

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

Inquiry Number: 8/6 UNR DAA 001/08

In the matter between:

THE COUNCIL FOR DEBT COLLECTORS

THE COUNCIL

and

DAAH SECURITY SERVICES AND DEBT

ADMINISTRATOR CC 1ST RESPONDENT

MIKE LOT MICHAELS 2nd RESPONDENT

**NOTICE BY THE COUNCIL FOR DEBT COLLECTORS IN TERMS OF
REGULATION 7(8)(a) OF THE REGULATIONS RELATING TO DEBT
COLLECTORS, 2003**

WHEREAS the First Respondent is a close corporation duly registered with the Registrar of Companies & Close Corporations on 12 July 2002 with registration number 2002/053086/23 and with business start date 12 July 2002

AND WHEREAS the Second Respondent was at all relevant times the member of the First Respondent

AND WHEREAS allegations of improper conduct in terms of Section 15(2) read with Regulation 7(2) were submitted to the Council for Debt Collectors (herein after referred to as "the Council") by Henry Pienaar and the South African Music Rights Organisation

NOW THEN TAKE NOTICE THAT:

Members of the Executive Committee of the Council on 23 January 2009 resolved to charge the Respondents with improper conduct

TAKE FURTHER NOTICE THAT:

In terms of Regulation 7(9) you must furnish the Council within 14 days of service of this notice with a written admission or denial of the charges. Upon admission of the charge/s, the Council shall deal with the matter as contemplated in Section 15(3) of the Act (Act 114 of 1998).

CHARGE 1

The Respondents are guilty of improper conduct by contravening Section 15(1)(g) of the Debt Collectors Act (Act 114 of 1998) read with Section 8(1) and further read with Sections 1, 14, 25(a) and Schedules 1, 2(2), 2(3), 7(1), 7A(a) and (c) of the Code of Conduct, published under Government Notice R. 663 on 16 May 2003

IN THAT the Respondents, being debt collectors (as defined) and being vicariously liable for the conduct of the company, its directors and servants failed to register every member of the legal person DAAH SECURITY SERVICES AND DEBT ADMINISTRATOR CC , by failing to register both MIKE LOT MICHAELS and the legal person itself, in terms of the Act, since 11 AUGUST 2003.

disciplinary inquiry report 2009

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

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 30/06/2009; 24/07/2009 and 11/09/2009

Gehou te _____ op ____ / ____ / 20 ____

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

1. Daah Security Services and Debt Administrators CC

2. Mike Lot Michaels

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

Adv. T. Gildenhuys

Persoon aangestel om getuienis te lei (Reg 7(8)(b)) _____

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

Besonderhede van persone wat namens Skuldin-vorderaar(s) verskyn

**(a) No appearance on behalf of the respondents. Matter proceeded in
terms of regulation 7(14)(c) of the regulations promulgated in
terms of the Act.**

Council for Debt Collectors

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

Plea of not guilty entered in view of the respondents absence.

8. The proceedings are recorded by mechanical means/

Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

Guilty both respondents – charges 1, 2, 4, 5, 6, 7, 8, 9, 10

10. Sentence / Vonnis:

Not guilty charge 3.

1. In terms of section 15(3)(e) of the Debt Collectors Act, 1998 the respondents are jointly and severally ordered to pay the Council an amount of R 13 957.00 in respect of the costs incurred by the Council in connection with the investigation. This amount must be paid on or before 18 September 2009.

2. In terms of section 15(3)(f) of the Act the respondents are jointly and severally ordered to repay –

(i) Mr. Henry Pienaar an amount of R 16 650.00 plus interest at 15.5% calculated from 1 March 2008 on or before 18 September 2009.

disciplinary inquiry report 2009

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

107

- (ii) Mr. Henry Pienaar an amount of R 4 712.15 plus interest at 15.5% calculated from 5 February 2008 in respect of the amount he overcharged Mr. Pienaar in fees on or before 18 September 2009.**
- (iii) Mr. Kevin Ncube on behalf of the Southern African Music Rights Organisation (Samro) an amount of R 128 747.98 plus interest at 15.5% calculated from 11/09/2009 on or before 18 September 2009.**

Charge 1

In terms of section 15(3)(c) of the Act the respondents are jointly and severally sentenced to:

R 50 000.00 of which R 30 000.00 is suspended for five years on the following conditions –

- (i) that the respondents are not during the period of suspension again convicted of a contravention of section 15 of the Act.**
- (ii) that the amounts that the respondents were ordered to repay in terms of paragraph 2 above are repaid on or before the dates which have been stipulated.**

The R 20 000.00 must be paid on or before 30 September 2009.

