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GENERAL NOTICES

NOTICE 407 OF 2002

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 4563 of 2000 as published in Government Gazette No. 21809 dated 1 December 2000, as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

**REPORT
IN TERMS OF SECTION 10(1) OF THE
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988
(ACT No. 71 OF 1988)**

Report No 87

**ACINAD PRODUCTIONS LTD, trading as
BUSINESS DEVELOPMENT INTERNATIONAL,
RIAAN VENABLES AND
SAM MOFOKENG**

1. The Consumer Affairs Committee

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of unfair business practices. An unfair business practice is defined as 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, deceiving any consumer or unfairly affecting any consumer.

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures to be followed, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister. In the pursuance of its objective, the Act confers wide investigative powers on the Committee. It provides for two types of investigations into the business practices of individual entities or businesses, namely "informal" section 4(1)(c) investigations or "formal" section 8(1)(a) investigations.

The usual procedure when the Committee receives a complaint from a consumer, is to undertake a section 4(1)(c) investigation. This type of investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any unfair business practice which allegedly exists or may come into existence. Notices of section 4(1)(c) investigations are not published in the Government Gazette, whereas formal section 8(1)(a) investigations are. The Minister is not empowered to make any decisions about the discontinuance of a particular unfair business practice on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8(1)(a) investigation.

It is not required in the Act that a section 8(1)(a) investigation must be preceded by a section 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispels with the section 4(1)(c) investigation. The Chairperson of the Committee invariably issues a press statement about an impending section 8(1)(a) investigation.

Should the Committee, after a section 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act.

The subsequent order of the Minister will be applicable to the particular individual(s) or business entity(ies). The order of the Minister is published in the Government Gazette. An infringement of the Minister's order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

2. An enquiry about the legality of Acinad

On 11 September 2000 the Committee received a letter from a consumer who enquired whether a scheme operated by Acinad Productions Limited (97/01706/07)(Acinad), trading as Business Developments for South Africa and Foreign African Countries, was legal. He wanted to invest in the company. The directors of Acinad are

Mr Riaan Venables (Venables), Ms Catherina Dora du Plessis (formerly Kilian) and Mr Sam Mofokeng (Mofokeng). Mofokeng is the "co-ordinating managing director". The main object of the company is stated on Form CM5⁽¹⁾ as the "... distribution and processing of poultry".

3. Advertisements placed by Acinad

Acinad placed advertisements in local newspapers inviting consumers to invest money in a "... giant R45 million chicken farm project" in the Fochville area. The following advertisement came to the attention of the Committee:

"FOCHVILLE BASED R45 MILLION CHICKEN PROJECT IN THE PIPELINE.

A Giant R45 Million Chicken Project based in Fochville will be housing 560 000 chickens per cycle, categorised as follows: 28 Chicken houses, each house consisting of 22 500 chickens. More investors are needed to invest R45 000 and receive a Toyota Corolla as well as R2 500 for 2 years. 7%⁽²⁾ shares will also be issued by the Local attorneys. Interested investors contact (016) 429 3070 or Sam at 083 541 3916 or 083 371 0562".

4. The meeting on 10 October 2000

A meeting was arranged between Venables and officials of the Committee on 10 October 2000. The meeting took place at a hotel in Vanderbijlpark. There were 14 people present and Venables said they were Acinad investors. Among those present were Mofokeng and Ms T Mbele (Mbele), an investor. The following is a summary of the information given by Venables at the meeting.

Venables said Acinad was registered in 1992⁽³⁾ and previously operated a chicken farm in the Eastern Cape Province. It now invites consumers to invest in a chicken project (hereafter called the project) with a view to raising R2.5 million. This amount was required to obtain the necessary R45 million for the project from a company in the United Kingdom. The R45 million was already approved and the money "... would soon arrive". Acinad also expected to receive another R20 million from Bancor of Asia Corporation.

The objectives of the project was to create jobs and Black empowerment. He had acquired land, valued at R2.2 million, in Fochville for the project. The land would serve as security for the investors. The first phase of the project, to house approximately 90 000 chickens and the construction of an abattoir, will commence during March 2001.

