

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)

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

Case number: NCT/91811/2017/59(1)NCA

In the matter between:

RANDOLPH VAUGHAN SAMUEL

APPLICANT

And

NATIONAL CREDIT REGULATOR

RESPONDENT

Coram:

Mr T Bailey _ Presiding Member

Ms H Devraj _ Tribunal Member

Adv FK Manamela _ Tribunal Member

Date of Hearing – 17 July 2018

REVIEW OF A DECISION OF THE NATIONAL CREDIT REGULATOR

INTRODUCTION

1. The Applicant approached the Tribunal in terms of section 59(1) of the National Credit Act 34 of 2005 ("the NCA"), to review a decision of the Regulator ("the NCR"). This, after the Regulator issued a letter to the Applicant, informing him that his registration as a debt counsellor has lapsed due to the Applicant's failure to pay the annual renewal fees for the years 2014; 2015; and 2016. The Applicant's defence is that the Regulator acted *ultra vires* when it unilaterally decided that the registration of the Applicant had lapsed. Further that the Respondent's application of the NCA was incorrect when it declared his registration as a Debt Counsellor to have lapsed. The Respondent

contends that the registration of the Applicant lapsed by operation of the law regulating the affairs of debt counsellors in terms of the National Credit Act. It is the responsibility and obligation of the Applicant to ensure that the registration fees are paid annually when they become due.

THE PARTIES

2. The Applicant is Mr Randolph Vaughan Samuel, a natural person formerly registered with National Credit regulator as a Debt Counsellor under registration number NCRDC763, with nominated address being [...]. The Applicant was registered as a debt counsellor with the Respondent on 6 February 2009 with NCR registration number NCRDC763, (*"hereinafter, the Applicant"*). The Applicant represented himself at the hearing.
3. The Respondent is the National Credit Regulator (*"the NCR"*), a juristic person established in terms of section 12 of the National Credit Act, 2005 (*"the Act"*), whose principal address is 127 Fifteenth Road, Randjespark, Midrand, Gauteng, (*"hereinafter, the Respondent"*). The Respondent was represented at the hearing by Ms Lizelle Squirra, a Legal Advisor in the employ of the Respondent.

APPLICATION TYPE AND THE RELIEF SOUGHT BY THE APPLICANT

4. This is an application to review a decision of the Regulator, the NCR. The Applicant seeks the Tribunal's order to review the NCR's decision to cancel the Debt Counsellor's registration due to non-payment of renewal fees. When one looks at Form TI. 59(1), completed by the Applicant, Part C thereof- the Applicant ticked paragraph (2), where it is stated *"the decision of the Regulator to be reviewed"* Paragraph (2) of the form completed by the Applicant, states: *"a decision in terms of section 49 to vary the conditions or impose new conditions"*. This creates confusion as to the actual decision the Applicant wants the Tribunal to review. However it was clarified during the hearing that the Applicant sought the review of the Regulator's decision to cancel his registration as a debt counsellor, due to non-payment of renewal fees.
5. The Applicant's completed Form TI.59(1) seeking relief from the Tribunal can be briefly summarized from the extract in the said Form where the Applicant states: *"I urgently require my debt counsellor's license to be re- instated as the Respondent's decision, to cancel my registration, based on non-payment of my registration renewal fees is, in my view incorrect"*.

BRIEF FACTUAL BACKGROUND

6. On the 11th February 2014, the Respondent sent a Notice dated 12 December 2013, to the Applicant informing of the Annual Registration Renewal Fees due in terms of Section 51(1) (c) of the Act. Together with the aforementioned notice, the Respondent submitted an invoice for 2014 renewal fees and a statement to the Applicant. The Applicant failed to make payment in terms of the mentioned invoice.
7. On the 15th January 2016 the Respondent submitted a Notice to the Applicant informing him of the annual registration renewal fees due in terms of Section 51(1) (c) together with an invoice for 2016 renewal fees. The Applicant again failed to make payment of the said invoice. A copy of the Notice of the Annual Registration Renewal fee due in terms of Section 51(1) (c) for 2015 and the subsequent invoice sent for the 2015 renewal fees could not be located by the Respondent¹.
8. On 18 January 2017, the Respondent sent a Notice dated 14 December 2016 to the Applicant informing him of the Annual Registration Renewal fees due in terms of Section 51(1) (c) together with the an invoice for the 2017 renewal fees.
9. On 1 February 2017 the Applicant made payment in the amount of R375.00, being payment of the annual renewal fees for 2017. The proof of payment was attached to the Applicant's notice of Application to review a decision of the Respondent in terms of Section 59(1) of the NCA.
10. The Respondent then advised the **Applicant** of the lapsing of his registration, by letter dated 15 May 2017.²
11. On 25 May 2017 the Respondent received an email from the Applicant acknowledging receipt of the lapsing letter and requesting the re-instatement of his registration as he had made payment in full for the 2017 annual renewal fees. The Respondent declined the Applicant's request for re-instatement and stated the reasons for such refusal, **as being** that the registration had lapsed.

