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GENERAL NOTICES
ALGEMENE KENNISGEWINGS

NOTICE 1763 OF 1997

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, under section 10 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 1325 of 12 September 1997 *(Government Gazette* No. 18263 of 12 September 1997), as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

KENNISGEWING 1763 VAN 1997

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktykekomitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 1325 van 12 September 1997 *(Staatskoerant* No. 18263 van 12 September 1997), soos in die Bylae uiteengesit.

A. ERWIN

Minister van Handel en Nywerheid

SCHEDULE • BYLAE

BUSINESS PRACTICES COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

Report No. 58

Investigation in terms of section 8(1)(b) of the Harmful Business Practices Act, 71 of 1988, into business practices concerning the receipt of consideration in respect of interest recalculators

1. Introduction

The Business Practices Committee (the Committee) was established in terms of section 2 of the Harmful Business Practices Act, 71 of 1988 ("the Act"). The purpose of the Act is to provide for the prohibition or control of harmful business practices and for matters connected with this. The Chairman of the Committee reports to the Minister of Trade and Industry (the Minister).

A "harmful business practice" is any business practice that, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer. The *raison d'être* of the Committee, and the Act for that matter, is thus the interest of the consumer and specifically the consumer who is or is likely to be unreasonably prejudiced or deceived.

In terms of the Act the Committee may conduct two types of formal investigations. *First*, in terms of section 8 of the Act, the Committee may on its own initiative, and shall on the directions of the Minister, undertake such investigation as it may consider necessary into any harmful business practice of particular individuals or persons that the committee thinks exists or may come into existence. *Secondly*, the Committee may investigate any business practice commonly applied by persons for the purposes of creating or maintaining a harmful business practice. The first type of investigation is a section 8(1)(a) investigation in terms of the Act and the second a section 8(1)(b) investigation.

The Committee reports to the Minister on the result of any investigation undertaken by it in terms of section 8. If the Committee, after an investigation, believes a harmful business practice exists, or may come into existence and is not satisfied that that harmful business practice is justified in the public interest, the committee in its report recommends to the Minister the action that should be taken to ensure the discontinuance of the harmful business practice. The powers of the Minister are set out in section 12 of the Act. The ultimate power of the Minister is to close down an entity or prohibit an individual from carrying out the harmful business practice. The orders of the Minister are published in the Government Gazette. A contravention of the Minister's order constitutes a criminal offence.

2. Interest recalculators

An overwhelming number of consumers in South Africa rely on credit. This enables them to acquire goods, such as homes and motor cars, without having to pay the full price immediately. The amount or balance is paid over a time out of future income. Various ways are available to finance the purchase of assets, such as credit agreements, overdraft current account facilities and mortgages. If they are to compete successfully, many retailers are also often compelled to offer credit. In South Africa banks play an important role in the granting of credit to consumers.

Monthly repayments on R100 000 loan over 20 years at various interest rates

Interest (%) (A)	Monthly instalment (R) (B)	Interest 1st month (R) (C)	Total (R) paid over 20 years (D)
17	1 466.80	1 416.67	352 032
18	1 543.31	1 500.00	370 395
19	1 620.68	1 583.33	388 964
19¼	1 640.15	1 604.17	393 636
19½	1 659.66	1 625.00	398 319
19¾	1 679.22	1 645.83	403 013
20	1 698 .82	1 666.67	407 717
25	2 098.22	2 083.33	503 573
30	2 506.69	2 500.00	601 606

The price consumers pay to obtain credit is called interest. The interest in Rand has a direct relationship between the amount owed, the prevailing interest rate and the time over which the credit is granted. The price, or interest in Rand terms, could be high. In the table on the left the monthly instalments (column B), the interest for the first month in Rand (column C) and the total amount payable on a loan of R100 000 over 20 years (column D) at various interest rates (column A) are given.

The table shows *inter alia* that: (a) The price of credit could be high. At an interest rate of 25% the interest portion of the first month's instalment of R2 098.22 is R2 083.33. The result is that in the first month only R14.89 capital is redeemed. (b) An increase in the interest rate of one quarter of a percentage point from 19.75% to 20% increases the monthly instalment by R19.60 and the total amount paid over 20 years by R4 704 (R407 717 less R403 013). (c) An increase in the interest rate of one percentage point from 19% to 20% increases the monthly instalment by R78.14 and the total amount paid over 20 years by R18 753 (R407 717 less R388 964). Thus, if the loan were to be R1 million, the increased amount paid over 20 years would be R187 530.

Many consumers may find the calculation of interest somewhat daunting. In most cases this is unfounded, because the calculations are not that complex. It stands to reason that should an interest rate higher than that agreed upon by the creditor and the debtor be charged, the debtor stands to pay more than he contracted to pay. The amount of this overpayment would depend on the existing interest rate and the loan amount or overdraft. Conversely, should an interest rate lower than that agreed upon by the creditor and the debtor be applicable, the creditor stands to receive less money than he would be entitled to receive..

Certain entrepreneurs recognised in this an opportunity. If an entrepreneur can prove that a creditor overcharged a debtor, the debtor would have to be refunded and the entrepreneurs are rewarded for their work. These entrepreneurs are, for want of a better word, called "interest recalculators" (from now on called recalculators) In this report "recalculator" means any business or person who provides any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions.

