



**IN THE FIRST-TIER TRIBUNAL (CONSUMER CREDIT)
GENERAL REGULATORY CHAMBER**

Case number: CCA/2012/0014

Between:

**Vasoulla Kissias
Appellant**

and

**The Office of Fair Trading
Respondent**

On appeal from: The Office of Fair Trading's determination reference ADJ/2397 643922

Dated: 6 August 2012

Heard at: Field House, 15 Bream's Buildings, London EC4A 1DZ

Date of hearing: 22nd March 2012 (sitting in public)

Date of decision: 10th April 2013

Before

Mr. Peter Hinchliffe, Tribunal Judge,
Mr. D. Stuart McDonald
Ms Sue Ward

Attendances:

The Appellant represented herself and was assisted by a McKenzie Friend, Ms S. Reyyes

For the Office of Fair Trading: Mr. James Eldridge, Legal Division of the Office of Fair Trading.

Cases referred to:

QSolvency Ltd. and the Office of Fair Trading (2009) CCA/2009/0004
Rowena Koning and Office of Fair Trading (2012) CCA/2012/0012

DECISION

1. The unanimous decision of the Tribunal is to dismiss the Appeal. The decision of the Office of Fair Trading to refuse to grant a licence under section 27 of the Consumer Credit Act 1974 (the “Consumer Credit Licence”) to Miss Kissias is confirmed for the reasons set out below.

BACKGROUND TO THE APPEAL

2. Miss Kissias appeals against the determination of the Office of Fair Trading dated 6th August 2012 to refuse her application for a Consumer Credit Licence under Section 27 of the Consumer Credit Act 1974 (“The Act”) on the grounds that the Office of Fair Trading is not satisfied that Miss Kissias is fit to engage in licensable credit activities.
3. Miss Kissias applied to the Office of Fair Trading for a Consumer Credit Licence authorising her to provide credit brokerage, debt adjusting on a commercial basis, debt counselling on a commercial basis and credit information services including credit repair on a commercial basis (the “application”). Miss Kissias proposed to carry on these activities as a sole trader under the brand name VK Money Lifestyle. Miss Kissias has not previously held a Consumer Credit Licence.
4. In a letter dated 21st July 2011, the Office of Fair Trading sought further information relevant to the application. This included a Credit Competence Plan. Miss Kissias replied on 18th August 2011. On 25th October 2011 a consultant acting on behalf of the Office of Fair Trading, Mr Masini, visited Miss Kissias at home and sought additional information from Miss Kissias. A report on this visit was prepared by Mr Masini.
5. On 1st March 2012, the Office of Fair Trading notified Miss Kissias that it was minded to refuse the application for a Consumer Credit Licence. The notice explaining that the Office of Fair Trading was minded to refuse the application was issued by Radhia Karaa, an adjudicator acting on behalf of the Office of Fair Trading. The notice offered Miss Kissias the opportunity to respond by means of written or oral representations to the notice. Miss Kissias responded with a detailed written submission.
6. On 6th August 2012, a different adjudicator, Avril O’Meara, issued a determination of minded to refuse notice on behalf of the Office of Fair Trading (the “determination”). This confirmed that the application from Miss Kissias was refused and set out the Office of Fair Trading’s reasons for this refusal. The determination set out its conclusion in the following terms.

“The Applicant has failed to demonstrate that she has the necessary skills, knowledge and experience required to hold a consumer credit licence. The Applicant has little relevant training or experience, she is confused about what regulatory regime and regulations apply to her proposed business and she lacks any real or meaningful awareness of relevant OFT guidance. This is demonstrated by her lack of reference to (or reliance on) relevant OFT guidance in her representations and the misplaced references to other sources of guidance and Regulators. The gaps, inconsistencies and inaccuracies in the information she has provided to the OFT indicates that she lacks the knowledge and experience required of a fit and competent person.”

Furthermore, the Applicant has not demonstrated that she has put in place adequate practices and procedures in her proposed business to ensure that she will operate a compliant consumer credit business.”

The adjudicator went on to refer to particular practices and procedures, including Miss Kissias’ policy on refunds, fee structure, complaints procedure and the content of other documents that she had provided, as causes for concern.

7. Miss Kissias submitted a notice of appeal dated 22nd October 2012 and set out a detailed response to the conclusions that the adjudicator had reached in refusing the application. She denied certain of the factual conclusions on which the adjudicator had based her determination, suggested a series of improvements that she proposed to make to the practices, procedures and documentation that she was to use in her business and indicated the steps she was taking to improve her competence.

