



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 455

Pretoria, 23 May
Mei 2003

No. 24860



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS*No.**Page
No. Gazette
No.***GENERAL NOTICES****Trade and Industry, Department of***General Notices*

1375	Consumer Affairs (Unfair Business Practices) Act (71/1988): Notice in terms of section 10 (3).....	3	24860
1376	do.: Notice in terms of section 12 (1) (b)	19	24860

GENERAL NOTICES

NOTICE 1375 OF 2003

DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 4283 of 2000 as published in Government Gazette No.21766 dated 17 November 2000, as set out in the Schedule.

A ERWIN
MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)

Report No. 100

Fincom Financial Brokers, South African Investment Society, Multi Financial Brokers, International Financial Brokers, Verifin Financial Brokers and Consumer Services of South Africa, Mrs E Human, Ms du Plessis, Messrs J P Botha and M Deliyannis. **(Fincom)**

1. The Consumer Affairs Committee - a brief background

The Consumer Affairs Committee (the Committee) administers the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). It is a statutory committee in the Department of Trade and Industry that reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of certain business practices.

An "unfair business practice" is defined in the Act⁽¹⁾ as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.

The Committee has wide investigative powers. In broad terms the Committee is empowered to undertake investigations into:

- (a) the business practices of individuals and businesses that could be involved in unfair business practices⁽²⁾

and

- (b) any business practice in general which is commonly applied for the purposes of or in connection with the creation or maintenance of unfair

(1) See s 1 the definition section

(2) In terms of sections 4(1)(c) and 8(1)(a). These are commonly referred to as 4(1)(c) and 8(1)(a) investigations. A 4(1)(c) investigation is an informal preliminary investigation whilst an investigation in terms of s 8 is a formal investigation and notice of the investigation is published in the *Government Gazette*. The Committee conducts an 8(1)(a) investigation when it is investigating specific businesses or individuals. Any order by the Minister would only apply to those businesses and/or individuals that are named in the notice.

business practices.⁽³⁾

A 4(1)(c) investigation enables the Committee to make a preliminary investigation in order to ascertain whether there is an unfair business practice in existence or whether there is a possibility that an unfair business practice may come into existence in the future. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* but if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the section 8 investigation is published in the *Government Gazette*. The purpose of a 4(1)(c) investigation is to enable the Committee to make a more informed decision as to whether there is a need for a formal investigation. The Minister is not empowered to make any decisions on the strength of a 4(1)(c) investigation but the Minister may do so following a section 8 investigation.

Should the Committee, after the conclusion of a section 8 investigation, resolve that an unfair business practice exists, or may come into existence, it recommends corrective action to the Minister.⁽⁴⁾ Orders of the Minister are published in the *Government Gazette*. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

The Committee was preceded by the Business Practices Committee (BPC) which administered the Harmful Business Practices Act, 71 of 1988 (the former Act). The

(3) In terms of section 8 (1) (b). This is commonly referred to as an 8(1) (b) investigation. The Committee conducts such an investigation when it is discovered that many businesses or individuals have adopted a particular business practice which appears to be unfair. In other words it is now a general business practice. Any order by the Minister would be applicable to any individual or business that is operating a similar business or that intends to operate such a business in the future regardless of the fact that they were not specifically investigated.

(4) The powers of the Minister are set out in s 12

former Act was amended during 1999.⁽⁵⁾ As a result, the BPC was replaced by the Consumer Affairs Committee and the definition of a harmful business practice was amended and now refers to an unfair business practice. The investigations which can be undertaken by the Committee have remained the same and those sections of the Act and the former Act are identical

2. Introduction

This report deals with a formal 8(1)(a) investigation into the business practices of -

Fincom Financial Brokers, South African Investment Society, Multi Financial Brokers, International Financial Brokers, Verifin Financial Brokers and Consumer Services of South Africa, Mrs E Human, Ms du Plessis, Messrs J P Botha and M Deliyiannis (**Fincom**).

