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GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 816 OF 1999

DEPARTMENT OF TRADE AND INDUSTRY
DEPARTEMENT VAN HANDEL EN NYWERHEID

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of 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 2007 of 1988 as published in Government Gazette No. 19222 dated 11 September 1988, as set out in the Schedule.

A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

KENNISGEWING 816 VAN 1999**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 2007 van 1998 soos gepubliseer in Staatskoerant No. 19222, gedateer 11 September 1998, soos in die Bylae uiteengesit.

A ERWIN

MINISTER VAN HANDEL EN NYWERHEID

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. 65

**The Serengeti Group of Companies
involving Kenneth Herbert Roberts**

1. INTRODUCTION

The Business Practices Committee (the Committee), a statutory body within the Department of Trade and Industry, administers the Harmful Business Practices Act, 71 of 1988, as amended (the Act). The purpose of the Act is to provide for the prohibition or control of harmful business practices, and for matters connected therewith.

A "business practice" includes any type of advertising and a "harmful business practice" is any business practice which, 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;

In terms of section 4 of the Act the Committee may undertake such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists, or may come into existence. The Committee may, in terms of section 8(1) of the Act, and subject to section 8(2), on its own initiative undertake such investigation as it may consider necessary into any harmful business practice which it has reason to believe exists or may come into existence.

The Committee has wide investigative powers. It may undertake a section 4(1)(c) or a section 8(1)(a) investigation in terms of the Act into the business practices of specific entities or persons. Section 4(1)(c) investigations are known as "informal" investigations and section 8(1)(a) investigations are called "formal" investigations. An informal investigation enables the Committee to undertake such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of informal investigations is not published in the Government Gazette, as opposed to formal investigations. The purpose of an informal investigation is to enable the Committee to make a more informed decision as to whether a formal investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of an informal investigation. He may do so in terms of a section 8(1)(a) or formal investigation.

2. THE ADVERTISEMENT

The business practices of the Serengeti Group of Companies (unless stated otherwise, Serengeti refers to Serengeti International Limited) involving Dr Kenneth Herbert Roberts (Roberts, ID 391015 5035 006) first came to the attention of the Committee during August 1995 because of an advertisement which appeared in "Die Landbouweekblad". A *verbatim* translation from the Afrikaans of this advertisement appears at the top of the next page.

At that time the Committee was undertaking an investigation into the business practices of Kleinsake Finansiering (Kleinsake, see the Committee's Report No 48: Kleinsake Finansiering Tvl & Ovs Bk and Others). Kleinsake purported to obtain loans at low interest rates from abroad for South African entrepreneurs who were unable to be accommodated by local banks. The "borrowers" were required to pay Kleinsake certain

**"ATTENTION ATTENTION!
COMMERCIAL FINANCING?
PRIVATE/BANK**

FUNDS AVAILABLE FOR THE FOLLOWING:

- NATIONAL AND INTERNATIONAL PROJECTS
- MINIMUM R500,000 - UNLIMITED
- PROPERTIES - TRANSPORT FIRMS
- MANUFACTURING CONCERNS - TAKE-OVERS
- RESTRUCTURING - BUSINESS DEVELOPMENT
- MANAGEMENT TAKE-OVERS - BUYING OF ASSETS
- RESULTS WITHIN 24 HOURS

SEND SHORT SUMMARY OF REQUIREMENTS

TO

SERENGETI INTERNATIONAL LIMITED

TEL (012) 342-4753/4

FAX (012) 342-1606"

amounts for "viability studies" and "other costs" to ascertain whether they qualified for the loans. The loans never materialised and an unknown number of consumers lost thousands of Rands to Kleinsake. It appeared that Serengeti conducted a similar business than Kleinsake.

3. THE ENQUIRY IN 1995

Investigation officers (officials) of the Committee visited Serengeti during September 1995 at its offices in Lynnwood, Pretoria. The managing director of Serengeti was Roberts. He told the officials that he was not involved in obtaining loans abroad for prospective clients. He alleged that he did not place the advertisement in "Die Landbouweekblad". At the time the advertisement appeared he was overseas and he only came to know about the advertisement when he returned from abroad.

Roberts said that a certain "A" placed the advertisement without his (Roberts') knowledge. Serengeti, however, paid for this "unauthorised" advertisement. Roberts maintained that there was no formal business relationship between himself and "A" and that they only shared offices. According to Roberts "A" "... had something to do with transport contracts". An official, during the course of an investigation into the business practices of another entity, held discussions with "A" during May 1998. "A" then claimed that he was paid a salary by Roberts. During August 1998 the official learned that "A" was imprisoned for counterfeiting banknotes.