Charge 2

In terms of section 15(3)(c) of the Act the respondents are jointly and severally fined an amount of R 5 000.00 which must be paid on or before 30 September 2009.

Charge 4

In terms of section 15(3)(c) of the Act the respondents are jointly and severally fined an amount of R 5 000.00 which must be paid on or before 30 September 2009.

Charges 5, 6, 7, 8 and 10 are taken jointly for purposes of sentence. The respondents are in terms of section 15(3)(c) of the Act jointly and severally fined R 50 000.00 which is to be paid on or before 31 October 2009.

Charge 9

The respondents are in terms of section 15(3)(c) of the Act jointly and severally fined an amount of R 10 000.00. This amount must be paid to the Council on or before 31 October 2009.

Judgment

The respondents were charged before a Committee of the Council established in terms of section 15(2) of the Act consisting of –

1. Adv J Noeth SC Chairman
2. Me Yoliswa Sidlova Member
3. Mr. Baker Maseko Member

The respondents are a closed corporation and Mr. Mike Lot Michaels is the sole director of the entity.

The respondents were duly summonsed to appear before a Committee of the Council on 30 June 2009. They were however absent and the matter was then remanded to 24 July 2009 to give the Council's representatives more time to trace them and ensure their presence at the hearing on this particular date. They were again absent.

Jacobus Christiaan Bredenhann testified under oath that he is employed by the Council as an Investigator. He stated that he went to the premises of the respondents at Hodgson street 3, Roodepoort on 4 June 2009 and personally served copies of Annexure B2 and B3 on the secretary of the Respondents, Mrs. Sekayi Mubonderi, and filed a return of service thereof as contained in annexure B1.

Prior to this he had a telephonic discussion with Mr. Michaels who indicated to him that it was in order for his Secretary to accept annexure B2 and B3 on his behalf. His Secretary acknowledged receipt of the copies by signing on the original of both notices (see annexure B2 and B3). She signed for it and immediately underneath her signature she printed the words:

"SEKAYI MUBONDERI (secretary to Mike Michaels)
(Passport No) AN 850151 (Zimbabwe)."

He explained to her the applicable court rules as well as the contents of the documents and the date of hearing of the matter. According to these documents the respondents were to appear before the Committee of the Council on 30 June 2009 at 09h00.

In view of Mr. Michaels' absence on 30 June 2009 Mr. Bredenhann phoned him twice on his cellphone but there was no answer. He also phoned the office number but there was only an answering machine on that number.

He on 21 July 2009 tried to contact Mr. Michaels again by phoning the cellphone number 079 734 9077. He recognized

Council for Debt Collectors

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

Mr. Michaels' voice when he answered but he said he is "Joe" and he does not know a Mr. Michaels. Mr. Bredenhann said he recognized the voice as that of Mr. Michaels to whom he spoke on 4 June 2009. He also phoned his Secretary on the landline and requested her to inform Mr. Michaels to contact him at his office number or on his cell number. He did not contact him. He spoke to his Secretary again and informed her that the matter was postponed to the 24 July 2009. She said she will convey the message to Mr. Michaels.

After this date he phoned the office number on numerous occasions but after a few rings there was only a reply on the answering machine. On 23 July 2009 he tried to make contact again on Mr. Michaels' cell number. It was answered again by "Joe" who does not know Mr. Michaels. He also phoned the land line number but it remained on the answering machine. He also phoned the office number on 24 July 2009 but with the same result and he left a message.

Adv Gildenhuis handed in a document dated 24 June 2009 as exhibit "E". This document is inter alia addressed to the Minister of Justice and Constitutional Development and the Director-General of the said Department. The contents of this document is self-explanatory in the sense that it was on the face of it drafted and written by Mr. Michaels himself as it deals with the charges contained in the charge sheet which was served on him. He states that it is "DAAH's democratically right not to register with your organization". He also refers to the two complainants, Henry Pienaar and Kevin Mcube. He argues that "this is a domestic and purely civil matter ..."

Attached to exhibit "E" is a letter dated 13 August 2008 addressed to advocate M.J. Gildenhuis. This letter is on the letterhead of "DAAH DEBT ADMINISTRATORS" with the address 3 Hodgson Street, 1st Floor, Rocklyn House, Roodepoort, 1724 and PO Box 7173, Westgate, 1734. This is the same address indicated in paragraph 13 of exhibit "F"

as the address to which future communications should be directed.