3. Events leading to the investigation

On 7 July 1997 the Committee received a complaint from a consumer. The consumer alleged that she was approached by a firm of recalculators who offered to recalculate the correct interest that she should have paid on her four mortgages that she held with a financial institution. The firm required payment in advance. She called the firm many times to enquire about the progress of the investigation but the firm did not respond to her calls. When approached by an investigating official (official) the firm alleged that the consumer had not yet supplied the necessary information in terms of the contract reached between the firm and the consumer.

Towards the end of July 1997 an official received a call from an irate bookkeeper of a business in the Kempton Park area. She said that she received a call from a firm of recalculators which claimed that the Department of Trade and Industry said that it had found that most clients of banks pay more interest on bonds than they are obliged to pay. The representative of the firm proposed to meet the bookkeeper on 1 August 1997 to discuss the matter. The official arranged with the bookkeeper to attend the meeting.

During the meeting the representative of the firm of recalculators alleged that clients overpay banks millions of Rands annually. He further explained that the computer programme used by his firm to recalculate interest was approved by the Department. This was without any truth.

The official met with the representative and the managing director of the recalculation firm on 4 August 1997. During the meeting the representative stated that he was told by the people that presented the in-house training for the company that the computer programme was approved by the Department. The managing director of the firm of recalculators said that this took place without his knowledge. Upon leaving the office the official requested the managing director to contact his branches and instruct the managers that any reference to the Department should be stopped immediately.

An official received a call from another recalculator offering his services. Officials visited this firm the day after receiving the call. The firm employed telemarketers to canvass unsolicited prospective clients. If the prospect showed any interest, a meeting was arranged between a "consultant" of the recalculator and the prospect. During this meeting the "consultant" presented his sales speech and tried to convince the prospect to sign an agreement with the recalculator. A transcript which was used by the telemarketers was handed to the officials. The following are quotes from this transcript that were in Afrikaans and English. Some quotes were translated from the Afrikaans.

> "As a result of an investigation carried out by the Department of Trade and Industry it was found that an interest calculation error was made on all (underlining by the Committee) bonds entered into before April 1993." (Na aanleiding van 'n ondersoek wat deur die Departement van Handel en Nywerheid gedoen is, en bevind is dat daar 'n renteberekenaarsfout begaan is op alle verbande wat aangegaan is voor April 1993).

"The computation error pointed out by the Department of Trade and Industry is usually somewhere between 1% and 4% of the amount outstanding on the bond". (Die berekeningsfout uitgewys deur die Departement Handel en Nywerheid beloop gewoonlik iets tussen 1% en 4% van die verbandbedrag).

"It would appear from a survey carried out by the Dept of Trade & Industry that errors frequently occurred in the calculation of interest charged by financial institutions" and

"The Department of Trade and Industry (DTI) which controls the Usury Act is busy with an investigation into home loan accounts (bonds) with all the banks and have found two major irregularities. XXX has been requested by the DTI to assist with this investigation".

Not one of these statements is true. The Department has never released an official document or documents to prove these allegations. The manager was asked to provide documentation supporting the claims made in the transcript. He could obviously not do so, because there was none. This firm was also requested to stop using any references to the Department immediately.

4. Press releases

On 7 October 1997 the Chairman of the Committee issued the following press release:

"On 12 September 1997 the Business Practices Committee gave notice in the overnment Gazette that it intends undertaking an investigation in terms of the Harmful Business Practices Act, 71 of 1988, into the business practice whereby "interest recalculators", require payment in advance (an up-front consideration) for services to be rendered.

It has come to the attention of the Committee that a number of these entities are alleging that they are involved is some way or other with the Department of Trade and Industry. This is devoid of all truth. Consumers are advised, until such time that the Committee has published its report, to be very careful in concluding contracts with such entities".

It should be pointed out that the Registrar: Usury Act issued the following press release on 3 December 1996.

"It has come to the attention of the Department of Trade and Industry that certain interest recalculation organisations are alleging that the Department of Trade and Industry has employed them to do investigations and recalculations regarding overcharging of interest. The Department expressly states that it has not employed any agents to conduct investigations or recalculations on its behalf. Any person who is approached by such an organisation should immediately report to the Department".

5. Notice of the investigation

Following a decision by the Committee to undertake an investigation into recalculators by which they require payment in advance for services to be rendered, the following appeared as Notice 1325 of 1997 in Government Gazette 18263 dated 12 September 1997:

> "In terms of the provisions of section 8(4) of the Harmful Business Practices Act, 1988 (Act No 71 of 1988), notice is herewith given that the Business Practices Committee intends undertaking an investigation in terms of section 8(1)(b) of the said Act into the business practice whereby "interest recalculators", as defined in the Schedule, require payment in advance (an up-front consideration) for services to be rendered.
>
> Any person may within a period of 30 days from the date of this notice make written representations regarding the above-mentioned investigation to The Secretary, Business Practices Committee, Private Bag X84, PRETORIA, 0001".

In the schedule recalculators was defined as in section 2 above. Notice of the investigation was reported to recalculators and related associations of which the Committee was aware, namely the Association of Financial Consultants, the Financial Research Foundation, International Interest Corporation, the National Association of Professional Financial Advisors and Senator Business Consultants.

