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GENERAL NOTICES

NOTICE 760 OF 2004

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry do hereby in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 Act no. 71 of 1988, publish the report by the Consumer Affairs Committee of the investigation conducted by the Committee pursuant to General Notice 1443 of 2002 published in Government Gazette of 16 August 2002, as set out in the Schedule.



A ERWIN

MINISTER OF TRADE AND INDUSTRY

SCHEDULE

CONSUMER AFFAIRS COMMITTEE

REPORT

**IN TERMS OF SECTION 10(1) OF THE
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES)
ACT, 1988 (ACT No. 71 OF 1988)**

REPORT No. 106

**Investigation in terms of section 8(1)(a) of the Consumer Affairs
(Unfair Business Practices) Act, 71 of 1983, into the business
practices of Empowerment Investment Trust trading as
Empowerment Investment Club**

EMPOWERMENT INVESTMENT CLUB

1. Introduction

The Consumer Affairs (Unfair Business Practices) Act (Act No. 71 of 1988), (the Act) is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of unfair business practices. An unfair business practice is defined as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between business and consumers, unreasonably prejudicing or deceiving any consumer or unfairly affecting any consumer.

The Act is enabling and is not prescriptive. The main body of the Act is devoted to various administrative procedures to be followed, the investigative powers of the investigating officials, the types of investigations the Committee could undertake and the powers of the Minister of Trade and Industry (Minister). The Act confers wide investigative powers on the Committee. It provides for two types of investigations into the business practices of individual entities or businesses, namely a informal section 4(1)(c) investigations or a formal section 8(1)(a) investigations.

The usual procedure when the Committee receives a complaint is to undertake a section 4(1)(c) investigation which is a preliminary investigation. Notice of section 4(1)(c) investigations are not published in the Government Gazette. The Minister is not empowered to make any decisions about the discontinuance of a particular unfair business practice on the strength of a section 4(1)(c) investigation. If, after this investigation, the Committee is of the view that an unfair business exists or may come into existence it may undertake an 8(1)(a) investigation. This is a formal investigation and notice thereof is published in the Government Gazette.

Should the Committee, after a section 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out

in section 12 of the Act. The subsequent order of the Minister will be applicable to the particular individual(s) or business entity(ies). The order of the Minister is published in the Government Gazette. An infringement of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

2. The complaint

The Committee received a complaint from a consumer against Empowerment Investment Trust trading as Empowerment Investment Club (EIC). The consumer alleged that on 22 November 2000, an agreement was entered into with EIC. The agreement stipulated that R3 100 should be invested with EIC and that within six weeks the return on the investment would be R8 000.

Although the money was invested, EIC failed to pay the return on the investment as promised when the six weeks period lapsed. EIC claimed that they had not been paid by an offshore investment scheme hence there were no funds available to refund the capital invested or pay the return on the investment.

On 16/17 January 2002 the Committee resolved to approve a section 4(1)(c) investigation into the business practices of Empowerment Investment Club in order to establish whether an unfair business practice exists. It appeared to the Committee that this was a multiplication scheme. A multiplication scheme is a scheme where a person offers, promises or guarantees an effective interest rate of 20 per cent and more above the REPO rate. Money making schemes were investigated by the Committee in 1999. Following this investigation, the Minister outlawed *inter alia* money multiplication schemes. (See Notice No 1135 of Government Gazette No 20169).

3. The Preliminary Investigation

EIC's offices were visited at Spruitview, Boksburg by the officials of the Committee (officials). The officials met with Mr Linda Derrick Radebe, also known as Lucky Radebe, who explained that EIC was formed in June 2000. The directors of EIC were Mr Ben Mahlubi Radebe (Ben Radebe) and Mr Thomas M ofokeng. EIC was registered as a Trust, No. 7088/00 and Mr Ben Radebe and Mr Thulani Linda Nxumalo are the trustees. There were about 18 000 investors, who have each invested R3 100 in the scheme. The investors were promised that they would get R8 000 after six weeks.

The officials were informed that EIC invested in an offshore investment scheme (OIS) but that it had not been paid the return on moneys invested. Therefore, it was unable to refund or pay monies promised to the investors. During August 2001 Price Waterhouse & Coopers (PwC) enquired about the activities of EIC and seized the computers and other documents. Consequently, the directors decided to discontinue EIC's business and registered East Rand Financial Services Co-operative Ltd (ERFSC).

