

**COUNCIL FOR DEBT COLLECTORS
COUNCIL IN TERMS OF ACT 114 OF 1998**

Caseno: 8/6CLA001/07

In the matter

COUNCIL FOR DEBT COLLECTORS THE COUNCIL

and

CLAASSENS & CLAASSENS CC

as represented by

**JOHANNES THEODORUS CLAASSEN RESPONDENT
NOTICE IN TERMS OF REGULATION 7(8)(a) OF THE REGULATIONS
RELATING TO DEBT COLLECTORS, 2003**

WHEREAS: the Council for Debt Collectors received a complaint from Mr. A Malema;

AND WHEREAS: the Respondent is herein represented by Mr. Johannes Theodorus Claassen with Council for Debt Collectors registration number 0005311/03, as a member of the abovementioned Close Corporation.

NOW THEN TAKE NOTICE THAT: The Council for Debt Collectors (hereinafter called the Council) as per decision of the Executive Committee of the Council decided to charge the Respondent with the following improper conduct:

CHARGE

That the Respondent is guilty of a contravention of Section 15(1)(c) and (f) of the Act, Act 114 of 1998, as well as Rule 7(1) and (4) and Rule 6 of the Code of Conduct in that:

The Respondent in collecting or attempting to collect a debt from the complainant made use of fraudulent and misleading representation to induce the complainant into signing documentation, which she would not have signed were she aware of the nature of the documents.

In the alternative;

Respondent in collecting or attempting to collect a debt from the complainant employed/made use of the services of a Christoffel Johannes Smith, a registered debt collector with Council for Debt Collectors registration number: 0012396/05, who made use of fraudulent and misleading representations to induce the complainant into signing documentation, which she would not have signed were she aware of the nature of the documents.

TAKE FURTHER NOTICE THAT:

- a. In terms of Regulation 7(9) you **must within 14 days** from service of this notice, reply in writing to the charge as set out above, by either admitting or denying the charge. Should you admit guilt the Council will deal with the matter as set out in Section 15(3) of the Debt Collectors Act 114 of 1998.
- b. Provide the Council, together with the above mentioned notice, with a physical address where you will accept service of process and notices in this matter.
- c. That failure to respond as requested above will not prohibit the Council from continuing with the process as set out in Regulation 7.

DATED AT PRETORIA ON THIS THE 15th DAY OF JUNE 2007.

**ADV. A CORNELIUS
LEGAL OFFICER**

**COUNCIL FOR DEBT COLLECTORS
RENTMEESTERPARK
WATERMEYER STREET 74
VAL DE GRACE
PRETORIA**

**TO: CLAASSENS & CLAASSENS CC
C/O HEFER & MARE STREET
NV BUILDING
PARYS
FAX 056 811 5578**

**In terms of the regulations this notice should be served by the sheriff.
You may however in writing acknowledge the receipt of this notice, and
grant permission for the notice to be served by fax.**

Council for Debt Collectors

Claassens & Claassens CC, JT Claassen 2007 CDC13

16

INVESTIGATION IN TERMS OF SECTION 15(2), ACT 114 / 1998
ONDERSOEK i.g.v ARTIKEL 15(2), WET 114/ 1998

1. Held at **PRETORIA** on **20/ 08/2007**

Gehou te _____ op ____ / ____ / 20____

2. Investigating Committee (Sect 15(2) and Reg 7(1)(a))

Ondersoek Komitee (Art 15(2) en Reg 7(1)(a))

Chairman / Voorsitter **Adv. J. Noeth SC**

Member / Lid _____ Member / Lid _____

3. Particulars of Debt Collector(s) charged /

Besonderhede van Skuldinvorderaar(s) aangekla

Claassen & Claassen CC as represented by **Johannes Theodorus Claassen**

4. Person appointed to lead evidence (Reg 7(8)(b))

ADV A CORNELIUS

Persoon aangestel om getuienis te lei (Reg(8)(b)) _____

5. Particulars of person(s) appearing on behalf of Debt Collector(s) /

Besonderehede van persone wat namens Skuldinvorderaar(s) verskyn

Wilhelm Smith van Smith en Peters Vereeniging

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

NOT GUILTY

8. The proceedings are recorded by mechanical means/ Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

GUILTY MAIN COUNT

10. Sentence / Vonnis:

1. In terms of Section 15(3)(e) of the Debt Collectors Act, 1998 the Respondent is ordered to pay to the Council an amount of R2516.00 in respect of the costs incurred by the Council in connection with the Investigation. This amount must be paid on or before 30 September 2007.

2. In terms of Section 15(3)(c) of the Debt Collectors Act, 1998 the Respondent is fined R30000.00 of which R15 000.00 is suspended for a period of five(5) years:

(i) on condition that the Respondent is not again convicted of a contravention of Section 15 of the Act committed during the period of suspension

(ii) that the Respondent take steps at his costs within 3 months from the date hereof to set aside the emoluments attachment order which was irregularly obtained against Me. A Malema.