6. The investigation

Following the publication of the notice of the investigation, the Committee received submissions from clients of recalculators and two associations claiming to represent the recalculators. A number of banks also responded to the notice of the investigation. Officials of the Committee also held discussions with two recalculators.

6.1 Submissions by clients

By 20 October 1997 the Committee received written submissions from 51 clients or ex-clients of recalculators. Many clients also called officials to tell them of their experiences with recalculators. The entities mentioned by consumers in their complaints were, in alphabetical order, Bankrente Ondersoekburo, Calculus Mora-dienste, Cawood Financial Services, Financial Research Foundation, CM Finance, E & J Finansiële Bemarking CC trading as SA Bureau for Interest Investigations, FCF, Interest Investigations (Pty) Ltd, Finsol Business Consultants, International Computational Experts, International Interest Corporation (previously International Settlement Corporation), ISC, Karel Geevers, Kontra Rente Sisteme, Martin Lemmer CC trading as Duxbury and Co, Senator and Stellenryk Financial Projects (later acquired by Infomak) . The following are very brief summaries of the experiences of consumers with these entities.

"During 1991 I paid R3 500 to Mr X to recalculate the interest on my bank statements from 1980 to 1990. He calculated that the bank owed me R83 000 but since then it was difficult to make contact with him. I was advised to stop issuing cheques on my account with Y Bank. I then opened an account with Z Bank. Bank Y surrended the policies I ceded to them when I was granted my overdraft. The policies were surrendered because I exceeded my credit limit. Eventually, I owed Y Bank R125 000 because the interest in arrears was capitalised monthly. During February 1995 Bank Y served summons on me. I called Mr X and he told me to sell the farm and pay back the bank. Mr X gave me his oath that his recalculations were correct. I am already 60 years of age and I now experience severe financial problems. My son is in the same boat because Mr X also "recalculated" the interest on his accounts".

"After they called me for the umpteenth time, I decided to have two of my accounts investigated. On 14 August 1995 I paid R16 800 and R1 479 again on 20 September 1995. I was promised that I would know within weeks whether the bank overcharged me. The bank charged me R2 000 for the bank statements. Each time I called them they said that they opened a court case against the bank and that I would only receive money after conclusion of the court case. It is now two years that I am kept on a string".

"The firm contacted me and I paid them R1 200 on 31 October 1996 to investigate the interest on a redeemed account for R1 million. The agreement was that I would receive the overpaid interest within three months. They were to take 50 percent of this amount. I called them often without any success and messages for the person responsible to call me back never materialised".

"I had my account with my agricultural co-op investigated and paid R5 928 to the firm. I called the recalculator often. Later I was told the person that explained the system to me left the service of the recalculator. Still later I was told that my contract has now been found but that the contract was not signed. I signed the contract in the presence of a witness".

"The recalculator approached me and asked for some of my bank statements. They said something was dreadfully wrong and that the bank overcharged me on the interest I paid. They then said that they would investigate but that I would have to pay R3 200. I paid this amount on 16 November 1993 and have not heard from them since that date".

"... a representative of a firm forced this investigation down my throat, because I was quite happy with my bank. I paid them R5 880 in advance but nothing

happened. They did their calculations at prime plus one percent. My agreement with the bank was prime plus two percent".

"I was approached by the recalculator on 15 July 1993 and was told that all their investigations were successful. I was later told that they would sue the money from the bank in a court of law. On 19 May 1995 I received a letter from them stating that my claim was unsuccessful. I paid them R4 200".

"On 13 December 1996 I paid them R5 400. Up to date there were no results. The Landbouweekblad carried a small report about the investigation by the Committee in September 1997. I called them again and they said that my file was in the archive because they still await particulars from the bank".

"I fell into the trap twice. On 8 May 1993 I paid R1 500 to a recalculator. He did not do anything. On 31 May 1996 I again paid another recalculator R1 000. I was informed on 28 October 1996 that I would hear within 90 days of the 'status of the investigation'. I have not heard from them again".

"I paid R13 428 to the firm who undertook to recalculate three accounts that I had. Since March 1996 I tried to get some response from the firm. I sent them in vain registered letters, called on their offices and called a cell number that was never available".

"About 2½ years ago I paid them R3 650. I literally took the money out of the bread bin. Whenever I called them they said that I should not disturb them because they were busy. They later informed me that the bank owes me R6 000 but refuses to refund the money".

"They contacted me several times but I wanted nothing to do with them. Mrs X came all the way to my farm in the Lydenburg area and convinced me that I will be refunded with R30 000. I paid R9 576 and have not heard from them again".

"I was informed that the bank owes me R80 000 and R50 000 respectively on two accounts. I paid R3 600 for the investigation but have not received any monies from the bank. I did not hear from the recalculator again".

"I paid R3 640 on 17 July 1996 to have the interest on my account recalculated. I then unsuccessfully tried to contact of the directors for eight months. I always left messages but he never called back".

"My son, who is a garage owner, paid a firm R2 250 each to recalculate the interest paid on our overdrafts. The firm alleged that the bank owed me R3 480.96. I eventually received R2 784.77".