ERFSC operated like a bank and was registered on 13 December 2000 as a primary trading/financial services co-operative. ERFSC is a member of the Financial Services Association, a self-regulatory body, for the financial services. The members of the public were entitled to shares for R10 and to receive a certificate. Mr Lucky Radebe advised the officials to speak to the director, Mr Ben Radebe for further information. Mr Ben Radebe was not available at the time but he was later contacted telephonically about the matter and invited to meet with the Committee at its next meeting.

4. The meeting of the Committee on 14 February 2002

The Committee met with Mr Ben Radebe at its meeting on 14 February 2002. Mr Ben Radebe was informed that the scheme operated by EIC appeared to be a multiplication scheme in that it offered returns on an investment of R3 100 that were more than 20% above the REPO rate. The Committee was also concerned about the fact that consumers were neither paid the returns nor refunded the amounts

invested.

In response Mr Ben Radebe mentioned that the return of R8 000 on an investment of R 3 100, indicated in the investment certificates provided to the investors, was not guaranteed by EIC. The investment contract (clause 4.15) entered into with the investors stipulated that *" Amount received and/or certificate given to the investors by the agent is only the maximum amount which should be expected by the investor as a return and that the agent or fund managers are not obliged to pay these returns if the anticipated project returns are not achieved"*.

It was explained to the investors that EIC was pooling funds to invest in a high yield return "program" and the maximum that they could expect from investing R3 100 was for instance R8 000. The return of R8 000 was calculated on the basis of what KLA Trade (Pty) Ltd (KLA Trade), an offshore investment scheme, would provide. EIC believed that the returns promised to the investors were reasonable and achievable but could not be guaranteed.

The investors were made aware that part of their investment would be utilized for the purpose of paying out salaries & administration costs. This was provided for in the investment contract which stated as follows: "

Clause 4.1: there are no restrictions on how the capital investment is to be distributed to the beneficiaries as long as the distributing is consistent with the deed of trust of the investment.

Clause 4.19 the agent of the trust may ensure the continued existence of the fund or investments or trust by using the unlimited percentage of the fund to cover trading and management costs."

Mr Ben Radebe informed the Committee as follows:

(1) EIC invested approximately 180 000 dollars (about R1,8 million) with KLA

Trade. It took approximately four months for EIC to raise the money from the investors. KLA Trade promised good returns and these returns were in turn promised to the investors. KLA Trade was investing the money in a "High Yield Investment Program" in Switzerland. The returns EIC expected to receive in six weeks were substantially greater than the returns the investors would be paid.

- (2) KLA Trade did not repay the money and legal action was taken against them despite assurance to EIC that the money was "available and lying in the bank". The South African Police Services were requested by EIC to assist with the investigation against KLA Trade and its directors for failing to pay the money. EIC was committed to ensuring that the investors would not lose their money.
- (3) The process of helping the investors was hampered by the fact that PwC, acting on behalf of South African Reserve Bank, had taken all the documentations, computers and files. PwC had not returned the documents despite being told that these were needed in order to continue with the operation of EIC. EIC does not, therefore has any proof of moneys invested with it and cannot attend to the complaints.
- (4) Sixteen (16) investors launched an application to liquidate EIC. EIC is unable to respond to the liquidation application because it does not have the documentation. This has also led to the situation where EIC was unable to assist the investors. The Committee cannot be provided with EIC's documents as the result of the action taken by PwC.
- (5) Mr Ben Radebe is also the Chairperson of East Rand Financial Services Co-operatives (ERFSC). This was formed to revive the economies of and assist previously disadvantaged black communities. ERFSC's objectives are to provide financial services and facilities for savings account and payment of bills.

- (6) ERFSC operated like a bank and the depositors' moneys was put in a vault and not invested. The depositors' could withdraw their money after three days and there are no bank charges. ERFSC did not provide loans to depositors because of cash flow problems. Although ERFSC was operating, it does not have the software or computer systems to handle the depositors' accounts. The books are being handled on manual basis and therefore the business was not being marketed. Pursuant to the removal of all documentations by PwC, ERFSC has not been able to operate at all and ceased to exist.

