

**IN THE NATIONAL CONSUMER TRIBUNAL
HELD IN CENTURION**

Case number: **NCT/81554/2017/73(2)(b)**

In the matter between:

THE NATIONAL CONSUMER COMMISSION

APPLICANT

and

WESTERN CAR SALES CC T/A WESTERN CAR SALES

RESPONDENT

Coram:

Prof. T Woker	–	Presiding member
Adv. J Simpson	–	Member
Ms. H Devraj	–	Member

Date of Hearing	–	24 August 2017
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JUDGMENT AND REASONS

APPLICANT

1. The Applicant in this matter is the National Consumer Commission. A regulatory entity created by section 85 of the Consumer Protection Act 68 of 2008 ("the CPA"), (hereinafter referred to as "the Applicant" or "the NCC").
2. At the hearing the NCC was represented by one of its employees, Mr J. Selolo.

RESPONDENT

3. The Respondent is Western Car Sales CC. The Respondent appears to be a supplier and dealer in second hand motor vehicles with its business premises at 24 to 26 Shelly Street Kraaifontein in the Western Cape (hereinafter referred to as "the Respondent").
4. The Respondent did not file any answering affidavit to the application and did not appear at the hearing.

APPLICATION TYPE

5. This is an application in terms of Section 73(2)(b) of the CPA. The NCC is alleging that it received a complaint, did an investigation and is now referring the complaint to the Tribunal.

CONSIDERATION OF THE EVIDENCE ON A DEFAULT BASIS

6. On 12 May 2017, the NCC filed the application with the Tribunal. The Tribunal Registrar issued a Notice of Complete Filing to all the parties on 16 May 2017.
7. In terms of Rule 13¹ of the Rules of the Tribunal, the Respondent had to respond within 15 business days by serving an answering affidavit on the Applicant. The Respondent however failed to do so.
8. The Applicant filed an application for a default order in terms of Rule 25(2) on 14 June 2017.
9. Rule 13(5) provides as follows:

¹ GN 789 of 28 August 2007: Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal, 2007 (*Government Gazette* No. 30225)

as amended by Notice	<i>Government Gazette</i>	Date
GN 428	34405	29 June 2011
GNR.203	38557	13 March 2015

“Any fact or allegation in the application or referral not specifically denied or admitted in the answering affidavit, will be deemed to have been admitted”

10. Therefore, in the absence of any answering affidavit filed by the Respondent, the Applicant's application and the allegations contained therein are deemed to be admitted.
11. The NCC provided the Tribunal with a Postnet waybill showing that the application was sent by courier to the Respondent and signed for on 12 May 2017. The NCC further referred the Tribunal to an email from the Respondent, which was in reply to the Tribunal's notice of complete filing. Mr Selolo also verbally informed the Tribunal that he did contact the Respondent on the morning of the hearing but the Respondent stated that they would not be attending the hearing.
12. Based on the information provided the Tribunal is satisfied that the application documents were adequately served in accordance with Rule 25(3). The matter therefore proceeded on a default basis in the absence of the Respondent.

BACKGROUND

13. On 11 December 2015 Ms H Van Lill purchased a 2001 model Volkswagen Passat 1.8T with approximately 280 000 kilometres on the odometer from the Respondent for an amount of R61 450.00. She collected the vehicle on 14 December 2015.
14. On 17 December 2015 the vehicle started exhibiting problems with the gearbox. The vehicle started shaking and the gears would not engage properly. On 19 December 2015 the vehicle broke down and had to be transported to the Respondent on a truck at Ms Van Lill's cost. Ms Van Lill requested the Respondent to refund her the purchase price of the vehicle but the Respondent refused to do so. The vehicle remained at the Respondent for a period of time but was eventually transported to Ms Van Lill's premises due to the Respondent threatening to charge storage costs.
15. Ms Van Lill reported her complaint to an independent institution called SA Consumer Complaints in January 2016. This institution attempted to resolve the dispute but was unsuccessful. She then

approached the Motor Industry Ombudsman of South Africa (MIOSA). MIOSA issued a ruling in favour of Ms Van Lill in May 2016. The Respondent however appears to have ignored the ruling and MIOSA thereafter referred Ms Van Lill to the NCC. Based on the complaint received from Ms Van Lill dated 30 May 2016, the NCC initiated an investigation into the matter and issued a report on 24 February 2017.