Roberts stated that another person, "B", also had something to do with the advertisement. "B" was killed in a motor car accident two days after he got "involved" with Serengeti. Roberts was unable to explain exactly what the role of "B" was. He said "B" was interested to buy the "infrastructure" of Serengeti. This "infrastructure" apparently consisted of nothing more than office furniture and computers.

Roberts said that he imported and exported "commodities" and the officials accepted his explanation. The only "evidence" which the Committee then had that Roberts was apparently obtaining or trying to obtain overseas loans, was the advertisement in "Die Landbouweekblad". The Committee thus did not pursue the matter further.

4. THE ENQUIRY IN 1998

During May 1998 the business practices of Serengeti again come to the attention of the Committee. Detectives of the Commercial Crime Unit (CCU) of the South African Police Services handed three affidavits to officials of the Committee. The following is a brief summary of an affidavit by "X":

On 6 December 1994 "X" paid Roberts R25 000 to obtain a loan of \$850 000. During January 1995 Roberts informed "X" that the loan was approved and in March 1996 "X" received a letter from Trafford Investments (Trafford) saying that the loan application was receiving attention. In June 1996 he signed an agreement with Trafford Investments (IOM) Ltd to obtain an "Irrevocable Letter of Commitment To Provide a Loan Guarantee". This agreement was signed by Roberts as director of Trafford. During December 1996 "X" received a letter from Roberts stating that the loan would be paid out on 31 January 1997. A later letter stated that the loan would be made available on 3 February 1997. On 6 February 1997 Roberts again wrote to "X". He asked "X" to note that

"The overseas delay is due to the fact that January/February is the period of "RAMADAN" in the Muslim world from which the Bank Sources the funds originate. We were unaware that this would create delays".

Roberts now said that the loan would be available on 28 February 1997. During March 1997 Roberts borrowed R30 000 from "X". This money was allegedly required by Roberts for Serengeti Diamonds (Pty) Ltd. Soon afterwards "X" again advanced R40 000 to Roberts. During May 1997 Roberts wanted to borrow another R200 000 "X". He refused to do so.

It now appeared that Serengeti and/or associated companies did accept money from prospective clients to obtain loans abroad. On 14 May 1998 the Committee resolved to undertake a section 4(1)(c) investigation in to the business practices of Serengeti and Roberts.

Following the decision by the Committee on 14 May 1998, officials of the Committee and Roberts met on several occasions to discuss the business practices of Serengeti. These meetings were held at the offices of Serengeti and at times at the offices of the CCU. The CCU earlier seized files and documents from the Serengeti offices. Most of the meetings was attended by "Y", a legal advisor and employee of Roberts.

4.1 THE SERENGETI GROUP OF COMPANIES

A dormant company, Serengeti Holdings (Pty) Ltd, with Roberts as the sole shareholder, was allegedly established to participate in a joint venture investment to buy a well-known franchise in Brooklyn. This company did the administration for the Serengeti Group of companies.

Serengeti Equity Holdings (Pty) Ltd was established to buy a big hospital in Natal. This company, according to Roberts already paid a deposit of R50 000. The directors were Roberts and Joubert (see later). The latter became involved with Serengeti approximately two years ago.

Roberts held ± 90 per cent of the shares in Serengeti International Ltd. The other shareholders were AE Roberts, LM Pieterse and HG Maritz. The company was established to trade in "commodities".

Serengeti Diamond Corporation (Pty) Ltd, with Roberts as the sole shareholder, was established to obtain a "rough" licence for the buying and selling of diamonds. The name of Serengeti Ostrich Corporation, an unsuccessful company was changed by special resolution to Serengeti Diamond Cutting Works (Pty) Ltd. The shareholders were Roberts and a A Pienaar. This company "bought diamonds, cut and polished the diamonds and sold the final product to the trade".

Other Serengeti companies were Serengeti Unique Wild Life Experiences (Pty) Ltd, Serengeti Paprikor (Pty) Ltd, Serengeti Ginger Gypsy Fruit Estate (Pty) Ltd and Serengeti Dermal Institute (Pty) Ltd. Roberts alleged that there were no cross shareholdings between the companies mentioned above, although loans were granted and received between them.