5. The meeting of the Committee on 16 and 17 May 2002

Having considered the evidence presented by the officials as well as evidence of Mr Ben Radebe, the Committee concluded that there was *prima facie* evidence of an unfair business practice and resolved to undertake an investigation in terms of section 8(1)(a) of the Act into the business practices of Empowerment Investment Club, Messrs Ben Radebe and Linda Derrick Radebe and any other director, employee, agent or representative.

6. Notice of publication of investigation

The following was published under General Notice 1443 of 2002 in Government Gazette 16 August 2002.

"In terms of the provisions of section 8(4) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1) (a) of the said Act into the business practice as applied by B

Empowerment Investment Club and Mr Ben Mahlubi Radebe (ID No. 7005115292080), Linda Derrick Radebe (ID No. 6003215883081) and any other director employee, agent and/or representative of any of the aforementioned relating to the business activities of any of the aforementioned parties.

Any person may within a period of fourteen (14) days from the date of this notice make written representation regarding the above-mentioned investigation to: The Secretary, Consumer Affairs Committee, Private Bag X84, Pretoria, 0001."

7. The Investigation

The certificates issued to the investors upon paying R3 100, contained the following particulars: surname; name; identity number; investors address, date of investment; amount invested; expected returns (R8 000) and date of return on investment. Based on the information on the certificate, the effective simple interest rate per annum was calculated as follows:

$$r = \frac{R \times 1200}{C \times T}$$

, where R= the interest in Rand for the full period (R8000x6/52), C=the capital invested (R3 100), t= the period of the investment in weeks (6) and r= the interest rate per annum, thus

The effective interest rate, r, is thus 1369.89%

Returns promised were therefore in excess of 1369.89% per annum.

On 4 December 2002 EIC consulted with its investors regarding whether they should continue in light of difficulties that were being experienced. In a letter dated 12 January 2002 addressed to the investors, EIC indicated that: "It is now with great pleasure that we announce the final resolution of the problems we have had and give you the dates of payment as follows". "Payment date per certificate for Nov 22, 23, and 24 2000 --- Final payment date 19 March 2001 to 23 March 2001". "Payment date per certificate for Feb 14, 15, 16 and 19 --- Final payment date 9 July 2001 to 13 July 2001".

The letter also stated that: "As from Monday the 15th January 2001, we will not be accepting any further enrolments as we have been doing in the past. However, our "bank", the ERFSC, will continue to offer excellent financial services to all our communities in conjunction with our "link" bank".

The complainant alleged that she invested her money on November 2000. She visited EIC's offices after six weeks and was informed that the money was not available. She was advised to return on 14 February 2001. On that date she was again informed to return on 30 April 2001. The last time she visited EIC's offices was on 09 July 2001 and could not be paid despite promises that EIC had resolved its problems. Instead she was requested to provide banking details and promised that the money would be deposited which to date has not happened.

The legal action against KLA Trade, Mr Ben Radebe referred to, was instituted on 09 November 2001 in the High Court of South Africa, Witwatersrand local division, Johannesburg under case no: 0123931. Mr Radebe stated, in the particulars of claim, that an amount of R800 000 was invested with KLA Trade, represented by Mr Dennis Moorby, on 10 October 2000 for a thirty- five day period.

He also alleged that the period of the investment ended on 15 November 2000 and KLA Trade failed to repay such amount together with one hundred percent profit. KLA Trade was therefore indebted to him in an amount of R1,6 million. KLA trade is a company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, having its principal place of business at Twin Palms, 42 Oldens Way, Kelvin, Sandton.

The case involving KLA Trade appears to be still pending. The office of the registrar of the High Court, Witwatersrand division has advised the officials that Mr Ben Radebe has not applied for a court date and nothing will happen until then.

The Committee became aware of a report on the investigation conducted by PwC into the financial and operational affairs of EIC. The objective of PwC's investigation was to

determine whether EIC was conducting the "business of a bank" in contravention with the provisions of the Banks Act (Act No. 94 of 1990) and/or the provisions of the Mutual Banks Act (Act No. 124 of 1989).