This particular letter states in paragraph 1 "We refer to the above and wish to confirm receipt of letter faxed on the 29/07/2008 of which contents have been noted therein". From the bottom of this letter it is also clear that Mr. Michaels is the same person as Mr. Khumalo. It is stated "Directors: Mr. M.L. Michaels (Khumalo)".

From this document it is obvious that the respondents have received the summonses and must have been fully aware of the fact that they have to appear before this committee on 24 July 2009.

The Committee in view of the available evidence decided unanimously to proceed with the matter in terms of regulation 7(14)(c) of the regulations promulgated in terms of the Act in the absence of the respondents.

A plea of not guilty was entered in respect of both respondents.

Ronelle Joubert states she is employed by the Council as the Systems Manager. She is responsible for the information on the system. She can access the system. On 23 July 2009 she checked the system for the names of Daah Security Services and Debt Administrators CC and Mike Lot Michaels, the two respondents but found that they were not reflected on the system as registered debt collectors. She also checked for all the alternative names indicated on exhibit "H" but none of these names were reflected as registered debt collectors. Mr. Henry Pienaar testified that he lodged a complaint against Mr. Michaels with the Council. He handed in a copy of his complaint as exhibit "I".

He said he was working for Cargo Handled Fast deliveries

Council for Debt Collectors

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

and he was referred to Mr. Michaels to collect money which was owing to him by Cargo Handled Fast (CHF) which did not pay him. CHF did not pay him for three months. He spoke to Mr. Michaels who told him that he must fax him all the invoices. "Then he said to me this is a piece of cake, he can get all my moneys for me".

He faxed all the statements to Mr. Michaels's office. This was in October 2007. The amount to be collected was R 18 000.00. His contact telephone numbers were 079 734 7077 (cell) and office number 011 760 6640. His address was 31 Van Wyk's Road, Roodepoort. He went to this address but only found the Secretary there. He spoke to her. Due to Mr. Michaels' absence he made an appointment with him for the

following week. Subsequently the Secretary phoned him and told him that Mr. Michaels was busy with the funeral arrangements of his daughter and they have to reschedule the appointment. This appointment was made but it never took place because Mr. Michaels was on holiday. He then went to the office and said to the lady Mr. Michaels can give him a cheque as he has already collected the money. CHF told him that they have already paid the money to Mr. Michaels. A document, exhibit "J", was handed in as proof of payment by the bank to Mr. Michaels. This is a deposit slip dated 22 February 2008. This money was deposited by Washington of CHF into the bank account of DAAH. The amount deposited was R 3 650.00. This was paid into account number 2865220656. He spoke to Michaels about this and he said that they had done payments on the 7th of each month and that he will get his money. He only received R 2 000.00 on 5 March 2008.

A further amount of R 15 000.00 has also been paid to DAAH by CHF on 21 February 2008. This information was sent by DAAH to Mr. Pienaar's attorney, Mr. Washington Siwela.

Since Mr. Michaels has collected the money he never spoke

disciplinary inquiry report 2009

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

113

to the witness. The witness tried to contact him but he could not get him. Mr. Michaels still owe him R 16 650.00.

The witness said that Mr. Michaels told him that he is an attorney. This is not indicated on his letterheads. He merely indicates on his letterheads that he is a debt collector.

It has been established by Mr. Gildenhuys from the Northern Law Society that Mr. Michaels is not registered as an attorney.

Kevin Ncube testified that he is employed by the Southern African Music Rights Organisation (SAMRO). He lodged a complaint with the Council on behalf of SAMRO. He handed a copy of this complaint in as exhibit "K". He also handed in a copy of a contract which was signed by SAMRO and DAAH Debt Administrators as exhibit "L" in

terms of which DAAH had to collect SAMRO's debts. On this contract DAAH's address is stated as:

DAAH Debt Administrators
1st Floor Rocklin House, no 3,
Hudson street,
Roodepoort.

The postal address is:

P.O. Box 7173,
Westgate
1734.

Mr. Michaels signed the original of this contract. The contract was entered into on 7 June 2008 at the premises of SAMRO. The contract stipulated that DAAH Debt Administrators will be given outstanding accounts to collect on behalf of SAMRO and commission of 18% will be chargeable. The accounts were ultimately withdrawn due to non-performance by DAAH.