THE LEGISLATIVE BACKGROUND

8. Section 25 of the Act deals with the requirements that the holder of a Consumer Credit Licence must be a fit person.

“25 – Licensee to be a fit person

(1) If an applicant for a standard licence –

(a) makes an application within section 24A (1)(a) in relation to a type of business, and

(b) satisfies the OFT that he is a fit person to carry on that type of business so far as it falls within the description or descriptions of business set out in his application in accordance with subsection (2) of that section,

he shall be entitled to be issued with a standard licence covering the carrying on of that type of business so far as it falls within the description or descriptions in question.

(2) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)

(a) The applicant’s skills, knowledge and experience in relation to consumer credit business or ancillary credit business: -

(b) ...:

(c) Practices and procedures that the Applicant proposes to implement in connection with any such business;”

ROLE OF THE TRIBUNAL

9. Section 41ZB of the Act deals with disposal of appeals by the Tribunal. It provides insofar as material that:

(1) *The First-tier Tribunal shall decide an appeal under section 41 by way of a rehearing of the determination appealed against.*

(2) *In disposing of an appeal under section 41 the First-tier Tribunal may do one or more of the following—*

(a) *confirm the determination appealed against;*

(b) *quash that determination;*

(c) *vary that determination;*

(d) *remit the matter to the OFT for reconsideration and determination in accordance with the directions (if any) given to it by the tribunal;*

(e) *give the OFT directions for the purpose of giving effect to its decision.*

10. The question to be decided by the Tribunal was whether on the evidence before them Miss Kissias was a fit person to hold a licence at the time the appeal came before the Tribunal. While the reasons given in the determination remain the foundation for the Appeal, the Tribunal is entitled to consider any further matter which had a bearing on Miss Kissias's fitness so long as Miss Kissias has been given the opportunity to make representation on such matters. The standard of proof on any issue is the usual civil standard of a balance of probability. The Tribunal has borne in mind that the appeal is a rehearing and that the legal burden of proof is on Miss Kissias to satisfy the Tribunal that she is a fit person.
11. The Tribunal has borne in mind the approach of the Tribunal in *Qsolveny Ltd v OFT (2009) CCA/2009/0004* and repeated in *Rowena Koning v OFT (2012) CCA/2012/0012* when considering a case where there had been "continuous evolution" of the applicant's proposed business model during the application and appeal process. The Tribunal is of the view that its function is to decide whether Miss Kissias is a fit person to hold a Consumer Credit Licence on the facts and in the circumstances existing at the time of the hearing. However, where concerns have been raised by the Office of Fair Trading and addressed by Miss Kissias during the course of the application and appeal process the Tribunal can take account of all such matters that have been raised during the course of the process and the manner in which they have been addressed or resolved. The Tribunal accepts the view outlined in these cases that the assessment of fitness "*cannot be an iterative process; constantly noting issues and reverting to Miss Kissias for amendments and/or improvement*". It is important for the Tribunal to determine whether Miss Kissias has the necessary skills, knowledge and experience and has put in place the required practices and procedures in connection with the business that will permit her to undertake the consumer credit activities that are the subject of the application without reliance upon regular monitoring or guidance by the Office of Fair Trading.

FINDINGS OF FACT

12. Miss Kissias's notice of appeal includes a long rebuttal of the findings set out in the determination: Miss Kissias pointed out that the business that she proposed to create would provide services other than consumer credit activities and expressed a view that this had been misunderstood by the OFT

and its representatives and that this explained some of the apparent confusion about the services she wants to provide and the manner in which she would operate. Miss Kissias referred to her knowledge of various relevant pieces of legislation including the Limitation Act, the Misrepresentation Act and the Unfair Contract Terms Act. She pointed out the steps that she was taking to improve the complaints procedure that she proposed to operate. She clarified her position in relation to advertising and her skills in relation to mortgage advice, where she had received training and was a qualified mortgage advisor. She denied difficulties in distinguishing between priority and non-priority debts and explained how the documentation that she had provided was clear on these subjects. She accepted that the OFT had correctly raised concerns about her references to the Business Protection from Misleading Marketing Regulations 2008 and the money laundering regulations, neither of which would apply to her business. She referred to the guidance that the Office of Fair Trading has issued for consumer credit businesses including guidance on debt management and credit repair. She offered clarification of the issues that were of concern in relation to the terms and conditions that she had proposed to use. She also stated that these terms and conditions had been withdrawn and provided a new 'Master Confirmation Advice Letter', which would be used in the course of the business in place of the terms and conditions in order to clarify the advice offered to customers. Miss Kissias referred to her skills and experience as a personal assistant in a firm of property lawyers and as a qualified mortgage advisor and confirmed that she felt able to supply the information and complete the forms required by the Office of Fair Trading. She also stated that she had the skills required to complete the documentation required in order to advise her clients and maintain the proper financial records of the consumer credit business.