The report indicated that PwC received copies of investment certificates, cash receipts and other documentation from the investors' legal counsel, Wilkins Attorneys. Based on the information PwC could confirm that EIC's scheme was run from a house at Spruitview, Boksburg. The scheme had apparently, by the 15 January 2001, ceased to operate and enrolments were terminated. There were no funds at the Spruitview premises; Mr Lucky Radebe and Mr Joseph Tshiululo were thought to have been in charge of the scheme. Documentations at various premises were found and seized.

PwC could not establish either the number or Rand value of investments made in the EIC. However, it was established that Ben Radebe has in excess of R400 000.00 in various bank accounts. The number of bank statements, examined by PwC, indicated that single deposits and withdrawals exceeding R1 000 000.00 were noted from Mr Ben Radebe's account. An amount, approximately R400 000.00 was invested with another money multiplication scheme called Miracle 2000.

PwC's investigation also revealed that Ben Radebe has two foreign currency accounts with Standard Chartered Bank in Botswana. One of the accounts is in the name of Empowerment Investment Fund and another in the name of Mr Ben Mahlubi Radebe.

EIC's scheme was promoted mainly through consultations with existing clients. Referrals from existing clients also took place. Due to the nature of the investment and the fact that such a scheme is not a regular "investment product" widely known by the general public, voluntary participation by existing and new clients would not readily occur without solicitation. There were indications that the scheme was to be marketed in areas such as Pietermaritzburg; Standerton; Daveyton; Kroonstad; and Pietersburg. PwC concluded that Empowerment Investments Club's scheme may have contravened the provision of the Bank's Act.

He (Ben Radebe) claimed that EIC could not function without being provided with copies of documentations seized by PwC. However, PwC had agreed to provide copies of the said documentations to EIC and/or its' representatives provided that EIC pay for such copies. PwC was also committed to issuing of receipts for the documents in their possession.

On 8 February 2002 the Master of the High Court in Pretoria appointed Mr JS Koka as the provisional liquidator of EIC. The final sequestration of EIC was on 12 March 2002.

8. Conclusion

The investment agreement between Mr Ben Radebe and KLA Trade stated that the funds would be invested in an investment scheme titled, JVA Moorbry, KLA Trade 1, with Deakin Consultants Ltd in London, England and not Switzerland as mentioned by Mr Ben Radebe. The agreement stated that the funds were invested in the name of Mr Ben Radebe and not Empowerment Investment Trust/Club. The amount invested with KLA trade was R800 000 and not R2 million as alleged by Mr Ben Radebe.

The return on an investment of R3100 with EIC was R8000 payable six weeks after the investment was made. The return is 2.72 times the amount invested or alternatively in excess of 1300 per cent. The scheme operated by EIC is a multiplication scheme. There are many investors who were neither paid their investments nor refunded. The investors were unlikely to recoup their investments and were deceived and prejudiced.

EIC could not provide the Committee with proof of the investment of R800 000 or R2 million with KLA Trade or an offshore investment scheme. Having met with Mr Ben Radebe, the Committee was of the opinion that the legal action against KLA Trade was a smoke screen and EIC was pretending by such actions that the investor's money had been lost. The Committee could find no evidence that there were moneys invested offshore by EIC. The money appears to have been invested in the personal bank accounts of some of the directors.

The investors money entrusted to the promoters was not invested in income earning assets, which could yield returns to cover the interest owed to the investors and to ensure a profit for the scheme. The returns offered by EIC cannot be sustained in the long term.

9. Recommendation

There are no grounds justifying the practices of EIC and its directors in the public interest. It is accordingly recommended that the Minister declare in terms of section 12(1)(b) of the Act the business practice whereby the parties known as Empowerment Investment Club also trading as East Rand Financial Services Co-operative and Messrs Ben Mahlubi Radebe and Linda Derrick Radebe, also known as Lucky Radebe, offer, promise or guarantee an effective annual interest rate of 20 per cent and more, above the REPO rate as determined by the South African Reserve Bank, to any investor, whether or not the investor becomes a member of Empowerment Investment Club, an unfair business practice.

The Committee also recommends that the Minister in terms of section 12 (c) of the Act direct the above parties to-

- (i) refrain from applying the unfair business practice;
- (ii) cease to have any interest in any business or type of business which applies the unfair business practice or to derive any income therefrom;
- (iii) refrain from at anytime applying the unfair business practice; and
- (iv) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the unfair business practice.



PROF T A WOKER

VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE

15/08/2003