

IN THE EXEMPTION APPLICATION OF:-

FIDELITY SECURITY SERVICES PTY LTD

1st Applicant

FIDELITY ASSET MANAGEMENT SERVICES (PTY) LTD

2nd Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY (Council)**

Respondent

PROTEA COIN GROUP (AIT)

Interested Party

DECISION

1. The Applicant applied for exemption from all provisions of the Main Collective Agreement for a period of 18 months.
2. Pursuant to a ruling issued by the Exemptions Body previously, the application was scheduled for a hearing on the 18th April 2011.
3. On the 18th April 2011 the following were present:-
 - 3.1 Mr. Y. Nagdee - Chairperson of the Exemptions Body
 - 3.2 Mr .G. Wessels - Member of the Exemptions Body
 - 3.3 Ms. R. Manning - Member of the Exemptions Body
 - 3.4 Mr. T. Short - Member of RFEA
 - 3.5 Mr J. Gys - MTWU
 - 3.6 Mr J. Gamede - SATAWU

- 3.7 Mr. E. Kock - Senior Agent of NBCRFLI
- 3.8 Mr P. Mndaweni - Committee Secretary of NBCFRLI
- 3.9 Mr C. Beckenstrater - Attorney for Respondent
- 3.10 Mr Myburg - Applicant's Group Legal Counsel
- 3.11 Mr P. Mathapi - Human Resources (G4S Cash Services SA)
- 3.12 Mr G. Pretorius - Interested Party (Protea Coin Group)

4. Apologies were received from:

- 4.1 Ms T. Stroh - NBCRFLI
- 4.2 Ms M. Brown–Engelbrecht - Member of RFEA
- 4.3 Mr N. Pakkies - SATAWU

5. **APPLICANT'S SUBMISSIONS**

Mr Myburgh expressed the view that the Applicant did not see the need to apply for condonation and was not bound by the decision. The Applicant would exercise other rights at its disposal.

6. **COUNCIL'S SUBMISSIONS**

Mr Beckenstater stated that Council wished to make submissions in respect of process issues and stated as follows:

- 6.1 The Applicant's application was brought outside the time periods.
- 6.2 Condonation was required.

6.3 In the absence of condonation the application should be dismissed.

6.4 It was not necessary to deal with the merits.

7. INTERESTED PARTIES

7.1 Protea Coin (AIT) submitted, inter alia, as follows:

“WHEREAS the Applicants submitted an application for Exemption on 2 November 2010;

and

WHEREAS FURTHER this matter was scheduled for a hearing by the Exemptions Body of the NBCRFLI on 22 March 2011 and was subsequently postponed to 18th April 2011 with an appropriate cost award made against the Applicants.

NOW THEREFORE the Interested Party hereby submits an objection to the exemption application by the Applicants based upon the following:

- 1. The facts and arguments reflected in the opposing affidavit by the General Manager: Operations of the Interested Party, Mr Johannes Lodewicus Pretorius in support of the Interested Party’s original objection to the exemption application. This affidavit is already on record with the Exemptions Body. Mr Pretorius shall also be present at the hearing scheduled for 18 April 2011.***

- 2. The Applicants had to submit the exemption application within 30 days of the agreement in terms of clause 4.1 thereof) on record between the relevant stakeholders in this regard. The Applicants thus had to submit the exemption application within one month of the signature date (3 August 2010) of such agreement. The Applicants in fact submitted the application for exemption more than three months later on 11 November 2010. It is submitted that this constitutes a material breach of the said agreement. If cognizance is taken of the serious effect that the Applicants' actions (carrying on business in conflict with industry standards) are having on the Interested Party and others (see hereunder), this fact alone should be sufficient to render the application for exemption unsuccessful.**
- 3. The Applicants failed to submit an application for condonation of late within 7 (seven) days as instructed by the Exemptions Body in respect of the hearing held on 22 March 2011.**
- 4. The Interested Party submits that the Applicants have been deliberately procrastinating this matter throughout the process from the start, as the Applicants are gaining an unfair advantage by not adhering to the norms and standards of the industry. The Applicants are securing contracts of various clients previously contracted to the Interested Party. They are in a position to do this, primarily due to the fact that they have the advantage of escaping the ambit of the Respondent's strenuous conditions for the industry. The recent 9% salary increase applicable to the industry, as well as the extension of the bargaining unit, have increased financial pressure for the Interested Party and others, but**

excluding the Applicants. They deliberately use this advantage to gain business in the industry. This is in fact exploiting employees who suffer the consequences of this practice. This is not in the best interest of the industry, employees and their Unions and certainly extremely prejudicial to other Interested Parties, including Protea Coin. The latter was recently forced to retrench a number of employees in the Eastern Cape, directly as a result of the Applicants in this matter obtaining certain Department of Justice contracts, previously held by the Interested Party. These dismissals may well be followed by others for the same reason. Disputes have followed in this regard.

- 5. The Applicants' actions are causing unfair competition in the industry, leading to conflict and job losses and in general are in conflict with objectives of the Labour Relations Act.***
- 6. The Applicants are advertising AIT services on their website, in fact claiming that they are conforming to bargaining council standards. They are actively recruiting, undercutting the price structure of the Interested Party and others, by virtue of underpayment in terms of required standards. The agreement on which the exemption application is based, is nothing but a tactical manoeuvre in order to gain maximum advantage in this regard. The application for exemption should therefore be dismissed without further ado.***
- 7. It is submitted that exemption should not be allowed to succeed as this could set a negative precedent. It could open a floodgate of other cases where operators in the industry see the tactic used by the Applicants as quite a lucrative one in order to escape the norms of the industry and gain unfair***

advantage. In fact, this matter has been in process for more than a year now if the demarcation application is taken into account and the Applicants are requesting an exemption period of 18 months; the postponement caused further delay and there is still the possibility of appeal to the Exemptions Body, At the end of the process, the Applicants may well have been operating in a situation of extreme unfair competition viz a viz other Interested Parties for a period of at least three years. This may be considered as a lucrative business practice to other Interested Parties. This would clearly not be in the interest of any stakeholder in the industry, except the Applicants.

WHEREFORE the Interested Party submits that the exemption application should be dismissed.”

7.2 Mr Mathapi on behalf of G4S and Mr Pretorius on behalf of Protea Coin opposed the application and sought compliance by the Applicant.

8. **SATAWU / MTWU**

Representatives of both Unions opposed the application.

9. **DECISION**

9.1 The Exemptions Body considered the submissions made. It is clear that the Applicant did not bring an application for condonation. The Applicant sought to challenge the decision of the Exemptions Body, yet an *ex tempore* the decision was handed down on the 18th March 2011. This was after deliberations

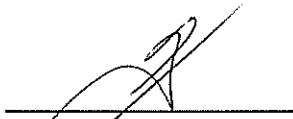
between Applicants' Attorney and the other parties. The Applicants were aware of the decision where it had to apply for condonation. The Applicants seek to challenge this decision at this stage yet it was represented at the previous hearing.

9.2 The Exemptions Body is *fuctus officio*.

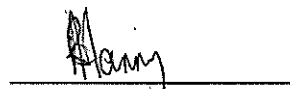
9.3 The Applicant indicated that it would exercise the other remedies at its disposal.

9.4 The Applicant has failed to apply for condonation and has shown a disregard for decision of this Body. In the absence of an application for condonation, the exemption application is dismissed.

DATED THE 29 DAY OF April 2011 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MRS R. MANNING
Member of the
Exemption Body
I agree

MR G. WESSELS
Member of the
Exemption Body
I agree