APPLICANTS SUBMISSIONS

16. The NCC is alleging that the Respondent is in contravention of the following sections of the CPA and requests the Tribunal to make a finding of prohibited conduct in this regard -

16.1 Section 51(1)(a) and (b) –

Prohibited transactions, agreements, terms or conditions

51. (1) A supplier must not make a transaction or agreement subject to any term or condition if—

(a) its general purpose or effect is to—

(i) defeat the purposes and policy of this Act;

(ii) mislead or deceive the consumer; or

(iii) subject the consumer to fraudulent conduct;

(b) it directly or indirectly purports to—

(i) waive or deprive a consumer of a right in terms of this Act;

(ii) avoid a supplier's obligation or duty in terms of this Act;

(iii) set aside or override the effect of any provision of this Act; or

(iv) authorise the supplier to—

(aa) do anything that is unlawful in terms of this Act; or

(bb) fail to do anything that is required in terms of this Act;

16.2 Section 48(1)(c)

Unfair, unreasonable or unjust contract terms

48. (1) A supplier must not—

(a)

(b)

(c) require a consumer, or other person to whom any goods or services are supplied at the direction of the consumer—

(i) to waive any rights;

(ii) assume any obligation; or

(iii) waive any liability of the supplier,

on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction.

16.3 Section 56(2)

Implied warranty of quality

56. (1) *In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.*

(2) *Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—*

(a) repair or replace the failed, unsafe or defective goods; or

(b) refund to the consumer the price paid by the consumer, for the goods.

17. The NCC is asking the Tribunal for the following orders -

17.1 That the Respondent be interdicted from engaging in prohibited conduct as above

17.2 Directing the Respondent to refund Ms Van Lill the purchase price within 15 days of the judgment

- 17.3 Directing the Respondent to pay an administrative fine not exceeding the greater of 10% of the Respondent's annual turnover or R1 000 000.00.
18. The NCC further provided an affidavit on oath submitting the factors and reasons why an administrative fine should be imposed.

HEARING

19. At the hearing Ms Van Lill was present. The Tribunal called Ms Van Lill to testify. Under oath she informed the Tribunal that the vehicle was in an excellent condition when she purchased it. It was very neat and everything appeared to function properly. Despite the high kilometres the vehicle had travelled there was no reason for her to believe that the car would not be reliable. She purchased the vehicle with the specific understanding and belief that it would be reliable and usable for a number of years at least. She was never informed otherwise or provided with any warning by the Respondent that the vehicle was not reliable and usable. The vehicle is still with her and has not been used since it broke down. They had travelled approximately 300 kilometres with the vehicle before it broke down.

DOCUMENTARY EVIDENCE SUBMITTED

20. The NCC attached the documents that Ms Van Lill signed when purchasing the vehicle. The NCC further obtained copies of the documents signed by other consumers when purchasing vehicles from the Respondent.
21. The offer to purchase document signed by Ms Van Lill is composed of a number of pages. On page 1 of 5 of the document the following the handwritten phrases appear –
- "Comments: Vehicle sold as it stand No warranty" (sic)*
"Due to KM and age No warranty"(sic)
22. On page 2 of the page titled *FSP 24337 – Compliance document – Western Car Sales* under *Mechanical Breakdown Warranty and Extended Warranties*, its states in a handwritten note –

"Client will look into a Mechanical Warranty at a later stage = No warranty due to KM + age"(sic)

23. On page 5 of 5 of the document the following typed standard phrasing appears –

FIT FOR PURPOSE

1. *I have read all of the material made available to me by Western Car Sales CC setting out the specifications of the vehicle and I confirm that this vehicle is fit for the purpose for which I an (sic) purchasing it.*
2. *I confirm that this vehicle is in good quality and in good working condition.*
3. *I understand that Western Car Sales CC will not be held responsible for normal wear and tear on the vehicle from the day of delivery onwards*

RETURN

1. *If I am entitled to return the vehicle to the seller for any reason whatsoever and I want to cancel the sale, then I Understand that by returning it and cancelling the sale, the value of the vehicle will drop, due to:*