¹The Respondent however submits, despite the aforesaid, the onus rests with the Applicant to ensure that payment of the annual renewal fees are paid within the prescribed time as required by S52(5)(d) of the Act,

²A copy of the letter and email were attached as part of the bundle of the documents before the Tribunal

RESPONDENT'S OPPOSITION TO THE APPLICANT'S RELIEF

12. The Applicant's omission to make timely payment of the annual renewal fees for the years 2014, 2015 and 2016 respectively; is in contravention of Section 52(5) (d) of the Act and his Conditions of Registration.
13. The lapsing of the Applicant's registration is; therefore; not an administrative process, but was occasioned by the operation of law in terms of Section 52(4) (b) (i)-(iii).
14. It is trite, according to the Respondent; that once the prescribed date to pay the renewal fees had lapsed and the fee is not paid, the registration is no longer in effect. **And** the registrant (the Applicant in this matter) ceases to be the registrant as defined in the NCA. Should anybody be found to have offered or engaged in the service of a debt counsellor, or held him/herself out to the public as being authorised to offer any such service; while not being registered to do so; such a conduct would be in contravention of section 44(2) of the NCA, and be declared prohibited.
15. Accordingly, the Applicant's payment of his 2017 annual renewal fees notwithstanding, and his failure to make payment of his annual renewal fees for three consecutive years respectively, is a contravention of section 52(5)(d), and such conduct has consequently caused his registration to lapse. Furthermore, the Applicant was issued with his Conditions of Registration, which he accepted and signed on 6 February 2009.

ISSUE TO BE DECIDED

16. **The issue to be decided is** whether or not the non-payment of the renewal fees caused the Applicant's registration to lapse, and was occasioned by operation of the provisions of the NCA

CONSIDERATION OF THE APPLICABLE LAW

17. Section 51(1) (c) of the NCA provides that:

"The Minister may prescribe an annual registration renewal fee to be paid by the registrants"

18. The annual renewal fees and timeframes for paying the fees were accordingly prescribed by the Minister in the Regulation published under GN R9494 in Government Gazette 29245 on the 21 of September 2006.

19. Section 52(4) (a) and (b) of the NCA provides that: “A registration takes effect on the date on which the certificate or duplicate certificate of registration is issued; and subject to timely payment of the prescribed registration renewal fees, remains in effect until the registrant is deregistered and the registration is cancelled in terms of this Act; or it is lapsed on the last day upon which the prescribed renewal fee should have been paid in terms of section 51(1)(c)”

20. Section 52(5) (c) further prescribes:

“A registrant must ...

comply with its conditions of registration and the provisions of this Act”

21. Section 52(5) (d) further provides that a registrant must “pay the prescribed annual renewal fees within the prescribed time”

EVALUATION OF THE ISSUES

22. Since the inception of the Applicant’s registration in 2009, and until 2013, the Applicant paid his Annual Registration Renewal Fees. In the years, 2014; 2015 and 2016 respectively, the Applicant failed to pay his Annual Registration Renewal Fees, and continued to practice as Debt Counsellor without the authority to do so under the NCA. Such conduct is in contravention of the NCA and falls to be declared, “*Prohibited conduct*”.

23. Prior to the Applicant’s registration lapsing, the NCR issued notices to the Applicant, reminding him of the payment of renewal fees, but to no avail. In January 2017, the NCR again notified the Applicant that his renewal fees were due and payable.

24. On 16 May 2017 the NCR informed the Applicant by email that his registration as a debt counsellor has lapsed due to the Applicant’s failure to pay the annual renewal fees for the years 2014; 2015; and 2016. Once such event occurs, the registrant ceases to operate as Debt Counsellor, and should reapply for admission or registration as a Debt Counsellor *de novo*, should he so decide.

25. The Applicant’s defence that the NCR acted ultra vires when it “unilaterally” decided that his registration had lapsed, is rejected. On 18 January 2017, the NCR sent a notice dated 14 December 2016 to the Applicant together with an invoice for 2017 renewal fees, informing the Applicant about the Annual Registration Renewal Fees being due in terms of section 51(1) (c) of the NCA. Again, the Applicant’s further argument that the Respondent’s application of the NCA was

“incorrect” when it declared his registration as a Debt Counsellor to have lapsed, cannot be sustained.