4.2 THE SCHEME

It was extremely difficult to obtain information from Roberts. He never volunteered any information and had the habit of evading questions put to him. At other times he merely responded to questions by saying that he "... did not remember". The exposition that follows is based on allegations made by Roberts during various discussions.

Roberts alleged that he never approached anyone to obtain overseas loans for them. He emphasised that he was approached by prospective clients. He did, however, about three years ago, tried to negotiate an overseas loan for his own businesses. His attempt to obtain an overseas loan began when he paid between R50 000 and R60 000 to two gentlemen to secure the loan. He needed the loan to buy a chemical factory in Rosslyn. He lost the monies paid by him and he realised that the two gentlemen ran a "scam". He then went overseas himself in an attempt to secure a loan. Loans were "freely available" and the only problem was to set up the required guarantees. The loans that were "granted" and were "freely available" never materialised.

He eventually received a personal loan from a Mr Seabrook (Seabrook), a friend of his, of Seabrook Investments Limited, based in London. There was no formal loan agreement and Roberts was at liberty to redeem the loan when he was able to do so. When asked how it would be possible to transfer monies abroad without a formal agreement, he said that he rendered services to Seabrook, such as consultation work. The monies Seabrook owed him for these services were then written off against the loan from Seabrook.

After he received the "loan" from Seabrook, he made contact with a "Professor Brocalli". Brocalli was from "... a financial institution in Rome". This Brocalli "... had many contacts with banks". Roberts tried to negotiate for a loan of \$1 million. A complicating factor, according to Roberts, in obtaining the loan was that South Africa then had a new government and overseas investors were nervous to invest in South Africa. The loan was approved but then he (Roberts) had too few projects to justify a loan of \$10 million. Apparently \$10 million was the "minimum" that could be borrowed. He came back to South Africa and took options to buy a number of mines and farms.

His first clients were referred to him by Mr Allan Urquhart (Urquhart) of Potchefstroom. Urquhart had a number of clients that he could not "assist" and 90 per cent of Roberts' clients were referrals from Urquhart. Roberts "did not know" how Urquhart got to know about him. Roberts did viability studies for these clients before attempting to obtain loans for them. These studies were done by himself and other experts.

Roberts acted as the authorised agent ("gemagtigde agent") of Urquhart's clients, although, according to Roberts, they were in a technical sense still the clients of Urquhart. These clients had to pay his "direct" costs, such as airfares and travelling costs and the viability studies. The clients allegedly paid Urquhart who in turn paid Roberts. All the clients knew that the loans were to be obtained overseas, because the clients were previously turned down by South African banks.

The following is a direct translation what Roberts said about these loans on 1 June 1998.

"Loans were granted everywhere. The institutions said: 'Yes, we have money - give me a guarantee - a farm, building or patent. No, we do not want South African guarantees, but we require foreign guarantees'. I then worked on this issue. I found a foreign insurance company that was prepared to give a guarantee and I found the guarantee. Then there was a catch 22 situation. The person that gave the guarantee wanted a mortgage registered over the South African property. This was not always possible and I had to go back overseas on many occasions ("moes menige keer teruggaan") to confess to the persons that I did not carry out a due diligence".

When asked whether he ever succeeded in bringing in money from abroad for his clients Roberts answered in the affirmative. It was agreed that a meeting would be held at the offices of the CCU to verify from the files and documents that loans have indeed been obtained.

4.3. The accounting books

On 3 June 1998 an official went through the "books", files and documents of Serengeti at the offices of the CCU. The official's impression was that the "books" were in a complete disarray. Not a single shred of evidence in the files or "books" was found that monies were obtained from abroad for the many applicants.

On 17 June 1998 officials of the Committee handed a note to Roberts setting out some aspects that needed clarification at a following meeting. The next issues were *inter alia* raised. Roberts' responses to these issues, where applicable, are indicated in *italics*

The latest annual financial statements of Serengeti Holdings (Pty) Ltd, Serengeti Equity Holdings (Pty) Ltd, Serengeti International Ltd and Serengeti Diamond Corporation (Pty) Ltd were required. *(Roberts: "There must be annual financial statements, but I do not know where they are". He said that his previous accountant, who had copies of the financial statements, died some time ago. He could not recall when the accountant passed away).*

The official wanted to know how Serengeti was financed. This question could have been answered were the annual financial statements, including the cash flow statements, available. It was agreed that the official would go through the "books" that were with the CCU together with the bookkeeper to establish how Serengeti was financed.