1.1 Market price

1.2 Wear and tear or any misconduct from my side, and

1.3 A cancellation fee made up of all the costs regarding the sale of the vehicle

2. *I have the option to put the vehicle on the seller's floor to be sold on my behalf.*

SPECIAL ACKNOWLEDGMENT

1. *I accept that Western Car Sales CC has disclosed the following risk(s), defects(s) or unsafe items(s) and that I will accept the vehicle in that condition notwithstanding what was pointed out to me:*

1.1 Vehicle sold as it stand due to KM and age (handwritten notes)

1.2 No warranty – declined (handwritten notes)

2. *I accept and understand that this is a Second Hand used vehicle and that due to wear and tear and age, any components or part may fall(sic) after I take delivery of the vehicle.*
3. *I accept and understand that NO warranties or guarantees are given on any electrical components, radios, air conditioning and alarm systems, central locking systems or keys.*
4. *Acknowledge the above/I choose to(sic):*

A Buy

B Decline X (Handwritten mark made)

The mechanical warranty that was offered to me.

24. The page of the document titled *VEHICLE DELIVERY RECIEPT (Please tick if acceptable)* contains numerous tick box questions such as *Paintwork, Indicators, Clutch operation* etc. All the boxes are ticked in handwriting. Under the comments section the following handwritten note appears –

Due to KM and age There is no Warranty on this vehicle (sic)

25. This page further contains what appears to be a small font stamp at the bottom of the page stating the following –

IMPORTANT DECLARATION

This vehicle is sold

- *With NO Certificate of roadworthiness*
- *With NO warranty*
- *In a "Non- Running" condition*
- *"As is"/"Voetstoots"/"Scrap"*

All Repair/Restoration Costs/Will be for new Owner's Account

Accepted (signature of Mr Van Lill) Date 11.12.2015

26. The examples of the other offer to purchase agreements signed by other consumers when purchasing vehicles from the Respondent contain exactly the same typed wording. The handwritten notes on each contract are very similarly worded and the "Important declaration" stamp appears on every contract. It therefore appears that the Respondent routinely sells many of its cars on the same contractual "catch all" basis.

27. It can be mentioned that an e-mail by Ms Van Lill to SA Consumer Complaints dated 20 January 2016 and the emailed response the same day by the Respondent contains reference to a friend of Ms Van Lill temporarily fixing the gearbox problem by adding oil to what he thought was the gearbox reservoir in the engine compartment. It later appears that this was in fact the power steering reservoir. There is no evidence or information as to whether this apparent error by Ms Van Lill's friend caused any defect or problem with the vehicle.

ASSESSMENT OF THE EVIDENCE

28. On the evidence submitted to the Tribunal there appears to be no dispute regarding whether or not the vehicle had a defect and was not of good quality or in good working order. The vehicle exhibited material problems within a few days after Ms Van Lill took delivery of it. It finally broke down within a few days after that and has not been functional or usable since then. While the exact nature of the defect is not known, it is clear that the vehicle cannot be used for the purpose for which it was reasonably intended.
29. Although there is reference in the papers to a reservoir in the engine compartment possibly having been filled with incorrect oil, there is no evidence that this caused any material damage to the vehicle or could have caused the vehicle to be defective.

THE PROVISIONS OF THE CPA

30. Part H of the CPA sets out a consumer's right to fair value, good quality and safety. Section 53 of the CPA sets out the following –

53. (1) In this Part, when used with respect to any goods, component of any goods, or services—

(a) “**defect**” means—

(i) any material imperfection in the manufacture of the goods or components, or in performance of the services, that renders the goods or results of the service less acceptable than persons generally would be reasonably entitled to expect in the circumstances; or

(ii) any characteristic of the goods or components that renders the goods or components less useful, practicable or safe than persons generally would be reasonably entitled to expect in the circumstances;

(b) “**failure**” means the inability of the goods to perform in the intended manner

or to the intended effect;

Section 55 of the CPA sets out the consumer's rights to goods which are reasonably suitable for the purpose intended and are free of any defects –

Consumer's rights to safe, good quality goods

55.

