

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

File Number: 8/6 UNR LEG 001/08

In the matter:

COUNCIL FOR DEBT COLLECTORS

THE COUNCIL

and

GEORGE MULLER RESPONDENT

(trading as Legal Care 24/7)

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

WHEREAS the Respondent is a person carrying on business as a debt collector **AND WHEREAS** allegations of improper conduct by the Respondent were submitted to the Council for Debt Collectors (herein after referred to as "the Council") by Mr. Steve Goosen

NOW THEN TAKE NOTICE THAT:

The Council decided to charge the Respondent with improper conduct as per the charges mentioned below:-

Charge 1.

The Respondent is guilty of improper conduct by contravening Section 15(1)(g) of Act 114 of 1998 read with Sections 1, 8(1) and 25(a)

IN THAT the Respondent, being a debt collector (as defined by Section 1) and being vicariously liable for the conduct of its members, servants and agents

On or about 5 June 2008 sent a letter of demand on behalf of Asset Solutions Company (Pty)Ltd, claiming payment in the sum of R 31 240.54 from him, without being registered as a debt collector in terms of Act 114 of 1998.

Charge 2

The Respondents are guilty of improper conduct by contravening or failing to comply with paragraph 5(3)(m), a provision of the Code of Conduct, in contravention of Section 15(1)(f) read with Sections 1, 14(3) and 15(1) of Act 114 of 1998 and further read with paragraphs 1, 2(2), 2(3) and 8 of the Code of Conduct published under Government Notice R. 663 on 16 May 2003,

IN THAT the respondent initiated communication with the debtor's employer prior to obtaining final judgment against the debtor, in order to exert pressure on the debtor, by sending a fax to the debtor's employer on or about 5 June 2008.

Charge 3

The Respondent is guilty of improper conduct in contravention of Section 15(1)(c) of Act 114 of 1998 read with Sections 1 and 15

IN THAT the Respondent, being a debt collector (as defined), made use of fraudulent or misleading representations to Mr. Steve Goosen on or about 5 June 2008 by using a letterhead dated 5 June 2008 that indicated that LEGAL CARE 24/7 was a close corporation with registration number 2001/001981/07 whereas this registration number in fact belongs to a registered company known as Rags and Riches Trading 105 (PTY) LTD.

Charge 4

The Respondent is guilty of improper conduct in contravention of Section 15(1)(c) of Act 114 of 1998 read with Sections 1 and 15

IN THAT the Respondent, being a debt collector (as defined), made use of fraudulent or misleading representations to the Council for Debt Collectors on or about 9 July 2008 by using a letterhead dated 8 July 2008 that indicated that LEGAL CARE 24/7 was a company with registration number 2001/001981/07 whereas this registration number in fact belongs to a registered company known as Rags and Riches Trading 105 (PTY) LTD.

TAKE FURTHER NOTICE THAT:

- i. 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 charges, the Council shall deal with the matter as contemplated in Section 15(3) of the Act (Act 114 of 1998).
- ii. You are also required to furnish a physical address (not a postal address or poste restante) where you will accept service of process and notices in this matter.

Council for Debt Collectors

LEGAL CARE 24/7 2009(1) CDC219

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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 **08/10/2008; 17/11/2008** and **19/03/2009**.

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 Besonderhede van Skuldinvorderaar(s) aangekla

As per annexure

Legal Care 24/7 CC 1st Respondent

George Petrus Muller 2nd Respondent

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

George Petrus Muller

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

Not guilty, both respondents.

8. The proceedings are recorded by mechanical means/

Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

Both respondents are found guilty on charges 1, 3, 4 and 5.

Both respondents are found not guilty on charge 2.

10. Sentence / Vonnis:

(a) In terms of section 15(3)(e) of the Act the respondents are ordered to jointly and severally refund an amount of R 8445.50 to the Council in respect of the costs incurred by the Council in connection with the investigation. This amount is payable to the Council on or before 30 April 2009.