3. Background

In August 1991, the BPC gave notice of its intention to conduct a general investigation into business practices involving advice to debtors and payments to or negotiations with creditors on behalf of debtors.⁽⁶⁾ This investigation resulted in the BPC's Report on Debt Mediation and Loan Assistance.⁽⁷⁾ This report deals with a range of problems which consumers, who are unable to meet their financial obligations, may encounter. These include the offering of debt counselling and advice, debt adjustment (renegotiation of debts), substitution of creditors (debt take over), debt distribution, debt refinancing and assistance in obtaining loans. These activities have the common, supposed aim, of improving the position of over committed debtors. These activities are, for the purpose of the report, referred to as "debt mediation". Notice 777 of 1995⁽⁸⁾

(5) The Act was amended by the Harmful Business Practices Amendment Act 23 of 1999

(6) Notice 750 of 1991, *Government Gazette* 13457 16 August 1991. This was an 8 (1) (b) investigation

(7) Report No 30 *Government Gazette* 15470 4 February 1994

(8) *Government Gazette* 16609 18 August 1995

was a direct result of Report 30.

Notice 777 reads as follows:

- "1. In this regulation "intermediary" means any director, manager or employee of, or any person who acts on behalf of, a moneylender, and any person, except the moneylender who receives an application from any person who intends to borrow money in terms of a money lending transaction or who in any manner acts on behalf of any person intending to become engaged in any negotiations relating to such loan.
2. Subject to the provisions of paragraph 6, the business practice -
 - (a) whereby an intermediary, directly or indirectly, in respect of a money lending transaction or an application by any person to borrow an amount of money, demands, receives or recovers any valuable consideration, excluding bank charges or lawfully permissible interest, from the borrower or from any person so applying, whether for his own account or on behalf of any person other than the moneylender, but excluding agreements in terms of which the fee of the intermediary is recovered from the loan amount; or
 - (b) whereby a person, directly or indirectly, undertakes the payment, for reward, of amounts to creditors on behalf of a debtor, excluding bank charges or lawfully permissible interest,is hereby declared unlawful.
3. Subject to the provisions of paragraph 6, the advertising by an intermediary, through any medium whatsoever, of the service whereby the payment, for reward, excluding bank charges or lawfully permissible interest, of amounts to creditors on behalf of a debtor is undertaken, is hereby declared unlawful.
4. Subject to the provisions of paragraph 6, any intermediary is herewith prohibited, directly or indirectly, from entering into an agreement with a person in respect of a money lending transaction or an application by any person to borrow an amount of money, granting such intermediary the right, whether conditionally or unconditionally, to receive or to recover, on his own account or on behalf of any person other than the moneylender, any valuable consideration, excluding bank charges or lawfully permissible interest, from the borrower or from any person so applying, but excluding agreements in terms of which the fee of the intermediary is recovered from the loan amount; or

5. Subject to the provisions of paragraph 6, any person is herewith prohibited, directly or indirectly, from entering into an agreement with a debtor, involving the payment, for reward, of amounts to creditors on behalf of that debtor, excluding bank charges or lawfully permissible interest.
6. This notice does not apply to-
 - (a) any person who practices as an attorney on his own account or as a partner in a firm of attorneys or as a member of a professional company, as defined in section 1 of the Attorney's Act, 1979 (Act No. 53 of 1979); or
 - (b) any person who is registered as an accountant or auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 5 of 1991); or
 - (c) estate agents who are holders of fidelity fund certificates in terms of section 16 of the Estate Agents' Act, 1976 (Act No. 112 of 1976); or
 - (d) a moneylender or a creditor grantor or a lessor, as defined in section 1 of the Usury Act, 1968 (Act No. 73 of 1968), paying an intermediary for services rendered by him in connection with any transaction referred to in Regulation 2 (a); or
 - (e) a banking institution as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990); or
 - (f) an employee or owner of any newspaper, magazine or other advertising medium."

4. Further complaints

Notwithstanding the order by the Minister, the Committee continues to receive a steady flow of complaints against businesses acting as intermediaries for loan applications. It appears that various businesses, acting as intermediaries, in respect of money lending transactions or applications to borrow money, are attempting to circumvent the Minister's prohibition by, for example, demanding that consumers:

- (a) become members of another association and pay an up-front membership fee
or
 - (b) purchase an information package
- before a loan application will be processed or considered.

Consumers who are now members of the association or who have purchased information packages are then supposedly also entitled to a wide range of other services such as various types of loans, debt rehabilitation, credit clearance, financial planning and para-legal services.