" A lady called me and told me about alleged irregularities on cheque accounts and bonds. I paid them R900. The firm only asked me for bank statements since my payment".

"During July 1996 I paid them R8 400 and was told that my claim would be settled in two months time. I have not heard from them again".

"The only reason I agreed to the investigation was that Mr X convinced me that they had a 99 percent success rate in recovering overpaid interest".

"I first gave them R30 000 and then again R22 000 and received no results. I am busy with them since 1993 and nothing seems forthcoming".

"The recalculator promised that within two months I should be refunded. I paid R600 during October 1995. Nothing happened yet".

"They told me that the bank owes me R144 000, but I have yet to receive this amount. I paid R10 000 for the service".

"I paid R6 930 on 5 October 1995 and heard nothing from them again".

"I was never called back after paying three instalments of R750 each".

"They never answered any of my enquiries after I paid them R3 360".

"My agricultural co-op paid me back R502.44. I paid R3 000 for the service".

A submission was also received from an agricultural co-operative. This entity submitted the names of 18 of its members who have had their accounts investigated by recalculators. None of these members were refunded "overcharged" interest but they had already paid the recalculator.

It would appear from the above comments by some clients of recalculators that they were not impressed with the services promised, already paid for but not yet rendered. Judging from the complaints, it seems that the target market for the recalculators was mostly persons from the farming community, owners of mostly small businesses and

professional people, such as medical doctors and veterinary surgeons. The Committee did not receive any submissions in which clients expressed their satisfaction with the services of these entities.

The fact that a recalculator informs a client that the client's bank overcharged on the interest payable does not guarantee that this is the case. There is no automatic refund of claims for interest "overcharged", because the banks dispute these claims in the great majority of cases.

6.2 Submissions by recalculators

Officials of the Committee held discussions with the owner of a close corporation which conducted business as a recalculator on 2 October 1997. This was an entity which claimed it enjoyed the support of the Department. During these discussions it was put the owner that often there is no question of the interest being calculated wrongly, but that claims arose because of a dispute in the rate of interest charged. He agreed with this suggestion and added that, should the Minister prohibit the payment in advance for interest to be recalculated, he would simply advertise that he would, for the interpretation of contracts, accept payment in advance. This close corporation had been in operation for five months. It had, at the time of the meeting, not recovered any overpaid interest for any of its approximately 400 clients, although it was alleged that court cases that would result in repayments of interest being made.

The Committee received a submission from the "National Association of Professional Financial Advisers" (NAPFA) responding to the notice of the investigation. NAPFA represented three entities, all calling themselves "business consultants". In the submission it was argued that there are no legal grounds justifying the payment of money before a service is rendered. The Association further suggested that the up-front payment for the services of recalculators should be prohibited and that a criminal sanction should apply. Another point made by the Association was that if there is malpractice by an unscrupulous recalculator a client's right of recourse would not mean much. The reason advanced was that the amounts recovered by the recalculator would not have been paid into a trust account, mostly because the recalculator would probably not qualify to open such an account.

The Association of Financial Consultants of South Africa (Vereniging van Finansiële Konsultante van Suid-Afrika, VFKSA) also submitted a memorandum on the investigation. This Association also represented three entities. The main points raised in the submission are summarised in the following five paragraphs.

1. VFKSA alleged that in the early nineties the overcharging of interest by financial institutions was common. Because of this many recalculators entered the market and developed software to recalculate the interest charged by the financial institutions in "... a proper and ordered manner". "Fly by nights", however, also entered the market and occasionally consumers were misled by operators who could not deliver the service they promised because of poor

infrastructures. The bad reputation of these entities rubbed of on the industry with the result the financial institutions, who really should have been exposed to an investigation, got away untouched. An association was established to protect the interests of consumers. This association, the "Vereniging van Renteondersoekers van Suid-Afrika", also failed because of infightings between the members.

2. According to VFKSA the real problem regarding interest investigations is a lack of information and not the unwillingness of recalculators to fulfil their obligations or their perceived dishonesty. It is difficult for the recalculators to obtain information from financial institutions to enable them to draw up meaningful reports. The Association did not suggest whether this difficulty was reported to prospective clients.

3. The submission also touched on various aspects of the Usury Act and the interpretation of it. The function of the Committee is to investigate harmful business practices and not to comment on the Usury Act or decisions by the Registrar: Usury Act.

4. The Association stated that an advance payment was necessary because the telemarketer and the "consultant" had to pay a commission for canvassing the client and securing the contract. Other costs that had to be cleared were the salaries of the computer personnel and other overheads. It was argued that, were the Minister to prohibit the requirement of a payment in advance for services to be rendered, the recalculators would disappear from the market. The fact that the recalculators were effectively financed by their client bases was not discussed. It was argued that market forces should be allowed to weed out the "undesirable" recalculators because this was the case with all services and professions. This argument ignored two facts. The receiving of payment before the rendering of a service was already prohibited in certain industries (see section 7). The "market forces" argument obviously only applies if consumers are completely informed. Many recalculators did not inform consumers of all the relevant issues. Consumers were not informed, but ill informed, if not misled, by the recalculators.