The documents at the offices of the CCU revealed the existence of Serengeti Diamonds USA Inc. It was necessary for the Committee to know who the shareholders of Serengeti Diamonds USA Inc were and what the connection between this USA company and the South African Serengetis were. A Dr PJ Joubert, M.Sc, MBL, PhD, DBA, was instructed by the USA company to do a "Valuation Report" on Serengeti Diamond Cutting Works (Pty) Ltd. *(Roberts: I was a director of Serengeti Diamonds USA Inc, registered in Florida. There is also a Serengeti Diamonds Inc in Vancouver. This company has no connection with the USA company. The Vancouver version has or had a branch in Cape Town. Dr Joubert was a professor at the University of South Africa).* It later turned out that this "professor" was Dr Joubert, a director of Serengeti Holdings.

The perusal of the documents revealed that the Afrikaans newspaper, "Beeld", on 29 May 1995 debited Serengeti with R763.34 for an advertisement. A note on the invoice stated: "Buitelandse finansiering vir besighede vanaf 9rent (sic)...". The Committee was aware of the advertisement in "Die Landbouweekblad". The note on the invoice seemed to suggest that an advertisement was placed in the "Beeld" to solicit applications for overseas loans. The advertisement "mistakenly" placed in the *Landbouweekblad* was thus not the only one placed to solicit applications for loans.

During discussions on 29 May 1998 Roberts said that "Trafford Investments Limited" was a financing house. It now seemed that "Stafford" was "Pleased to advise that xyz loan application has received favourable consideration". The letter was signed by Roberts for and on the behalf of "Stafford". In another letter, to Finboer Diensburo BK, Roberts signed as "Director - Southern African Office". (*Roberts did not explain the exact relationship between Trafford, the Southern Africa Office and himself*).

4.4 RELEVANT LETTERS

4.4.1 A letter dated 30 November 1994

Roberts wrote, *inter alia*, to "PVZ" Associates:

"3. We confirm that we have strong international links with financial sources able to provide the required finance. We require a retainer of R100 000-00 (one hundred thousand rand) on commencement of any assignment. You will be invoiced monthly for all travel, accommodation and other expenses. You will receive periodic progress reports. Our past experience has shown that the successful conclusion of a project funding scenario is from 6 weeks to 5 months 3 weeks. The norm is 3 months. Except for the direct expenses incurred the retainer is fully refundable at the end of 6 months in the event that we are not successful. We like to feel that you pay for results not promises".

Comments:

(a) Roberts certainly had no "... strong international links with financial sources able to provide the required finance".

(b) The requirement of a retainer of R100 000 shows that Roberts was, contrary what he told officials of the Committee in 1995, involved in obtaining loans abroad for prospective clients, or pretended to do so.

(c) "Our past experience has shown that the successful conclusion of a project funding scenario is from 6 weeks to 5 months 3 weeks. The norm is 3 months". This statement by Roberts was misleading and constituted a harmful business in terms of the Act. He did not mislead "PVZ" Associates by accident, but by design. There was no past experience and there was certainly no "... norm of 3 months".

4.4.2 A letter dated 17 April 1997

This letter, dated 17 April 1997, was sent to all the clients of Serengeti and seemed to indicate that Roberts was stalling his clients. The letter, set out below, is somewhat incomprehensible and was translated from a very poor Afrikaans.

"LOAN APPLICATION"

Following our letter dated 5 March 1997 as to the state of affairs and plan of action to resolve the issue as soon as possible, we inform you as follows:

To date we have achieved the following:

1. We acquired loan possibilities ("lenings moontlikhede") at six entities.
2. Guarantees and collateral were arranged ("bekom") at three entities.
3. The elements to resolve the issue is now in place ("Die elemente om die aangeleentheid nou af te handel is in plek"). Although we realise that it can happen, we are not able to give a date and time for the completion, because there is enormous (geweldige) administrative work to be done.

Therefore the following was decided:

1. To close your file in terms of the agreement set out in our letter of 5 March 1997 and to refund you the costs provided by you within thirty days and thus to absorb the costs ourselves.

