

Julia Sehunelo

From: Julia Sehunelo
Sent: Tuesday, 31 December 2019 2:00 PM
To: alexandra@statusmrk.co.za; miranda.hall@merchantscx.com; richard@rossaro.co.za
Subject: FW: Attached Image
Attachments: AV_GP-CANON-2_2165_001.pdf; CSOS newPractice Directive on Dispute Resolution v2 21052019 (002).pdf

Dear All

Attached hereto please find adjudication order.

Kindly note clause 25, 26, 31, 32, 34 and 35 of the practice directive attached hereto

From: CSOS <no-reply@csosombud.onmicrosoft.com>
Sent: Tuesday, 31 December 2019 1:50 PM
To: Julia Sehunelo <julia.sehunelo@csos.org.za>
Subject: Attached Image



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

Case Number: CSOS002846/GP/18

IN THE MATTER BETWEEN

MIRANDA HALL

APPLICANT

and

STATUS-MARK PROPERTY GROUP

1ST RESPONDENT

SUNSET VIEW BODY CORPORATE

2ND RESPONDENT

ADJUDICATION ORDER

EXECUTIVE SUMMARY

This is an application for dispute resolution in terms of the following sections of the Community Schemes Ombud Service (CSOS) Act:

- Section 39 (1) In respect of financial issues—
(c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;
- Section 39 (7) (b) – any other order proposed by the Chief Ombud;

Applicant seeks an order in the following terms:

- *The charges that have been illegally claimed by Status-Mark must be reversed.*

The order is in line with Section 39 (1) (c) and 39 (7) (b) of the CSOS Act No.9 of 2011 (the CSOS Act).

FINDINGS

The relief sought by the Applicant has become academic and therefore moot.



INTRODUCTION

1. The Applicant is Miranda Hall, the registered owner of Unit 29, situated at Sunset View Body Corporate, Samanie Street, Weltevreden Park, Johannesburg, GAUTENG
2. The 1st Respondent is Status-Mark Property Group the managing agent of the 2nd Respondent. The managing agent having its principal place of business at Ruimsig Office Park, Ruimsig.
3. The 2nd Respondent is Sunset View Body Corporate Body Corporate Board of Trustees as set out by Section 2 of the Sectional Title Schemes Management Act No. 8 of 2011. The scheme is situated at Samanie Street, Weltevreden Park, Johannesburg, GAUTENG.
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 6 December 2019. 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. The parties were duly served as contemplated section 48 of the Community Schemes Ombud Service Act No.9 of 2011.
7. Both parties attended the adjudication hearing and none of the parties were legally represented.

APPLICABLE PROVISIONS OF THE ACT

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. Section 50 provides that - *“The adjudicator must investigate an application to decide whether it would be appropriate to make an order, and in this process the adjudicator –*
 - (a) Must observe the principles of due process of law; and*
 - (b) Must act quickly, and with as little formality and technicality as is consistent with a proper consideration of the application; and*
 - (c) Must consider the relevance of all evidence but is not obliged to apply the exclusionary rules of evidence as they are applied in civil courts.”*

SUMMARY OF EVIDENCE

APPLICANT’S SUBMISSIONS

The Applicant was duly sworn in and testified as follows;

12. The Applicant, Ms Miranda Hall, had no objection in taking the prescribed oath and was duly sworn in.
13. The Applicant testified that she is the owner of Unit 29, Sunset View Body Corporate, Samanie Street, Weltevreden Park, Johannesburg, GAUTENG. The Applicant submitted that she has been the owner for 22 (twenty-two) years. The Applicant paid her levy on 8 December 2018, immediately after receiving a reminder that levy was overdue. On 08 January 2019 the Applicant received a text message and a letter of final demand to pay an alleged outstanding balance of R358.31 (three hundred and fifty-eight rand and thirty-one



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cents). She received further demand to pay requesting exorbitant costs. She requested the 1st Respondent to cease these demands whilst the dispute is being attended to. The demands and SMSs continued unabated which according to the Applicant is tantamount to harassment. The Applicant stated that her dispute was not against the trustees of the body corporate but against the managing agent. She believed that the managing agent was acting without the instructions of the trustees. Numerous correspondence was exchanged between the managing agent and the Applicant.

14. The Applicant further alleged that her daughter was being harassed by the 1st Respondent, who is a resident at the Applicant's property.
15. The Applicant objected to the collection, sms admin, and email fees which Status-Mark purports were prescribed by the Debt Collector's Act but were not reference in their registered rules. Ms Hall indicated that the charge was reversed.

APPLICANT'S PRAYERS

16. The Applicant prayed that the 1st Respondent must apologise for their conduct.
17. Further that there be a retraction of the statements that were made during the Annual General Meeting.
18. As well as financial relief as the Adjudicator may deem fit.

RESPONDENT'S SUBMISSIONS

The Respondents were duly sworn in and testified as follows:

19. The Respondent, Ms Alexandra Venski had no objection in taking the prescribed oath and was duly sworn in. Ms Venski testified that she was the managing agent of Sunset View Body Corporate. She believed that the Applicant's dispute was nothing more than personal issues and confrontation.
20. Ms Venski stated that Status-Mark does not self-serve, the charge was reversed not because it was incorrect but because it was minimal and not worth the fight. She mentioned that the victimisation of her daughter was unfounded and ludicrous. The Chairperson was given permission to erect a carport at the AGM.



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RESPONDENT'S PRAYERS

21. The Respondent prayed that the application be dismissed.



EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

22. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
23. 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 and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

DISCUSSION

24. I have perused all written submissions and taken into consideration all submissions stated before me on 6 December 2019.
25. The gravamen of the complaint is the charges and numerous demands for payment of a penalty charge for alleged late payment of the Applicant's levy.
26. The Respondent reversed the charge of R358.31 which was levied against the Applicant. The matter relating to the alleged harassment of the Applicant's daughter did not form part of the complaint thus cannot form part of the adjudication process.
27. The matter relating to the installation of a carport although it formed part of the initial complaint there was no information provided to assist when making a determination.
28. The Applicant mentioned that the charge was reversed and the relief sought was for an apology and financial relief.
29. Chapter 3 of the CSOS Act sets out the application procedure when lodging an application for a dispute resolution. In terms of section 38 – *"Any person may make an application if such person is a party to or affected materially by a dispute."*

30. The relief sought by the Applicant must fall within the provisions of section 39 of the CSOS Act. The relief sought by the Applicant in the application form for a reversal of the charge has resolved and has become academic and therefore moot. The demand for an apology and financial recourse do not fall within the ambit of CSOS.

POWERS AND JURISDICTION OF THE ADJUDICATOR

31. 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

32. Accordingly, the following order is made;

- (a) The relief sought by the Applicant has become academic and therefore moot.
- (b) No order is made as to costs.

RIGHT OF APPEAL

33. The parties' attention is drawn to 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"*

SIGNED at SANDTON on this 30th DAY OF DECEMBER 2019.



ML BULO

ADJUDICATOR



ADJUDICATION ORDER

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