IN THE NATIONAL CONSUMER TRIBUNAL

HELD IN CENTURION

Case Number: **NCT/295854/2023/73(2)(b)**

In the matter between:

NATIONAL CONSUMER COMMISSION **APPLICANT**

and

BAJ AUTO INVESTMENTS (PTY) LTD **RESPONDENT**

TRADING AS AUTO INVESTMENT VANDERBIJLPARK

Coram:

Dr M Peenze - Presiding Tribunal member

Dr A Potwana - Tribunal member

Mr S Mbhele - Tribunal member

Date of hearing: 23 September 2024

JUDGMENT AND REASONS

APPLICANT

1. The applicant is the National Consumer Commission, a juristic person established under section 85 of the Consumer Protection Act, 68 of 2008 (CPA). During the hearing, the applicant was represented by its legal advisor, Ms Imran Magoro.

RESPONDENT

2. The respondent is Baj Investments (Pty) Ltd, trading as Auto Investment Vanderbijlpark, a supplier as defined under section 1 of the CPA. During the hearing, the applicant was represented by Mr Douglas Hewitt, an advocate of the Pretoria Society of Advocates instructed by Muller Oberholzer Attorneys.

APPLICATION TYPE AND JURISDICTION

3. This is an application in terms of section 73(2) of the CPA. The applicant alleges that the respondent contravened various provisions of the CPA.

4. In terms of section 27(a)(ii) of the National Credit Act, 34 of 2005 (NCA), the Tribunal has jurisdiction to consider this application.

INTRODUCTION

5. On 3 November 2023, the applicant referred a complaint to the Tribunal in terms of section 73(2)(b) of the Consumer Protection Act, 68 of 2008, (CPA) using Form T1.73(2)(b) CPA. The application documents were served on the respondent's attorneys, Muller Oberholzer Prokureurs, via email (by consent) on 3 November 2023. In "Part D: Order sought from the Tribunal", the applicant stated that it seeks order in the following terms:
   5.1. The respondent's contravention of the following sections of the CPA be declared prohibited conduct:
      5.1.1. 56(2)(a) to (b) read with 55(2)(a) to (c); and
      5.1.2. 51(1)(a) and (b).
   5.2. Interdicting the respondent from engaging in conduct amounting to contraventions of the sections of the CPA cited above.
   5.3. Directing the respondent to refund the complainant the amount of R277 899.00, the purchase price paid by her for the 2012 Volkswagen Amarok with vehicle registration number: CMS073NC, together with interest thereon in accordance with the Prescribed Rate of interest Act No. 55 of 1975 from the date it was paid to the respondent until final payment.
   5.4. Directing the respondent to pay an administrative penalty in the amount of R1 000 000,00 (One Million Rands).
   5.5. Any appropriate order contemplated in section 4(2)(b)(ii) of the CPA.

FACTS

6. The deponent to the applicant's founding affidavit is Ms Thezi Mabuza (Ms Mabuza), the applicant's Deputy Commissioner. Ms Mabuza stated that she deposed to the affidavit pursuant to her having studied the investigation report authored by Mr Tebogo Motseta (Mr Motseta). She averred that the applicant received a complaint from a complainant, Mrs Sonette Lombard (the complainant), who alleged that on 6 April 2022, she purchased and took delivery of a pre-owned 2012 Volkswagen Amarok with vehicle registration number CMS073NC (the vehicle) from the respondent for the price of R277 899.00. The vehicle's odometer reading was 185,000 kilometres at the time of the purchase. As part of the transaction, the respondent made the complainant sign a mechanical warranty waiver certificate wherein the respondent exonerated itself from liability in the event of a breakdown or failure.

7. Five days after taking delivery, on 12 April 2022, the vehicle's engine failed, and an engine warning light illuminated on the vehicle's display cluster while she was driving to Nelspruit. The complainant immediately notified the supplier via a WhatsApp message of her predicament. The supplier advised her

to drive to the nearest filling station. Five kilometres later, the vehicle broke down before she could reach the filling station. Thereafter, the vehicle was towed at the complainant's own cost to the nearest VW dealer for inspection. It was found that the vehicle's engine switched on but stopped running at some point. Upon further inspection, it was discovered that the camshaft was damaged. This was an indication that work had previously been done on the engine and that the head camshaft had previously been removed.

