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GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 2009 OF 1998

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 Notice No. 1194 of 22 August 1997 (*Government Gazette* No. 18208 of 22 August 1997), as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

KENNISGEWING 2009 VAN 1998

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 Kennisgewing No. 1194 van 22 Augustus 1997 (*Staatskoerant* No. 18208 van 22 Augustus 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. 59****XB NATIONAL CARE SOCIETY (PTY) LTD****CONTENTS**

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3. PRELIMINARY INVESTIGATION
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1. Introduction

The Business Practices Committee (the Committee) administers the Harmful Business Practices Act (Act No. 71 of 1988) ("the Act"), as amended. A harmful business practice is defined as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relation between business and consumers, unreasonably prejudicing or deceiving any consumer. The *raison d'être* of the Committee, and the Act for that matter, is thus in the interest of the consumer and specifically the consumer who is or is likely to be unreasonably prejudiced or deceived.

2. The complaint

The Committee received a complaint from the Office for Serious Economic Offences (OSEO) about XB National Care Society (Pty) Ltd (XB). The allegations were—

- (a) the policies issued by XB were not underwritten;
- (b) claims exceeding R200 000 were not paid by XB;
- (c) bank accounts of members of XB were debited on strength of debit orders signed in favour of another (liquidated) entity.

On 9 April 1996 the Committee decided, with the view to obtain more information to institute a preliminary investigation in terms of section 4 (1) (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), into the business practice as applied by XB National Care Society (Pty) Ltd and any director, employee, agent, and/or representative of the aforementioned body corporate.

3. Preliminary investigation

XB was incorporated against the background of the liquidation of the following companies:

- (a) XB Holdings (Pty) Ltd;
- (b) XB Brokers (Pty) Ltd; and
- (c) XB Peoples Funeral Services (Pty) Ltd.

The director of XB was Mr M M Nxumalo (Nxumalo). XB runs a funeral scheme and accepts individuals and burial stokvels as members. The benefits of the "Basic Scheme" at R25 per month, are the following:

Funeral cover

Member: R7 000.

Spouse(s): R5 000.

Children:

Ages 14 to 24: R3 000.

Ages 06 to 13: R2 000.

Ages 00 to 05: R1 000.

The number of spouses is limited to three and the number of children is limited to 15 per spouse. Mr Nxumalo claimed that the policies issued by XB were underwritten by Safrican Insurance Company Ltd (Safrian).

A letter dated 9 October 1995 from Safrican to Nxumalo stated that "Safrian had not been a risk regarding XB clients from 1 September 1995 and would not entertain any claims arising from XB members". Investigating officers of the Committee (officials) met with Mr Nxumalo at his offices in Sheffield House, Johannesburg at 13:30 on 29 July 1996. When confronted with Safrican's letter, Nxumalo immediately called Safrican and asked to speak to a Mr Mbili. Mr Mbili was unavailable. Nxumalo alleged that the letter in question referred to the XB Peoples Funeral Services (Pty) Ltd and not to XB National Care Society (Pty) Ltd. Nxumalo explained the history of XB and the operations of stokvels at some length and produced a number of paid cheques to prove that XB had paid for funerals. The drawer of these cheques appeared to be XB Guards. Nxumalo explained that XB Guards was a security business which he owned.

Nxumalo claimed that he could not afford a bookkeeper. The number of members of XB at the end of June 1996 was 857. Nxumalo could not provide all the information requested and suggested that the officials talk to his general manager, Lindie Nxumalo. She was to be available on 7 August 1996. Lindie Nxumalo is a daughter of Nxumalo.

Officials visited XB on 7 August 1996 and asked Lindie Nxumalo to produce various books and documents. Lindie Nxumalo left the office to get the documents required and stayed away from lengthy periods. Upon her return it invariably happened that the books or documents requested were unavailable or incomplete. At times one Gugu Nxumalo was also requested to find the documents. Lindie Nxumalo claimed that she "works with the payments". At other times one Siphos Shabane was requested to provide answers or obtain documents. It was alleged that Siphos Shabane "works with the receipts and bank deposits".

The accounting system of XB appeared to be in total shambles.

The "Executive Director", one Thembi Mauke left in the middle of March 1996. She was followed up by one Rose Mhlanga who also left the employ of XB during May 1996. The officials required the bank statement for May 1996, only two pages could be produced. It was said that the reason why the bank statements could not be presented was that XB moved from the Cine Centre to its present location and that a number of documents went missing in the process.