The fine of R15 000.00 is to be paid as follows:

(a) R3000.00 on or before 31 October 2007

(b) R3000.00 on or before 30 November 2007

(c) R3000.00 on or before 31 December 2007

(d) R3000.00 on or before 31 January 2008

(e) R3000.00 on or before 29 February 2008

If any of the mentioned amounts are not paid on the due date the total outstanding amount on the relevant date will be immediately due and payable.

**Council for Debt Collectors
versus
Claasen & Claasen CC**

24-08-2007

Judgment

Three witnesses, first me. Malema testified in this matter and she said that she was visited by mr. Christoffel and there was discussions, she was called at her desk, and he explained to her that he had documents that she need to serve. She said she did not want to and she ordered against that. The reason for that is that she knows when she has a garnishing order against her she can subsequently not get any credit. That is what she told mr. Christoffel.

After a long discussion he said that she must give him a signature so that he can proof to his employer that he was with her. The evidence as far as I am concerned is clear. Under cross-examination she testified clear and to the point. She did not avoid any questions and my impression of her was that she precisely know what was happening, what did happen on this occasion and I accept her evidence that she told mr. Christoffel that she didn't want a garnishing order and was honest enough to say that she did sign a document but the purpose of the signature was to help mr. Christoffel to show his employer that he in fact was there. I must say her evidence does in various aspects confirm what mr. Smit testified.

I must compare her evidence, like I said, with that of mr. Smit. I must say I am not very impressed with mr. Smit's evidence. He was contradicting himself, he avoided questions. When he was asked to repeat a question then he had a different explanation. There was various aspects where he contradicted himself. He was at a later stage, I believe, under cross-explanation prepared to admit that the documents was not filled in. One of the documents he said was fully completed in his presence, now that in itself is not true. He signed that statement and said it was done and then gave evidence something else happened. So, at least in that aspect, as far as that document is concerned, he is not honest. That signature that he put on there was not honest.

I checked his evidence, I can not accept his evidence if I compare it to the evidence of the complainant in this regard and consequently if I have to compare evidence. On that evidence I find Claasen and Claasen CC guilty on the main count as charged. If you want more reasons from me I will take the time to give a full report, but this is a brief, thus Claasen and Claasen is guilty of the charges against them.

Sentence

You are aware of the provisions of section 15. If the Council finds a debtor guilty of improper conduct the Council may withdraw his certificate of registration as a debt collector, suspend his registration for a specified period depending on the full amount of conditions, impose a fine not exceeding the prescribed amount. The prescribed amount is R 100 000.00. Reprimand him or her, and recover the cost incurred by the Council in connection with the investigation.

With regard to section 15(3)(e) the cost of the Council with regard to the investigation of the matter and the hearing is R 2 516.00 to be paid to the Council on or before a certain date and the reason for that is the Council is not

government funded and the other debt collectors in discussions with the Council say "...we pay the fees for this Council but we are not prepared to pay for the misdeeds of others who don't behave. They must pay their own cost if they are charged ...".

Eerstens gelas ek ingevolge artikel 15(3)(e) dat die koste deur die Raad in verband met hierdie ondersoek en verhoor aangegaan 'n bedrag van R 2 516.00 aan die Raad terugbetaal word op of voor 30 September 2007.

Tweedens, word u beboet met 'n bedrag van R 30 000.00 waarvan R 15 000.00 opgeskort vir 'n tydperk van vyf jaar op voorwaarde dat daar nie gedurende die tydperk van opskorting weer skuldig bevind word van 'n oortreding van artikel 15 nie. Ook 'n voorwaarde van die opskorting dat u daardie vonnis reg te maak en daardie vonnis teen haar naam verwyder. Dit is 'n voorwaarde van die opskorting. Dit moet binne drie maande gebeur.

R 15 000.00 moet betaal word teen R 3 000.00 per maand, die eerste betaling 31 Oktober 2007, 30 November 2007, 31 Desember 2007, 31 Januarie 2008 en 29 Februarie 2008. Dit is R 3 000.00 op of voor daardie datum. Dit is 'n baie duidelike voorwaarde hier dat enige van die bedrae nie op die vasgestelde datum betaal is nie, word die volle uitstaande bedrag op daardie stadium onmiddellik betaalbaar. Mnr. Smit ek wil u laastens vra u moet na u kantoor gaan kyk ek is geskok om te sien wat daar aan die gang is ons kan nie so werk nie. Die Raad het 'n verpligting teenoor die publiek daar buite en skuldinvorderaars weet wat hulle pligte is. As u weer voor my verskyn met iets van hierdie aard, dan is ek baie ernstig om u sertifikaat in te trek, maar daar is 'n mate van simpatie by my met hierdie geval omdat dit met die administrasie in u kantoor te doen het. Maar u sal teen die dame, mev. Nortje, moet optree. U moet u kantoor laat oplei oor die praktyke en hoe hulle dit kan doen. Ons kan nie dat dokumente oningevul laat teken.

disciplinary inquiry report 2007

Claassens & Claassens CC, JT Claassen 2007 CDC13