



In the matter between:

THE COMPLAINANT

And

THE SACCO & CREDIT COOPERATIVE SOCIETY LTD

RESPONDENT

STATEMENT OF DETERMINATION OF COMPLAINT GIVEN IN TERMS OF SECTIONS 75 AND 75 OF THE FINANCIAL SERVICES REGULATORY AUTHORITY ACT NO 2 OF 2010 (THE FSRA ACT)

INTRODUCTION

1. This complaint relates to the business of a savings and credit cooperative society in which the complainant (the Complainant) was a member. The Sacco and Credit Cooperative Society Limited (the Respondent). is the Respondent and a licensed financial services provider per the FSRA Act, 2010.

THE COMPLAINT

2. On 27 November 2019, the Complainant submitted a sworn statement of her complaint (the Complaint Form). The complaint form had supporting documents, including,
 - 2.1. Correspondences dated November 2015 ("A") and 6 January 2017 ("B"), and
 - 2.2. Member's Financial Statement as at 31 October 2019.

The complaints form presents the following facts:

- 2.3. The complainant retired from Employer X on or about October 2015.
- 2.4. Thereafter, Complainant, through A, requested to continue to be a member of Respondent, pledging to continue being bound by all rules and regulations stipulated by the latter.
- 2.5. The Complainant, at the time of the complaint, had savings amounting to E34 475.32 (thirty-four thousand four hundred and seventy-five Emalangenani thirty-two cents).
- 2.6. The Complainant at the time of the complaint, was indebted to the Respondent on account of loans advanced to her under the relationship.
- 2.7. The Complainant resigned as a member on the 11 September 2019.
- 2.8. The Complainant asks that the Ombudsman investigates the way her membership with Respondent was terminated. She also asks for a refund of her savings plus any accrued interest, including the sum of her shares with the Respondent.

THE RESPONSE / DEFENCE

3. On 1 July 2020, the Respondent submitted a statement responding to the complaint. The response had several supporting documents, including,
 - 3.1. Member's Financial Statement as at 30 June 2020,
 - 3.2. Screen Short of Loan Enquiry,
 - 3.3. Member's Loan Repayment History (Long Term Loan), and various loan application forms.
4. The following facts can be extracted from the response:

4.1. The Complainant applied and was granted loans in the particulars appearing below –

Loan Type	Date of Loan	Principal Amount	Balance (s)
Education Loan	8 October 2012	E10 000. 00	E10 000. 00 plus E11 086.93 as penalties
Short Term Loan	8 January 2016	E10 000. 00	E10 000. 00 plus 13 221. 02 as penalties
Long Term Loan	13 January 2016	E50 000. 00	E906.67 plus E4585.76 as penalties

- 4.2. All the Complainant's accounts were ultimately frozen as of June / July 2017. The Respondent's system automatically freezes a loan account that goes without payment for a year.
- 4.3. There were constant reminders sent to the Complainant regarding the default payments.
- 4.4. Even if the Respondent sets off Complainant's indebtedness against her savings, she would still be in arrears.
- 4.5. The Complainant must pay what is due to the Respondent.

THE COMPLAINANT'S REPLY

5. On 29 July 2020, the Complainant replied to the defence raised by the Respondent. Her reply is that there was an agreement reached between the parties and the Respondent was to deduct all monies owed by the Complainant from her savings. Heavy reliance was made on B, which was received by the Respondent as evidenced by a date stamp of even date.

DETERMINATION AND REASONS THEREOF

6. It is the role of the Ombudsman to determine whether the termination of the Complainant's membership with Respondent was fair. Further, the Ombudsman has been called upon to determine whether there is cause for a refund of the Complainant's savings plus any interest accrued thereon, including the value of her shares with the Respondent.
7. In assessing the above, both versions of the parties were investigated. The following are common cause facts-
 - 7.1. The Complainant joined the respondent sometime in 1990 and has remained a member till the cause of complaint arose.

- 7.2. The Complainant extended her membership beyond her retirement.
 - 7.3. The Respondent advanced several loans to the Complainant in the particulars outlined in 3.1. above.
 - 7.4. The loans have outstanding balances and have attracted penalties.
 - 7.5. The Complainant has savings with the Respondent.
8. The following facts were found to be in contention:
- 8.1. Whether the Complainant was a member of the Respondent (Was her membership terminated?)
 - 8.2. Whether an agreement exists predicated on B regarding the payment of the outstanding balances.