The counterfoils of a number of cheques seemed to point to irregular payments. For example, the wording on the counterfoil of cheque 7 dated 16 April 1996 for R577 read "Ticket Xolani", cheque 12 dated 24 April 1996 for R695 read "Gown" and cheque 21 dated 30 April for R1 992 read "La Boutique Suite". Gugu Nxumalo could not explain these transactions or produce relevant invoices. These transactions took place "before her time" as she was appointed at the beginning of May 1996. She could, however, also not produce an invoice to support cheque 25 dated towards the middle of May 1996 for R1 200 towards "Cash Repairs".

It appeared that bank reconciliations were never done by Gugu Nxumalo or her predecessors. Siphos Shabane could not produce any documents to indicate that the amounts received corresponded with the amounts banked. The "Reconciliations" were allegedly at his home because he was working on them and they did not "know the investigators would require them". There was evidence that some of the monies received from XB members were paid into the account of XB Guards, allegedly on the instructions of one Thembi Mauke, who had also left the company.

Some funeral costs were paid by XB Guards. According to Lindie Nxumalo the salaries of the personnel of XB National Care Society (Pty) Ltd was paid by XB Guards. Safrican sent the Committee a fax on 25 July 1996 which read as follows:

.... "we do not underwrite XB National Care Society. It appears that we are looking at this business but have yet made a decision about it".

On 24 October 1996 Nxumalo held discussions with the Committee and agreed that he will furnish the Committee with relevant accountancy books and other documents of XB. These documents were not submitted because according to Nxumalo the enquiry made into the affairs of XB was a sequel to complaints from certain quarters and that the complaints had to be addressed. XB was therefore obliged to resolve and satisfy the Committee on the listed complaints. Furthermore his legal Counsellor demanded copies of all documentation in possession of the Committee relating to complaints that had been brought against XB by OSEO.

On 17 May 1997 officials again visited the offices of XB and met with Mr Nxumalo. He explained the business operation of XB. He claims that XB was operated on the concept of a stokvel. When XB was formed, premiums collected were insufficient to cover the unexpected high funeral costs which Nxumalo estimated to be R4 000 per funeral. On average there were about four funerals per month. He was morally therefore compelled to assist in whatever manner by advancing money from the other business (XB Guards) to XB. He remarked that the South African Police Services had enquired about the activities of XB. Consequently his legal Counsellor had advised him to distance himself from all activities of XB and as such it was dormant.

On the 2nd of June 1997 the officials received a report from Nxumalo dealing with the complaint against XB. In it he stated that XB Peoples Society (Pty) Ltd was placed in liquidation by an order of the Supreme Court of SA, dated 30 September 1995, as a result of an application brought by the Financial Services Board. Messrs B. S. Cooper and B. B. Nicc were appointed joint liquidators of the company and had carried out the liquidation.

Soon after the closure of XB People Funeral Services (Pty) Ltd during August 1995, the liquidators requested that he (Nxumalo), should meet the affiliated societies and some individual members with a view to informing them about the closure of the company. The people were duly met and addressed on the issue of the closure of the company. The community burial stokvels then decided to contribute whatever they could to assist each other in times of death of one of its members. The same group of societies had requested Nxumalo to register a company for them in order to start afresh with their burial work. XB National Care Society (Pty) Ltd was subsequently registered.

Capitalisation of the company was the next important matter that had to be tackled. The members of the different intended burial societies did not raise the money and the company could thus not be activated. Instead the burial societies continued to stand together and assist each other to bury any member with the funds they collected monthly for burial purposes.

The burial societies asked Nxumalo to approach various companies to underwrite their funeral benefits, so that they could again operate their registered company, namely XB. It took almost the rest of 1996 to get an underwriter that suited their scheme and monthly contributions. Rentmeester Assurance Limited (Rentmeester) agreed to underwrite and gave them their rules of operating the scheme. Mr Nxumalo stated that he at all times acted merely in an advisory capacity and his only intention was to assist burial societies who asked him for advice.