5. Investigation into Fincom

After preliminary investigations into a number of complaints, the Committee identified several businesses including Fincom as acting as intermediaries in money lending transactions and/or applications by persons to borrow money. The Committee resolved to investigate each business separately. On 29 February 2000, the Committee resolved to undertake a 4(1)(c) investigation into the business practices of Fincom. As the investigation proceeded, the names of other persons and businesses involved were added to the investigation.⁽⁹⁾

5.1 The complaints

The complaints received revolved around the payment of a fee when applying for a loan. Consumers responding to advertisements with headings such as, "CASH LOANS - Loan applications are free", discovered that they had to enrol as members of either South African Investment Society (SAIS) or Consumer Services of South Africa (CSSA) and were required to pay a membership fee. A six-month membership entitled the members to various services such as financial and retirement planning and consumer advice (see below for details). Consumers complained that when an application for a loan was refused, the **membership fee was not refunded**.

(9) Those involved in Fincom include Fincom Financial Brokers, South African Investment Society, Multi Financial Brokers, International Financial Brokers, Verifin Financial Brokers and Consumer Services of South Africa, Mrs E Human, Ms du Plessis, Messrs J P Botha and M Deliyannis

5.2 The practice

The following standard letter from Fincom sets out the business practice.⁽¹⁰⁾

"We thank you for your recently received enquiry regarding your personal financial requirements and take this opportunity to introduce our company and the services that we render as financial brokers and advisors to our members only.

The South African Investment Society (S.A.I.S.) through its vast knowledge and experience is qualified to provide and assist you with outstanding advisory services and assistance relating to your Personal and Financial needs. Our unique background plus a sincere philosophy based on personal involvement within a network of various financial leaders, investors and affiliated institutions ensure that your Personal and Financial requirements are satisfied, ranks us as an outstanding Authority in this specialised field.

Our dynamic services are also available to you, therefore the opportunity to become a member would immediately qualify you to receive the following services.

Financial Planning	Financial	Credibility	Para-Legal
Personal Financial Evaluation Med. & Long Term Financial Planning Retirement Planning Investments Short & Long Term Insurance	Personal Loans Housing Loans Home Improvements Vehicle Finance Bridging Finance Consolidation of Debt	Debt Rehabilitation Credit Clearance Assistance in respect of: Letters of Demand, Summonses, Blacklisting, Credit bureau and Credit build.	Consumer Legal Advice Estate Planning Drafting of Wills Administration of Estate

Should you require any of these services, please forward the following vital information to enable us to proceed:

Completed Application Forms

Copy of Identity Document or Passport

(10) This letter is given to those who make inquiries about the business

Copy of latest Salary Advice or Letter from Employer stating Income

Study Loan Applications - Attach most recent examination results.

Photocopy of Marriage Certificate (Only if applicable)

Membership Fee of R200.00, which is REFUNDABLE should membership not be accepted

The Committee established that consumers who were already in difficult financial circumstances responded to advertisements which suggested that cash loans could be obtained. These advertisements did not indicate that it was a prerequisite that an applicant had to become a member of either SAIS or CSSA before the loan would be processed. However, the complainants paid the fee in order to get the loan. They indicated that they were not interested in any of the other services.

5.3 The investigation

Officials of the Committee held discussions with Mrs E Human (Human) on 29 March 2000 at the offices of Fincom. Fincom's business practices were discussed. The officials requested that Human provide details regarding the various services which were being provided to members. Human explained that Fincom's administration office was in Cape Town and that it would take time to compile the requested information. Various reminders followed and it was later alleged that the information had been faxed to the Committee. Further meetings were held with Human on 31 May 2000 and again on 1 June 2000. By then it had been established that South African Investment Society (in Cape Town), Verifin Financial Brokers, Multi Financial Brokers and International Financial Brokers were interwoven and that Human was the driving force behind these businesses. These businesses operated in Gauteng, KwaZulu Natal and the Western Province. It appeared that trading names were chosen and changed at random and that Human, Ms du Plessis (Human's sister) and a Mr Botha (both from the Cape Town office) were the owners of the businesses. These businesses were not registered companies or close corporations.

