

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CIV-2021-004-001850**

BETWEEN	COMMERCE COMMISSION Applicant
AND	ACE MARKETING LTD First Defendant
AND	SANDIP KUMAR Second Defendant

Date: 1 November 2022

Appearances: A McClintock and J Barry for the Applicant  
No Appearance by or for the First Defendant  
No Appearance by or for the Second Defendant

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**ORAL JUDGMENT OF JUDGE D J CLARK**

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[1] The Commerce Commission applies by way of originating application for banning orders under s 108 of the Credit Contracts and Consumer Finance Act 2003 (the Act).

[2] The matter has come before me today as a firm fixture. On 30 March 2022, I granted orders for substituted service on the second defendant, the first defendant having been served at its registered office. No steps have been taken at any stage by the defendants throughout the course of this proceeding.

[3] At a case management conference on 10 May 2022, His Honour Judge Bergseng set the matter down as a firm fixture. As I have noted above, it has come before me today.

[4] Neither defendant has turned up at today's hearing and enquiries have been made by the registrar to see whether the defendants were present in the courthouse. Neither were.

[5] On that basis, Ms McClintock has confirmed the orders which are sought in the originating application should be granted. I discussed with counsel whether detailed reasons were required in granting the orders, given the absence of the defendants. My preference was to provide detailed reasons notwithstanding that the court has proceeded effectively on an ex parte basis. To that end, I do note that considerable work has gone into this application both in terms of the affidavit evidence and the significant number of documents which comprise the bundle of documents, together with the detailed submissions which I have received. I thank counsel for their efforts in that regard. On that basis detailed reasons for the orders which I grant today will follow this judgment in due course.

### **Orders**

[6] Because there is no prescribed form for banning orders as such under the Act, the originating application was required to proceed by way of an application for leave to proceed.<sup>1</sup> I grant leave accordingly.

[7] I turn then to the banning orders which are requested in terms of the application itself.

[8] As against Ace Marketing Limited, I grant a banning order to provide a credit under the Act.

[9] As against Mr Kumar I grant a banning order to:

- (a) provide credit under the Act;

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<sup>1</sup> See 20.13(3) District Court Rules

- (b) to act as a director or take part directly or indirectly in the management or control of any company or business that provides credit under the Act; and
- (c) to be in the employ or acting as an agent of a creditor in any capacity that allows Mr Kumar to take any part in the negotiation of consumer credit contracts involving the provision of credit by the creditor.

[10] In respect of the term of the banning orders, I impose a period of five years from the date of the making of these orders.

[11] Detailed reasons for the basis of these orders will follow. I also invite counsel to file a memorandum as to costs which I will incorporate in my reasons judgment.

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Judge D J Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 07/11/2022