

IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: NCT- 232776-2022-Section 141(1) (b)

In the matter between:

STEFAN STEFFENS

APPLICANT

And

MICHEAL PETER BOYLEN

RESPONDENT

Coram:

Ms. P. Manzi-Ntshingila - Presiding Tribunal Member

Adv. C Sassman - Tribunal Member

Dr. M. Peenze - Tribunal Member

Date of Adjudication (in chambers) - 7 October 2022

Date of Judgment - 29 October 2022

JUDGMENT AND REASONS

THE PARTIES

1. The Applicant in this matter is Stefan Steffens, an adult male, consumer residing in the Western Cape (Applicant).
2. The Respondent is Michael Peter Boylen, who was registered as a Debt Counsellor with Registration letters and numbers NCRDC808 (Respondent).

APPLICATION TYPE

3. This application is made in terms of Section 141(1)¹ of the National Credit Act, Act 34 of 2005 (NCA).

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

4. On 24 June 2022, the Applicant made its application with the Tribunal, and the application was duly served on the Respondent via registered post on 24 June 2022. For effecting service to the Respondent, the Applicant used the address provided by the National Credit Regulator (NCR). The address is 523 Emerald Estate Diamond Drive, West Greenstone Hill, Edenvale. In June 2022, the Tribunal's Registrar issued a notice of filing to all the parties.
5. In Rule 13 of the Tribunal Rules², the Respondent had 15 business days to serve

¹ "Referral to Tribunal- (1) if the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to-

- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or
- (b) the Tribunal, with the leave of the Tribunal".

² GN 789 of 28 August 2007: Regulations for matter relating to the functions of the Tribunal and Rules for the conduct of the matters before the National Consumer Tribunal, 2007 (Government Gazette No. 30225). As amended.

an answering affidavit and file the same with the Tribunal's Registrar. However, the Respondent failed to do so.

6. The Applicant did not file an application for a default order in terms of Rule 25(2).
7. On 22 July 2022, the Tribunal's Registrar issued a notice of set down to all the parties, setting the matter down for hearing on 7 October 2022.
8. Due to changes in the Tribunal's hearing processes, the application for leave to refer was considered in chambers on 7 October 2022. It was not necessary for a formal hearing to be held.
9. Rule 13(5) provides that:

"Any facts or allegations in the application or referral not specifically denied or admitted in the answering affidavit, it will be deemed to have been admitted"; therefore, in the absence of any answering affidavit filed by the Respondent, the Applicant's application and all of the allegations contained therein are deemed admitted.

BACKGROUND

10. It is the Applicant's averment that in 2012 when he was applying for a loan or during a credit check by one of his creditors, he discovered that he was listed on the credit bureau as being under debt review. He was therefore refused finance or credit.
11. The Debt Counsellor (DC) who listed him, alternatively, Lifeline Debt Solutions being the company that employed the DC was said to be based in Kwazulu-Natal (KZN) and Gauteng (GP). The Applicant, therefore, viewed his case as one of few peculiar ones and questioned how, as a resident of the Western Cape, he could have any linkages to contracts signed in KZN. It was primarily on this basis that the Applicant denied any knowledge of the Debt Review Application, submitting that he

has never signed nor been in discussions with any DC, let alone one from KZN. Nor had he verbally or otherwise consented to the processing of a debt review application.

12. The Applicant submits that the additional basis for his denial is that from 2010 through 2022, he either had only one account, which was with Absa, or was under no financial difficulty to require nor have a need to be placed under debt re-arrangement. Therefore, he unequivocally denies making the application.
13. Consequently, the Applicant complained to the NCR under case number TU2012/02/15/000481/81. The NCR rejected his application and on 26 April 2012 closed his file. No mention is made of the reasons for the refusal or closure.
14. The Applicant stipulated that he recently gained information that he is still listed as being under debt review by the TransUnion credit bureau, and possibly by other credit bureaus. This discovery resulted in him launching a new application to the NCR against the Respondent. The NCR stated that six years and six months had elapsed since the listing. The NCR was, therefore, not prepared to take the matter any further due to the time limitation or prescription.
15. The NCR also referred to the Debt Counsellors Debt Help system, which reflected that the Applicant made the Debt review application on 10 May 2010.
16. The Applicant remained adamant about his denial, despite all that was presented to him by the NCR and the credit bureau, and further alluded that the listing was erroneous. He attempted to resolve the matter, but the DC or Lifeline Debt Solutions continuously requested the paid-up letters and was unwilling to entertain the Applicant or take the matter further for the removal from the debt review.
17. It was the dual refusal by the NCR to refer the matter and lack of assistance from

the DC or his employer that the Applicant applied to the Tribunal for leave to refer the matter. He wishes it to be heard and seeks a finding against the DC that the DC effectively acted *ultra vires*, or his listing was erroneous. The application of debt review in its entirety was a result of possible identity theft or mistaken identity.³

APPLICATION FOR LEAVE.

