In the matter between:

**COMPLAINANT**

and

**CREDIT PROVIDER** **RESPONDENT**

**STATEMENT OF DETERMINATION OF COMPLAINT GIVEN IN TERMS OF SECTION 75 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT 2010 (the Act)**.

## 1 INTRODUCTION

1.1 This complaint concerns the charge of collection fees by the Credit Provider Credit Provider (the Credit Provider) on several loans extended to the Complainant, and whether these were in violation of the then applicable Money-Lending and Credit Financing Act No. 3 of 1991 (the Money-Lending Act).

## 2 BACKGROUND

2.1 The complaint was lodged with the Financial Services Regulatory Authority (FSRA) on the 14th January 2016. It was later referred to this Tribunal on the 18th March 2016 for resolution.

## 3 COMPLAINT

3.1 The Complainant states that she began borrowing from the Credit Provider from January 2001 up to 2013. On the 25th November 2013, her outstanding balance with the Credit Provider was standing at E9, 376.79. She finally settled her debt through the assistance of the Employment related Co-operative, to which she is a member.

3.2 Following settlement of the debt, she requested the FSRA to enquire into the charges termed as "collection fees", which she argues, were levied unlawfully, and contrary to law. She states that these charges were deducted straight from Treasury. She wonders as to why she was charged so much on collection fees. She states that she wrote to the Credit Provider on 17 December 2015 allowing them 30 days to respond. The Credit Provider's response was that there were no refunds due to the Complainant as what was charged to her was in accordance with the law. She then requested that the FSRA resolve the issue between herself and the Credit Provider.

3.3 The Complainant requests that the collection fee payments be reimbursed to herself.



3rd Floor, West Wing, Ingcamu (PSPF) Building, Mhlambanyatsi Road, Mbabane, Swaziland, Post Office Box 8490, Mbabane H100
Tel: +268 2404 7653/ 2404 4464, Fax: +268 2404 0636, E-mail: info@ombudsfs.org.sz, Website: www.ombudsfs.org.sz

## 4 CREDIT PROVIDER'S RESPONSE

4.1 The Credit Provider's defence to this complaint is that the collection fees charged to the loans were valid and in terms of the law.

## 5 DETERMINATION AND REASONS THEREOF

5.1 The contents of the complaint together with supporting documents were furnished to the Credit Provider on the 27 April 2017 but no responses were forthcoming until date of this determination. The Tribunal will deal with the complaint on the papers before it.

5.2 Due to the jurisdictional limit of this Tribunal, the transactions which this Tribunal will enquire into will be those entered into and concluded between 1 June 2010 (following the promulgation of the FSRA Act) and 9 March 2017 (when the Consumer Credit Act, 2016 came into effect). The affected transaction in this instance was that concluded between the Complainant and the Credit Provider on 28 February 2012, and whose final instalment due date was 28 February 2017. Consequently, the question for determination is whether or not the Complainant should be awarded the amount she paid as collection fees charged by the Credit Provider on the February 2012 agreement.

5.3 The loan schedule shows that at the time, the Complainant had an outstanding balance of E6, 981.65. She borrowed an additional E1, 018.35. The eventual total loan amount was now E8, 000.00. The schedule further demonstrates that the interest amount was calculated at E3, 099.99. The finance charge amount was E7, 320.00. It is notable that in the other transactions which Complainant included in her complaint papers, the "Finance Charge Amount" is sometimes referred to as "Service Fee" and other times "Collection Fee".

**Interest**

5.4 A credit lender is entitled to charge interest on a loan extended to a borrower. Section 3.1 (b) of the Money-Lending Act provides for limitation to the interest to be charged thus:

> "*Where in respect of any money-lending or credit transaction the principal debt —exceeds E500 or such amount as may be prescribed from time to time, no lender shall charge an annual interest rate of more than 8 percentage points, or such amount as may be prescribed from time to time, above the rate for discounts, rediscounts and advances announced from time to time by the Central Bank*...."[Emphasis added]

5.5 The above section serves as authority that interest charged should not be more than 8% above the discount rates fixed by the Central Bank of Swaziland. The discount rate at the time of the transaction entered into by the Complainant was 5.5% [**Central Bank *Annual Report* 2012/2013, page 9**]. This percentage added to the 8% provided for in the section means that a money lender would not charge a borrower more than 13.5% interest that year. In the present complaint, the Credit Provider charged 13.285,



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which was less than the prevailing interest rate. Here are the values representing that interest rate:

| | Entered values |
|---|---|
| Loan amount | E8,000.00 |
| Annual interest rate | 13.285% |
| Loan period in years | 5 |
| Number of payments per year | 12 |
| Start date of loan | 28/03/2012 |

5.6 Implementing the above rates, our calculations yielded the following results:

| | Loan summary |
|---|---|
| Scheduled payment | E183.19 |
| Scheduled number of payments | 60 |
| Actual number of payments | 60 |
| Total interest | E2,991.68 |

5.7 It turns out, using the above entries, that instead of the interest of E2, 991.68, the Credit Provider charged Complainant E3, 099.99. Accordingly, the Complainant was charged E108.31 extra in interest. It is noteworthy that legislation requires that the charges be specifically stated. This serves to ensure transparency between the parties. Therefore, once a certain rate is put forward, then the values once calculated should reflect the given rates. In this matter, Complainant ought to have been charged E2, 991.68, which was according to the rates in the agreement, and no more.

**Finance charges**

5.8 The Complainant challenges the Credit Provider's billing of finance charges on the loan she signed. The reason advanced by the Complainant in challenging the charges is that it is unlawful in so far as it is not provided for in the Money-Lending Act. The question is whether the Credit Provider is justified in charging such finance charge amount over and above the interest.