8. On 22 April 2022, the respondent towed the vehicle from Nelspruit to Vanderbijlpark and paid the cost of towing the vehicle in the amount of R10 000.00. On 25 April 2022, the respondent took the vehicle to Brother's Automotive in Vanderbijlpark, where an assessment was conducted. The assessment report revealed that the engine required an overhaul due to the oil pump having seized, which was a direct result of damage to the engine. After the respondent failed to claim the cost for the repairs from the complainant's insurance, the respondent informed the complainant that it would not repair, replace or cancel the transaction because the engine failure was due to her negligence.

9. Based on the above, the applicant suspected that the respondent had committed contraventions of the CPA and directed an inspector to investigate the complaint. During the investigation, the supplier advised that the vehicle had since been vandalised and some components had been stolen while it was in storage. As redress, the complainant wants the transaction to be cancelled, and the purchase price refunded.

10. The respondent filed an answering affidavit and raised four *points in limine*. It is pertinent that we consider these points from the onset.

The respondent's first point in limine

11. The first point in limine raised by the respondent is that Ms Mabuza's evidence constitutes inadmissible hearsay evidence because she does not have personal knowledge of the facts and has not stated that she had undertaken an investigation or interviews. It further argues that the author of the investigation report did not depose to a confirmatory affidavit to place his report under oath. The report, at best, is an affidavit deposed to outside the ambit of these proceedings. It constitutes inadmissible evidence as the veracity, truthfulness and contents of the report have not been admitted as evidence under oath by the author in these proceedings. The complainant deposed to a confirmatory affidavit on 2 October 2023. In this affidavit, she confirms that she read the affidavit of Ms Mabuza, which was deposed to only on 17 October 2023. She could not confirm the facts and evidence in Ms Mabuza's affidavit as that affidavit did not exist when the complainant deposed to the confirmatory affidavit.

12. In the applicant's replying affidavit, Ms Mabuza submitted that Mr Motseta's report is in the form of an affidavit and the complainant filed a confirmatory affidavit confirming the contents of the investigation report in so far as they relate to her. She argued that even if the contents of her evidence are based on hearsay evidence, the contents thereof are admissible in terms of section 3(1)(b) of the Law of Evidence Amendment Act 45 of 1988 in that both the inspector and the complainant have deposed to affidavits. Concerning the date on the complainant's confirmatory affidavit, Ms Mabuza stated that the complainant's affidavit was deposed to on 2 November 2023 as reflected on the Commissioner of Oaths' stamp.

13. Section 3(1)(b) of the Law of Evidence Amendment Act 45 of 1988 states that "Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings." In view of Motseta's affidavit, the complainant's affidavit, and Ms Mabuza's explanation that the month of October was erroneously inserted and that the complainant's affidavit was deposed to on 2 November 2023 as reflected on the Commissioner of Oaths' stamp, we are satisfied that Ms Mabuza's evidence does not constitute inadmissible hearsay evidence. The respondent's first point in limine is accordingly dismissed.

The respondent's second point in limine

14. The respondent alleges that the investigation report is an affidavit deposed to outside the proceedings before the Tribunal. The report was signed 6 weeks before the referral application was instituted before the Tribunal and Mr Motseta has not deposed to a confirmatory affidavit to place his report under oath. It argues that Mr Motseta's affidavit constitutes inadmissible evidence as the veracity, truthfulness and contents of the report have not been admitted as evidence under oath. It submits that the primary source of the facts is the complainant and that, at best, Mr Motseta's report is an affidavit deposed to outside the ambit of these proceedings.

15. The respondent did not provide any basis or authority for the above-stated assertion. The applicant's reasons for appending the founding affidavit of Ms Mabuza, who had no personal knowledge of the facts that form the basis of the applicant's referral, instead of the founding affidavit of the investigator, who has personal knowledge of the facts, and the confirmatory affidavit of the complainant remain a mystery. Notwithstanding, cumbersome as it might be, we are not aware of any legal prohibition that bars the applicant from filing the founding affidavit of Ms Mabuza and the affidavits of the investigator and the complainant, who have personal knowledge of the facts that form the basis of the complaint. In the result, we find that the point is meritless and is dismissed.

The respondent's third point in limine

16. The respondent argues that Ms Mabuza stated that she authorised Mr Velaphi Mabuza (Mr Mabuza) to investigate the complaint. However, the investigator who undertook the investigation was Mr Motseta and not Mr Mabuza. Thus, Mr Motseta was not authorised to undertake the investigation. Accordingly, the report is unauthorised and stands to be disregarded.