- (1) This section does not apply to goods bought at an auction, as contemplated in section 45.
- (2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
 - (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of any defects;
 - (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.
- (3)....
- (4)....
- (5)....
- (6) Subsection (2)(a) and (b) do not apply to a transaction if the consumer—
 - (a) has been expressly informed that particular goods were offered in a specific condition; and
 - (b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

- 31.** The provisions of Section 56 of the CPA provide for a six month time period within which the goods can be repaired, replaced or returned for a refund.

Implied warranty of quality

56.

- (1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—

- (a) repair or replace the failed, unsafe or defective goods; or
- (b) refund to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—

- (a) replace the goods; or
- (b) refund to the consumer the price paid by the consumer for the goods.

(4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—

- (a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and
- (b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

25. When applying the provisions of section 55 of the CPA to the facts accepted by the Tribunal, it becomes clear that the goods, in this case the vehicle, supplied by the Respondent, was not of good quality, in good working order and free of defects. The vehicle could further not be used for a reasonable period of time. These defects became apparent within a period of days after it was supplied by the Respondent and therefore falls within the six month period prescribed by section 56 of the CPA. The Applicant has requested that the purchase price of the vehicle be refunded to Ms Van Lill, which is a permissible remedy provided for by section 56.

SPECIFIC CONDITION OF THE VEHICLE

26. The Tribunal must further consider whether the contract signed by Ms Van Lill possibly allows the Respondent to escape liability for the defects in the vehicle. Section 55(6) of the CPA states that the rights of the consumer to goods that are reasonably suitable for the purposes for which they

are generally intended and are of good quality, in good working order and free of any defects are not applicable if - the consumer was expressly informed that particular goods were offered in a specific condition; and expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

27. The intention of the legislature with this section appears to be that allowance must be made for instances where consumers purchase goods that are clearly and specifically intended to be used as parts only or as a renovation project, or with the specific intention of repairing them for example. In cases such as this it would be patently unreasonable to expect the supplier to ensure that the goods as a whole are free of defects and usable.
28. Determining whether this exception applies to any particular situation would have to depend on an objective evaluation of the facts.
29. In the matter before the Tribunal, it appears, from the documents signed by Ms Van Lill, that the Respondent's intention was to use phrasing and words in the contract with the express purpose of using the provisions of section 55(6) to limit its liability for the condition of the vehicle. The wording and phrasing of the contract is however not the only factor that would need to be considered. All the relevant factors surrounding the purchase would need to be evaluated.
30. On the evidence presented there is no indication whatsoever that Ms Van Lill intended purchasing the vehicle as "scrap", a "non-runner" or as a renovation project as such. Besides the notes made on the contract and the stamp with the standard phrasing used – there is no evidence that the Respondent informed or warned Ms Van Lill that the vehicle was in a non-running condition and could be classified as scrap. No evidence was presented on what the normal market value of this vehicle may have been, however, it appears reasonable to expect that a vehicle being sold as scrap would have been sold for a commensurate amount reflecting a non-usable product. The evidence shows that Ms Van Lill intended purchasing a reliable vehicle that she could use for a number of years and there is no evidence to suggest that she conveyed any other understanding or intention to the Respondent when purchasing the vehicle.
31. The content of the contract signed is further contradictory. The contract contains general wording indicating the defective nature of the vehicle but also contains numerous statements and wording which conveys that the vehicle was in good working order. For example, the contract contains the sentence - *I confirm that this vehicle is in (sic) good quality and in good working condition.*

This sentence clearly does not indicate that the vehicle was unusable. The contract contains a comprehensive checklist of all the various parts of the vehicle that were checked. All the items are marked with a tick. None of them are marked in any way to indicate that they are defective or unusable.

