

My ref: Mrs Vuma L.B.

Date: 14 July 2021

Dear NHBRC

Re: CHAIRPERSON'S REPORT IN RESPECT OF THE DISCIPLINARY HEARING BEFORE THE NATIONAL HOME BUILDERS REGISTRATION COUNCIL ("NHBRC")'s DISCIPLINARY COMMITTEE AGAINST ITS REGISTERED HOME BUILDER, NAMELY, FERDINAND COOPER t/a FJ DECKLING - REG NO. 601433, HELD VIRTUALLY ON 28 JUNE 2021

COMPOSITION OF THE DISCIPLINARY TRIBUNAL's COMMITTEE

Kindly note that as before the Disciplinary Committee was constituted by myself as the appointed chairperson and two technical assessors, namely Messrs Michael Moloto and Charles Ngundu. The Prosecution was represented by Adv. Fikile Hlabangana. The home builder was still accompanied by his life partner Ms Joleen Osthuizen.

THE PROCEEDINGS

THE PROSECUTION's SUPPLEMENTARY CLOSING ARGUMENTS

The prosecution submitted that the home builder be found guilty in respect of 42 (forty-two) counts of the original 50 (fifty) counts the home builder had been charged of. The prosecution argued that it has succeeded to prove its case against the home builder on a balance of probabilities and that the home builder has failed to mount a successful challenge or differently put, a reasonably possible defence against its case. The prosecution further argued that all its witnesses were credible and clear and that on that basis their evidence should be accepted and that the home builder's should accordingly be rejected.

THE HOME BUILDER's SUBMISSIONS FOR AN ACQUITTAL

The home builder submitted that but for the 'abnormal' payment arrangement entered into between his father and the housing consumer, he wouldn't be in the unenviable mess he finds himself immersed in. He argued that the housing consumer was the author of her own misfortune given the unconventional building financing arrangement through her son. He also argued that the NHBRC's inspector failure to do sporadic inspections in that area contributed to his demise, otherwise they (the NHBRC inspectors) could well have picked up the defects timeously.

THE COMMITTEE'S DELIBERATIONS

The Committee deliberated on the submissions made by both parties on the evidence adduced and was satisfied that the prosecution's witnesses were credible in material respects and that their evidence be accepted. The Committee was further satisfied that the prosecution has proven its case on a balance of probabilities and that the home builder's evidence which did not even raise a defence accordingly stood to be rejected.

In the result, the Committee found the home builder guilty in respect of the following counts: Count 1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 33; 34; 36; 37; 38; 39; 44; 45; 46; 49 & 50.

The home builder was however not found guilty in respect of the following counts, namely Count 32 which was struck out by the prosecution; count 35 as the committee found the prosecution failed to prove its case; counts 40, 41, 42 and 43 as these four counts were struck out as they are duplication of counts 36, 37, 38 and 39. Also not guilty of count 47 as it is a duplication of count 1 and count 48 since the prosecution withdrew this charge.

PREVIOUS CONVICTIONS AGAINST THE HOME BUILDER

The Prosecution proved no previous convictions against the home builder.

SUBMISSIONS BY THE HOME BUILDER IN MITIGATION OF THE SANCTION

Mr Cooper submitted that if he could do this whole thing again he would stop his father from entering into this form of a payment arrangement so as to avert the status quo. He stated that he would never do this again. He further stated that they (the Coopers) had put in an amount R600 000.00 in this project. He asked for a sanction of a warning to be imposed.

SUBMISSIONS BY THE PROSECUTION IN AGGRAVATION OF THE SANCTION

Adv. Hlabangana submitted that the seriousness of the charges the home builder has been found guilty of can never be overemphasized and that under the circumstances, a sanction in the form of a fine will be appropriate. He stated that despite the home builder being a first offender, the fact that remains is that the housing consumer is still in a rented house with a condemned building still standing in her land. He argued that the committee, in its sanction, if persuaded by the prosecution's argument, should order that 80% portion of the fine should be directed as compensation towards the housing consumer. He recommended the following fine:

Count 1 to 10	- R15 000.00;
Count 11 to 29	- R10 000.00;
Count 30; 31; 33 & 34	- R8000.00 per count;
Count 36; 37; 38; 39; 44	- R 10 000.00;
Count 46	- R 6000.00;
Count 49 & 50	- Warning

The prosecution submitted that an amount of R50 000.00 (fifty thousand rand) be suspended on condition that the home builder clears the site within a period of 90 (ninety) days of this Ruling, failing which the full amount of the fine be effective. The prosecution further submitted that a certain percentage of the fine be paid over to the housing consumer.

THE COMMITTEE'S VIEW

The Committee considered all the facts and evidence presented before it and accordingly imposed the sanction as appears below herein.

SANCTION

1. The home builder fined in the amount of R387 000.00, made up as follows:

Count 1 to 10	- R10 000.00;
Count 11 to 29	- R10 000.00;
Count 30; 31; 33 & 34	- R8000.00 per count;
Count 36; 37; 38; 39; 44	- R 10 000.00;
Count 46	- R 6000.00;
Count 49 & 50	- Warning

2. Of the R387 000.00 imposed fine, an amount of R79 500.00 is suspended on condition the home builder clears the site, namely Erf 12008, D' urbanvale, Durbanville, Western Cape, within a period of 90 (ninety) days of this Ruling

3. Pursuant to regulation 14.0.9 of regulation no. 6(7) of Government Gazette no. 20658, the committee orders that 75% of the above imposed fine should be applied as compensation to the housing consumer, namely, Ms Debbie Costopoulos.

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Signed:

Mrs Vuma L.B