On 13 July 2000, a business consultant and Fincom's attorney, visited the offices of the Committee to discuss the investigation. A meeting with Human at Fincom's office was arranged by them for 17 July 2000. A few minutes after the commencement of the meeting Human refused to answer questions put to her by the Committee's officials. It appeared that her decision was taken on the advice of her attorney. There was no point in continuing the meeting and so the officials left the premises.

In a letter dated 18 July 2000, the attorney was requested to confirm, by not later than 20 July 2000, whether his client agreed that the investigating officials could continue with the investigation without a search warrant or whether she preferred that a search warrant be obtained. ⁽¹¹⁾

Human did not consent and a search warrant was obtained on 31 July 2000. The investigators entered the premises on 2 August 2000. The inspection revealed *inter alia* the following:

- (a) Copies were found of fliers which were distributed in various cities and towns and which referred to cash loans. These fliers did not indicate any of the other services or that consumers were required to pay a membership fee.
- (b) The administration office or head office was situated in Cape Town and all membership applications and also loan applications were forwarded to that office.
- (c) Consumers were expected to become members of SAIS or CSSA (not two separate businesses, but two names for the same entity) before any loan application would be considered and processed. The loan

(11) See s 7(a) where it states that unless the owner or person in charge of the premises concerned has consented thereto in writing, an investigating officer must obtain a search warrant issued by a magistrate.

applications from non members were retained and did not receive attention until the membership fees had been paid.

- (d) A membership registration book and a receipt book were seized and certified copies of all the pages were made. The first date in the membership registration book was 7 January 2000 and it ended on 1 August 2000 and was numbered from 1000 to 1963. Sequential pages were not used and the total number of new members for this period was 932. In all instances the service provided was that of an application for a loan.
- (e) The number of receipts did not correspond with the number of new members. It was alleged that no receipts were issued when consumers, applying for membership, made deposits directly into Fincom's bank account. Receipts were only issued for cash payments.
- (f) There was evidence that a number of loans had been placed successfully with money lending institutions and that Fincom earned commission from these transactions.

It was apparent that Fincom's "real" business is that of acting as an intermediary for consumers applying for loans. Human gave her full cooperation during the discussion on 2 August 2000. She also indicated that she was willing to change the practices of the business.

5.4 Section 9 negotiation

In terms of s 9, the Committee may at any time negotiate with any person who is involved in what the Committee believes is an unfair business practice. The purpose of the negotiation is for the various parties to reach a negotiated settlement which will bring the unfair business practice to an end. As Human had indicated that she was prepared to work with the Committee, a draft undertaking was forwarded to Fincom's

attorney on 8 August 2000. On 24 August 2000 a proposed draft undertaking which was not the same as the one forwarded by the Committee was received. This undertaking was discussed by the Committee on 26 August 2000 and the Committee resolved that the proposed undertaking was not acceptable. A letter in this regard was addressed to the attorneys in which it was pointed out that the draft received was not acceptable and also that all the persons involved in the business were obliged to complete the undertaking, not only Human. No further response was received from the attorneys and in a letter, dated 4 October 2000, the attorneys were informed that the Committee intended to continue with a formal investigation. The Committee invited Human to address it on this issue. The invitation was declined and in a letter dated 6 November 2000, the Committee informed the attorneys that a decision to undertake an 8(1)(a) investigation had been taken and notice of this investigation would be published in the *Government Gazette*.

The notice read as follows:⁽¹²⁾

NOTICE 4283 OF 2000
DEPARTMENT OF TRADE AND INDUSTRY
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of -

Fincom Financial Brokers, South African Investment Society, Multi Financial Brokers, International Financial Brokers, Verifin Financial Brokers and Consumer Services of South Africa, Mrs E Human, Ms du Plessis, Messrs J P Botha and M Deliyiannis, the owner(s), manager(s), any employee(s), agent(s) and/or representative(s) of any of the aforementioned in respect of the business practices of the aforementioned.

The investigation will *inter alia* focus on the payment of a membership fee to enrol with the above businesses, after which certain services, such as acting as intermediaries for loan applications of the members, are offered."

(12) See Notice 4283 of 2000, *Government Gazette* 21766 17 November 2000

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504

Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737

Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001

Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510

Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504

Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737

Kaapstad-tak: Tel: (021) 465-7531