, who is a Chartered Accountant, at its own cost to identify all credit agreements which the Respondent concluded in the past three years to identify or consumers who were overcharged interest and / or on service fees and / or total cost of credit, and provide a list of such consumers as well as the amount by which each such consumer was overcharged;
  - ii) Once the aforesaid auditor has compiled the abovementioned report, the Respondent is to, within 30 days from the date of the auditor's report –
    - (1) refund the consumers all costs of credit which exceeded the prescribed maximum amount allowed by the Act;

- (2) Take the same steps as set out in paragraphs f)ii)(2) and f)ii)(3) above in respect of all such consumers who were overcharged as identified in the audit report;
  - iii) Once the refunds have been made as stated above, the Respondent is to provide the auditor's report together with a written report to the Applicant detailing the identity of the consumers, the refunds made, and the further steps taken as contemplated in paragraphs f)ii)(2) and f)ii)(3) above. These reports are to be provided to the Applicant within 120 days after the tribunal order has been obtained.
  
- h) The appointed auditor must also, as part of the report referred to above, identify all credit agreements which the Respondent entered into without properly conducting assessments in terms of section 80(2)(a)(ii) and /or (iii) of the Act and, once so identified, the Applicant is authorized to approach the Tribunal again on the same papers (supplemented where necessary) and under the same case number to seek an order declaring those agreements as reckless in terms of section 80(1)(a) of the Act and
  - i) Setting aside all the consumers' obligations under those agreements; and
  - ii) ordering the Respondent to, at its own cost, take the same steps as set out in paragraphs f)ii)(2) and f)ii)(3) above in respect of the agreements identified by the auditor.
  
- i) The Tribunal makes no cost order.

Dated at Johannesburg on the 24<sup>th</sup> day of March 2022.

[SIGNED]

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Ms D Terblanche  
PRESIDING TRIBUNAL MEMBER

Mr T Bailey, Tribunal member, and Adv F Manamela, Tribunal member concurring, it is so ordered.

**Authorised for issue by The National Consumer Tribunal**

**National Consumer Tribunal**

**Ground Floor, Building B**

**Lakefield Office Park**

**272 West Avenue, Centurion, 0157**

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