13. Miss Kissias confirmed that she had applied to several organisations where she hoped to take on voluntary positions in order to improve her knowledge and experience of consumer credit. She denied that her experience is limited, but said that it would "*be a lot more stronger when I receive my Consumer Credit Licence!*" She confirmed that she had not undertaken any particular training as yet, however she had "*invaluable experience in a traumatic debt situation myself, I have as stated in previous correspondence assisted a few colleagues*". She would rely on associates and said she was more than able to join networks and other sources of information. She referred to and sent details of the many training courses and workshop available to her which she intended to undertake "*so as to ensure best practice*".
14. Miss Kissias disagreed with the concerns over the transparency of her fee arrangements and denied that the fee structure that she proposed to adopt was confused. However, she stated that she had sought to review the fee structure and had prepared a new proposal since the visit by the representative of the Office of Fair Trading. Her fees were now clearly stated in the Master Confirmation Advice Letter. She pointed to the notice of the right to cancel, which was set out in the Master Confirmation Advice Letter, and believed this had addressed concerns over cancellation and refunds.
15. Miss Kissias also outlined her view that it was unfair that the Office of Fair Trading had, in her case, sought a visit in order to assess her competency and ability when, in most cases, no such visit was undertaken and licences were granted.

16. At the hearing, the Tribunal heard from both the Office of Fair Trading and Miss Kissias on the issue of the skills, knowledge and experience that Miss Kissias may or may not be able to bring the consumer credit business that she proposed to operate. The Tribunal explained to Miss Kissias the requirements set out in Section 25 (2) of the Act and the specific references to the applicant's skills, knowledge and experience in relation to consumer credit business in determining whether an applicant for a licence is a fit person for the purposes of the Act.
17. The Tribunal invited Miss Kissias' representations and evidence on the skills, knowledge and experience that she possessed. In identifying the skills that she possessed that would be relevant to the consumer credit business, Miss Kissias referred to her skills in listening, her pro-active approach and her ability to sit down with clients and discuss and explain debt matters whilst making them feel comfortable and not embarrassed about their situation. She emphasised her strong listening skills and the empathy that she brought with her by virtue of her own experience in overcoming debt problems. She also felt that she had the skills to assist and advise the customers of her business in providing the relevant information that was required and to help them complete the financial statements setting out their assets, liabilities, outgoings and commitments.
18. With regard to the knowledge that Miss Kissias would bring to the licensed activities, Miss Kissias referred to her experience in finding and implementing debt solutions to her own debt difficulties in the past. She had read extensively on the internet about debt management and debt advice. She understood and could cope with confidentiality. Her experience in her existing position in a law firm was relevant and helpful in this regard. The other main source of knowledge that she had, over and above the information gained from reading relevant materials on the internet, was the contacts that she had. These contacts were friends with experience in this area and these included good friends with positions at the Citizens Advice Bureau and in other unspecified organisations carrying out activities that related to debt management. She referred to the information available from the Money Advice Trust and to a good friend and contact who had worked for 25 years in the mortgage business. When questioned by the Tribunal, Miss Kissias confirmed that she had not undergone any specific training in relation to consumer credit in the 17 month period since she applied for the licence, other than an introductory course provided by "Christians Against Poverty", an organisation she had joined in order to gain experience. She had also been to one or two meetings with this agency. She had not attended any of the training courses or workshops that she had identified when responding to the determination. She had not joined any particular bodies or groups that were active in relation to consumer credit, debt management or debt advice or which provided training or information in these areas, other than Christians Against Poverty. However, she said that she still intended to join the Debt Resolution Forum and would do so as her next step.
19. The experience that Miss Kissias brought to her proposed business was based upon her experience in dealing with her own debt issues and those of friends. This experience arose when she had got into difficulties with debt following the collapse of a business she had invested in and the running up of debts on a mortgage and credit cards. She had been able to manage her way out of those difficulties using an IVA. She had successfully dealt with her debt issues and had been able to repay her liabilities after only 18 months of a five