17. In the applicant's replying affidavit, Ms Mabuza stated that she erroneously alleged that Mr Mabuza was directed to investigate the complaint. In fact, the investigator who was authorised to conduct the investigation of the complaint was Mr Motseta, as stated in the investigation directive attached as annexure "G" to the applicant's founding affidavit.

18. Since annexure "G" to the applicant's founding affidavit shows that Mr Motseta was appointed to investigate the activities of Auto Investment Vanderbijlpark and Ms Mabuza's above-narrated explanation, we are satisfied that there is no merit to this point and dismiss it accordingly.

The respondent's fourth point in limine

19. The respondent alleges that the applicant's investigation as of 14 September 2024 was unauthorized and unlawful because the validity of the inspectors' certificate ended on 4 July 2023. In paragraph 4.8.9 of the investigation report read with its annexures "01-5", the investigator requested the complainant to respond to an allegation contained in the respondent's attorneys' letter stating that she decided to take the vehicle to Brother's Automotive. The complainant responded on the same day denying this allegation.

20. The applicant claims that the correspondence referred to by the respondent did not constitute a further investigation. The information provided by the complainant was a confirmation of allegations that the complainant already made when the complaint was lodged.

21. It is evident that the applicant's inspector acted ultra-vires when he contacted the complainant on 14 September 2024. The question is whether his illegal actions automatically render this evidence inadmissible. In Lenco Holdings Ltd and Others v Eckstein and Others,[1] Hurt J said:

> "I take the view that Lombard J and Myburgh J were both correct in holding that, in civil proceedings, the court has a discretion to exclude evidence which has been obtained by a criminal act or otherwise improperly. Given that there is such a discretion the next question is, what factors should weigh with the court in deciding whether to exercise it against a party who tenders such evidence.

[1] 1996 (2) SA 693 (NPD) at 704C.

In all probability the correct attitude is, and must be, that each case must be decided on its own facts."

22. The applicant is a creature of statute with extensive investigative powers. An inspector is expected to investigate a complaint as quickly as practicable.[2] The applicant has not explained why Mr Motseta could not complete the investigation within the three months specified in the Investigation Directive or why the period stated in the directive was not extended if he needed to continue with the investigation after the expiry of the three months stated therein. In the absence of these explanations, we find no basis to condone Mr Motseta's actions. It follows a fortiori that the contents of paragraph 4.8.9 of the investigation report read with annexures "01-5" are inadmissible.

23. The vexed question is whether the inspector's indiscretion renders the entire investigation unlawful as argued by Mr Hewitt. He did not present any legal authority for this proposition, and we could not find any. Accordingly, we disagree with Mr Hewitt's argument that the inspector's indiscretion in this regard renders the entire investigation unlawful. In our opinion, only the actions the inspector performed after the expiry of his authorization on 4 July 2023 are ultra vires and invalid.

24. In response to the factual issues, the respondent argues that the vehicle was sourced from Auto Alive at the complainant's express insistence. The vehicle was serviced on 1 March 2022, a month before the sale, and was delivered on 31 March 2022 from Auto Alive. It was certified as roadworthy. The roadworthy test included an inspection of the engine, engine and transmission mountings, and oil leaks. It submits that the cause of the failure of the vehicle was a direct result of the complainant's own negligence in that she failed to adhere to the engine warning light and continued to drive the vehicle. Had the complainant adhered to the warning light, only the oil pump would have been replaced at the cost of approximately R1 650.00, excluding labour. The seizure of the oil pump was because of fair wear and tear. To support this claim, the respondent referred the Tribunal to the confirmatory affidavit of Mr Lourens Hand and Mr Pedro Hand of Brother's Automotive. In his affidavit, Mr Lourens Hand stated that he has been "the workshop's business owner for approximately four and a half years." He averred that in his "professional opinion that the engine damage and failure was caused by the oil pump that seized up." He opined that after the oil pump seizes, the driver must stop immediately, failing which severe engine damage or failure would occur. In his confirmatory affidavit, Mr Pedro Hand stated that he has been a qualified mechanic for approximately nine years and confirmed the contents of the respondent's answering affidavit and Mr Lourens Hand's confirmatory affidavit.

[2] Section 72(1)(d) of the CPA.

25. The respondent further argues that the assessment report relied upon by the applicant constitutes inadmissible hearsay evidence because it was authored by a receptionist, Ms Jani Helberg, and was not placed under oath by a confirmatory affidavit from the mechanical engineer or workman who conducted the assessment of the vehicle. It submits that the document is speculative and does not provide a factual explanation for the possible reasons for the cams being damaged. The assessment report does not state that the vehicle had any prior defects and that the damage was not due to fair wear and tear to be expected in a second-hand vehicle which has done more than 185 000 kilometres or that the continued driving of the vehicle after the engine light came on was not the cause of the damage. The report does not provide any evidential basis for the claim that the vehicle was not in good working order and free of defects at the time of sale and that the breakdown of the vehicle was not due to fair wear and tear to be expected in a second-hand vehicle which has done more than 185 000 kilometres.