The conclusion is:

1. You are at liberty to again apply according to correct business principles. We will thus conclude a contract whereby you will pay the costs according to an agreed tariff. There is thus also a risk factor on your shoulders and we will thus be compensated for the time and labour pertaining to your application.
2. Up to now enormous ("geweldige") discussions took place over the issue and much unnecessarily and useless attention was given to a situation over which we had no control.
3. The principles ("beginsels") of a loan has basic guidelines:
 - ◆ a business plan
 - ◆ guarantee of repayment
 - ◆ attractive ("gunstige") interest rates
 - ◆ good business principles, etc

4. Discipline and patience by all concerned is an important element that was until now lacking because of some parties' unilateral actions that were often based on unfounded hearsay. It was therefore decided to handle all future negotiations in writing to avoid any misunderstanding.

You will be contacted as soon as possible to resolve the issue. You can contact Dr Joubert telephonically should you require more information. Should it happen that it is not possible to immediately talk to you, leave your name and telephone number so that you can be called back.

We thank you for your cooperation in these extremely difficult circumstances to find a speedy solution.
Yours sincerely

Director
for and on behalf SERENGETI INTERNATIONAL LTD"

Comments:

Roberts still pretended to be able to obtain loans. He stated: "You are at liberty to again apply according to correct business principles". There were apparently no moneys available, yet he promised to refund "... costs provided by you within thirty days and thus to absorb the costs ourselves".

4.4.3 A letter dated 14 May 1997

On 14 May 1997 Roberts wrote to "XYZ Safari Corporation"

"The negotiations, arrangements, etc will be completed within 90 days".

Comments:

Roberts very well knew that this statement was misleading.

4.5 MEETINGS HELD

4.5.1 Meeting with Roberts and "Y" on 24 June 1998

On 24 June 1998 officials met with Roberts and "Y" at the offices of the CCU. It was earlier agreed that a meeting would take place on 24 June 1998 with the bookkeeper of Serengeti. The bookkeeper would have given the outstanding information required

by the officials but was not present. Roberts said that he could answer all questions. The first question put to him was about R150 000 that was paid into the Serengeti Holdings (Pty) Ltd account on 30 March 1998. Roberts was asked who paid this amount into the account. The question was put to Roberts at 08h40 and by 09h10, after going through a number of books/documents, he was unable to answer the question.

It was agreed that a meeting with the bookkeeper was now overdue. For various reasons the first date that suited Roberts was 15 July 1998. It was agreed that this meeting were to take place at the offices of the CCU. While arranging this date Roberts suggested that he appoint an auditor to write up the "mess". He asked that the official support him when he put this proposal to the investigating officer of the SAPS. At an earlier meeting Roberts gave the name of his auditor.

4.5.2 Meeting with Urquhart on 30 June 1998

On 30 June 1998 an official held discussions with Urquhart at the offices of the Committee. Urquhart said that he previously owned a business, Finburo CC, and that he was a financial advisor and business consultant. He tried to assist a certain farmer with his financial affairs. This farmer told him (Urquhart) about Roberts and Trafford Investments and that Roberts tried to obtain an overseas loan for him (the farmer). This is how he (Urquhart) came to know Roberts. He met Roberts at the offices of Serengeti. Roberts showed him "bank guarantees" and once, while he was with Roberts, he (Urquhart), spoke to one of the financiers overseas. Urquhart was asked how he knew that he in fact spoke to someone overseas. He conceded that the call could have been a local one.

He was "impressed" with the way Roberts talked, the "bank guarantees" and the call to the "overseas financier". This is why he referred some of his clients to Roberts. He said that he received monies from clients and passed this on to Roberts. At times he issued cash cheques to Roberts for overseas expenses.

Urquhart was asked why he kept on referring clients to Roberts when no loans were forthcoming. He said that up to a certain stage he believed that the monies would indeed be made available. Urquhart undertook to furnish the Committee with certain documentation, such as:

- (a) all monies received from clients by him (Urquhart) on the behalf of Roberts, the names and addresses of the persons the monies were received from and the relevant dates,
- (b) all monies paid by him to Roberts and the relevant dates,
- (c) the cash that was handed to Roberts.

The official was to meet with Urquhart on 13 July 1998 to obtain this information. Urquhart did not turn up for the meeting because he "... did not have enough time to obtain the required information". It was agreed that he would visit the offices of the Committee on 20 July 1998.

4.5.3 Meeting with Roberts, Mrs Roberts and "Y" on 15 July 1998

An official met with Roberts, Mrs Roberts (the bookkeeper) and "Y" at the offices of the CCU. Mrs Roberts said, in Afrikaans, that the books were in a mess ("gemors"). Roberts did not repudiate this statement but said that not one cent was missing.