5. Finally, the impractical suggestion was made that, as a short term solution to the problem, Government should institute a body and all recalculators should be members. Complaints about recalculators could then be addressed to this body. This body could then liaise with other bodies such as Council of South African Banks (Cosab). Cosab is, of course, a body established by the banks. Nothing is preventing the recalculators from establishing a body to represent them. They have unsuccessfully done so in the past. One can also not on the hand suggest that market forces should be allowed to solve the problem and on the other hand argue for some sort of Government assistance to help solve the problem.

The Committee took note of the various amounts the recalculators claimed have been overcharged on interest by financial institutions. Estimates of between R60 million and R200 million have been made. For want of exhaustive assumptions on which these estimates are based, these figures are pure speculation. The fact that the figures range between R60 and R200 million is already an indication that very rough assessments were made. Various figures are also quoted about the amounts recovered from financial institutions and paid over to clients, but no estimates are available on the monies lost by consumers in the endeavours of their recalculators to recover these amounts.

The allegation was also made that the real culprits were the financial institutions. A policy deliberately to overcharge clients on the interest payable, could be regarded as a harmful business practice. The Committee would investigate such cases should it be presented by facts. General statements such as "...all banks overcharge on mortgages and overdraft accounts" are simply too vague to investigate. The Committee would not get involved in those cases where there is a dispute over the interest rate. The function of the Committee is to investigate harmful business practices, and not to investigate disputes arising from contractual agreements.

6.3 Submissions by banks

The Committee received submissions from the Council of South African Banks and two commercial banks. Banks use computer technology and software for the calculation of interest charges which are debited to its customers accounts. Computer security is maintained by computer security departments. who use sophisticated computer software to monitor and maintain the computer programmes. These programmes validate the computer system to ensure that programmes and data files are not corrupted. Only computer programmers have access to banks' programme files and their access is restricted to the programme files applicable to their work. Write access to data files in the computers is restricted to users using the appropriate create or amend functions built into the software applications.

It was alleged that the instances where "incorrect" interest charges were debited to customer accounts, happened as a result of human error. These types of error occur during the data input process, where, for example, the data capturer, due to finger problems, keyes in the incorrect interest rate. It was stated that the necessary checks and controls were in place to identify and correct these type of errors.

The interest charges on current cheque and loan accounts are calculated on the outstanding daily balance, which accrues and is then debited to customer accounts monthly in arrears. A bank submitted that it was necessary for them to do a recalculation because the recalculation schedules submitted by the recalculators are generally unusable. These schedules, it was alleged, do not always show the interest recalculation on a daily balance. The bank also found that certain recalculators worked with the aggregate balance and interest rates. This is not a true reflection of the actual rates applicable to customer accounts.

One of these banks commented on the effect of recalculators on the bank and its consumers. The bank recognised the right of its customers to have the interest rates charged to their accounts verified in circumstances where a likely problem is identified or suspected. The right of the interest recalculators to conduct their business was also recognised.

The bank submitted, however, that the playing fields between themselves and the recalculators were not level. The bank stated that it operated within a highly regulated banking industry, whereas the activities of recalculators were unregulated, "... arbitrary, opportunistic and exploitative".

Recalculators, by the unregulated nature of their businesses, are able to set up their businesses at a small cost. This enables them to earn a high level of income by exploiting the bank's customer base. This has resulted in recalculators swamping them with "interest claims". As a result of this bank had to set up an interest claim auditing service.

This required the bank to invest in the necessary infrastructure and staff to man and process the large number of interest claims received. The service is obviously provided at a cost, which in the long term, does not buy the bank any benefits. Recalculators, in contrast, earn high profits from the "expertise" they are selling.

The bank stated that recalculators held themselves out to be experts in recalculating interest charges. Their customers, believing that interest calculation is a complex issue, rely heavily on the word of the "expert" sales consultants employed by recalculators. The clients or the recalculators are:

lead to believe that they automatically qualify for the bank's prime overdraft interest rates, in cases where they clearly do not qualify for these rates and were promised huge refunds from the bank

required to pay upfront for the services to be provided by the recalculators, with no guarantee of a refund or provision for recourse in the event of an unsuccessful claim.

The bank stated that recalculators use vigorous tele-marketing campaigns (including cold canvassing) and unscrupulous sales consultants to find prospective customers. The bank have had a number of instances where their customers have indicated that they were called and questioned about the identity of their bank, whereafter the consultant proceeded with a sales presentation. According to their customers these consultants made automated unsubstantiated allegations that the bank was overcharging its customers. The consultants then boast about their apparent successes against banks. This type of sales talk created a high level of expectation with the recalculators' prospective customers.

The prospective customers, believing that they were going to get large refunds from their bank, then sign contracts with a recalculator. Where customers declined, they were phoned on a regular basis in an effort to secure the deal. The recalculator collected an upfront fee from the customer, knowing that the chances of a claim succeeding were negligible. It would appear, from the bank's experience, that once the recalculator has received payment for his service or the claim has been refuted by the bank, his customer was abandoned. The bank was then left to deal with an irate customer who no longer trusted his bank. The bank was concerned that the relationship of trust built up with its customers suffered as a result of activities which "... have no foundation in fact or law".