THE APPLICABLE LAW

9. The rules and procedures of a Savings and Credit Co-operative Society (SACCO) are set out in its by-laws. Section 15 of the Cooperative Societies Act, 2003 provides that these by-laws are binding upon all the members.

By-Laws to bind members

"15 (1) the by-laws of cooperative shall, when registered, bind the cooperative and members thereof to the same extent as if they were signed by each member and contained covenants on the part of each member for himself/herself or for his / her successor to observe all the provisions of the by-laws."

Section 6 of the 2005 regulations to the above Act further states:

Compulsory by-laws

6 (1) Subject to the Act and these Regulations, a society shall make by-laws for the regulation of its affairs and the promotion of its stated objects...[emphasis added]

10. Clause 15 (a) of the Respondent's by-laws states that "all loans shall be granted in terms of the loan policy." Further, and pertinent to the complaint is clause 15 (d) which provides for the event of a default in repayment of the loan. It states,

"In the case of default in repayment of a loan without good cause and sufficient reason...a delinquent penalty shall be charged, and that member shall be suspended from borrowing until it makes good the arrears and wait for three (3) months before borrowing any loan. Non-compliance herewith may result in termination of membership." [emphasis added]

APPLICATION OF THE LAW TO THE FACTS

11. The common cause facts establish that various loans were advanced to the Complainant. In paragraph 3.1. above, the loaned amounts and their balances are outlined as well as the penal amounts levied against the same. Per clause 15 (d) of the by-laws, the legal basis for

the imposition of a default penalty is established and consequently accepted as operative in this relationship. It is thus a fact that the Complainant is indebted to the Respondent.

12. The question of whether the Complainant’s membership was terminated fairly or otherwise becomes the second issue of inquiry. The two competing versions are both supported by documentation. On the one hand, the Complainant submitted a Member’s Financial Statement as at 8 October 2019 [appears to have been extracted at 1256hrs]. The status of the Complainant appears as resigned.
13. However, the Respondent in support of its version submitted a Member’s Financial Statement as at 30 June 2020 [appears extracted at 1126hrs], wherein the status of the Complainant appears active. It warrants mention that the statements above present different balances, with the former closing its account with a negative balance of E17 223.38 (seventeen thousand two hundred and twenty-three Emalangeni thirty-eight cents) and the latter with a negative balance of E16 082.65 (sixteen thousand and eighty-two Emalangeni and sixty-five cents).

DOCUMENT	SUBMITTED BY	CLOSING BALANCE
Member’s Statement as at 8 October 2019	Complainant	- E 17 223.38
Member’s Statement as at 30 June 2020	Respondent	- E 16 082.65

14. From the above, the Complainant, even after setting off against her investments, would still be in arrears. While her investments, which include shares and savings, stand at E38 383.30 (thirty-eight thousand three hundred and eighty-three Emalangeni and thirty cents), they still fall short of the loan amounts and the accrued default penalties.
15. The Complainant relied on B in both her reply and substantive complaint form. She states that there was an agreement to settle the debts using her savings as early as January 2017. There is no record of such agreement. The Respondent has also not confirmed or denied this fact. This is despite that the fact was put to it. However, it should be borne in mind that by that time, the Complainant had not honoured his repayment obligations and there seems to be no justifications or reasons extended to Respondent.
16. In terms of clause 15 (d) of the by-laws, the Respondent by that time reserved the right to terminate the Complainant’s membership for noncompliance. The question of termination of membership therefore becomes answered by clause 15(d) of the by-laws. However, the Respondent in its response states that the Complainant is still a member, albeit a member they consider as a “bad payer”.

FINDING

17. The Respondent did not terminate the Complainant’s membership, notwithstanding that she is in default of her loan repayments. The Complainant further owes the Respondent

the sum of E16 082.65 (sixteen thousand and eighty-two Emalangeni and sixty-five cents), being the negative closing balance as at 30 June 2020.

THE ORDER

18. The complaint is not upheld.

19. No order is made against the Respondent.

THUS, DONE AT MBABANE 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.

THE OMBUDSMAN OF FINANCIAL SERVICES