32. It is further significant that all the examples of the contracts used by the Respondent contain similar handwritten notes and the stamp indicating the vehicle is sold as scrap. None of the contracts make any specific reference to the specific defects with the specific vehicle in question.
33. When considering all these factors objectively as a whole it becomes clear that the exception provided for by Section 55(6) of the CPA does not find application. The evidence strongly suggests that the Respondent sold the vehicle to Ms Van Lill as a usable vehicle in good working order but tried to evade liability for any defects by inserting standard wording in the contract.
34. The Tribunal cannot and will not prescribe what factors would have to be present before section 55(6) would find application. It can however be noted that general vague contract terms which do not specifically apply to a specific vehicle and its specific defects would not generally be a convincing factor in finding that section 55(6) is applicable. It would have to be objectively ascertainable that the consumer was left in no doubt that the specific goods they were purchasing were not usable or in good working order and what those specific defects were. If the specific defects are not specified then one would be left with the strong impression that any warnings in the contract are inserted purely in an attempt to escape liability in terms of the CPA.
35. It can finally be noted that section 55(6) only provides an exception to sections 55(1) (a) and (b). Section 55(1)(c) and (d) are not affected. Even if section 55(6) were applicable, the consumer would still have a right to goods which will be useable and durable for a reasonable period of time, having regard the use to which they would normally be put and to all the surrounding circumstances of their supply; and comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation. It is therefore possible that the supplier of goods can still be held liable for any defects in goods for a period of time depending on the circumstances. The concept of a "voetstoots" sale, whereby the supplier is able to sell goods without any form of liability for any defects, whether patent or latent, whatsoever is therefore not applicable to any transactions falling under the CPA.

PROHIBITED CONDUCT

36. The NCC has requested the Tribunal to make a finding that the Respondent contravened Section 48(1)(c) and sections 51(1)(a) and (b) and that this constitutes prohibited conduct.
37. On the evidence presented to the Tribunal, the contract provided by the respondent and signed by the consumer contains numerous clauses and statements which either contradict the rights of a consumer in terms of the CPA or at the very least misrepresent the consumer's rights in this regard.
38. An example of this is the clause in the contract relating to "Return" as set out under paragraph 23 above.

RETURN

If I am entitled to return the vehicle to the seller for any reason whatsoever and I want to cancel the sale, then I Understand that by returning it and cancelling the sale, the value of the vehicle will drop, due to:

2.1 Market price

2.2 Wear and tear or any misconduct from my side, and

2.3 A cancellation fee made up of all the costs regarding the sale of the vehicle

I have the option to put the vehicle on the seller's floor to be sold on my behalf.

This section of the contract is very vague as to what the basis may be for any vehicle being returned. If the clause intends this situation to include a return of the vehicle in terms of section 55 of the CPA then the conditions applicable to the return are clearly not in accordance with the rights of the consumer in terms of the CPA.

39. The following clauses which are quoted from the contract (referred to in paragraph 21 and 23 above) also bear specific mention -

I accept and understand that this is a Second Hand used vehicle and that due to wear and tear and age, any components or part may fall(sic) after I take delivery of the vehicle.

I accept and understand that NO warranties or guarantees are given on any electrical components, radios, air conditioning and alarm systems, central locking systems or keys.

"Comments: Vehicle sold as it stand No warranty" (sic)

"Due to KM and age No warranty"(sic)

These clauses are also in direct contradiction to the rights of a consumer as set out in section 55 of the CPA. At the very least they misrepresent the rights of a consumer. As stated previously, the CPA does not provide for a sale of goods on a basis that the supplier does not accept any liability and does not offer any warranty whatsoever.

40. There are numerous other examples in the contract that can be mentioned but for the current purposes the above examples will suffice.
41. The ultimate effect of these clauses is that they mislead the consumer, seek to avoid liability for the supplier and defeat the purpose of the CPA. This is specifically prohibited by the provisions of section 51 of the CPA.
42. The Tribunal further considered the applicability of section 48 to the contract and its terms. In the Tribunal's view the purpose and relief provided for by sections 48 and 51 differ from each other. While the Tribunal has the power to declare conduct which contravenes section 51 as prohibited, the same cannot be said for section 48. On a plain reading of section 48, read with section 52, it would appear that the power to apply the provisions of section 48 remain exclusively reserved for a court of law. It would in any event appear to be a case of splitting of charges to find a contravention of section 51 would also amount to a contravention of section 48.

CONSIDERATION OF AN ADMINISTRATIVE FINE

43. The NCC has requested the Tribunal to impose a fine on the Respondent. The NCC has submitted argument on the factors listed in section 112(3) of the CPA that the Tribunal must consider.
44. Considering the nature of the contraventions and the importance of this issue for consumers the Tribunal regards a fine as appropriate and justified. The buying and selling of vehicles is a large

industry in South Africa. This industry affects consumers on a daily basis. A clear message must be sent that non-compliance with the CPA will not be condoned or tolerated.