26. The respondent further argues that even if Nelspruit VW allegedly confirmed that the vehicle was previously worked on, the engine was opened, and the head was removed, this does not indicate any wrongdoing by the respondent. The respondent was unaware of any such work, and Messrs Hand from Brothers Automotive confirmed that the issue they discovered would not have been discoverable unless the entire engine had been dismantled.

THE LAW

27. Section 51(1)(a) and (b) of the CPA states –

> "A supplier must not make a transaction or agreement subject to any term or condition if—
>
> (a) its general purpose or effect is to—
>
> (i) defeat the purposes and policy of this Act;
>
> (ii) mislead or deceive the consumer; or
>
> (iii) subject the consumer to fraudulent conduct;
>
> (b) it directly or indirectly purports to—
>
> (i) waive or deprive a consumer of a right in terms of this Act;
>
> (ii) avoid a supplier's obligation or duty in terms of this Act;
>
> (iii) set aside or override the effect of any provision of this Act; or
>
> (iv) authorise the supplier to—
>
> (aa) do anything that is unlawful in terms of this Act; or
>
> (bb) fail to do anything that is required in terms of this Act."

28. Section 55(2)(a) to (c) of the CPA states –

> "Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
>
> (a) are reasonably suitable for the purposes for which they are generally intended;
>
> (b) are of good quality, in good working order and free of any defects;
>
> (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply."

29. Section 56(2)(a) to (b) of the CPA states –

> "Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—
>
> (a) repair or replace the failed, unsafe or defective goods; or
>
> (b) refund to the consumer the price paid by the consumer, for the goods."

CONSIDERATION OF THE MERITS

30. At the outset, we record that there is no evidence that the applicant bought the vehicle from Auto Alive. As per annexure "B1" of the investigation report, we are satisfied that the complainant bought the vehicle from the respondent. It is common cause that the respondent made the complainant sign a mechanical warranty waiver certificate wherein it exonerated itself from liability in the event of a breakdown or failure. It argues, however, that the mechanical insurance notice does not contravene the CPA because the vehicle was 10 years old and had travelled almost 200 000 kilometres. Accordingly, the vehicle was prone to experience mechanical breakdowns as a result of fair wear and tear. It argues that the notice complies with the provisions of section 49 of the CPA. These arguments are misplaced. While we are mindful of the fact that the vehicle was 10 years old and had travelled almost 200 000 kilometres, the provisions of section 51(1)(a) and (b) of the CPA are not concerned with the condition of the goods. They prohibit the inclusion of terms and conditions specified therein in transactions or agreements without exception. The age of the vehicle and the kilometres travelled are not relevant in determining whether the respondent contravened the provisions of section 51(1)(a) and (b) of the CPA.

31. The respondent's argument that the complainant was entitled to decline signing the mechanical insurance certificate as the agreement was not subject to the signing of the mechanical insurance document is also misplaced. The provisions of section 51(1)(a) and (b) of the CPA are peremptory. They place an obligation on the supplier not to make a transaction or agreement subject to any term or condition specified therein. It is, therefore, not a valid defence to claim that the complainant was entitled to decline to sign the mechanical insurance certificate. The duty was on the respondent not to make the transaction of the agreement subject to any term or condition prohibited in section 51(1)(a) and (b) of the CPA.

32. In our view, the words "As of the date of sale Auto Investments will not be held accountable for any claims that may arise as a result of a breakdown or failure on the abovementioned vehicle" appearing in annexure "L" to the applicant's investigation report clearly evidence that the respondent made the transaction subject to a term or condition that:
    32.1. was intended to defeat the purposes and policy of the CPA, mislead or deceive the complainant or subject her to fraudulent conduct in contravention of section 51(1)(a) of the CPA;
    32.2. directly purported to waive or deprive the complainant of her rights to, amongst others, direct the respondent to repair or replace the vehicle or demand a refund if the vehicle failed to satisfy the requirements and standards contemplated in section 55 of the CPA in contravention of section 51(1)(b)(i) of the CPA;
    32.3. directly purported to avoid the respondent's obligation or duty to repair or replace the vehicle if the vehicle failed to satisfy the requirements and standards contemplated in section 55 of the CPA in violation of section 55(1)(b)(ii) of the CPA;
    32.4. directly purported to set aside or overrode the effect of section 56(2) of the CPA in violation of section 55(1)(b)(iii) of the CPA; and
    32.5. directly or indirectly purported to authorise the respondent to do anything that is unlawful in terms of the CPA or fail to do anything that is required under the CPA, to wit, to refuse to repair or replace the vehicle or refuse to refund to the complainant the purchase price if the vehicle failed to satisfy the requirements and standards contemplated in section 55 of the CPA in contravention of section 51(1)(b)(iv) of the CPA.