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- (1) South African Companies Registration Office's "Application for Reservation of Name or Translated Form or Shortened Form or Defensive Name" form.
 - (2) Investigating officials of the Committee were unable to establish what "seven per cent shares will also be issued by the Local attorneys" was intended to convey.
 - (3) The company was registered by the Registrar of Companies in 1997.

Investors were required to sign contracts prior to investing in Acinad. The minimum investment was R45 000 and the highest amount invested by a person was R135 000. Approximately 47 people invested R45 000 each. Investors received motor vehicles and they could choose between Toyota Corollas or Polo Playas or Kia Shumas. Investors also received an income of R2 500 per month for two years. An investor who did not wish to receive a motor car was entitled to a monthly income of R4 500⁽⁴⁾. Venables alleged that he had invested R1.4 million which was utilized by Acinad to pay for the aforementioned benefits offered to investors. The money invested was paid into the trust account of Acinad's attorney. Consumers would be refunded their investments two years after the date of their investments and then they had to return the vehicles.

Venables refused to provide an official with a copy of the contract between the investors and Acinad and the business plan. He agreed to meet with the Committee if he was invited to do so. He was invited to address the Committee at its next meeting which was to take place on 27 October 2000. He alleged that he had to attend a meeting in Cape Town on that day to secure new cars for the investors. He indicated that Mofokeng would attend the meeting of the Committee.

5. The meeting of the Committee on 27 October 2000

Mofokeng, accompanied by Mbele, attended the meeting of the Committee on 27 October 2000. Mofokeng *inter alia* informed the Committee that:

- (a) Venables could not attend the meeting,
- (b) a total of 49 investors each invested R45 000,
- (c) he received R5 000 for each investor canvassed,
- (d) he was responsible for the presentations and the advertisements about Acinad,
- (e) the names and addresses of the investors would be made available to the Committee but that only Venables could release such information,
- (f) the mayor of Fochville donated the land on which the development was intended to take place and
- (g) the attorney would provide the Committee with all documents which it required.

(4) Ignoring the monthly value of the cars to consumers, a monthly return of R2 500 on an investment of R45 000 is equal to an effective annual return of 66.67 per cent. The effective return is perhaps better illustrated in the case where investors choose not to receive cars, but opted for monthly incomes of R4 500. In this case the effective annual return is 120 per cent.

An official told the Committee that the attorney concerned no longer represented Acinad. Mofokeng said that he was unaware of this development.

At the conclusion of the discussion with Mofokeng, the Committee resolved to undertake a section 8(1)(a) investigation in terms of the Act into the business practices of Acinad, Venables and Mofokeng. The Committee further resolved that Mofokeng be informed of the resolution by the Committee and that Venables be requested in writing to assist the Committee with its investigation.

6. Publication of the notice of the investigation

The following was published under Notice 4563 of 2000 in Government Gazette 21809 dated 1 December 2000:

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 81 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practice of -

Acinad Productions Limited, formerly known as Acinad Productions (Pty) Ltd, trading as Business Development International, Mr Riaan Venables (ID No 630820 5020 08 5), Mr Sam Mofokeng (ID No 550113 5176 08 1) and any other director, employee, agent and/or representative of any of the aforementioned in respect of the activities of the aforementioned.

Any person may within a period of fourteen (14) days from the date of this notice make written representation regarding the above-mentioned investigation to: The Secretary, Consumer Affairs Committee, Private Bag X84, Pretoria, 0001"

7. The investigation

In a letter dated 5 November 2000 another attorney confirmed that he now represented Acinad. He alleged the following in his letter:

- (a) the project would create 2 500 new job opportunities,
- (b) on 3 November 2000 the Town Council of Fochville was expected to confirm the allocation of approximately 1 000 hectares for the project,
- (c) Acinad will be in full production as from 1 April 2001,
- (d) a loan of approximately R45 million was being negotiated with Bancor of Asia Corporation. The negotiations were almost completed and the formal guarantee was awaited within a "few days"⁽⁵⁾,

(5) On 10 October 2000 Venables told investors that the R45 million was already approved and the money would soon arrive (see section 4).