The bank had been confronted with instances where recalculators deliberately and tactically delayed legal proceedings against defaulting debtors through spurious claims of "overcharged" interest. Unnecessary legal costs were incurred to disprove these allegations. It is the debtor, not the interest recalculator, who is obliged to pay these additional legal fees when the order for costs is made by the court.

To date the bank has refunded only 0.02 per cent of the total value of all interest claims submitted by recalculators. None of the claims received by it related to any computer inaccuracy in computing calculations. Undetected human error accounted for the instances where they refunded its customers. Its system have accordingly proved to be accurate.

7. Conclusion

The market for buyers of the services of recalculations may be getting smaller while the number of suppliers (recalculators) appears, for various reasons, to be on the increase.

The fee structure on overdraft current accounts is now being printed by most commercial banks on the monthly bank statements. The same applies to statements reflecting deposits held at the banks. The chances for disputes about the interest rate under the present dispensation are diminishing.

Officials were told by a representative of a recalculation firm that many existing recalculators previously worked for other recalculators and that the number of recalculators mushroomed in the recent past. It appeared that some recalculators have very bad reputations, even among their associates.

The sales presentations made to prospective clients by some or all telemarketers of the recalculators are unsatisfactory. Potential consumers are cold canvassed and brought under the impression that especially banks as a matter of policy charge their clients too much interest. This raises the expectations of the prospects and these expectations are based not on facts, but on perceptions. Prospects are approached indiscriminately and not because the recalculator thinks that the prospect is being overcharged.

There is always a great risk for consumers when they pay for services yet to be rendered. The Committee investigated two other cases where payment was required for services yet to be rendered.

In the first case the Committee investigated the practice by which entities or individuals allegedly would "arrange for loans" for their clients. Invariably the loans did not materialise and the unsuspecting clients were financially worse off than before. On 18 August 1995 by Notice 777 of 1995 in Government Gazette No 16609 the Minister declared unlawful the business practice by which an intermediary, directly or indirectly, in respect of a money lending transaction or an application by any person to borrow an amount of money, demands, receives or recovers any valuable consideration from the borrower or from any person so applying, whether on his own account or on the behalf of any person other than the moneylender.

In the second case services for "removing your judgement, adverse, slow payer from bureaus legally" were advertised and many consumers turns to these "credit repair entities" for help. Some of these credit repair entities charged an up-front fee for their services levied before the name being removed from the black list. The Committee was, however, aware of complaints that although a fee had been paid (in advance) the "name disappearing" did not materialise. This worked a financial hardship upon particularly consumers who have limited economic means and are inexperienced in credit matters. On 28 February 1997 the Minister, by Notice 338 of 1997 in Government Gazette 17809 of an even date, gave notice that he intended to declare harmful the business practice by which credit repair entities accept up front payments.

The harmful nature of the business practice of recalculators occurs when the recalculator accepts money in advance to recover "overcharged" interest, not knowing what the chances of such occurrences are. This could be equated with the practice of debt intermediaries and credit repair entities who may accept money in advance for a service that they cannot deliver or do not know whether they can deliver. Debt intermediaries, credit repair entities and many recalculators have worked and are working a financial hardship upon consumers.

The Committee is in possession of evidence which indictes that although a fee has been paid, in advance, the recovering of the alleged interest overpaid does not materialise in most cases. Furthermore, the mere fact that the recalculator accepts money from the client does not necessarily mean that an investigation into the client's account will be conducted. The offer to obtain the repayment of interest is often no more than a pretext to mislead consumers into handing over their money. The scale of abuse in South Africa among recalculators is such that in the view of the Committee it is clear that the practice of taking money in advance can on no grounds be justified in the public interest.

It is possible that some recalculators could inform their clients that no interest was overcharged, even if no investigation was undertaken. It is also possible that other recalculators could raise the expectations of their the clients by notifying them that the

"... banks owe them huge amounts". A bank spokesperson stated that the greatest majority of all "claims" received by the banks are refuted by them.

There have been cases and there would probably be other cases where creditors have indeed overcharged debtors with interest. Debtors should be free to use the services of recalculators if the debtors suspect that they have been overcharged by the creditor. The debtors who are consumers should, however, be protected from unscrupulous recalculators or whatever they may call themselves, be it financial services, research foundations, business consultants, interest corporations, settlement corporations, computational experts, bureaus for interest investigations or financial projects. These operators should not be allowed to require payment in advance, or up-front fees, for their services to recalculate clients' financial accounts. This should also apply to operators who may try to bypass the order of the Minister by calling themselves "interpreters of contracts" or any other name where this interpretation or service revolves around a dispute on the interest payable by a creditor to a debtor. Where they do undertake to recalculate interest for a client, they may by prior arrangement with the client, retain a negotiated percentage of whatever amounts they successfully recover or alternatively they may agree on a fee negotiated beforehand to be paid if the service is rendered fully.

7. Recommendation

As the Minister has already placed restrictions on the activities of debt intermediaries and will place restrictions on the activities of credit repair entities, the Committee has resolved to recommend to the Minister that in terms of section 12(6) of the Harmful Business Practices Act, 71 of 1988, he declares unlawful the business practice by which -

> any person or business entity or interest recalculator offers or provides a service of investigating fees, charges or interest payable by a debtor to a creditor in terms of an agreement between such debtor and creditor and in terms of which such interest recalculator, any of its employees, agents, or other person on its behalf receives payment or money or any financial consideration before the rendering of such service in full.

