

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

Saakno:8/6TPS001/08

In the matter:

**COUNCIL FOR DEBT COLLECTORS THE COUNCIL
and**

**TOP NOTCH PROPERTY SERVICES CC FIRST RESPONDENT
As represented by C.J. Wagenaar**

C.J. WAGENAAR SECOND RESPONDENT

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

WHEREAS: the Council for Debt Collectors received complaints from Ms Gird.

NOW THEN TAKE NOTICE THAT: The Council for Debt Collectors (hereinafter called the Council) as per decision of the Executive Committee of the Council on 23 JANUARY 2009, decided to charge the Respondents with the following improper conduct:

CHARGE 1

That the debt collector acted in contravention of Section 19(1)(a) and (b) of the Act, Act 114 of 1998 and Section 5(3)(a) of the Code of Conduct by attempting to recover an amount to which the debt collector was not entitled in that:

On a statement dated 07 August 2008 you recovered/attempted to recover the following costs from Mr. Gird;

- a) Final demand letters in the amount of R 85-50 each(2 letters claimed)
- b) Reminder letters in the amount of R51-30 each. (3 letters claimed)

CHARGE 2

That the respondent is guilty of a contravention of section 15(1)(g) read with Section 8(1) of the debt collectors Act, Act 114 of 1998 in that:

That during the period August 2008 the debt collector acted as a debt collector, by recovering/attempting to recover a debt from a Mr. Gird a debtor from whom the Respondent had been instructed to recover a debt, whilst the he was/is not registered as a debt collector and whilst knowing/should have know that he was/is not registered.

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.

NOTE In terms of regulations 7(10)(a) this notice should be personally served by the sheriff, or a person designated by the Council. You may however in writing acknowledge the receipt of this notice, and consent to service by fax. Please indicate in writing whether you consent or not.

- b. Provide the Council, together with the above mentioned notice, with a physical address were 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.

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

1. Held at **Cape Town** on **06/04/2009** and **08/06/2009**.

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. Particulars of Debt Collector(s) charged /
Besonderhede van Skuldinvorderaar(s) aangekla

(a) Topnotch Property Services CC

First Respondent

(b) Mr. C.J. Wagenaar

Second Respondent

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

Adv. A. Cornelius

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 Skuldinvorderaar(s) verskyn

(a) Mr. C.J. Wagenaar

6. Charge(s) / Klagte(s)

As per chargesheet annexed hereto /

Soos per klagstaat hierby aangeheg.

7. Plea / Pleit:

Not guilty both counts.

8. The proceedings are recorded by mechanical means/

Die verrigtinge word meganies opgeneem

9. Finding/Bevinding:

Guilty both counts.

10 Sentence / Vonnis:

(a) In terms of section 15(3)(e) of the Debt Collectors Act, 1998 the respondents are jointly and severally ordered to pay the Council for Debt Collectors an amount of R 2 942.00 in respect of the costs incurred by the Council in connection with the investigation. This amount must be paid to the Council on or before 8 July 2009.

(b) The respondents are in terms of section 15(3)(c) jointly and severally fined an amount of R 10 000.00 which is suspended in total 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.

(c) In terms of section 15(3)(f) of the Act the respondents are jointly and severally ordered to make a calculation of the

costs as reflected in charge 1 of the charge sheet to establish (d) whether any of these costs have been recovered from Mr. Irvine and if so how much of this amount must be returned to Mr. Gird. Proof of such calculation as well as the refund, if any, must be submitted to Adv Cornelius of the Council on or before 8 July 2009.

JUDGMENT

The Respondents were on 6 April 2009 charged with improper conduct before Adv. J. Noeth, Chairman of the Council.

The Council was represented by Adv. A. Cornelius. The Respondents were represented by C.J. Wagenaar.

The Respondents were charged with the following charges:

CHARGE 1

That the debt collector acted in contravention of Section 19(1)(a) and (b) of the Act, Act 114 of 1998 and Section 5(3)(a) of the Code of Conduct by attempting to recover an amount to which the debt collector was not entitled in that:

On a statement dated 07 August 2008 you recovered/attempted to recover the following costs from Mr. Gird.

- a) Final demand letters in the amount of R 85.50 each (2 letters claimed).
- b) Reminder letters in the amount of R 51.30 each (3 letters claimed).

CHARGE 2

That the respondent is guilty of a contravention of section 15(1)(g) read with Section 8(1) of the Debt Collectors Act, Act 114 of 1998 in that:

That during the period August 2008 the debt collector acted as a debt collector, by recovering/attempting to recover a debt from Mr. Gird, a debtor, from whom the Respondent had been instructed to recover a debt, whilst he was/is not registered as a debt collector and whilst knowing/should have known that he was/is not registered."

Mr Wagenaar on behalf of both the Respondents pleaded not guilty to both the charges.

He said that Topnotch Property Services CC is a managing agency. In this capacity the respondents collect arrear levies for bodies corporate. He does not consider these arrear levies as debt.

Adv Cornelius handed annexures "A", "B", "C" and "D" in with the consent of the respondents.

Attached to annexure "C" is a statement from Topnotch Property Services CC dated 7 August 2008 reflecting the amount of the claims set out in the charge sheet annexure "A". Annexure "D" is a letter dated 7 May 2007 from Topnotch Property Services CC claiming an amount of R 51.30 and in which the following is stated.

"Please note that your account is debited with an amount of R 51.30 for the administration costs pertaining to this letter and will only be reverse due to an error on our behalf."

After a thorough consideration of the facts in this matter I find that managing agents who collect arrear rent or levies are debt collectors in terms of the Debt Collectors Act, 1998 and must be registered as a debt collector before they can collect such arrears. The reasons for my decision are set out in the written judgment by me in the matter of the Council versus Brunello Property

Management CC dated 8 June 2009. In my view the principles in the two matters are the same. A copy of the relevant judgment is attached. The respondents are convicted on both charges.

disciplinary inquiry report 2009