45. The nature, duration, gravity and extent of the contravention;

The approach used by the Respondent as set out above appears to be ongoing and common practice. Using terms in a contract which have the effect of misleading consumers on an ongoing basis regarding their rights is a serious contravention of the CPA.

46. Any loss or damage suffered as a result of the contravention;

No specific evidence was provided in this regard but it is reasonably expected that many consumers have been denied their rights in the same way that Ms Van Lill was. These consumers would then have had to suffer the loss incurred when their vehicle was not repaired or they were not refunded.

47. The behaviour of the Respondent;

The Respondent refused to comply with the ruling made by the MIOSA. It then did not defend the application before the Tribunal. This behaviour is indicative of a dismissive attitude towards the rights of consumers and the dispute resolving process in general. The Respondent was granted an ideal opportunity to cooperate and resolve the matter through the MIOSA. The fact that it chose to simply ignore the ruling made by the MIOSA and not engage further in any way to resolve the dispute is an aggravating factor.

48. The market circumstances in which the contravention took place;

No specific evidence was provided to the Tribunal but based on the types of matters referred to the Tribunal it would appear that vehicle related complaints against dealerships are very common. For the average consumer the purchase of a vehicle would constitute an extremely costly and important transaction, second only to the purchase of a house.

49. The level of profit derived from the contravention;

No specific evidence was provided in this regard. Again, the Respondent would have derived the significant benefit of not having to refund consumers or repair their vehicles.

50. The degree to which the respondent has co-operated with the Commission and the Tribunal;

Based on the NCC's submissions the Respondent did cooperate with the NCC's investigator.

51. Whether the respondent has previously been found in contravention of this Act.

The NCC submitted that there was no record of a previous investigation or finding against the Respondent.

52. The NCC did not submit any evidence of the turnover of the Respondent. The Tribunal can still impose a fine but is then limited to a maximum fine of R1 000 000.00.

53. As far as the Tribunal is aware, this is the first judgment being issued which deals with prohibited provisions in a contract involving the sale of vehicles. A strong message must be sent that dealers in motor vehicles cannot escape the peremptory provisions of the CPA. Their contracts must be aligned to the CPA and consumers must be protected against dealers that use their contract terms to mislead consumers as to their rights. Dealers and suppliers must further make use of the opportunity to settle disputes through the MIOSA when provided with the opportunity to do so, as set out in section 69 of the CPA.

54. The Tribunal must however also consider that the fine must not be so punitive as to discourage dealers from engaging in a necessary and lawful business. It must further be kept in mind that the fine imposed would be for a first offender as such. Further transgressions would be met with significantly higher penalties.

CONCLUSION

55. The Tribunal finds that Ms Van Lill is entitled to a refund of the purchase price paid for the vehicle in terms of section 56 of the CPA. The vehicle must naturally also be returned to the Respondent.

56. The Respondent is found to have contravened sections 51(1)(a) and (b) of the CPA and this constitutes prohibited conduct.

57. The Respondent must be interdicted from contravening the provisions of the CPA any further.

58. An administrative penalty of R100 000.00 is appropriate under the circumstances.

ORDER

59. Accordingly, the Tribunal makes the following order:

59.1 The Respondent is to reimburse Ms Van Lill with an amount of R R61 450.00 within 15 business days of the date of this judgment.

59.2 After payment has been made the Respondent may collect the Volkswagen Passat 1.8 T vehicle from Mr Van Lill at its own cost.

59.3 The Respondent is interdicted from using any terms in its contract which contravene the CPA as explained in this judgment.

59.4 The Respondent is to pay an administrative fine of R100 000.00 (One hundred Thousand Rand) into the National Revenue Fund referred to in section 213 of the Constitution within 30 business days of the date of this judgment.

59.5 No order is made as to costs.

DATED ON THIS 4th DAY OF SEPTEMBER 2017

[Signed]

Adv J Simpson

Member

Authorised for Issue by National Consumer Tribunal

Case Number: NCT-81554-2017-73(2)(b)

Date: 2017-09-14

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Prof. T Woker (Presiding member) and Ms H Devraj (member) concurring.