year programme under the IVA. She had also guided and helped close friends who had suffered similar problems and referred to working with three individuals on their own serious debt issues. Miss Kissias identified her assistance in helping these individuals as guidance and acknowledged the Office of Fair Trading's concerns by stating that she had not carried out licensable activities during the course of assisting and guiding her friends. Miss Kissias was unable to identify any other experience of debt management or the provision of debt adjusting, debt counselling or credit information services including credit repair. She had applied for two voluntary positions one in Christians Against Poverty and the other at the Harrow Law Centre. She had not heard back from the Harrow Law Centre. When questioned by Mr. Eldridge for the Office of Fair Trading, Miss Kissias accepted that she might have exaggerated her experience when applying for the position at the Harrow Law Centre. Miss Kissias had not undertaken any work directly with customers or clients as part of her role at Christians Against Poverty. As the hearing progressed, Miss Kissias appeared to accept that she had little relevant experience of debt advice, debt adjusting and debt counselling.

20. The Tribunal accepted that Miss Kissias had made a number of changes to the practices and procedures that she proposed to adopt in her business and the documentation that she would employ. These changes had been made during the course of her dialogue and correspondence with the Office of Fair Trading since the submission of her original application for a licence. The Tribunal invited Miss Kissias to explain a few matters relating to the operation of the business at the hearing. In particular, an outline of the business model that she planned to pursue, including the fees that she proposed to charge and the clients understanding of the fee structure, were discussed at the hearing. Miss Kissias was also asked to outline the terms and conditions that were to be put in place with clients through the Master Confirmation Advice Letter and the nature of the service that she would provide and advice that she would offer if the licence were granted. Miss Kissias was unable to explain what process would apply to those consumers who did not have the funds required to make the upfront payment that her business model required. Miss Kissias was clear that she would offer to refer such clients to agencies who could assist on debt problems without charge. However, the basis of how this would happen and at what point in the engagement with the client this would be assessed and take place was not clear. The Tribunal was concerned that the business model appeared to be reliant upon a formal debt restructuring taking place and Miss Kissias was unable to dispel their concern. Miss Kissias assumed that all discussions around debt problems would result in a structured solution such as an IVA, a debt relief order or bankruptcy. There was no provision for charges to be made where any other solution or advice was required. Miss Kissias admitted that she had had this question before and she was still unable to answer it. Miss Kissias was unable to explain how the Master Confirmation Advice Letter would work. It appeared to be her plan that this letter would not be issued to the client until after an initial consultation had taken place. Her advice was to be provided in the Master Confirmation Advice Letter at the same time as requesting the customer's agreement to its terms. It was therefore not clear on what basis the initial meeting took place, how the client would know the terms on which they were dealing with Miss Kissias' business until they received the advice or how Miss Kissias would be paid in the event that the customer received the advice and then declined to countersign the letter. Miss Kissias was unclear as to what areas she would provide advice on. By way of example, the Master Confirmation Advice Letter refers to the possibility of eviction and to debts arising on rental

accommodation. However, Miss Kissias did not know whether she would be able to advise in this area or how the letter would be modified to address such an issue. It was not clear to the Tribunal whether the topics covered in the Master Confirmation Advice Letter would all be the subject of advice. It appeared to be Miss Kissias' intention that she would always advise the client which of a list of formal debt restructuring solutions was most suitable to them and that they would then agree to pay for the solution. However, Miss Kissias was unable to clarify this point at the hearing and accepted that a problem existed.

21. The Office of Fair Trading expressed concern about Miss Kissias' reliance upon the advice and expertise of third parties, friends and others who she knew and relied upon on an informal basis. Miss Kissias was unable to explain how this process would work in a manner that both gave her a reliable source of expertise and preserved the confidentiality of her clients. This concern arose in relation to her proposed work as a mortgage advisor as well as in relation to consumer credit activities. Miss Kissias referred to her role as a mortgage advisor working alongside her friend, who had been in the business for many years, without identifying the regulatory basis upon which she could undertake this work and without recognising the problem that existed in this respect.