33. We will now consider whether the respondent contravened section 56(2)(a) to (b) read with section 55(2)(a) to (c) of the CPA. It is common cause that within five days of taking delivery of the vehicle, the vehicle's engine failed. The respondent argues that this happened because the oil pump seized. According to Mr Lourens Hand, after the oil pump seizes, the driver must stop immediately, failing which severe engine damage or failure would occur. In his confirmatory affidavit, Mr Pedro Hand stated that he

has been a qualified mechanic for approximately nine years and confirmed the contents of the respondent's answering affidavit and Mr Lourens Hand's confirmatory affidavit. The respondent's experts were of the opinion that the defect in the oil pump would not have been detectable without dismantling the entire bottom end of the engine in a workshop.

34. The pertinent question is whether in enacting section 56(2)(a) and (b) of the CPA, the legislature intended to extend protection to consumers such as the complainant who buy goods that have been used for a significant period. Section 55(4) and (5) of the CPA provides some guidance. Section 55(4) of the CPA states –

> "In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to—
>
> (a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
>
> (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
>
> (c) the time when the goods were produced and supplied."

Section 55(5) of the CPA states that "For greater certainty in applying subsection (4), it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods. After considering the circumstances in the supply, including but not limited to, the amount of money the applicant paid for the vehicle and the fact that the vehicle broke down within five days of taking delivery, the Tribunal is persuaded that the protection provided in section 56(2)(a) and (b) of the CPA, extends to the complainant in this matter.

35. It is undisputed that the complainant paid a significant amount of money for a used vehicle she only drove for five days. We are mindful that in Motus Corporation (Pty) Ltd and Another v Wentzel[3], the Supreme Court of Appeal reasoned that a defective module that could be readily replaced did not render a vehicle defective to entitle the purchaser to return it and demand repayment of the purchase price. In this case, however, the evidence of the respondent's witnesses that the defect in the oil pump would not have been detectable without dismantling the entire bottom end of the engine in a workshop proves that the defective oil pump could not be readily replaced. This fact and the failure of the vehicle's engine shortly after the oil pump seized further prove that the defect was serious. Consequently, we find that the failure of the oil

[3] Case no 1272/2019) [2021] ZASCA 40 (13 April 2021).

pump within five days of the complainant taking delivery of the vehicle, and the failure of the engine shortly thereafter proves that the vehicle was not reasonably suitable for the purpose for which it was intended. Within six months of purchase, the vehicle exhibited a defect which revealed that it was not of good quality, in good working order and free of any defects. And, it was not useable and durable for a reasonable period of time, having regard to the use to which it would normally be put and to all the surrounding circumstances of its supply. By informing the complainant that it would not repair, replace or cancel the transaction because the engine failure was due to her negligence, the respondent contravened sections 56(2)(a) to (b) read with 55(2)(a) to (c) of the CPA.

FINDING

36. The respondent contravened sections 51(1)(a) and (b) and section 56(2)(a) to (b) read with section 55(2)(a) to (c) of the CPA.

CONSIDERATION OF AN APPROPRIATE ADMINISTRATIVE FINE

37. In terms of section 112(1) of the CPA, the Tribunal may impose an administrative fine in respect of prohibited or required conduct. Such a fine may not exceed the greater of 10% of the respondent's annual turnover during the preceding financial year or R1 000 000.00. The applicant wants an administrative fine of R1 000 000.00 to be imposed on the respondent. The respondent argues that an administrative fine is inappropriate. We disagree with the respondent.

38. Section 112(3) of the CPA outlines the factors the Tribunal must consider when determining an appropriate fine. We shall discuss each of these factors under the sub-headings below.