18. In terms of section 141(1) of the NCA, the Applicant may only refer a matter directly to the Tribunal with leave of the Tribunal.
19. Previously, the Tribunal held a formal hearing on leave to refer with all the parties present. In the matter of *Lewis Stores (Pty) Ltd v Summit Financial Partners (Pty) Ltd and Others* (Case no 314/2020) [2021] ZASCA 91 (25 June 2021) SAFLII, the court provided helpful guidance to the Tribunal in decisions regarding leave to refer. It held that a formal hearing to refer was unnecessary, there was no test to be applied, and the decision to consider leave could not be appealed. The court held-

"[15] As I have explained, the NCA provides for an expeditious, informal, and cost-effective complaints procedure. Section 141(1)(b) confers on the Tribunal a wide, largely unfettered discretion to permit a direct referral, to the Tribunal. The NCA does not require a formal application, and it is not necessary for purposes of the present appeal, nor is it desirable, to circumscribe the factors to which the Tribunal should have regard. There is no test to be applied in deciding whether or not to grant a direct referral to it in respect of a complaint. The purpose of the provision is simply for the Tribunal to consider the complaint afresh, with the benefit of any findings by the Regulator, and to decide whether it deserves its attention. Circumstances that may influence its decision may include the prospects of success, the importance of the issue, the public interest to have a decision on the matter, the allocation of resources, the complainant's interest in the relief sought, and the fact that the Regulator did not consider that it merited a hearing before the Tribunal. The list is not intended to be exhaustive."

As no test is to be applied, the Tribunal will consider the matter in the general context of the circumstances, as submitted by the Applicant.

³ Page 5 Paragraph 1 of the Tribunal bundle.

20. In the matter of *Road Accident Fund and another v. Mdeyide*⁴ the court held-

“In the interest of social certainty and the quality of adjudication, it is important that legal disputes be finalized timeously. The realities of time and human fallibility require that disputes be brought before a court as soon as reasonably possible. Claims thus lapse or prescribe after a certain period. If a claim is not instituted within a fixed time, a litigant may be barred from having a dispute decided on by the court. This has been recognized in our legal system –and others – for centuries.”

21. Section 166⁵ of the NCA states that a complaint may not be referred or made to the Tribunal more than three years after the act or omission occurred.

22. The complaint arose on 11 May 2010, when the Applicant was registered under debt review, whether correctly so or not. He, therefore, had until April 2013 to file this application with the Tribunal. The application was only filed with the Tribunal on 12 February 2021.

23. This application is out of time. The NCA does not provide an extension of the time based on when the consumer discovered the act or omission. The Tribunal has no power or discretion to extend or interrupt the limitation period of three years.

24. Even though the Tribunal cannot deal with the application, it can be noted that the Applicant’s evidence in this application stands uncontested. He submitted that he never agreed to be placed under debt review and made any payments.

25. The Applicant is at liberty to exercise his rights in terms of section 71(3) of the NCA, which regulates an exit.

Section 71(3) provides that-

“Removal of record of debt adjustment or judgment

⁴ (CCT)10/10 [2010] ZACC 18, 2011(1) BCLR 1.

⁵ 166. Limitations of bringing action.— (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after—

(a) the act or omission that is the cause of the complaint; or

(b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(3) If a Debt Counselor decides not to issue or fails to issue a clearance certificate as contemplated in subsection (1), the consumer may apply to the Tribunal to review that decision. If the Tribunal is satisfied that the consumer is entitled to the certificate, in terms of subsection (1) of the Act, the Tribunal may order the debt counselor to issue a clearance certificate to the consumer.

26. It is trite that section 71 is not the application before us and the Tribunal cannot, therefore, consider it.

CONCLUSION

27. The Applicant's application for leave to refer this application to the Tribunal has become time-barred and must be refused.

ORDER

28. Accordingly, the Tribunal makes the following order –

28.1. The Applicant's application for leave to refer the matter directly to the Tribunal is refused; and

28.2. There is no order as to costs.

Dated at Centurion on 29 October 2022.

Signed

Mrs. P.T. Manzi-Ntshingila

Presiding Tribunal Member

Tribunal members Dr. M. Peenze and Adv C. Sassman concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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