By the time XB contracted with the underwriter there was no finance readily available to activate the company "National Care Society (Pty) Ltd". There was also no money to repay XB Guards that had funded most of the funerals in the past when members' monthly collections could not cover all the burials. XB Guards did not intend acting as a burial society. It merely assisted by funding funerals on humanitarian grounds. Those people that were not assisted by XB Guards with funeral benefits are still waiting for re-imbursement by the committees of the different societies. Similarly XB Guards that ran an account specifically to assist the societies, is still waiting for re-imbursement to cover their shortfall at the bank. No monies were taken from members of the society other than to assist with burials.

Nxumalo contended that burial societies and stokvels were declared to be a traditionally Black phenomenon through which provisions are made for unexpected death. Neighbours, friends, relatives and other close social groups come together and decide on monthly contributions by each member towards a fund to provide for funerals of members or relatives. The benefits are clearly defined for various age groups of the dependants. This being the traditional way of providing for their needs, is a tradition found and practised in every town or township and does not involve the use of underwriters and brokers.

XB Guards decided, after considering all the costs, and the demands made on its staff to stop assisting the societies at that stage and to close down the activities of XB, leaving it to the societies concerned to deal with the company and to look after its own affairs. It was further agreed by the chairpersons of the societies that they would repay any money owed to XB Guards and that they would deal with any of their members whose funerals had not been paid for.

He (Nxumalo) had re-iterated that he was not and did not at any stage act as a director of XB. Neither was he registered as a shareholder or director of that company in any office. Whatever he did was at the express request of the burial societies and the liquidators of the old company to which the burial societies were affiliated. This assistance was, however, rendered without prejudice and without obligation save to ensure that ordinary society members continued to receive burial assistance. There was no intention whatsoever to act in his own interest.

Nxumalo stated categorically that at no stage did anyone else act as an own underwriter, or a broker without an underwriter. Dealings with the groups that he assisted at the request of the liquidators has been terminated, save for the repayment of what they owed XB Guards.

On 19 June 1997 Rentmeester confirmed that it had agreed to underwrite XB's policies. This was to be effective from 1 September 1996. But further discussions between XB and Rentmeester to finalise membership details, including monthly contributions per member, could not be held as was envisaged. The reason was that XB never succeeded to have the scheme in operation and there was thus no business transactions that took place between the two parties.

On 11 July 1997 officials met with Mr Pieter Johannes du Toit, who was listed as secretary of XB. He confirmed that Nxumalo had requested him to register XB on his behalf. He was an acting secretary of the company for registration purpose and for ease of signatories only. But had transferred the shares to the new owner (Nxumalo) effectively from date of incorporation.

4. The investigation

On 3 September 1996 the Committee decided to conduct a section 8 (1) (a) investigation into the business practices as applied by Mr M. M. Nxumalo (ID No. 4411285437088), XB National Care Society (Pty) Ltd and any director, employee, agent and/or representative of any of the aforementioned. The intention of publication of the notice of investigation was confirmed again on 8 March 1997. Notice No. 1194 of the investigation was published in the *Government Gazette* dated 22 August 1997.

XB National Care Society was incorporated on 4 September 1995, and its registered number is 95/09374/07. M. M. Nxumalo was the registered shareholder, sole director and Chairman of XB despite his allegations. This was also confirmed by Pieter Johannes du Toit.

XB opened an account at the beginning of 1996 at Nedbank in the name of XB Care Society, Account No. 700007 190805 1908 67202173. When XB Peoples's Society was placed in liquidation XB debited the bank accounts of clients who had signed debit orders in favour of a liquidation entity. This was done without knowledge or prior permission of clients. This action was likely to impact negatively on its relation with clients.

There was evidence that XB Guards had funded most of XB's funeral costs when members monthly collections could not cover all the burials. On 17 May 1997 officials were shown counterfoils of cheques of XB Guards that indicated payments made to members of societies for burials. This proved the fact that XB and XB Guards were operated as one company by Nxumalo. XB Guards was used as an underwriter of XB although it was not an insurance company. This had continued despite the fact that Rentmeester had agreed to underwrite XB's policies. It had happened that some members had paid their contributions but could not enjoy the funeral benefits. In the absence of a qualified underwriter all members of the Society were not safeguarded against any future non-payments of claims. Therefore they were unduly exposed to some risk. This action by XB has unreasonably prejudiced them and the conduct is considered to be harmful.