The nature, duration, gravity and extent of the contravention

39. The applicant alleges that the respondent's conduct has been going on for more than a year. The contraventions are serious. The respondent has shown a blatant disregard for the provisions of the CPA and has severely prejudiced consumers. The respondent argues that the suggestion that consumers have been prejudiced is mischievous as only 1 consumer was involved in this case. It submits that the suggestion that it has been in contravention since April 2022 is untenable, unfair and justifiable. Section 34 of the Constitution guarantees everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. According to the respondent, it should not be penalised for exercising its constitutional rights.

Any loss or damage suffered as a result of the contravention

40. The applicant submits that the complainant was never able to enjoy the use of the motor vehicle she purchased. The complainant pays a monthly instalment of R5 577.66 towards the vehicle's financing. Even if the respondent is ordered to refund the full purchase price for the vehicle, the complainant is unlikely to get full redress for all expenses incurred in financing the purchase of the vehicle. The respondent argues that the monthly instalments would be compensated by a full refund. And the respondent paid R10 000.00 to the complainant as a gesture of good faith.

The behaviour of the respondent

41. The applicant alleges that the respondent showed no regard for the complainant's rights and refused to co-operate with the Motor Industry Ombudsman of South Africa (MIOSA). The respondent argues that it fully co-operated with the MIOSA.

The level of profit derived from the contravention

42. The applicant submits that the respondent benefited from the purchase price paid by the complainant. The respondent argues that if the application is successful, it would have gained no profit as it would have to refund the entire purchase price of the vehicle.

The degree to which the respondent co-operated with the applicant

43. The applicant states that the respondent formally co-operated with the applicant but did not do anything to try to resolve the matter.

Whether the respondent has previously been found in contravention of the CPA

44. There is no evidence that the respondent previously contravened the provisions of the CPA.

CONCLUSION

45. The respondent's contravention of sections 51(1)(a) and (b) and section 56(2)(a) to (b) read with section 55(2)(a) to (c) of the CPA is prohibited conduct.

46. The applicant has failed to lay any basis for an interdict. In any event, the prayer for an interdict is misguided. In Shoprite Investment Limited v The National Credit Regulator[4], the full bench of the High Court of South Africa (Gauteng Division, Pretoria) supported a concession that a restraining order would

[4] [2019] ZAGPPHC 956 (18 December 2019) at para 48.

serve no purpose as the legislation, the NCA, already proscribed the granting of reckless credit. Similarly, in the present matter, an interdict will not serve any purpose as the CPA already prohibits the conduct that the applicant wants to interdict.

47. The respondent should be ordered to refund the complainant the amount of R277 899.00, the purchase price she paid for the vehicle. Concerning the payment of interest thereon in accordance with the Prescribed Rate of Interest Act No. 55 of 1975 from the date it was paid to the respondent until final payment, we are not satisfied that the applicant has laid a proper basis for this order to be made.

48. Concerning the applicant's prayer that the respondent be directed to pay an administrative penalty in the amount of R1 000 000,00 (One Million Rands), based on a conspectus of all the evidence presented to us and having considered the parties' submissions on all the factors prescribed in section 151(3) of the CPA, the Tribunal finds that an administrative fine of R100 000.00 (One Hundred Thousand Rands) is appropriate.

ORDER

49. The Tribunal makes the following order:
    49.1. The respondent contravened sections 51(1)(a) and (b) and 56(2)(a) to (b) read with 55(2)(a) to (c) of the CPA.
    49.2. The respondent's contravention of sections 51(1)(a) and (b) and 56(2)(a) to (b) read with 55(2)(a) to (c) of the CPA is declared prohibited conduct.
    49.3. The respondent must refund the complainant the amount of R277 899.00, the purchase price she paid for the 2012 Volkswagen Amarok with vehicle registration number CMS073NC, within 14 business days of the issuance of this order.
    49.4. The respondent must pay an administrative fine in the amount of R100 000.00 (One Hundred Thousand Rands) within 60 (sixty) business days from the date of the issuance of this order into the bank account of the National Revenue Fund, the details of which are as follows:

    Bank: Nedbank
    Account holder: Department of Trade, Industry and Competition
    Branch name: Telecoms and Fiscal
    Branch code: 198765
    Account number: 126 884 7941
    Reference: NCT/295854/2023/73(2)(b) and the name of the person or business making the payment.

49.5. There is no order as to costs.

Thus, done and dated 10 October 2024.

[Signed]

……

Dr A Potwana

Tribunal Member

Dr M Peenze (Presiding Tribunal member) and Mr S Mbhele (Tribunal member) concur.

Authorised for issue by The National Consumer Tribunal

National Consumer Tribunal

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national consumer tribunal