(b) The respondents are in terms of section 15(3)(c) of the Act jointly and severally fined as follow in respect of the charges mentioned:

Charge 1 An amount of R 10 000.00 of which R 5 000.00 is suspended for a period of three years on condition that the respondents are not again convicted of a contravention of section 15 of the Debt Collectors Act, 1998 which was committed during the period of suspension. It is a further condition of this suspension that the respondents submit proof to the Council on or before 27 March 2009 that a trust account in terms of section 20 of the Act has been opened with a registered bank.

Charge 5 The respondents are in terms of section 15(3)(c) of the Act fined an amount of R 10 000.00.

Charges 3 and 4 are taken jointly for the purposes of sentence. The respondents are in terms of section 15(3)(c) of the Act fined an amount of R 10 000.00 of which R 5000.00 is suspended for a period of three years on condition that the respondents are not during the period of suspension again convicted of a contravention of section 15 of the Debt Collectors Act, 1998.

It is a specific condition of the suspended fines that if an installment is not paid on or before a stipulated date the full outstanding amount in fines at that date will immediately be payable in full to the Council.

JUDGMENT

The Respondents were on 17 November 2008 charged before Adv J Noeth, Chairman of the Council with improper conduct. Adv Noeth was duly appointed by the Council to preside in the matter.

Adv T Gildenhuys and Adv Joan Adams appeared on behalf of the Council. They were duly appointed by the Council in terms of regulations 7(1)(b) and 8(b) of the Regulations promulgated in terms of the Act to investigate the allegations of misconduct and to lead the evidence in the investigation.

Mr George Petrus Muller, second respondent, an admitted attorney, appeared on behalf of the respondents.

The respondents were charged with the following five charges as contained in Annexure "B".

Charge 1

The Respondents are guilty of improper conduct by contravening Section 15(1)(g) of Act 114 of 1998 read with Section 1, 8(1) and 25(a).

In that the Respondents, being debt collectors (as defined in Section 1) and being vicariously liable for the conduct of its members, servants and agents on or about 5 June 2008 sent a letter of demand on behalf of Asset Solutions Company (Pty) Ltd and or Standard Bank, claiming payment in the sum of R31240.54 from Steve Goosen, without being registered as a debt collector in terms of Act 114 of 1998.

Charge 2

The Respondents are guilty of improper conduct by contravening or failing to comply with paragraph 5(3)(m), a provision of the Code of Conduct, in contravention of Section 15(1)(f) read with Sections 1, 14(3) and 15(1) of Act 114 of 1998 and further read with paragraphs 1, 2(2), 2(3) and 8 of the Code of Conduct published under Government Notice R. 663 on 16 May 2003.

In that the Respondents, being debt collectors (as defined in Section 1) and being vicariously liable for the conduct of its members, servants and agents. Initiated communication with the debtor's employer prior to obtaining final judgment against the debtor, in order to exert pressure on the debtor, by sending a fax to the debtor's employer on or about 5 June 2008.

Charge 3

The Respondents are guilty of improper conduct in contravention of Section 15(1)(c) of Act 114 of 1998 read with Sections 1 and 15.

In that the Respondents, being debt collectors (as defined) and being vicariously liable for the conduct of its members, servants and agents made use of fraudulent or misleading representations to Mr Steve Goosen on or about 5 June 2008 by using a letterhead dated 5 June 2008 that indicated that LEGAL CARE 24/7 was a close corporation with registration number 2001/001981/07 whereas this registration number in fact belongs to a registered company known as Rags and Riches Trading 105 (Pty) Ltd.

Charge 4

The Respondents are guilty of improper conduct in contravention of Section 15(1)(c) of Act 114 of 1998 read with Sections 1 and 15

In that the Respondents, being debt collectors (as defined in Section 1) and being vicariously liable for the conduct of its members, servants and agents

Made use of fraudulent or misleading representations to the Council for Debt Collectors on or about 9 July 2008 by using a letterhead dated 8 July 2008 that indicated that LEGAL CARE 24/7 was a company with registration number 2001/001981/07 whereas this registration number in fact belongs to a registered company known as Rags and Riches Trading 105 (Pty) Ltd.