5.9 In the case of ***Cebile Nomzamo Simelane v Micro Provident Swaziland Letshego & others*** **Civil Case No. 39/2015** the Supreme Court of Appeal dealt with a case where the applicant sought return of collection fees paid by them to a money lender. The court referred to section 4 of the Money-Lending Act, dealing with disclosure of interest charges as follows:

> *"4. A lender shall, in connection with any money-lending or credit transaction for which finance charges are payable, state in the instrument of debt executed in respect of any such transaction, the following particulars:*
> *(a) the cash amount in money…;*
> *(b) all other charges shown separately…;*
> *(c) the principal debt…;*
> *(d) the amount in Emalangeni and cents of the finance charges;*



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*(e) the finance charges expressed at an annual finance charge rate; and*
*(f) As the case maybe,*
*i) the date upon which or the number of instalments in which the principal debt together with the finance charges shall be paid;*
*ii) …"* [Emphasis added]

5.10 The above section disproves Complainant's argument that the Money-Lending Act does not provide for such charges, as it clearly provides for them. Quoting the now repealed South African Usury Act 73 of 1968 (the Usury Act), the Supreme Court noted that finance charges constitute valuable consideration which the borrower gives to a money lender in terms of a money lending transaction. Further, that it represents the cost of credit or the cost of borrowing. In the Court's view, these are charges incidental to the cost of borrowing. As illustrated above, the Money-Lending Act expressly permits the levy of finance charges by money lenders and places few limitations thereon, unlike the Usury Act.

5.11 Complainant's argument therefore is not valid. She is bound by the agreement to pay the charges as agreed in the same way that she is bound to pay all other costs, depending on the legality of the contract. Section 6(1) of the Act provides that:

"*Any agreement in connection with any money-lending or credit transaction that is not in conformity with the provisions of this Act shall be null and void, and shall not be enforceable against the borrower or the credit receiver by the lender.*" [Emphasis added]

5.12 The Court further went on to state that the Act prohibits in section 6(1) only transactions not in conformity with the Act, for instance, providing:

"(*d) in the case where judgment is obtained for recovery of the principal debt or finance charges due from the borrower or credit receiver, legal costs awarded in terms of such judgment.*"

5.13 The Complainant argues that such charges are unlawful. It is clear from the loan schedule that the charges were agreed upon by the parties when they concluded the written agreement. The Complainant does not deny that she concluded the said agreement with the Credit Provider in which she bound herself to pay the finance charges.

5.14 Since the parties agreed at the conclusion of the money-lending transaction, the Court went on to find that the collection fees were in fact finance charges permitted by section 4 of the Money-Lending Act and therefore not unlawful. This Tribunal is bound by the decision of the Supreme Court, and as such, can only reach the conclusion that the finance charges were within the confines of the law and therefore allowable.



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5.15 Now to turn to the extent of the finance charges levied against the Complainant. The loan schedule provided by the Complainant shows the values entered for the finance charge amount as follows:

| | **Entered values** |
|---|---|
| Loan amount | E8,000.00 |
| Annual Charge Rate | 1.524% |
| Loan period in years | 5 |
| Number of payments per year | 12 |
| Start date of loan | 28/03/2012 |

5.16 Once again, implementing the above rates and values, the following amounts were generated:

| | **Loan summary** |
|---|---|
| Scheduled payment | E138.56 |
| Scheduled number of payments | 60 |
| Actual number of payments | 60 |
| Total Finance Charge Amount | E313.75 |

5.17 It is clear from the above that there are disparities in the calculations that were made by the Credit Provider to those represented above. The loan schedule illustrates that the Total Loan amount was E8, 000.00; the Finance charge amount is represented by the amount of E7, 320.00 calculated at the rate of 1.524%. 1.524% of E8, 000.00 clearly does not yield E7, 320.00 as illustrated from our calculations in paragraph 5.16 above. The calculations made by the Credit Provider on the schedule and which the Complainant signed on to were therefore not accurate. While the Credit Provider rightly charged a finance charge; however, the amount reflected in the rate stated is disproportionate to the percentage rate charged. In other words the Complainant was overcharged the finance charge amount. Based on our calculations, the excess amount charged to Complainant is E7, 006.25. This amount should rightfully be reimbursed to the Complainant.

## DECISION

The Complainant was overcharged in respect of both interest and finance charges to the tune of E108.31 and E7, 006.25 respectively. Both calculations were inaccurate and therefore unlawful.

## THE ORDER

1. The Credit Provider is ordered to pay Complainant the sum of E108.31 in respect of the overstated interest.
2. Finance charges were allowed in terms of the law and therefore valid.



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3. The Credit Provider is ordered to pay Complainant the sum of E7, 006.25, in respect of the inflated finance charge.
4. The payments referred to in (1) and (3) above shall include interest at the rate Complainant was charged under the loan agreement calculated from the date when the Complainant lodged the complaint with the regulator to the date of payment.

**THUS DONE AT MBABANE ON THIS 1ST DAY OF DECEMBER, 2017 AND CERTIFIED A TRUE AND CORRECT DETERMINATION OF THE OMBUDSMAN OF FINANCIAL SERVICES IN TERMS OF SECTION 75(5) OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT OF 2010.**

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**THE OMBUDSMAN OF FINANCIAL SERVICES**



3rd Floor, West Wing, Ingcamu (PSPF) Building, Mhlambanyatsi Road, Mbabane, Swaziland, Post Office Box 8490, Mbabane H100
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