

**THE IRISH FINANCIAL SERVICES APPEALS TRIBUNAL
REGISTER NO. 009-1013**

IN THE MATTER OF PART VIIA OF THE CENTRAL BANK ACT 1942

BETWEEN:-

FREDERICK COLLINS T/A WESTGATE FINANCE

APPELLANT

AND

THE CENTRAL BANK OF IRELAND

RESPONDENT

APPEALS TRIBUNAL:

Inge Clissmann, S.C., Chairperson

Geraldine Clarke, Solicitor

Paul Brennan, Solicitor

APPEARANCES:

Frederick Collins t/a Westgate Finance represented by Malachy Callan;

Central Bank of Ireland represented by James Doherty B.L. instructed by Anne Brennan,
Solicitor, Central Bank of Ireland;

HEARING:

The Hearing was heard in public on the 28th of January 2014 at Frederick House, 19 South
Frederick Street, Dublin 2.

DECISION:

By letter dated the 30th July 2013, the Central Bank of Ireland ("Central Bank") decided to
revoke the Appellant's Moneylenders Licence under Section 93(11) of the Consumer Credit Act

1995 (the CCA 1995) on the basis that the Appellant had failed to carry out his money lending business in accordance with the terms and conditions of the licences granted from the 1st August 2012 and the 1st August 2011. By Notice in writing dated the 21st August 2013, Frederick Collins t/a Westgate Finance appealed the decision to the Irish Financial Services Appeals Tribunal (the "Appeals Tribunal").

The Appeals Tribunal, having considered the arguments advanced and the evidence adduced, decided to affirm the decision of the Central Bank for the reasons set out hereunder.

THE APPEALS PROCESS

On the 22nd August 2013, Frederick Collins t/a Westgate Finance (the Appellant) lodged with the Registrar of the Appeals Tribunal ("the Registrar") a Notice of Appeal in the prescribed form against the decision of the Central Bank. In response thereto, on the 24th September 2013, the Central Bank delivered its response and a copy thereof was forwarded by the Registrar to the Appellant on the 26th of August 2013.

The Appeals Tribunal arranged that a Directions Hearing be held at the offices of the Appeals Tribunal in Frederick House on the 15th of November 2013 at 10.30 am. and the parties were notified accordingly.

The Directions Hearing was presided over by Francis D. Murphy, who sat with Inge Clissmann and Geraldine Clarke. It was directed or agreed (among other things) as follows:-

1. The hearing of the appeal would be conducted in public.
2. Each party would provide to the Registrar for transmission to the other party a statement of the evidence to be given by any witness intended to be called at the hearing.
3. The witness statements furnished to the Registrar would be taken as evidence and the Appeals Tribunal would facilitate cross examination of the witnesses, if necessary.

4. Any additional documentation which was to be delivered would be provided as soon as possible.

The Chairperson of the Appeals Tribunal designated Geraldine Clarke and Paul Brennan to constitute the Appeals Tribunal to be chaired by Inge Clissmann, Deputy Chairperson of the Tribunal. The date fixed for the hearing was the 28th January 2014. On that date evidence on behalf of the Appellant was given by Mr. Frederick Collins and evidence on behalf of the Central Bank was given by Mr. Tom Enright. Oral submissions were made on behalf of both parties and at the conclusion of the hearing the Appeals Tribunal reserved its judgment.

THE BACKGROUND

Mr. Frederick Collins of Westgate Finance, the Appellant, has carried on the business of a moneylender for a period in excess of thirty years. The business of moneylending became licensed in 1996 and since then, he has obtained an annual Moneylenders Licence which in his case, is granted until the end of July of each year. The Licence permitted the Appellant to enter into moneylending agreements subject to a maximum Annual Percentage Rate (APR), a maximum cost of credit and subject to other terms and conditions as set out in the licence.

On foot of an inspection by authorised officers from the Consumer Protection Division of the Central Bank (hereinafter called "CPC-BPD") in October of 2012, certain issues arose. In particular, the following were identified.

- (i) Consumers were being charged an APR in excess of that permitted in the Licence granted on the 1st August 2011.
- (ii) The cost of credit applied to consumers was in excess of that permitted in the Licence granted on the 1st August 2011.

- (iii) Loan Agreements were entered into for terms not in accordance with the specified terms in the Licences granted on the 1st August 2011 and the 1st August 2012.
- (iv) A record of the name of the person to whom repayment of a loan was being made was not maintained.
- (v) A repayment schedule was not retained in respect of the moneylending agreements.