Charge 5

The Respondents are guilty of improper conduct by contravening Section 15(1)(g) of Act 114 of 1998 read with Sections 1, 8(1) and 25(a)

In that the Respondents, being debt collectors (as defined in Section 1) and being vicariously liable for the conduct of its members, servants and agents

On or about 5 June 2008 sent a letter of demand on behalf of Asset Solutions Company (Pty) Ltd and or Standard Bank, claiming payment in the sum of R31240.54 from Steve Goosen, signed by HLONI MASHABA, without HLONI MASHABA being registered as a debt collector in terms of Act 114 of 1998.

The Respondents pleaded not guilty to all the charges.

In charge 1 it is alleged that the two respondents sent a letter of demand on 5 June 2008 on behalf of Asset Solutions Company (Pty) Ltd and or Standard Bank without being registered as a debt collector in terms of the Debt Collectors Act, 1998. Charge 5 relates to the fact that Hloni Mashabi an employee of the Respondents was not registered as a debt collector on 5 June 2008 when she was doing debt collecting.

Section 8(1) of the Act provides inter alia as follow in regard to the registration of debt collectors:

"8(1) As from a date fixed by the Minister in the Gazette, no person, excluding an attorney or employee of an attorney shall act as a debt collector unless he or she is registered as a debt collector in terms of this Act.

From the "use" of the word "shall" it is clear that this is a peremptory provision. Mr Muller who is an attorney, by profession, would of course not only be aware of this provision, but would also have no difficulty in grasping this very clear and succinct provision. The evidence of Ronelle Joubert of the Council is that Legal Care 24/7, a Close Corporation, the first Respondent was only registered with the Council on 30 June 2008 under registration number 28606/08. The second respondent was also registered with the Council on 30 June 2008 and his registration number is 28609/08. The Close Corporation was registered with the Registrar of Companies on 30 August 2007. These facts are not disputed by the Respondents. It is therefore clear that the two respondents were not registered on 5 June 2008 when they were doing the debt collecting as alleged in the two charges.

In relation to charge 1, Mr Gerhard Diedericks Brummer, the Administrative Officer of Legal Care 24/7 stated that he forwarded the registration forms in respect of both respondents on 4 March 2008 to the Council. After a month he made enquiries and was told that a fax was forwarded to them in respect of outstanding requirements. This fax had a wrong fax number. Doreen van der Walt handed the application for the registration in as exhibit "J". She received the application for registration on 6 March 2008.

On 10 March 2008 she addressed a fax to Mr Muller indicating that the application cannot be processed due to the following defects:

"REGISTRATION AS A DEBT COLLECTOR

The following application submitted can unfortunately not be processed due to the defects listed below:

GP Muller

Attachments not submitted

Letter from bank in respect of Trust account opened in terms of Section 20(1) Act 114/1998

Letter from Auditor accepting appointment as your auditor

Copy of Identity document

Proof of Payment: R2 888.00

Kindly let us have abovementioned on or before 10 April 2008."

She did not receive any reaction to this fax. She phoned on 15 April 2008 and spoke to Bianca. She again faxed the letter and also posted it. She asked for compliance with these requirements by 15 May 2008. They did not comply on this date. The outstanding requirements were only received on 21 May 2008. It is obvious from these faxes that the applications submitted on 6 March 2008 were defective in many material respects, such as outstanding fees to an amount of R 2888.00, copy of an identity document and a letter from the bank indicating that a trust account in terms of the Act has been opened. Mr Muller, as a lawyer, could therefore in my view not have had any expectation that the two respondents have complied with the Act and that they will be successfully registered. The respondents must therefore bear the blame for the late registrations and no compliance with the Act. Both respondents are convicted on charge 1.

From exhibit "R" it is obvious that an application was only submitted to the Council on 2 October 2008 to register Hloni Mashaba as a debt collector. She was only registered on 9 October 2008.

Hloni Mashaba testified under oath that she is doing currently the same work at Legal Care that she was doing on the date she was appointed at Legal Care 24/7. She was appointed during March/April 2008. That is to "phone debtors and finding out what the position is." She also send out letters to other debtors. She said it is her name that appears at the bottom of exhibit "D" dated 5 June 2008. She said she knew that debt collectors have to be registered with the Council. She was aware that she was committing a criminal offence when she was doing debt collecting without being registered.