26. On the contrary, the Tribunal accepts the NCR’s assertion that the registration of the Applicant lapsed by operation of the law regulating the affairs of debt counsellors, the National Credit Act. The decision to inform the Applicant about the lapsing of his registration is not an administrative one, but is occasioned by the application of the specific provisions of the NCA, regulating the registration of the registrants.³ Such provisions are peremptory and instructive. The NCR cannot escape the invocation of these provisions even if its administrative processes could be found to be lacking in determining whether or not the registrant’s fees are in order.
27. The Applicant has the obligation to ensure that his registration fees are paid annually when they become owing, due and payable. He has the responsibility as a registrant, to install systems within his establishment as Debt Counsellor that would assist him to keep track of his obligations requiring compliance with the NCA and the conditions of his registration as a Debt Counsellor. The onus rests with the Applicant to ensure the observance of laws regulating his trade or profession. The Regulator is under no obligation to remind the registrants to renew their Annual Registration Renewal Fees.
28. The Tribunal dealt with a similar matter regarding the effect of the registration of a registrant in the *National Credit Regulator v Lightning Cash Loans CC*⁴ In this case the Regulator approached the Tribunal for an order to cancel the registration of a registrant whose registration had lapsed. The Tribunal applied similar provisions of the NCA regulating the registration of a registrant, and made a determination regarding the existence of a registration of a registrant before considering whether or not there were grounds for such cancellation. In determining that, the Tribunal referred to section 57(1) of the NCA. This section provides for the cancellation of the registration, that one must be careful not to cancel the registration of an entity whose registration was no longer in force and effect or whose registration had ceased to exist.
29. In the current matter, the Applicant seeks an order reviewing the decision of the NCR, where the latter has declared the Applicant’s registration to have lapsed. In the *Lightning Cash Loans* case,

³ See sections 51 (1) ; 52(4); 52(5)(d) of the NCA

⁴ NCT 7281/2013/57 (1)(P)NCA

the Tribunal also addressed the lapsing of the registration of the registrant's on similar grounds: the Respondent's non-payment of the Annual Registration Renewal Fees (own emphasis)

30. In the present application before the Tribunal, as in the *Lightning Cash* case, the Applicant's registration did not remain in effect due to the Applicant's failure to timely pay the Annual Registration Renewal Fees for three consecutive years, 2014; 2015; and 2016. In terms of section 52(5) (d), the "*the remaining in effect of the registration*" (the phrase used by the Tribunal in the *Lightning Cash* case); is subject to only the obligation of payment of the annual registration renewal fee imposed on a registrant."
31. In the *University of Pretoria v Registrar of Patents*⁵ the learned Judge referred to section 40 of the Patents Act No.57 of 1978, and held that in terms of such section, there is no grace period for a late application for renewal. The court held that the patent had lapsed on the date upon which the registration should have been renewed. The court further held that section 40 provides that an extension can only be granted "*on good cause shown and on the payment of the prescribed fee.*" By the due date for the registration of the patent; there was no application for an extension of a registrant- "*the current registrant*", that is: a registrant whose registration was still in existence. The logic behind such a determination by the Tribunal; in the *Lightning Cash* case; was not at all, "*good cause shown*" or a prescribed fee paid. The court came to the conclusion that the 2004 patent application lapsed on 1 October 2005, upholding the appeal in that regard.
32. The NCA, unlike the Patents Act No. 57 of 1978,⁶ does not provide for a grace period after the lapse of a registration. The lapsing of the registration kicks in immediately on the date of failure to pay the Annual Registration Renewal fee. The Regulator must in terms of section 53(1) alter its register to show that the registration has lapsed.
33. Section 54 provides for restrictions by unregistered persons or associations who offer, engage or hold themselves out as authorised to engage in that activity. Such activities may be declared an offence, should the person or association instructed by the Regulator to cease and desist from continuing such activities, fail to stop from engaging in such conduct or activity.
34. In the result and for the reasons canvassed above, the Tribunal makes the following order:

⁵ 2011 JDR 1406 (GNP)

⁶ As amended up to 2002

ORDER.

- 35. The application to review a decision of the NCR (the Regulator), is hereby dismissed;
- 36. The Applicant's registration as Debt Counsellor has, in terms of section 52(4) of the NCA, lapsed;
- 37. The Applicant is directed to stop engaging in activities of a Debt Counsellor; and
- 38. There is no order as to costs

SIGNED AND DATED ON THIS_23rd DAY OF AUGUST 2018

ADV FK MANAMELA
PRESIDING MEMBER

With Mr T Bailey (Tribunal Member) and Ms H Devraj (Tribunal Member) concurring.