A recalculator includes any business or person who provides a service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions.

Louise A. Tager

LOUISE A TAGER
CHAIRMAN: BUSINESS PRACTICES COMMITTEE
Date 31 October 1997

NOTICE 1764 OF 1997

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, in terms of section 12 (6) (a) (iii) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), hereby give notice that I intend publishing the following notice in the *Government Gazette:*

NOTICE IN TERMS OF SECTION 12 (6) (a) (iii) OF THE HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, by virtue of the powers vested in me by section 12 (6) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), and after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 1325 of 1997 in *Government Gazette* No. 18263, dated 12 September 1997, which report was published in Notice 1763 of 21 November 1997 in *Government Gazette* No. 18443 of 1997, promulgate in the public interest the notice in the Schedule.

SCHEDULE

In this notice, unless the context indicates otherwise—

"interest recalculator" means any business or person or any other provider of a service that revolves round a dispute on the interest payable by a debtor to a creditor, who provides any service in return for money or any other valuable consideration for the express or implied purpose of investigating fees, charges, and/or interest charged on any debtor's account(s), including accounts held at financial institutions;

"harmful business practice" means the receiving of any money or other valuable consideration for the performance of any service that an interest recalculator has agreed to perform for a consumer before such service is fully performed;

"the parties" means interest recalculators.

1. The harmful business practice is hereby declared unlawful in respect of the parties.
2. The parties are hereby directed to—
   (a) refrain from applying the harmful business practice;
   (b) refrain at any time from applying the harmful business practice.

On the recommendation of the Business Practices Committee I may, in a particular case, in terms of section 12 (6) (c) of the Act in writing, grant exemption from a prohibition contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exemption. Such applications for exemption must be directed to:

The Secretary
Business Practices Committee
Private Bag X84
PRETORIA
0001
(For attention: Ms Lana van Zyl)

A. ERWIN

Minister of Trade and Industry

KENNISGEWING 1764 VAN 1997

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, gee hiermee, kragtens artikel 12 (6) (a) (iii) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), kennis dat ek van voorneme is om die volgende kennisgewing in die *Staatskoerant* te publiseer:

KENNISGEWING KRAGTENS ARTIKEL 12 (6) (a) (iii) VAN DIE WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Alexander Erwin, Minister van Handel en Nywerheid, kragtens die bevoegdheid my verleen by artikel 12 (6) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), en na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan by Kennisgewing 1325 van 1997 in *Staatskoerant* No. 18263, gedateer 12 September 1997, kennis gegee is, welke verslag by Kennisgewing 1763 van 21 November 1997 in *Staatskoerant* No. 18443 van 1997, gepubliseer is, vaardig hiermee in die openbare belang die kennisgewing in die Bylae uit.

BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

"rente herberekenaar" enige besigheid of persoon of enige ander voorsiener van 'n diens wat betrekking het op 'n dispuut oor die rente betaalbaar deur 'n debiteur aan 'n krediteur, wat in ruil vir geld of enige ander waardevolle vergoeding 'n diens verrig met die uitdruklike en vooropgestelde doel om fooie, debiete en/of rente gehef teen enige debiteur se rekening(e), insluitende rekeninge wat gehou word by finansiële instellings te ondersoek;

"skadelike sakepraktyk" die ontvangs van enige geld of waardevolle vergoeding vir die verrigting van enige diens wat 'n rente herberekenaar onderneem het om te verrig vir 'n verbruiker voordat sodanige diens ten volle verrig is;

"die partye" rente herberekenaars.

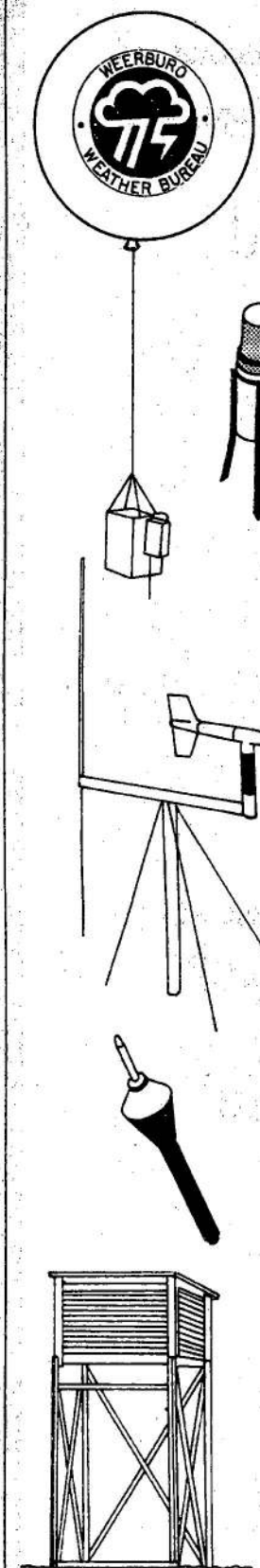
1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.
2. Die partye word hiermee gelas om—
   (a) af te sien van die toepassing van die skadelike sakepraktyk; en;
   (b) te gener tyd die skadelike sakepraktyk toe te pas nie.

