

National Consumer Tribunal cancels registration of two non-compliant debt counsellors

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In response to applications brought by the National Credit Regulator (NCR), the National Consumer Tribunal (NCT) cancelled the registration of a debt counsellor, Petrus Martinus Ferreira trading as Ferreira Debt Counsellors (FDC). The registration of another debt counsellor, Ralph Zulu of GNR and Associates was also cancelled; however, this cancellation was suspended for a period of one year. Both these debt counsellors were found to have repeatedly contravened the National Credit Act (NCA) and their conditions of registration.

The Tribunal ruled that Petrus Martinus Ferreira, who offered debt counselling through an entity called Ferreira Debt Counsellors (FDC) and operated 13 branches throughout the country, had contravened the National Credit Act in a number of ways. He had branches in Johannesburg, Cape Town, Port Elizabeth, Bloemfontein, Polokwane and Durban.

In a separate matter, the registration of KwaZulu Natal-based debt counsellor, Ralph Zulu of GNR and Associates CC was also cancelled; however, this cancellation is suspended for a period of one year. This effectively means that should Mr. Zulu contravene again within a year, he would not be allowed to proceed with his business.

In Ferreira's case, Adv. Jan Augustyn, Investigations and Prosecution Manager at the NCR said that after investigating, the NCR found that he had repeatedly failed to comply with the administrative duties of debt counsellors as prescribed by the National Credit Act and its Regulations and he also failed to comply with certain conditions of his registration. In this regard the investigation conducted by the NCR established, amongst others, that:

- Ferreira did not comply with the prescribed time-frames as set out in the National Credit Act;
- Ferreira did not submit debt review proposals on behalf of his clients to the affected credit providers; and
- Ferreira did not refer debt review applications to the Magistrate's Court for Court Orders.

This failure on the part of Ferreira placed his clients at serious risk in that credit providers could institute legal proceedings against such clients. These legal proceedings could result in clients losing their property including homes, vehicles etc.

The National Credit Regulator found that Ferreira not only failed to maintain adequate records and keep relevant copies of documentation in order to comply with the

National Credit Act, he also had set up a close corporation as a payment distribution agent, despite this not having been approved by the NCR.

Ferreira had claimed that FDC was a separate legal entity to himself and he could therefore not be held liable for contravening the law. The Tribunal, however, found that there was no distinction between him and FDC and that he had merely used the close corporation as a separate legal entity to avoid the law.

“Debt counsellors must act professionally and reasonably in providing debt counselling services to consumers and provide them in a manner that is timely, fair and non-discriminatory and does not bring the NCR or debt counselling into disrepute,” said Augustyn. “Ferreira had failed on many of these counts.”

Augustyn said the Tribunal had cancelled Ferreira’s registration and he was now required to deliver a list of all his past and current clients to the NCR so that the necessary steps could be taken to assist Ferreira’s former clients.

In the matter of Ralph Zulu, the NCR found that Zulu had not adhered to several NCA and regulatory requirements with regard to prescribed time-frames, keeping of proper records, and following the debt counselling process through to the end by obtaining Magistrate’s Court Orders in respect of his clients.

Last year the Tribunal had adopted a rehabilitative approach in disciplining Zulu rather than penalising him with fines or immediate deregistration. The Tribunal had ordered him not to take on any new clients for the six month period ending February 2010, pending further investigation reports to be conducted by the NCR on a monthly basis. The further investigation reports also proved that Zulu’s administration of files had improved considerably during this time. The Tribunal decided to cancel his registration, however, this was suspended for one year until February 2011, based on a number of conditions which included, that Zulu does not further contravene the National Credit Act; he will assist clients whose debt review process had been terminated due to his failure to comply with the NCA; and that he pays outstanding costs in respect of investigations conducted by the Regulator.

Augustyn further noted that non-compliance with an order of the Tribunal is a criminal offence punishable by a fine and/or imprisonment for a period not exceeding 10 years. “Debt counsellors play a key role in the debt review process, therefore the NCR will continue to closely monitor the behaviour of all registered debt counsellors and other registrants in terms of the NCA to ensure that all parties are protected.” “We cannot allow already debt stressed consumers to be exploited by the very people that must assist and protect them”, concluded Augustyn.

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