- (e) money paid by investors will be administered from Acinad's bank account or from the attorney's trust account,
- (f) a meeting will be held with the shareholders for the appointment of the directors and
- (g) Acinad will co-operate with the Committee.

The attorney furnished the Committee with a list of Acinad shareholders, copies of Acinad's registration certificates, the business plan for the project and the standard agreement with investors.

On 13 November 2000 it was reported in a local newspaper that a number of businessmen invested R160 000 in a non-existent Vereeniging "get-rich-quick" chicken farming scheme which promised an annual profit of R10 million. The profit or scheme itself did not materialise. It was alleged in the report that Venables was behind the scheme and that he had disappeared.

On 22 November 2000 the attorney was informed of the Committee's intention to investigate the business practices of Acinad, Venables and Mofokeng in terms of section 8(1)(a) of the Act.

On 12 December 2000 officials of the Committee met with Mofokeng and the attorney in Vereeniging. A copy of Notice 4563 was presented to them. They were requested to provide the officials with *inter alia* full particulars of the accountants appointed by Acinad, audited financial statements of Acinad and confirmation of the alleged allocation of 1 000 hectares for the project.

During the discussions the attorney said that the R45 million loan had been approved. He alleged that he negotiated the loan but that it would not be paid out unless Acinad deposited a service fee of approximately 34 800 US dollars into an offshore trust account. The attorney added that it appeared that Acinad was experiencing difficulties in meeting its obligation towards the investors.

The officials also visited the offices of Acinad on 12 December 2000 where they perused the investors' files. It appeared at that stage that there were 63 investors and that six of them had cancelled their contracts. Those that cancelled their contracts were refunded the amounts invested by them less penalties and payments already advanced to them. The vehicles made available to the investors were hired from a well known car rental business (hereafter referred to as CHB). Venables paid a cash deposit of R5 000 for each vehicle which was hired. No financial records were available and the officials could not determine how the investors money was invested.

On 13 December 2000 Venables called an official of the Committee and informed him that on 15 January 2001 all the investors will be refunded monies invested with Acinad. He said that he would provide the Committee with documentary evidence that the R45 million loan had been approved by a foreign company. Venables said that he would call the official later during January 2001 to make arrangements to meet with the

Committee.

On 19 December 2000 officials visited the Fochville Transitional Council (FTC) and CHB. An official of the FTC informed the officials that it had not entered into negotiations, agreements or created any expectations to make agricultural land available in Fochville for the purpose of a chicken farm. The Town Clerk once had a brief discussion with a person who enquired about the availability of land for a chicken farm. The enquirer was informed that the FTC did not dispose of any suitable agricultural zoned land and that estate agencies should be approached about the availability of privately owned agricultural land. The enquirer was furthermore requested to put his request in writing to enable the FTC to ascertain the needs pertaining to bulk municipal services. No written response was received from the enquirer. It appears, however, that the enquirer then made an appointment to meet with the Town Clerk to discuss the project. The enquirer did not turn up for the meeting.

CHB, the car rental firm, indicated that its relationship with Venables was that of a lessor and lessee and that CHB was not aware that Venables had misrepresented his business activities to their personnel at their Vanderbijlpark branch. A lease agreement for a vehicle was concluded with Venables on 23 June 2000. On 26 June 2000 he took delivery of two more vehicles, allegedly for persons who were "... bringing him business", and presumed to be his employees. Venables continued renting vehicles on a monthly basis and by 29 September 2000 the number of vehicles hired by him increased to 27. Venables was always the principal renter and the names of the investors were indicated as additional drivers on each rental agreement. On 25 July 2000 CHB informed Venables that he had to open an account instead of paying in cash. His application to open an account was, however, rejected because he provided his personal banking details and not that of a corporate account reference. CHB also established that he was not creditworthy due to four judgements for debts against him. He was consequently required to pay on a weekly basis.

Towards the end of September 2000 the head office of CHB was alerted to the fact that a single person was hiring a large number of cars. On 5 October 2000 a meeting between officials of CHB and Venables was held to discuss *inter alia* the requirements of Venables and his request to negotiate a new rate for the rental of the vehicles. At this meeting CHB discovered that Venables was hiring vehicles for investors who invested in the project.

