

## **March 2009 finding by the Banking Ombud with regard to costs relating to the registration of a covering bond of which the borrower-client said the bank never advised him**

### **Facts**

Mr X (for the Ombud did not release the name of the complainant nor the Bank involved) was a property investor. He owned six properties, each of which was bonded to a financial institution. At some point he decided to consolidate the various bonds he had over his properties with a view to accessing more money and to increase his property portfolio. He approached Y Bank to enquire about consolidating his bonds and was advised that the bank indeed offers a consolidating product that would be suitable for his purposes. He was also advised that the initial cost for setting up this facility would be capped at R5 000 and it was explained to him that the costs for canceling the existing bonds that were held by financial institutions other than the Bank would be for his own account. He understood and accepted this.

In due course he attended at the offices of a firm of attorneys in order to sign the necessary documents; and a few days later he noticed that his current account had been debited with the sum of approximately R27 000-00. Upon enquiry with the bank, he was informed that the amount was deducted in order to settle the attorney's costs for registering covering bonds. He was furthermore advised that the bank, as a matter of course, registers covering bonds as security for the consolidating facility. Mr X however contended that he was never advised by Y Bank that it would register covering bonds as security or that he would have to pay the cost of about R27 000 associated with this. He therefore refused to be liable for the costs relating thereto and demanded that the money be refunded.

The bank's internal complaint department rejected Mr X's concerns and suggested that since Mr X is in the property business and had previously had many dealings with banks and attorneys relating to the registration of bonds, he should reasonably have realized that the costs of registering the covering bonds would be for his own account. Mr X then lodged a formal complaint with the office of the Ombudsman claiming a refund of the money that was deducted from his account in respect of the bond registration costs.

### **Finding:**

- The office of the Ombudsman established that the procedure that applied was that Y Bank, after granting the consolidation facility to Mr X, appointed an attorney to attend to the bank's legal work and to register the covering bond. Accordingly, it is clear that the attorney is acting on Y Bank's instructions and acts on behalf of the bank, and not on behalf of Mr Y.
- The costs that would be incurred for the registration of the covering bonds were never discussed with X nor disclosed to him. In fact, the bank admitted not having discussed liability for the attorney's costs with him at any stage. (It is not stated in the Ombud's report whether the attorney ever discussed this with the client.)
- The consolidating facility was registered during May 2008. Therefore the National Credit Act applies, and especially application, in particular sections 92 and 102. The gist of these sections are, firstly, that a credit provider is prohibited from entering into certain credit agreements unless the credit provider has furnished the consumer with a quotation, in the prescribed form, setting out the principal debt, the proposed distribution of that amount, the interest rate and other credit costs and the total costs of the proposed agreement.
- Secondly, the credit provider may include certain amounts in the principal debt, but only if the credit provider has afforded the consumer the opportunity of electing whether he or she is agreeable to its inclusion.
- On the facts it was found that the bank did indeed furnish a quotation to Mr X but it reflected only the principal debt and initiation fee, not the interest rate nor the bond registration costs or estimation thereof. These items ought to have been included as they all form part of the principal debt and Mr X should then have been afforded the choice whether to accept it or not.
- In this instance the bank charged the bond registration costs to Mr X's account without prior disclosure and without affording him any choice and accordingly contravened the provisions of the NCA.
- The Ombudsman accordingly found in favour of Mr X and the bank was ordered to refund the moneys.