From these facts it is obvious that she was doing debt collecting without being registered as such with the Council.

Mr Muller, respondent 2, said he did not register Hloni Mashaba earlier, because she was still undergoing a training process. There is no exclusion from the specific and clear requirements of the Act set out in section 8(1) of the Act for debt collectors in training and Mr Muller, as a lawyer, must be fully aware of this. The facts are, however, that Hloni Mashaba does not state that she was in

training. Her evidence is that she was doing full time debt collecting from the moment she started with Legal Care 24/7. She was aware of the fact that she was even committing a criminal offence in this regard. Mr Muller's evidence in this regard is therefore rejected. The respondents in my view therefore deliberately did not register her before she started functioning as a debt collector. There was at least a seven months delay before an application for her registration was lodged with the Council.

Both respondents are convicted on count 5 as charged.

Before I deal with the other charges, I wish to comment on the evidence of Mr George Muller.

To say the least, his evidence was often confusing and utterly contradictory. In this regard, I wish to refer to the following.

I have already referred to his unsatisfactory evidence in respect of the delayed registration of Hloni Mashaba. His evidence in this regard is directly contradicted by his own witness, Hloni Mashaba.

He furthermore alleges in his affidavit to the Council as contained in exhibit "P" which is in the form of an affidavit "dat die klagtes in die klagstaat vervat 'nie toelaatbaar is en voor die Raad gebring kan word nie' ". He also alleges that the audi alterem partem rule "nie eers herken is in hierdie verrigtinge nie" en "die respondente is nie die geleentheid gegun om op die klagtes van goed te reageer nie".

He further alleges that new charges were added to the charge sheet without the knowledge of the respondents or that they were given the opportunity to react thereto. On a question from the Chairman which charges were added he replied charge 6. The Chairman then pointed out to him that there were only five charges and no charge 6. As far as his allegation that the audi alterem partem rule was not complied with he was referred to the recorded record of proceedings which fully proof that the alterem partem rule was in all respects complied with. He then replied that the charge sheet is defective and that he cannot be convicted on the charges which is now before the Council. He alleged under cross-examination that the charge sheet on which he pleaded "is ten minste die derde klagstaat as ek reg onthou" and he continued as follow:

"MNR MULLER: My getuienis is dat ek berei my voor op die klagstaat wat aan my in 'n billike tyd voor die verrigtinge begin aan my beskikbaar gestel word, daarop berei ek my voor. Ek berei my nie voor op 'n klagstaat wat 10 minute voor die tyd uitgelees word nie, want dan is my voorbereiding nie heeltemal korrek nie, maar my getuienis is op daardie spesifieke aspek dat die Raad met sy dissiplinêre manier van dinge voer, onbillik is en soos almal nou deesdae sê, my konstitusionele regte word as gevolg daarvan aangetas."

Hy gaan dan soos volg voort:

"MNR MULLER: Ek is verras dat daar 'n vierde of 'n derde klagstaat 5 minute voor 'n verhoor voorgelê word, dit het my inderdaad verras".

Hierop het Adv Adams vir die Raad soos volg reageer:

"ADV ADAMS: Kom ons maak dit maklik mnr Muller. U sal sien op die 22ste September 2008 het mnr Gildenhuys, my kollega, hierdie klagstaat wat nou voor die komitee is, Bewysstuk B, het uitgegaan na u toe, dit is uitgestuur na u toe op die 22ste September en weet u wat, Bewysstuk P wat u ingehandig het vandag, wat gedateer is op 14 Oktober 2008, meer as 'n maand voor hierdie verrigtinge begin het Maandag die 17de November, het u op ieder en elk van daardie klagtes gereageer in Bewysstuk P."

To this latter question he replied "Ek betwis dit nie".

From this part of the proceedings it is very clear that he deliberately attempted to mislead the Chairman and that his evidence not only contradictory but unreliable.

His heads of arguments is similarly confusing in that he states no proof has been placed before the Chairman that sections 8(2), 14(1)a, 14(1)(b), 14(2) and 14(3) have been complied with.