Venables was then requested to provide a bank guarantee of R500 000 and that the motor vehicles be comprehensively insured while being rented. He was also requested to provide copies of the contracts entered into with investors. Venables failed to comply with the requirements and the rental agreements were terminated. It was alleged that Venables made veiled threats against certain staff members of CHB because CHB terminated the contracts.

On 5 February 2001 officials met with Venables, Mr FHJ Venables (the father of Venables), Mofokeng, a girl friend of Venables, Mbele and a "consultant" of Acinad. Venables told the officials that he wrote to President Mbeki to complain about the reluctance of entities to finance the project and thus stand in the way of job creation. He said that he received a letter from the Presidents office in which it was stated that

his complaint was referred to the Department of Trade and Industry.

Venables was informed that the Committee had not yet received the required information that was requested from the attorney and he undertook to provide the information before 9 February 2001⁽⁶⁾. He said that Acinad approached consumers to invest in the scheme in order to "activate" the project and thus far about 67 people have invested a minimum of R45 000 each.

Venables was asked whether consumers bought shares in the company. He answered in the affirmative and said that the share certificates were to be issued by the auditor. Venables could not say how many shares were acquired by each investor who paid R45 000. He was also at a complete loss when he was asked what the registered share capital of Acinad was. He groped for an answer and none of the persons who accompanied him could assist him in finding an answer.

Venables was given a letter from the FTC in which it denied that it donated land to Acinad. He reacted by saying that the statement of the FTC was an "infamous lie". He was informed that the matter could be easily resolved. All that was required of him was to furnish the Committee with evidence that the land was indeed available. Until such time, the Committee has a letter from a local authority which clearly states that the land is not available.

The R45 million loan from abroad again came under discussion. The "consultant" said that he negotiated the loan and that it was approved⁽⁷⁾. It only remained to finalize the guarantees and for Acinad to pay the service fee. He refused to provide documentary evidence that the loan was approved, saying that it was confidential information. An official asked Venables why it was necessary for Acinad to obtain finance from consumers if the R45 million required for the project was certain to arrive "... at any time". He was again at a loss for words.

It appeared that Venables was not able to understand why the Committee was concerned about the business practices of Acinad. He said that there were some investors that had already received their monthly incomes for eight months. There were no complaints from any investor and everybody was happy. It was explained to him that his plan was very undeveloped and as yet no land has been acquired for the project. He received at least R3 million⁽⁸⁾ from investors and there were clearly no assets. The money he received from new investors was used to finance the monthly incomes of previous investors and the rental of the motor vehicles. Acinad merely generated money to keep investors happy. Venables did not deny this statement but added that he had personally invested R1.4 million in the project. He could not, however, provide any documentary evidence of this investment. Mofokeng, by his own admission, continued to canvass new investors.

During the discussions it emerged that Acinad conducted its business on a cash basis.

(6) The information never reached the offices of the Committee.

(7) This was also said by one of the attorneys for Acinad (see section 7).

(8) 67 times R45 000. On 10 October 2000 Venables told investors that he required R2.5 million (see section 3).

Investors received their monthly incomes on a cash basis, the car rental company was paid in cash, the "consultant" was paid in cash for his costs and services rendered and Mofokeng received his commission in cash.

On 8 February 2001 the vice-chairperson of the Committee issued a press statement in which it was inter alia stated:

"It appears that Venables and Mofokeng are accepting 'investments' to erect a poultry processing plant. However the plan appears to be very undeveloped and as yet no land has been acquired for this purpose. The present 'investors' receive a monthly income, but it appears that their incomes are financed by new 'investors'".

8. Conclusion

The construction of the chicken pens and abattoir and the operation of the chicken farm appears to depend on securing R45 million from abroad. There is no evidence to suggest that this money will be forthcoming. It further appears that financial institutions are not eager to make finance available for the project. The only source of funds is consumers.

