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IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION

Case Number: NCT/88018/2017/165(1)

In the matter between:

BENAY SAGER obo
ENGELA HELENA HARDING

APPLICANT

And

AFRICAN BANK LIMITED	1 ST RESPONDENT
BAYPORT FINANCIAL SERVICES (2010) PTY LTD	2 ND RESPONDENT
DIRECT AXIS (SA)PTY LTD, AGENT FOR CALL DIRECT ON BEHALF OF FIRSTRAND	3 ND RESPONDENT
FINCHOICE (PTY)LTD	4 TH RESPONDENT
NEDBANK LIMITED	5 TH RESPONDENT
STANDARD BANK OF SOUTH AFRICA LIMITED	6 TH RESPONDENT

Coram:

Mr A Potwana	–	Presiding member
Adv J Simpson	–	Member
Prof. K Moodaliyar	–	Member

Date of hearing – 26 October 2017

JUDGEMENT AND REASONS

APPLICANT

1. The Applicant is Benay Sager, a debt counsellor duly registered with the National Credit Regulator under registration number NCRDC 2484.
2. The Applicant represents Engela Helena Harding, a major female residing in Johannesburg who is under debt review (hereinafter referred to as "Consumer").

RESPONDENTS

3. The First to the Sixth Respondents are all registered with the National Credit Regulator as credit providers (hereinafter collectively referred to as "the Respondents").

BACKGROUND

4. During January 2017, the Applicant lodged an application (through registered debt counsellor Benay Sager) with the Tribunal in terms of Section 86(8) of the National Credit Act¹ ("Act") to have a debt re-arrangement agreement confirmed as an order of the Tribunal.
5. The debt re-arrangement was confirmed as an order of the Tribunal on 2 March 2017 as per the case number NCT/74278/2017/138(1)(P).
6. During March 2017, the Applicant lodged an application with the Tribunal in terms of Section 165(1) of the Act to have the order granted on 2 March 2017 varied.
7. The basis for the application is that *"Due to a system error that occurred on 23 January 2017 the Consumer's Standard Bank account number [...] was excluded from the Consumer's payment plan,"* and that further negotiations were *"entered into with Nedbank limited who consented to the reduction in instalment for account number [...]."*
8. On the date of the hearing there was no appearance by the Applicant or the Respondents. The Registrar advised the Tribunal that the Applicant was contacted on the morning of the hearing but the Applicant did not intend appearing before the Tribunal and in fact intended to withdraw the

¹ 34 of 2005.

matter. No withdrawal form had however been filed.

CONSIDERATION OF THE APPLICATION

9. As stated above there was neither appearance by the Applicant nor any representative on the date of the hearing.

10. Rule 24 of the National Consumer Tribunal Regulations states the following:

"(1) 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;

(2) The Presiding member must 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); and

(3) If a matter is dismissed, the Registrar must send a copy of the ruling to the parties. "

11. The Notice of Set Down was sent to all the parties by the Registrar's office via e-mail on 19 September 2017.

12. At the time the matter was called by the Tribunal panel, there was no appearance by any of the parties.

13. The Presiding member of the Tribunal was satisfied that the parties were properly notified of the date, time and venue for the proceedings.

14. The application was then formally dismissed by the Tribunal on record.

15. The Tribunal can note that the original application for the consent order does not contain any reference to a loan agreement with Standard Bank, Account number [...]. It appears to the Tribunal that the existence of this specific loan agreement with Standard Bank was only realised after the application was filed and the order granted. Further, Nedbank's consent to reduce the instalment only occurred after the order was granted. There is no apparent evidence of any error, omission, ambiguity or mistake made in the original consent order. Therefore, there is no apparent basis for a variation of the order under Section 165 of the Act.

ORDER

16. Accordingly, the Tribunal makes the following order:

15.1 The application lodged in terms of Section 165 of the Act is hereby dismissed.

15.2 There is no order as to costs.

THUS DONE ON THIS 30th DAY OF OCTOBER 2017.

[signed]

Prof. K. Moodaliyar

Member

Mr. A Potwana (Presiding Member) and Adv. J Simpson (Tribunal Member) concurring.