Mr. Ncube stated that in the first month Mr. Michaels as representative of DAAH was given a number of accounts to

Council for Debt Collectors

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

collect and also a schedule of the accounts, the addresses, telephone numbers and the value of the accounts.

He handed in exhibit "M" which contains proof of payment for specific accounts that DAAH had claimed money and received money on behalf of SAMRO. The first page of this exhibit is an account of Umhlanga Mica Stores. Mr. Michaels claimed that he had not collected any money on this account. When Mr. Ncube requested proof of payment from the client they faxed him the proof of payment in DAAH's account of R 16 026.18 and correspondence. He tried to locate Mr. Michaels but he was not available for comment.

He went to Mr. Michaels offices about five times and he made several phone calls where Mr. Michaels asked him to leave a message with his Secretary. Mr. Michaels never responded to any of these calls. He has a list of the telephone calls he made to Mr. Michaels office over a period of three months. He also handed in exhibit "N" which is proof of payment of a list of accounts where proof was provided of money that was received by DAAH but which was not paid over to SAMRO.

He said the number he regularly tried to contact Mr. Michaels on was 011 763 6337. Mr. Michaels provided him with this number. He also provided him with a business cell number 079 734 9077. He looked at exhibit "B1". He said that the cell number on that document is identical to the one he has read into the record. He said Mr. Michaels sent

Him two SMS's from that number on the 22nd and 23rd July 2008. He then tried to arrange a meeting with him.

He tried from the 1st August to the 25th August 2008 to set up a meeting with Mr. Michaels but without success. In July Mr. Michaels had excuses but in August there was no response from him at all.

disciplinary inquiry report 2009

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

Mr. Ncube said he drafted exhibit "N". The amounts reflected on the document are amounts which the clients claimed to have paid. There are proof of the payments attached and he personally phoned each of the clients to request proof of the payments. He gave full details of the payments which were made to Mr. Michaels. This is contained on pages 76 to 77. He did not receive anything from these payments.

He received a cheque for R 60 000.00 three days before its expiry. The cheque was made out to SAMRO. This R60000.00 is still in the coffers of SAMRO but there is no record "as to who has paid and who has not paid". But this amount is concerning different issues and not in respect of the amounts which are reflected on exhibit "N".

He testified in detail on the payments that have been made to DAAH Administrators by the various debtors as reflected on exhibit "N" and which have not been paid over to SAMRO.

Payments of these various amounts were made into account number 62182174062 with the branch code 250441. This is the bank account of DAAH at First National Bank at Roodepoort.

On 25 July 2008 they withdrew the first batch of accounts from DAAH. The withdrawals happened over a period of a month. Mr. Michaels was e-mailed and faxed of the withdrawals.

He said that when the contract was entered into between SAMRO and DAAH it was agreed that DAAH "were to practice as debt collector not an attorney's office or attorneys, they were not to litigate, they were not to do anything but to do a debt collectors duties only".

He said that Mr. Michaels represented himself as Mr. Michaels but it is claimed that his original name was "aka Khumalo".

He became suspicious about Mr. Michaels when he received

Council for Debt Collectors

DAAH SECURITY SERVICES AND DEBT ADMINISTRATORS CC 2009(1) CDC103

proof that Mr. Michaels had received the money from the clients handed over to him but he never paid it to SAMRO.

From this witness's evidence there is adequate proof that payments were made to DAAH in respect of the accounts stated in the charge sheet. There is proof that he was continuously charging for disbursements in an amount of R 865.00.

Adv. Gildenhuys stated that he has spoken to Paula Venter who is a representative of the Law Society of the Northern Province. He requested her to check whether a person by the name of Michael Khumalo or Mr. Mike Lot Michaels is registered as an attorney. She said neither of these persons are registered with the Law Society.

As indicated earlier on in the summary of the evidence this Committee is satisfied that Mr. Michaels received adequate notice of this disciplinary hearing and was fully aware of the date of the hearing. The Committee therefore proceeded with the hearing of the matter in terms of regulation 7(14)(c) in the absence of both respondents.

The evidence submitted in respect of the various charges proof the commission of all the charges as alleged in the charge sheet with the exception of charge 3 which is too vaguely drafted to enable the Committee to make a decision in respect of this charge.

The respondents were given adequate opportunity to respond to the charges but deliberately elected not to do so. The evidence as represented is consequently accepted and the respondents are found guilty on all charges except charge 3. On charge 3 the respondents are found not guilty.