REASONS FOR THE DECISION

22. Under Section 25 (2) of the Act the Office of Fair Trading is required to have regard to any matters appearing to it to be relevant including Miss Kissias skills, knowledge and experience in relation to consumer credit businesses and the practices and procedures that Miss Kissias proposes to implement in connection with any such business. It is for Miss Kissias to satisfy the Office of Fair Trading that she is a fit person to carry on a consumer credit business.
23. The application by Miss Kissias covered the areas of debt adjusting and debt counselling. These are considered to be high risk activities by the Office of Fair Trading. The Office of Fair Trading's guidance in these areas makes this plain. The Tribunal shares this view and believes that any applicant seeking a licence in this area should be aware of the Office of Fair Trading guidance and should share an understanding of the risk associated with such activities and the likelihood that their clients will be vulnerable consumers. It is, therefore, appropriate that the Office of Fair Trading should expect a reasonably high standard of skills, knowledge and experience from applicants seeking licences to undertake debt adjusting and debt counselling activities. It is also likely that clients seeking such advice may well be lacking in financial and commercial capability and it is, therefore, necessary for an applicant to ensure that the practices and procedures and documentations to be used in a business operating in these areas is adequate for the needs of the likely client base.
24. The Tribunal found that Miss Kissias had received very little relevant training on the relevant legislation and regulatory requirements. Miss Kissias appeared to be aware of the need for her to obtain further training and had made representations to the Office of Fair Trading that she would undertake such training. Despite this, she had made no real effort to gain relevant knowledge or to improve her limited knowledge in the consumer credit areas in which she proposed to carry on business. Not only did Miss Kissias lack the basic knowledge required to carry on the consumer credit activities for

which she sought a license, but she appeared to the Tribunal to have a poor understanding of the implications of her lack of knowledge for the clients that she proposed to assist.

25. It was not clear to the Tribunal that Miss Kissias had any relevant work experience. The experience that she brought to the application was inadequate and offered no assurance of quality or competence.
26. The Tribunal found Miss Kissias to be well-intentioned in making and pursuing the application. She had a genuine intention of helping those who had got themselves into difficulties with debt and the Tribunal accepted that the skills that she brought to this role would enable her to empathise and win the trust of those with whom she dealt and that she would deal with them on the basis of honesty and a strong desire to assist. These skills are important in carrying out licensed consumer credit activities in high risk areas and amongst vulnerable groups of consumers. However, they do not provide an adequate basis for pursuing such activities. Unless well-intentioned and honourable conduct is accompanied by an adequate level of competence and expertise it remains the case that consumers could be very badly served by a licence holder. Miss Kissias did not have the skill or judgement required to identify the shortcomings in her own knowledge, the precarious nature of her reliance on the assistance of third parties, the danger of confusing or misleading consumers about the basis upon which they would deal with her business, or the range of expertise and advice that a competent and experienced individual in the consumer credit area could bring to those suffering from problems arising out of over indebtedness. For these reasons, the Tribunal found that Miss Kissias lacked the skills required of a consumer credit licence holder.
27. The practices, procedures, and documentation that Miss Kissias proposed to implement in operating her business remained inadequate and incoherent. This was despite a period of 17 months in which Miss Kissias had submitted an application and had responded to the concerns expressed by the Office of Fair Trading. The Tribunal accepted again that this did not arise from any desire or intention of Miss Kissias to mislead consumers or the Office of Fair Trading. It appeared to arise from a lack of understanding and capability in preparing the practices and procedures required to launch her business to a standard that would serve her business purpose, meet regulatory standards and stand up to scrutiny from the Office of Fair Trading and be accessible and intelligible to those to whom she proposed to offer her services.
28. It is clear from the correspondence between Miss Kissias and the Office of Fair Trading and from Miss Kissias' submissions during the course of the hearing that she relied upon the Office of Fair Trading to point out any problems that might exist in her business and in her proposed activity and she appeared to regard this as a necessary role for the Office of Fair Trading to carry out. This basic misunderstanding of the role of the Office of Fair Trading and the duties of a Consumer Credit Licence holder is, in the view of the Tribunal, indicative of her lack of knowledge and understanding of the work in which she proposes to be engaged and the regulatory and legal environment in which she would operate.

DECISION OF THE TRIBUNAL

29. In all the circumstances of this appeal and having considered all of the evidence and arguments, the Tribunal finds that Miss Kissias is not a fit person to be issued with a Consumer Credit Licence and that the imposition of requirements under the Act would not address these fitness concerns. The appeal is refused.

30. The Tribunal would like to thank and commend Mr Eldridge for the professionalism and courtesy that he demonstrated in assisting Miss Kissias as an unrepresented party in the Tribunal. The Tribunal would also like to repeat that it accepted that Miss Kissias' good intentions and good faith in applying for a Consumer Credit Licence.

P M Hinchliffe

Tribunal Judge