

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case Number: **NCT/10293/2013/148(1)P**

In the matter between:

HANS REINHARD PETTENBURGER-PERWALD (Debt Counsellor) **1st APPELLANT**

DANIEL COENRAAD DU BUSON (Consumer) **2ND APPELLANT**
ID: [.....]

and

BAYPORT FINANCIAL SERVICES (PTY) LTD **1ST RESPONDENT**

JDG TRADING (PTY) LTD **2nd RESPONDENT**

AFRICAN BANK LIMITED **3rd RESPONDENT**

Coram:

Prof J Maseko – Presiding Member

Adv F Manamela – Tribunal Member

Mrs H Devraj – Tribunal Member

Date of hearing – 11 December 2013

RULING AND REASONS

APPELLANTS

1. The First Appellant is Hans Reinhard Pettenburger-Perwald, a debt counsellor (hereinafter referred to as “First Appellant”) conducting business in B[.....]. He is also a registrant in terms of Section 40 of the National Credit Act, 34 of 2005 (the “NCA” or the “Act”) with registration number NCRDC 49.

2. The T.I 148 form was completed by the First Appellant on behalf of the consumer, Daniel Coenraad Du Buson (hereinafter referred to as the “Second Appellant”).
3. At the hearing of 11 December 2013, both Appellants did not attend the hearing and nor were they represented.

RESPONDENTS

4. The 1st Respondent is Bayport Financial Services (Pty) Ltd, a company duly registered in terms of the Company Laws of the Republic of South Africa (hereinafter referred to as “the 1st Respondent”) and a registered credit provider with the National Credit Regulator.
5. The 2nd Respondent is JDG Trading (Pty) Ltd, a company duly registered in terms of the Company Laws of the Republic of South Africa (hereinafter referred to as “the 2nd Respondent”) and a registered credit provider with the National Credit Regulator.
6. The 3rd Respondent is African Bank Limited, a company duly registered in terms of the Company Laws of the Republic of South Africa (hereinafter referred to as “the 3rd Respondent”) and a registered credit provider with the National Credit Regulator.
7. At the hearing of 11 December 2013, the Respondents were not present and nor were they represented.

APPLICATION TYPE

8. The Appellants lodged an appeal to a full panel of the Tribunal in terms of Section 148(1) of the Act against a decision by a single member of the Tribunal.

BACKGROUND

9. The Appellants had applied to the Tribunal for the confirmation of a debt re-arrangement agreement in terms of Section 138(1) of the NCA under case number NCT/8710/2013/138(1)(P). On 7 July 2013, Tribunal Member, Ms. Laura Best, refused to confirm the draft consent order. The grounds for refusing to confirm that order were that:

- a. The interest rate agreed upon between the 2nd Appellant and the 2nd Respondent exceeded the maximum interest rate that was in force on the 9th July 2012, prescribed by the NCA and the Regulations under that Act.
10. The rate agreed upon with the 1st Respondent, which is said to be higher than the interest rate agreed upon with the 2nd Respondent, had not been mentioned in the ruling refusing the consent order.
11. The order was issued to the parties on 18 July 2013.
12. On 20 August 2013, the 2nd Appellant, through a registered debt counsellor, Hans Reinhard Pettenburger-Perwald, brought an appeal in terms of Section 148(1) against the decision of the single panel member above.

ANALYSIS OF THE APPEAL

13. The appeal did not meet the requirements as set out in Rule 26(5) and 26(6) of the Rules of the Tribunal¹.
14. Rule 26(5) requires an appellant to:
 - (a) prepare 4 copies of the record of the ruling appealed against;
 - (b) prepare 4 copies of the appeal documentation; and
 - (c) index and paginate such documents in separate bundles.
15. Rule 26(6) expressly requires that the bundles contemplated in subrule (5) are delivered to the Registrar (of the Tribunal) within 5 days of the filing of the Respondent's replying affidavit or in the absence of a reply within 5 days of the lapse of the period provided for in subrule (4).

DISMISSAL OF APPLICATION

¹ Rules for the Conduct of Matters before the National Consumer Tribunal published under GN789 in GG30225 of 28 August 2007 as amended by GenN428 in GG34405 OF 29 June 2011 (hereinafter "the Rules of the Tribunal").

16. As stated above, there was no appearance by either of the Appellants or any representative on the date of the hearing, 11 December 2013. Rule 26(9) provides that *“The Parties and their legal representative may appear at the appeal hearing.”* File records showed that the parties were issued with a notice of set down 22 November 2013 requiring them to attend the hearing.
17. With regard to the non-appearance of parties at a hearing, Rule 24(1) of the Rules of the Tribunal provides that:
- “If a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party-*
- (a) is the applicant, the presiding member may dismiss the matter by issuing a written ruling; or*
- (b) is not the applicant, the presiding member may-*
- (i) continue with the proceedings in the absence of that party; or*
- (ii) adjourn the hearing to a later date”*
18. Rule 24 (2) requires the Presiding Member to be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).
19. Rule 24(3) requires the Registrar (of the Tribunal) to send a copy of the ruling to the parties in the event that a matter is dismissed or is to continue on a future date.
20. Since, as indicated above, the notice of set down was sent to all the parties by the Registrar’s office via e-mail on 22 November 2013; the appeal panel of this Tribunal noted that there had been no formal application for a postponement, and nor was this appeal withdrawn in the prescribed manner or at all.
21. The Presiding member of the Tribunal was satisfied at the hearing, that the parties were properly notified of the date, time and venue for the proceedings.
22. The appeal was then formally dismissed by the appeal panel of the Tribunal.

RULING

23. Accordingly, the Tribunal hereby confirms that this appeal lodged in terms of section 148(1) of the Act is dismissed in terms of Rule 24(1) of the Rules of the Tribunal.

Thus handed down at Centurion on thus 22nd day of January 2014.

[signed]

Mrs H Devraj

Tribunal Member

Prof J Maseko (Presiding Member) and Adv F Manamela (Tribunal Member) concurring.