On the 3rd April 2013, CPC-BPD sent a letter to the Appellant giving him statutory notice of its proposal to revoke his Moneylender's Licence in accordance with Section 93(12) of the CCA 1995. The grounds for same was that he had failed to carry out his moneylending business in accordance with the terms and conditions of the Licences granted under the CCA 1995, which said Licences were effective from the 1st August 2012 and from the 1st August 2011. Included in that letter was reference to the fact that the Central Bank had considered whether it would be sufficient to impose a number of conditions upon the Appellant within the terms of his Licence in order to address the concerns arising. However the Bank had concluded that the imposition of conditions would not be sufficient to address these concerns in light of the fact that the breaches listed in the Schedule attached to its letter related to failures in respect of fundamental conditions set out in the Appellant's Moneylending Licence.

In response to the said letter, the Appellant made written submissions in a letter dated the 26th April 2013. While he admitted a number of errors in relation to matters, he pointed out that he had mistakenly charged a rate of 85.8% when the maximum rate applicable under his Licence was 71.65%. With regard to the cost of credit to consumers being in excess of that permitted, he pointed out that in relation to certain of the loans the amounts overcharged were very small. With regard to the entering into loan agreements for terms outside those provided for under his Licence, he said that he did not appreciate that the loan terms had to be strictly adhered to, and that some of the terms had been only a week longer than permitted and that this also had applied to a lot of the other loans. He accepted that he had not recorded the name of the person to whom payments should be made but that as he was the only person involved in collection of

repayments, this was not of any significance and was merely an oversight. Further, with regard to repayment schedules, he said that these were maintained but had been mislaid.

He further undertook to abide fully by any rules and regulations and to repay any overcharging of any customer affected by the errors.

Having considered the Appellant's submissions and representations made in his correspondence, the CPC-BPD came to the conclusion that its concerns had not been addressed satisfactorily. In accordance with the normal procedure, it asked the Deputy Governor of Financial Regulation in the Central Bank to appoint decision-makers for the purposes of performing the statutory functions of the Central Bank pursuant to Section 93(11)(a) of the CCA. This is the normal practice of the Central Bank whereby it delegates decisions such as revocation of licences to decision-makers who have not been involved in the supervision of the relevant entity and to ensure that there will not be any suggestion of pre-judgment or bias in any particular case.

On the 28th June 2013 the Deputy Governor of Financial Regulation appointed an Authorisation Committee (the "Committee") for the purposes of reaching a decision in relation to the proposed revocation of the Appellant's Licence. A number of queries were raised by the Committee prior to reaching its decision and responses were provided by CPC-BPD. The Committee reached their decision on the 19th July 2013 and the members unanimously agreed that on the basis of the grounds and supporting reasons set out in the letter of the 3rd April 2013, the Appellant's Moneylender's Licence should be revoked pursuant to Section 93(11)(a) of the CCA 1995. This decision was conveyed to the Appellant on the 30th July 2013 by the CPC-BPD. The Licence was due to expire on the 31st July 2013.

THE HEARING

It became clear during the hearing, that Mr. Collins' business as a moneylender was relatively small. It further became clear that the Central Bank was not in a position to entertain an application for a new Licence to commence on the 1st August 2013 until such time as the issue in relation to the breaches and ultimate revocation of his previous Licence was disposed of.

It was explained on behalf of the Central Bank that a fundamental requirement imposed on any moneylender is that proper records are maintained. This is for the protection of the consumer but also to allow the Central Bank to carry out its supervisory functions readily and promptly and to be in a position to monitor the business of moneylenders. It was stated on behalf of the Central Bank that the level of overcharging or the level of money involved was not the specific issue in this case, but that the issue of the failure of the Appellant to maintain proper records and to comply with the conditions of his Licence were such that they were of a very serious nature. It was explained by Mr. Enright on behalf of the Bank that the terms and conditions that are applicable to each moneylender arise on foot of the proposal that is sent by that moneylender in advance of the granting of a licence, and these are sent in on an annual basis. The applicant money lender sets out the nature of the products that the moneylender proposes to offer. Once these are approved by the Central Bank, they are set out by way of appendix to the annual licence and the moneylender must comply with the provisions therein. It was accepted by the Bank that the level of interest which was charged by Mr. Collins in relation to his products, were considerably lower than the level of interest charged by some other moneylenders.

Furthermore, although the Appellant had claimed he had never had any problems with the Central Bank previously it was pointed out that in 2008 there were problems which were identified by the Central Bank. At that time, the Appellant had assured the Bank that he would abide by his regulatory requirements and that in order to do so he would purchase software to calculate APRs correctly. Arising from the assurances of the Appellant, the Bank had determined that the Moneylending Licence which he held would not be varied in 2008.