A spot check revealed that the following monies were received on the dates mentioned:

24 October 1995: Van den Berg	R50 000
5 December 1995: Rademeyer	R50 000
15 December 1995: Steenkamp	R50 000
27 December 1995: ???	R20 000 ⁽¹⁾
27 December 1995: ???	R2 000 ⁽¹⁾
5 January 1996: Silberbome Boerdery	R200 000
7 May 1996: Small Business Consultants Potch	R100 000 ⁽²⁾
17 August 1996: SNS Finansiële Dienste	R317 000 ⁽²⁾

(1) It could not be established where these monies came from.

(2) These amounts were received from Urquhart.

The amounts received were debited to the clients on unbound pages in their files. The normal procedure would have been to open a ledger. It also appeared that the funds of the various Serengeti companies and that of Roberts had been commingled. Funds were moved from one Serengeti company to another as the need for cash arose. During the spot check it appeared that Roberts also paid some expenses from his personal account. It could not be determined whether any of the monies received found its way into Roberts' personal accounts. The "messy" books and absence of financial statements prevented a conclusive assessment of the companies' or Robert's financial position.

Roberts was told at this meeting that he could address the Committee if he wished to do so. "Y" asked if they could bring along an advocate.

4.5.4 Meeting with Urquhart on 20 July 1998

Officials of the Committee again met with Urquhart on 20 July 1998. From documents obtained from Urquhart it appeared that during the period 25 March 1996 to 24 May 1996 he received R828 000 from Serengeti's clients and paid R650 000 over to Serengeti. The difference, ±R178 000, was retained by him as commission for services rendered.

Urquhart handed over copies of the following deposit slips of amounts paid into the Serengeti account:

30 March 1996:	R150 000
02 April 1996:	R50 000
11 April 1996:	R20 000
18 April 1996:	R250 000
07 May 1996:	R100 000

Urquhart gave the officials a copy of a letter dated 7 February 1996 from Trafford Investments Limited, to the attorneys of a Serengeti client. This letter was signed by Roberts as "Director - Southern African Office". The following is a quote from this letter:

"We are pleased to advice that our principals in London have agreed to a loan of R5 million in respect of the abovementioned client. It is anticipated that guarantees could be issued by the 29th February 1996 upon approval of the loan application which is being made to the South African Monetary Authorities (SARB)".

In a letter dated 20 February 1998 from Trafford Investments Limited, P O Box 1, SARK, GB-Channel Islands, to the Serengeti client it is stated:

"We are pleased to advice that you (sic) loan application has received favourable consideration. The conditions pertaining to the loan is (sic):

Amount: \$1 530 000

Period: 5 years

Interest: 8,5% per annum payable six monthly in arrears

Lender: Trafford and/or assigns".

4.5.5 Meeting with "S" and "G" on 23 July 1998

On 23 July 1998 officials of the Committee met with Messrs "S" and "G". They were anxious to obtain loans for their respective businesses. They said they responded to an advertisement placed by Urquhart in the "Landbouweekblad". The advertisement allegedly stated that loans could be obtained at "lower rates". Originally Urquhart would have raised a loan for them with the Bank of Africa, but after the bank closed down he (Urquhart) told them about Roberts that already obtained loans for others from abroad. These loans were ostensibly available at an interest rate of 8.5 per cent per annum. Urquhart did viability studies for them and he was paid a commission for this "work".

"S" was a top broker for a well-known insurance company when he got involved with Roberts. He and top officials of the insurance company developed an elaborate plan to pay Roberts his commission and refund the proposed "loans". It appears that "S"

cleared the plan with his seniors at the insurance company. The "investment and policy" plan were to work as follows:

Assume "X" needed R1 million. "X" would then apply for a foreign loan of R2 million from Roberts. Interest on the foreign loan was payable after one year in arrear. The idea was that once "X" received the R2 million loan, he would invest R1 million with the insurance company. This investment would yield a monthly income and this income would have been used to pay the premiums on a policy which would yield enough after 5 or more years to repay the loan. The commission "S" received for selling the policy was paid immediately paid to him by the insurance company. He used these commissions to pay Roberts' fees. Payments of the premiums on the policies was deferred for three months. All those involved thought by that time (three months) the foreign loans would have been made available and that the payment of the premium would thus pose no problem.