Section 8(2) deals with the requirement that all debt collectors must be registered with the Council. The evidence dealt with above fully proves counts 2 and 5. The other sections quoted, deals with the publication of the code of conduct which has been published on 16 May 2003. This matter was not raised by him during any stage of the proceedings and has in my view no effect on the proceedings at all. I am also satisfied that the statutory requirements for the proceedings have been fully complied with.

He also undertook to provide the Council with the bank statements of the respondent's trust account at First National Bank at Boksburg by 3 December 2008. By 2 February 2009 these statements have not been received. These statements are important in the sense that it will proof when the respondent's operations actually started. On 2 February 2009 he was informed that he must produce these statements at the hearing on 6 February 2009. On this date he only produced a letter from Messrs Marais & Alcock, Chartered Accountants which read as follow:

"The statements as set out on pages 2 to 4 for the period ended 31 October 2008 have been prepared from the books and records of the Legal-Care 24 7 Close Corporation and from explanations and information supplied by the management.

The financial statements have not been audited by us and accordingly we do not express any opinion concerning it.

CHARTERED ACCOUNTANTS (S.A)

BOKSBURG

30 January 2009"

No bank statements were attached.

An order was then issued in terms of regulation 7(15)(b) of the regulations issued in terms of the Act for the bank to produce the financial statements on 24 February 2009.

In respect of charges 3 and 4 he states that it was "a pure administrative error that occurred which caused the wrong registration number to be used as that of the First Respondent".

It must be borne in mind that on 5 June 2008 when the fax by Hloni Mashaba was dispatched to Mr Goosen none of the respondents were registered with the Council. They could not therefore possibly comply with the requirement in regulation 4(2)(b) that a debt collector shall "indicate the number of his or her certificate of registration on all correspondence."

In view of this it can be expected that no registration number will appear on outgoing letters. Surprisingly the following appears on exhibit "D" under the right hand corner of the letterhead "Reg. No 2001/058981/07". There is no indication that this is a company registration number. The reader of this letter will thus easily accept that this is the first respondent's registration number with the Council. On another letter dated 21 May 2008 to the Council this number again only appear as "Reg. No 2001/001981/07". Once again no mention of a company registration number.

On a letter dated 8 July 2008, exhibit "M", to adv Gildenhuis the words "Company Registration Number 2001/001981/07" now appears at the bottom of the letter. The same number which has appeared on the right hand top of the two previous letters, without any indication that it is a company registration number, has now been removed. This is, however, still an incorrect company registration number which belonged to another company "Rags and Riches Trading 105 (Pty) Ltd." The use of this incorrect company number is non-sensical in view of the fact that Legal Care's correct company registration number was already well-known by 3 March 2008 at the date when the application for the registration of Legal Care 24/7 CC was lodged with the Council. On "Aanhangsel Vorm 1 B" under the heading "A. Besonderhede van Regspersoon/Maatskappy/Beslote Korporasie par 2" the following is stated "2. Registrasienuommer CK 2007/169934/23". The date of registration is indicated as 30 August 2007.

This is the correct registration number of Legal Care 24/7 CC and it was reflected correctly long before 5 June 2008.

Mr Gerhard Brummer, an Administrative Officer, of Legal Care 24/7 CC said he was involved with the registration of Legal Care 24/7 CC with the Council. He forwarded the documents in March to the Council. Now in these documents the correct company registration number of Legal Care 24/7 are used. How is it then possible that he did not notice the incorrect registration number on the letterhead which was, as I have pointed out, conveniently just reflected as "registration number" and not as "company registration number."

Mr Muller's evidence, as I pointed out, is unreliable and I also do not accept his evidence in regard to the registration number. Both respondents are consequently also found guilty on charges 3 and 4. They are found guilty that they made use of misleading misrepresentations in this regard.

On charge 2 both respondents are found not guilty. Mr Goosen at one stage in his evidence said that "dit is moontlik" that somebody spoke to him in connection with the matter prior to faxing the letter to him. The respondents are therefore given the benefit of the doubt in this regard.