

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

Case Number: **NCT/88262/2017/56(1)**

In the matter between

MORTGAGE SECURED FINANCE (PTY) LTD

APPLICANT

and

THE NATIONAL CREDIT REGULATOR

RESPONDENT

Coram:

Prof Tanya Woker – Presiding member

**APPLICATION TO FILE AN OBJECTION TO A COMPLIANCE NOTICE
JUDGMENT**

APPLICANT

1. The Applicant is Mortgage Secure Finance (Pty) Ltd a registered credit provider with registration number NCRC4865.

RESPONDENT

2. The Respondent is the National Credit Regulator, established in terms of section 12 of the National Credit Act, (the Act), and responsible for *inter alia* monitoring the credit market to ensure that prohibited conduct is prevented or detected and prosecuted.

APPLICATION TYPE

3. This is an application to the National Consumer Tribunal (the Tribunal) to permit the Applicant to file an application for a review of a compliance notice issued in terms of section 55 (1) of National Credit

Act, 2005 (the Act) by the Respondent to the Applicant. The application is brought in terms of section 56 of the Act.

BACKGROUND

4. In November 2014 the Respondent conducted an investigation into the activities of the Applicant after receiving a complaint from consumers (Gert and Jennifer Collins) regarding certain fees which were being charged by the Applicant in relation to a mortgage bond which was granted by the Applicant to these consumers. A subsequent report was drafted by the Respondent's inspectors and is dated 17 April 2015.
5. The Applicant received this report after a court order was issued on 26 May 2016 ordering that the report be filed by 19 August 2016. This court order was issued in relation to the case of *Mortgage Secured Finance (Pty) Ltd (the Applicant) vs Gert and Jennifer Collins* (Case No 1803/2016 in the High Court of South Africa, Western Cape Division).
6. On 12 September 2016, the Respondent issued a compliance notice to the Applicant in terms of sections 55 (1) of the Act regarding the fees which the Applicant charges consumers.
7. The Applicant has applied to the Tribunal for this notice to be reviewed as provided for in terms of section 56 of the Act. Section 56 (1) (a) provides that an application for a review of the compliance notice by the Tribunal may be filed within 15 days of the Applicant having received the notice. In terms of this section, the application for a review should have been filed on or before 6 October 2016. However, the Act also provides that the application for review may be filed outside the 15 day period provided good cause is shown (section 56 (1) (b)). The Applicant only filed its application for a review on 24 October 2016. Hence the need for the Applicant to apply for a review of the compliance notice, which the Respondent has opposed.

APPLICABLE SECTIONS OF THE ACT AND CASE LAW

8. Section 56 of the Act provides that any person issued with a notice in terms of section 54 or 55 may apply to the Tribunal for the notice to be reviewed within 15 business days after receiving that notice (section 56 (1) (a) or such longer period as may be allowed by the Tribunal on good cause shown (section 56 (1) (b)).

9. Although the parties have referred to this matter as an application for condonation, this is not an application to condone non-compliance with the Act or with any rules relating to the Act, as the Act specifically provides that an applicant may apply to file an application for review outside the 15 day period, provided good cause is shown. Nevertheless, the Tribunal has in numerous matters dealt with the issue of “good cause” in applications where the Applicant or Respondent has failed to comply with the Tribunal Rules¹ and is therefore seeking condonation. So, in order to decide whether the Applicant has shown good cause, it is useful to refer to the law which has been applied in condonation applications.
10. In *Head of Department, Department of Education, Limpopo Province v Settlers Agriculture High School and Others*² it was held that the standard for considering an application of this nature is the interests of justice.
11. Whether it is in the interest of justice to grant condonation depends on the facts and circumstances of each case. It requires the exercise of a discretion following an objective consideration of all the facts. Factors that are relevant include but are not limited to:
- (1) the nature of the relief sought;
 - (2) the extent and cause of the delay;
 - (3) the effect of the delay on the administration of justice and other litigants;
 - (4) the reasonableness of the explanation for the delay;
 - (5) the importance of the issue to be raised; and
 - (6) the prospects of success.³
12. In *Melane v Santam Insurance Company Limited*⁴ it was held that these factors are interrelated and should not be considered separately.

CONSIDERATION OF THE MERITS

13. In its application the Applicant explains that there is a High Court matter which is dealing with the mortgage bond dispute that it has with the consumers who laid the complaint with the Applicant. The Applicant was of the view that the notice would be dealt with in this matter.

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.

² 2003 (11) BCLR 1212 (CC) at para[11].

³ *Van Wyk v Unitas Hospital and Others* 2008(4) BCLR 442 (CC) at para 20 as applied in *Camagu v Lupondwana* Case No 328/2008 HC Bisho.

⁴ 1962 (4) SA 531 (A) at 532C-F.

14. As far as the merits of the matter are concerned, the Applicant disputes that the fees which are being charged are fees which are prohibited by the Act and alleges that these are fees which are charged in respect of services provided by a third party.
15. The Respondent has objected to the application on the basis that the notice relates to other consumers as well and not just to the matter involving the original complainants (Mr and Mrs Collins). It disputes that this allegation constitutes a proper basis on which to base an application for condonation. The Respondent also argues that the Applicant's objection to the compliance notice holds no merit and should be dismissed.
16. The issue regarding the fees the Applicant charges is an issue that can only be decided by a full hearing into the matter by the Tribunal. There is a material dispute of fact regarding the nature of these fees.
17. The compliance notice was only issued after the High Court in the Western Cape ordered that the Respondent's report into the Applicant's fees be filed and delivered to the Applicant. The Applicant's explanation therefore that it believed that the notice would be dealt with by the High Court is a feasible one. (It is noted from the Respondent's answering affidavit filed in September 2017 that this matter has still not been finalised).
18. The Applicant filed its application for a review of a compliance notice 10 days after the 15 day period provided for in section 56 (1) (a) expired which is not an excessive period of time given the time lines in this particular matter.
19. The Respondent will not suffer any prejudice if the Applicant is permitted to file its application for a review of the notice and it is in the interests of justice that this matter should be properly ventilated before the Tribunal in order for it to reach an appropriate decision regarding the nature of the fees consumers are charged.
20. The Tribunal finds that, taking these factors into consideration, there is good cause in these specific circumstances to permit the Applicant to file its application for a review of the compliance notice as provided for in section 55 (1) (b).

ORDER

21. Accordingly, for the reasons set out above, the Tribunal makes the following order:-

(1) The Applicant may file its application for a review of the compliance notice in terms of section 56 (1) (b); and

(2) No order is made as to costs.

DATED ON THIS 17th day of October 2017

{signed}

T Woker

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Presiding Member