There is no doubt that new investors are financing the monthly incomes of previous investors and the rental of the motor vehicles. Acinad merely generates money to keep investors happy and the operation is akin to a money revolving scheme. There is no investment whatsoever to generate profits from which dividends could be paid. The scheme is dependent on a continuous flow of new investors and Acinad appears to be a front for a fake investment scheme.

Consumers are misled into believing that their investments will be utilized to acquire productive assets. They believe that the entity in which they invested acquired land in Fochville and that the company is profitable. How else can one explain the fact that for an investment of R45 000, refundable over two years, one receives a car for two years and a monthly income of R2 500, also for two years? They are probably unaware that there are no assets and that their incomes are financed by fellow investors.

It appears that Acinad, Venables and Mofokeng transgressed Notice 1135 dated 9 June 1999⁽⁹⁾. The Committee will bring this report to the attention of the Commercial Crime Unit of the South African Police Services for investigation as it appears to the Committee that Venables and Mofokeng not only contravened Notice 1135, they

(9) Multiplication schemes were declared unlawful on 9 June 1999 by the Minister of Trade and Industry in terms of section 12(6) of the Act. The order of the Minister was published under Notice 1135 in Government Gazette 20169. Any person who contravenes a notice published or given under the Act or who fails to comply therewith shall be guilty of a criminal offence. A multiplication scheme exists when a person or entity offers or promises or guarantees an effective annual interest rate of 20 per cent and more above the REPO rate, as determined by the South African Reserve Bank, to any investor. Acinad, Venables and Mofokeng offered investors annual returns of between 66.67 and 120 per cent. This is much more than 20 per cent above the REPO rate that applied at the dates the investors made their investments.

committed fraud.

It also appears that Venables and Mofokeng, by accepting deposits from the public, contravened certain provisions of the Banks Act. Information at the disposal of the Committee indicates that the South African Reserve Bank is aware of the activities of Venables and Mofokeng.

9. Recommendation

The "business" practices of Acinad Productions Limited, Venables and Mofokeng constitute unfair business practices in terms of the Act. There are no grounds justifying the practices in the public interest. The Committee therefore recommends that the Minister:

- (a) under section 12(1)(b) of the Act, declare unlawful the business practice whereby Acinad Productions Limited, Riaan Venables (ID 630820 5020 085) and Sam Mofokeng (ID 550113 5176 081) directly or indirectly,
 - (i) invite any persons to advance loans or take up shares in any business in which they have a direct or indirect interest, and/or
 - (ii) receive investment funds from any persons for management or re-investment of such funds on behalf of the investor; and/or
 - (iii) offer clients or investors a "money - back guarantee" of monies invested by them; and/or
 - (iv) pay interest to previous investors from monies obtained from more recent investors.
- (b) in terms of section 12(1)(c) of the Act directs Venables and Mofokeng to refrain from applying the unfair business practice.

PROF T A WOKER

VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE

NOTICE 409 OF 2002**CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 4563 of 2000 published in Government Gazette No. 21809 of 1 December 2000, which report was published in Notice No. 407 in Government Gazette No. 23261 of 22-03-2002, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) and (c) of the Consumer Affairs (Unfair 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 -

"the parties" means, Acinad Productions Limited (97/01706/07), trading as Business Developments for South Africa and Foreign African Countries, Riaan Venables (ID 630820 5020 085) and Sam Mofokeng (ID 550113 5176 081),

"unfair business practice" means the business practice whereby the parties, directly or indirectly

- (i) invite any persons to advance loans or take up shares in any business in which they have a direct or indirect interest, and/or
- (ii) receive investment funds from any persons for management or re-investment of such funds on behalf of the investor; and/or
- (iii) offer clients or investors a "money - back guarantee" of monies invested by them; and/or
- (iv) pay interest to previous investors from monies obtained from more recent investors.

1. The unfair business practice is hereby declared unlawful in respect of the parties.
2. The parties are hereby directed to -

- (a) refrain from applying the unfair business practice;
- (b) cease to have any interest in a business or type of business which applies the unfair business practice or to derive any income therefrom; and
- (c) refrain from at any time applying the unfair business practice.

3. This notice shall come into operation upon the date of publication hereof.

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