Nxumalo would not provide the information requested by the officials such as cash books, ledger and debtors books and cheque books. He explained that they were inviolable private property of XB which would not assist in the investigation. He further submitted that the books asked for could do nothing to prove or answer to the listed complaints that were received. Apparently this was done as they believed that they were entitled to their privacy and confidentiality under the constitution. It appears that XB operated without proper keeping of books of accounts and this was also a cause for concern.

5. Conclusion and recommendation

It is evident that XB National Care Society (Pty) Ltd operated without the underwriting of its obligations. This had the effect of unreasonably prejudicing its clients in that some members did not receive the burial benefits to which they were entitled.

XB National Care Society (Pty) Ltd, under the control of Mr M. M. Nxumalo, conducts business in a manner that has the potential of harming the relations between itself and consumers, this constitutes a harmful business practice as defined in section 1 of the Harmful Business Practices Act (Act No. 71 of 1988).

It is recommended that XB National Care Society (Pty) Ltd, Moses Michael Nxumalo or agent or any person acting directly or indirectly on behalf of XB National Care Society (Pty) Ltd or Moses Michael Nxumalo be prohibited from accepting any financial consideration from any person in terms of an arrangement that obliges XB National Care Society (Pty) Ltd, Moses Michael Nxumalo and/or the agent to provide benefits in relation to funerals.

E. M. MAFUNA

Vice-Chairman: Business Practices Committee

3 May 1998

NOTICE 2010 OF 1998

DEPARTMENT OF TRADE AND INDUSTRY

HARMFUL BUSINESS PRACTICES ACT, 1988

Whereas I, Alexander Erwin, Minister of Trade and Industry, after consideration of a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice No. 1194 of 1997 (*Government Gazette* No. 18208 of 1997), and which report was published by General Notice 2009 (*Government Gazette* No. 19235 of 11 September 1998), am of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers under section 12 (1) (b) and (c) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

A. ERWIN

Minister of Trade and Industry

SCHEDULE

In this notice, unless the context indicates otherwise—

“**harmful business practice**” means the operation of a funeral scheme business without its obligations being underwritten by a registered insurance company and whereby persons identified under “parties”, directly and/or indirectly—

- (a) accepts any financial consideration from any person in terms of an arrangement that obliges any party to provide benefits in relation to funerals;
- (b) makes any payment in relation to funeral benefits to any person in terms of paragraph (a) above.

“**the parties**” mean XB National Care Society (Pty) Ltd, Moses Michael Nxumalo or agent or any person acting directly or indirectly on behalf of XB National Care Society (Pty) Ltd or Moses Michael Nxumalo.

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) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income thereof;
 - (c) refrain from at any time applying the harmful business practice; and
 - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.
3. This notice shall come into operation on date of publication.

KENNISGEWING 2010 VAN 1998

DEPARTEMENT VAN HANDEL EN NYWERHEID

WET OP SKADELIKE SAKEPRAKTYKE, 1988

Aangesien ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan kennis gegee is by Kennisgewing No. 1194 van 1997 (*Staatskoerant* No. 18208 van 22 Augustus 1997), en welke verslag gepubliseer is by Algemene Kennisgewing 2009 van 1998 (*Staatskoerant* No. 19235 van 11 September 1998), van oordeel is dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, oefen ek hierby my bevoegdhede uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

A. ERWIN

Minister van Handel en Nywerheid

BYLAE

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

“die partye” XB National Care Society (Edms.) Bpk., Moses Michael Nxumalo, of die agent of enige persoon wat direk of indirek optree namens XB National Care Society (Edms.) Bpk. of Moses Michael Nxumalo.

“skadelike sakepraktyk” die sakepraktyk wat bedryf word as 'n begrafnisskema besigheid waarvan die verpligtinge nie deur 'n geregistreerde versekeraar onderskryf word nie en die persone geïdentifiseer as “die partye”, direk en/of indirek—

- (a) enige finansiële vergoeding aanvaar van enige persoon volgens 'n ooreenkoms waar die een party verplig is om voordele met betrekking tot begrafnisse te voorsien;
 - (b) enige betaling doen in verband met begrafnisvoordele aan enige persoon soos geïdentifiseer in paragraaf (a) hierbo.
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;
 - (b) op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk toepas, of om enige inkomste daaruit te verkry;
 - (c) te gener tyd die sakepraktyk toe te pas nie; en
 - (d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk toepas, te bekom nie, of om enige inkomste daaruit te verkry nie.
 3. Hierdie kennisgewing tree in werking op die datum van publikasie.
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