



**ADJUDICATION ORDER IN TERMS OF SECTION 53 AND 54  
OF THE COMMUNITY SCHEMES OMBUD SERVICE ACT NO.9 OF 2011**

Case Number: CSOS1432/GP/17

and

CSOS1643/GP/17

IN THE MATTER BETWEEN  
**NORTHDOWNNS BODY CORPORATE**  
(Applicant)  
and  
**ALIK DRISHNER**  
(Respondent)

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**ADJUDICATION ORDER**

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**CITATION**

1. The Northdownns Body Corporate is a complainant under case reference number CSOS1432/GP/17 and a respondent under case reference number CSOS1643/GP/17. Mr Alik Drishner is the complainant under case referenced number CSOS1643/GP/17 and a respondent under case reference number CSOS1432/GP/17. For the purposes of this order Northdownns Body Corporate is cited as the applicant and Mr Alik Drishner is cited as the respondent.

## **THE PARTIES**

2. The Northdowns Body Corporate is a body corporate as contemplated in Section 2 of the Sectional Title Scheme Management Act No.8 of 2011 and to which it would be convenient to refer as “the body corporate”.
3. The respondent, Mr Alik Drishner (Drishner) is the registered owner of Unit 209 Northdowns which is situated at No.12 Mansion Road, Glenhazel, Gauteng.

## **INTRODUCTION**

4. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
5. The adjudication hearing took place on 11 June 2018. This application is before me as a result of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
6. On 11 June 2018, the applicant was absent at the hearing of this matter and the respondent (Drishner) represented entered an appearance in terms of the Notice of Set Down which was sent out to the parties on 16 May 2018 as contemplated in Section 48(4) of the Community Schemes Ombud Service Act No.9 of 2011.

## **APPLICABLE PROVISIONS OF THE ACT**

7. The hearing was conducted in terms of section 38 of the CSOS Act No,9 of 2011 which provides that –

*“Any person may make an application if such person is a party to or affected materially by a dispute”.*

8. Section 45(1) provides that –  
*“The ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”*
  
9. Section 47 provides that –  
*“on acceptance of an application and after receipt of any submissions from affected persons or responses from the applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation’.*
  
10. Section 48 provides that –  
*“If conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.*
  
11. Accordingly, this matter proceeded to conciliation on 13 March 2018 but the dispute could not be resolved and a certificate of Non Resolution was issued on 13 March, in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of that Act.

## **SUMMARY OF EVIDENCE**

### **Applicant's Submissions**

The applicant was absent at the hearing. Therefore, the applicant's file cited as case reference number CSOS1432/GP/17 was removed from the roll. The applicant under this file is the author of its own demise.

### **Respondent's Submissions**

12. Drishner is the complainant under case reference CSOS1643/GP/17 and was present for the proceedings. Therefore, his matter was heard.
13. Drishner stated that the complex comprises of 42 residential sectional title units managed by the Northdowns body corporate and the managing agent, Compeg.
14. Drishner stated that he took occupation of his unit in 30 July 2017. He further stated that on or about 16 October 2017 he left the keys to his unit as well as all the access keys to the Northdowns common areas, remotes and cheque book in his car. He stated that when he arrived in his flat he realised that all the keys were missing including his keys to his flat, the multi lock keys which gives access to all Northdowns common areas and his cheque book.
15. Drishner stated he requested a member of the body corporate to assist him to look for the keys in the car. He also called his son to come and assist but the keys could not be found.
16. Drishner stated that he then opened a police case to report the missing keys and his cheque book. Drishner stated that the police advised him that his car could have been jammed. Drishner stated that he then reported to the Rochelle, from the managing agents that he had lost his keys and has reported the matter to the police.
17. Drishner stated that Mrs Sandra Epstein (Epstein), who was a trustee at the time, accused him of negligence and putting the Northdowns body corporate at risk.

Drishner stated that Epstein and called a Trustee's meeting to report the matter. Drishner stated that the Trustees resolved that they replace all the locks on the nine (9) access gates due to the security of the body corporate being put at risk thereby placing the lives and safety of all persons living in Northdowns in jeopardy.

18. Drishner stated that the costs of replacing all locks in the nine access gates was recovered from him in the amount of R21900.00 (twenty-one thousand nine hundred rand). Drishner stated that when he refused to pay this amount it accumulated interest and the total amount due to him was an amount of R24000.00 (twenty-four thousand rand).
19. Drishner stated that he paid the amount of R24000.00 to the body corporate in protest because he subsequently sold his unit in Northdowns and the body corporate informed the managing agent not issue Drishner a clearance certificate until he pays the R24000.00.

#### **RESPONDENT'S PRAYERS**

20. The respondent's prayers were listed as follows:
  - An order directing that the body corporate refunds him the R21900.00 debited onto his levy account.
  - An order directing that the body corporate refunds him the R2100.00 debited onto his levy account for interest on the outstanding amount.

#### **EVALUATION OF INFORMATION AND EVIDENCE OBTAINED**

21. The applicant elected not to attend the hearing after having been given an opportunity to do so. The applicant is therefore the author of its own demise.
22. The Adjudicator only has the version of the respondent to make an order.

23. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
24. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up as a whole and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.
25. Having listened to the respondent's submissions also read all written submissions and communication between the respondent, the applicant and the managing agent I am of the view in terms of STSMA Regulations, Part 5, Rule 25 (5) provides that –

*“A body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgement or order by a judge, adjudicator or arbitrator”.*

26. Accordingly, the STSMA and its regulations makes it clear that the body corporate does not have the powers to debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or the rules without the member's consent. The respondent stated that he paid the amount under protest because the body corporate was refusing to release the clearance certificate. Therefore, I am persuaded that the body corporate must refund the respondent the total amount of R24000.00 which was added onto the respondent's levy statement, for the replacement of the locks in the nine access gates, and the interest thereof.

#### **POWERS AND JURISDICTION OF THE ADJUDICATOR**

27. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud

Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of this order is to bring closure to the case brought by the applicant to the CSOS.

### **ADJUDICATION ORDER**

Accordingly, the following order is made –

28. That the Northdowns Body Corporate (applicant) refunds to Mr Alik Drishner (respondent) the total amount of R21900.00 (twenty-one thousand nine hundred rand) charged for the replacement of locks to nine (9) access gates.
29. That the Northdowns Body Corporate (applicant) refunds to Mr Alik Drishner (respondent) the total amount of R2100.00 (two thousand one hundred) charged for interest.
30. Therefore, the Northdowns Body Corporate must in total refund Drishner a total amount of R24000.00 (twenty-four thousand rand) by no later than 31 July 2018.
31. The amount of R24000.00 must be paid into the following bank account:

Account Holder: A. Drishner  
Name of Bank: FNB Balfour Park  
Bank Account: 622-462-260-06  
Branch Code: 21-22-17  
Type of Acc: Current Account

### **RIGHT OF APPEAL**

The parties' attention is drawn to –

32. Section 57(1) of the CSOS Act of 2011 refers –  
*“An applicant, the association or any affected person who is dissatisfied by an adjudicator’s order, may appeal to the High Court, but only on a question of law”*

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**DOMBOLO MAKGOMO MASILELA**  
**ADJUDICATOR**