A number of examples were used to demonstrate the various issues of concern that the Central Bank had in relation to the Appellant and which had emerged from the inspection carried out in 2012. It is clear that one such sample relating to a customer known as Ms. BB indicates that there was a simple error made juxtaposing the number of repayment instalments with the number of weekly payments to be made by the debtor. However, the balance of the examples demonstrated the basis for the Central Bank's concerns.

The Central Bank has the power to revoke a Moneylender's Licence and the power of the Appeals Tribunal is a limited one. Under Part VIIA Section 57Z of the Central Bank Act of 1942 its powers arise in respect of a decision under Section 57Z(2)(a) and (d). The said powers are:

1. To affirm the decision of the Central Bank, or:-
2. to remit the matter concerned for a reconsideration by the Central Bank together with any recommendation or direction of the Appeals Tribunal as to what aspect of the matter should be reconsidered.

In giving consideration to the Appellant's Notice of Appeal, it is clear that he objects to the revocation of his Moneylender's Licence and he refers specifically to his letter of the 26th April 2013. In that letter he acknowledges breaches as set out in the Schedule prepared by the Central Bank but in mitigation he refers to the fact that he mistakenly charged a higher rate than he was authorised to do (the higher rate having been permitted a number of years previously). He also claims that the amounts involved in applying a cost of credit to his customers in excess of what he was permitted to do, were very small amounts. He also states that he did not understand that he had to strictly adhere to the periods of time or the "terms" which were specified in his Licence and in the Appendix attached thereto and he points out that as he was the only person collecting the repayments of money, the failure to identify himself on the documentation was merely an oversight and was of no real consequence. He also points out that the repayment schedules were maintained but had been mislaid.

However, despite his claim on the Notice of Appeal that he had been in business for thirty-one years with no complaints previously made by the Central Bank, it became evident that there had been complaints and concerns raised by the Central Bank in 2008. The issues which arose in the recent complaint of 2012, coincided in some respects with those which had arisen in 2008, and it became clear that matters had not been properly attended to or rectified by Mr. Collins.

In considering the examples provided by the Central Bank, the Tribunal accepts that an error was made by Mr. Collins which appears on the face of the Promissory Note relating to Ms. BB and that this was a simple clerical error resulting in the juxtaposition of the number of weeks as against the amount of the instalments that were due to be paid. It is accepted by the Tribunal that the amount of the instalment payment was correctly set out further down on the same document. The Tribunal also accepts that the amounts that may have been overcharged to other customers appear to have been small, and that, on the face of it, many of the complaints of the Central Bank would appear trivial and of little significance.

The case made on behalf of Mr. Collins was that the revocation of his Licence was wholly disproportionate as a sanction having regard to the actual breaches that had occurred in relation to the manner in which he maintained his business as a moneylender. On the other hand, on behalf of the Central Bank, it was pointed out that it was a requirement for the protection and benefit of the consumer that the rates of interest, the cost of credit and the periods of time over which the loans could run were of necessity to be readily available to any intending borrower. It was pointed out that many of the persons involved in borrowing from a moneylender are people who are vulnerable and who come from very fraught financial situations and are consumers who are frequently in financially precarious positions.

CONCLUSION

Protections must be afforded to consumers who use moneylending services and a fundamental requirement in those circumstances is that the terms and conditions upon which money can be borrowed must be clearly stated and records must be kept in a clear and immediately ascertainable state. It is also clear that the Central Bank must be able to monitor the businesses involved in moneylending and that the underlying paperwork is an essential part of being able to do so readily. The terms of the Consumer Credit Act facilitate and require a moneylender to set out the type of products that he intends to offer and to include in his submission the APR he proposes to charge, the cost of credit that will be involved and the term or duration of the loan in relation to each of the products he intends to offer. Once a Licence is granted, the products will

be set out in the Appendix attached to that Licence and the moneylender, thereafter, is obliged to comply with the various conditions.

In light of this, the Tribunal is of the view that the decision of the Central Bank should be affirmed as Mr. Collins has not complied with the requirements of keeping accurately to the terms of his Licences and this failure was evident in a substantial proportion of his loan book.

OBSERVATION

In the event that Mr. Collins applies for a new Licence, the Tribunal notes that there has been no allegation of dishonesty against him, that he has thirty-one years experience in the moneylending business and that he has suffered a loss by reason of being unable to collect monies which he would have been due to collect in the period since July 2012.

21 February 2014

Note: The Appeals Tribunal made no Order as to costs.