

Shoprite loses appeal, guilty of reckless credit lending

Shoprite Investments Limited (Shoprite) has lost its appeal against the National Consumer Tribunal's ruling that it recklessly granted credit. The retail giant's appeal was dismissed with costs by the Pretoria High Court on 18 December 2019.



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Case history

"In September 2014, whilst conducting a research exercise, the National Credit Regulator (NCR) identified deficiencies in Shoprite Investments Limited's (Shoprite) affordability assessment processes and established that Shoprite was likely granting credit recklessly to some consumers," says Nomsa Motshegare, CEO of the NCR.

A full investigation into Shoprite's affordability assessment and credit granting practices was then carried out, which culminated in the NCR launching a referral in the National Consumer Tribunal (NCT) against Shoprite.

Shoprite opposed the proceedings in the NCT but, in September 2017, the NCT handed down in its ruling in terms of which it confirmed that Shoprite had, on a number of occasions, failed to conduct proper affordability assessments prior to granting credit to consumers and thus had granted credit recklessly. The NCT further declared that Shoprite had committed conduct prohibited by the National Credit Act (NCA) and ordered Shoprite to pay R1 million as a fine.

Shoprite was also ordered to appoint a debt counsellor to assist affected consumers and make assessments on a case by case basis for purposes of determining whether to suspend and/or restructure consumers' obligations under the reckless credit agreements.

Failed appeal

Shoprite appealed the NCT's ruling in the Pretoria High Court, where a full bench of three judges unanimously dismissed the appeal with costs, and confirmed the NCT's ruling almost in its entirety.

The NCT elaborated as to the reasons that Shoprite's affordability assessment mechanisms, models and procedures were not compliant with the NCA and were reckless:-

- Shoprite disregarded consumers' pre-existing credit payment obligations, contrary to the provisions of the NCA;
- Shoprite "adjusted" credit bureau information to enable credit to be granted where the information in the credit bureau report indicated that consumers could not afford the proposed new debt; and
- Shoprite disregarded or adjusted consumers' pre-existing and future financial commitments in order to create affordability for the proposed new debt.

In dismissing the appeal, the High Court noted that the "most astonishing" aspect of Shoprite's approach to affordability assessments is the fact that many consumers "still had negative affordability figures" even after Shoprite had carried out its "adjustments" to affordability calculations, yet Shoprite nonetheless proceeded to grant credit to these consumers.

The High Court also noted that the consumers affected by Shoprite's conduct are mostly pensioners and individuals with low average income, i.e. largely financially vulnerable members of society.

Shoprite must now comply with the NCT's order by making payment of the R1 million fine, and appointing a debt counsellor who will be making contact with affected consumers.

"The NCR would like to appeal to any consumers, who believe they may be a victim of reckless credit granted by Shoprite, to lodge a complaint with the NCR by emailing their complaint to complaints@ncr.org.za," concludes Motshegare.

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