"S" handed photocopies of certain documents to officials of the Committee. One of these was of a cheque of R317 000 in favour of Serengeti Holdings drawn the brokerage firm of "S". The idea was Roberts would pay this and other monies over to the insurance company. On 12 August 1996 a Serengeti Holdings cheque of more than R360 000 (the actual amount on the photocopy was blurry) was paid into the account of the insurance company (the destination bank was Adderley Street, Cape Town). "S" and "G" maintained that before the cheque could be cleared, payment thereof was stopped by Roberts,

At one stage "S", "G", another person and Roberts went to London to finalise the "loan" and arrange and pay for exchange rate cover. They took R137 000 in travellers cheques with them. In London they exchanged these cheques at a Bureau de Change for pound sterling. Roberts then left them and later returned with a "receipt". It appeared to "S" and "G" that Roberts invested the money for his own account. "S" now owes the insurance company a considerable amount of money and he will probably be sequestered.

5. APPLICATION FOR THE VOLUNTARY LIQUIDATION OF SERENGETI

On 25 June 1998 Serengeti applied for its voluntary liquidation. The assets of the company was R15 000 in cash and its liabilities ±R1.8 million. The application was lodged with Cape Trustees.

6. INVITATION TO ROBERTS TO ADDRESS THE COMMITTEE

"Y" was told on two occasions that Serengeti (Roberts) was wellcome to address the Committee. On the first occasion he was unable to do so because, according to "Y", Roberts was abroad. On the second occasion "Y" stated that after considering the matter, they declined the offer to address the Committee on 1 September 1998.

7. NOTICE OF THE SECTION 8(1)(a) INVESTIGATION

The following appeared under Notice 2007 of 1998 which was published in Government Gazette 19222 of 11 September 1998:

"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)(a) of the said Act into the business practices of the Serengeti Group of Companies involving Kenneth Herbert Roberts, Kenneth Herbert Roberts (ID 391015 5035 006), and any employee, agent and/or representative of any of the aforementioned in respect of the activities of the mentioned group of companies.

Any person may within a period of fourteen (14) 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".

8. CONCLUSION AND RECOMMENDATIONS

It appeared that Roberts often went abroad. During 1994 he went overseas 14 times for a total of 158 days. The corresponding visits and days for 1995 and 1996 were respectively 10 times and 108 days and 13 times and 187 days. During the first four months of 1997 he went overseas on five occasions for a total of 74 days. Since January 1994 to April 1997 he thus undertook 42 overseas visits and stayed for a total of 527 days. The costs, in excess of R1 million, attached to these visits were paid for by the clients who "applied" for "overseas loans".

Roberts represented to his clients that he was able to secure loans and/or the necessary guarantees on their behalf. He could never do so over a number of years, yet kept on accepting their monies to frequently go overseas. For what purpose?

With the available evidence it also seems that Roberts contravened Notice 777 which appeared in the Government Gazette of 18 August 1995. In this notice the Minister placed a prohibition on the receipt of monies and other consideration for the arrangement of loans. This matter will be brought to the attention of the CCU.

Over the years the Committee has observed that many South African consumers are extremely credulous and even naive about financial matters. This observation of the Committee was reinforced by the behaviour of the clients (victims) of Roberts and Urquhart. The victims confidently believed that it was possible, even certain, to obtain loans from abroad at low interest rates while their unfortunate and less astute fellow South Africans were paying South African prime rate plus for their local loans. The loans negotiated and "approved" never materialised. *The applicants were led to believe they would receive the loans for which they had applied.*

The business practices of Kenneth Herbert Roberts, in the opinion of the Committee constituted harmful business practices. There are no grounds justifying the practices in the public interest. The Committee has consequently resolved to recommend to the Minister that in terms of section 12(1)(b) and (c) of the Harmful Business Practices Act he declares unlawful the business practices whereby:

- (i) Kenneth Herbert Roberts, directly or indirectly, in respect of:
 - (a) a money lending application, demands, receives or recovers any valuable consideration (the consideration) from the borrower or from any person so applying, whether on his own account or for any person other than the moneylender; until the amount of money to be borrowed has been deposited into a bank account; and being an account in respect of which only the borrower shall be authorised to withdraw any funds;
 - (b) an interim transaction, namely the design of a feasibility study, a business plan, a cash flow plan, a market research project, the arrangement of a letter of commitment, the arrangement of an irrevocable letter of commitment to issue a guarantee and the issuing of an irrevocable letter of commitment to issue a guarantee that would lead or purport to lead to a money lending application, demands, receives or recovers any valuable consideration (the consideration) from the borrower or from any person so applying, whether on his own account or for any person other than the moneylender; until the amount of money to be borrowed has been deposited into a bank account; and being an account in respect of which only the borrower shall be authorised to withdraw any funds; or
 - (c) convey the impression in advertisements that they can arrange financing of whatever nature

and

directs Kenneth Herbert Roberts 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 therefrom;
 - (c) refrain from at any time applying the harmful business practice;
- and

- (c) 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.