Op aanbeveling van die Sakepraktykekomitee kan ek, in 'n bepaalde geval, kragtens artikel 12 (6) (c) van die Wet skriftelik vrystelling verleen van 'n verbod bedoel in hierdie kennisgewing, in die mate en vir die tydperk en onderworpe aan die voorwaardes in die vrystelling vermeld. Sodanige aansoeke om vrystelling kan gerig word aan:

Die Sekretaris
Sakepraktykekomitee
Privaatsak X84
PRETORIA
0001
(Vir aandag: Me. Lana van Zyl)

A. ERWIN
Minister van Handel en Nywerheid

SA WEATHER BUREAU SA WEERBURO



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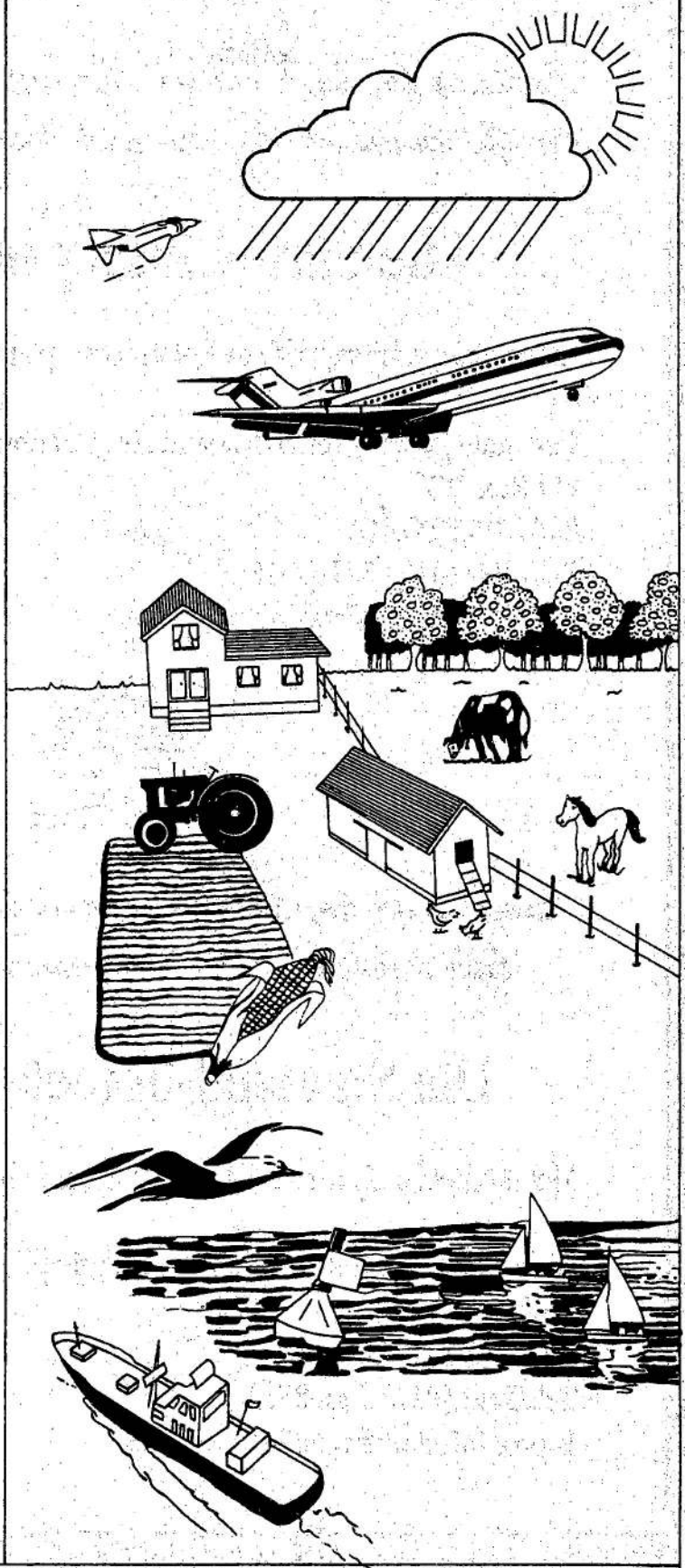

DEPT. OF ENVIRONMENTAL AFFAIRS AND TOURISM · DEPT. VAN OMGEWINGSAKE EN TOERISME

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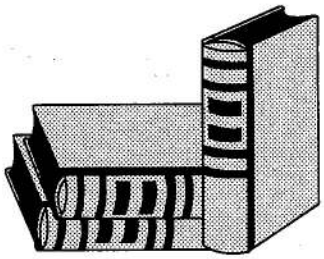

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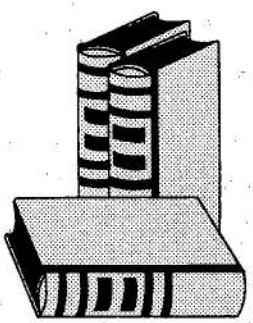

Waar is die meeste weerkundige inligting in die hele Suid-Afrika beskikbaar?

Department of Environmental Affairs and Tourism
Departement van Omgewingsake en Toerisme

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