LOUISE A TAGER

CHAIRMAN: BUSINESS PRACTICES COMMITTEE

12 November 1998

NOTICE 817 OF 1999

HARMFUL BUSINESS PRACTICES ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in General Notice 2007 of 1998 published in Government Gazette No. 19222 of 11 September 1998, which report was published in Notice 816 in Government Gazette No. 20053 of 7 May 1999, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(1)(b) and (c) of the Harmful Business Practices Act (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 business practice whereby Kenneth Herbert Roberts:

- (a) in a money lending application, demands, receives or recovers any valuable consideration (the consideration) from the borrower or from any person so applying, whether on his own account or on behalf of any person other than the moneylender; until the amount of money to be borrowed offshore has been deposited into a bank account; and being an account in respect of which only the borrower shall be authorised to withdraw any funds;
 - (b) in an interim transaction, namely the design of a feasibility study, a business plan, a cash flow plan, a market research project, the arranging of a letter of commitment, the arrangement of an irrevocable letter of commitment to issue a guarantee and the issuing of an irrevocable letter of commitment to issue a guarantee, that precedes or would lead or purport to lead to a money lending application, demands, receives or recovers any valuable consideration (the consideration) from the borrower or from any person so applying, whether on his own account or on behalf of any person other than the moneylender; until the amount of money to be borrowed offshore has been deposited into a bank account; and being an account in respect of which only the borrower shall be authorised to withdraw any funds; or
 - (c) convey the impression in advertisements that he can arrange financing of loans through funds obtained offshore.
1. The harmful business practice is hereby declared unlawful.
 2. Kenneth Herbert Roberts is 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 therefrom;
- (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 upon the date of publication hereof.

KENNISGEWING 817 VAN 1999**WET OP SKADELIKE SAKEPRAKTYKE, 1988**

Ek, Alexander Erwin, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 2007 in Staatskoerant No. 19222 van 11 September 1998 kennis gegee is, welke verslag gepubliseer is by Kennisgewing 816 in Staatskoerant No. 20053 van 7 Mei 1999, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid 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 "skadelike sakepraktyk" die sakepraktyk waardeur Kenneth Herbert Roberts:

- (a) by 'n aansoek om geld te leen, enige betaling vereis, ontvang of enige teenprestasie van die geldlener verhaal of van enige persoon wat aldus aansoek doen, namens homself of namens enige ander persoon anders as die geldlener; totdat die bedrag wat geleen staan te word van die buiteland in 'n bankrekening gedeponeer is; hierdie rekening moet sodanig wees dat slegs die lener gemagtig moet wees om enige gelde daaruit te onttrek;
- (b) tydens 'n tussentydse transaksie, naamlik die opstel van 'n lewensvatbaarheidsplan, 'n besigheidsplan, 'n kontantvloeiplan, 'n bemarkingsnavorsingsprojek, die reël van 'n verbintenisbrief, die reël van 'n onherroepelike verbintenisbrief om 'n waarborg uit te reik en die uitreiking van 'n onherroepelike verbintenisbrief om 'n waarborg uit te reik, wat die aansoek om 'n lening voorafgaan of wat sal lei of voorgee om te lei tot 'n aansoek om 'n lening, enige betaling vereis, ontvang of enige teenprestasie van die geldlener verhaal of van enige persoon wat aldus aansoek doen, namens homself of namens enige ander persoon anders as die geldlener; totdat die bedrag wat geleen staan te word van die buiteland in 'n bankrekening gedeponeer is; hierdie rekening moet sodanig wees dat slegs die lener gemagtig moet wees om enige gelde daaruit te onttrek; of
- (c) die indruk in advertensies skep dat hy finansiering kan reël deur middel van fondse verkry van die buiteland.

1. Die skadelike sakepraktyk word hiermee onwettig verklaar.
2. Kenneth Herbert Roberts 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 bedryf, of om enige inkomste daaruit te verkry;
- (c) te gener tyd die skadelike sakepraktyk te bedryf nie; en
- (d) te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.

3. Die kennisgewing tree in werking op die datum van publikasie hiervan.

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