



**REPORT OF THE ADJUDICATOR  
(revised 18/05/2012)**

**Complaint reference number:** 14599

**WASPA member(s):** Mobile NOBO (IP)

**Membership number(s):** 1091

**Complainant:** WASPA Secretariat

**Type of complaint:** Subscription service

**Date complaint was lodged:** 2011-08-26

**Date of the alleged offence:** 2011-08-26

**Relevant version of the Code:** 11.0

**Clauses considered:**

**Relevant version of the Ad. Rules:** Not applicable

**Clauses considered:** Not applicable

**Related cases considered:** 9978

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**Complaint**

The WASPA Secretariat lodged this formal complaint against the IP for its failure to pay a fine of R150 000.00 which was one of the sanctions given for complaint 9978 which was upheld against the IP on 25 August 2011.

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**Service provider's response**

No response has been received from the IP.

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## **Sections of the Code considered**

14.3.17. Once the adjudicator has determined whether there has been a breach of the Code, and any sanctions, the adjudicator will provide the secretariat with a written report detailing these findings.

14.3.18. The secretariat will provide a copy of this report to the relevant member and to the complainant.

14.3.19. Should technical errors be identified in an adjudicator's report, the adjudicator has the sole discretion to decide whether the initial report should be withdrawn and replaced with an amended report.

14.3.20. The member has five working days to notify the secretariat if it wishes to appeal against the decision of the adjudicator. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.21. Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal process is completed.

14.3.22. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

14.3.23. The member must provide the secretariat with confirmation of compliance with any applicable sanctions within five working days of receiving the adjudicator's report.

14.3.24. The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.

14.3.25. The secretariat will maintain a record of any complaints resolved through the formal complaint procedure.

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## **Decision**

The IP has failed to pay the fine imposed against it for complaint 9978 within 5 (five) working days as per section 14.3.24. No appeal has been lodged by the IP against the finding.

The IP's failure to pay the fine as aforesaid constitutes a further breach of the WASPA Code of Conduct in terms of section 14.3.22.

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## **Sanctions**

The IP's contravention of the Code under complaint 9978 was ruled as serious and previous complaints (see complaints 7435 and 7505) had also been upheld against the IP.

The IP's failure to pay the fine imposed under complaint 9978 was viewed in a serious light and the following sanctions were imposed:

1. All service providers who provide services to the IP were required to suspend such services to the IP for a period of 6 (six) months; and
2. The IP's membership of WASPA was suspended for a period of 6 (six) months.

The IP has subsequently made an effort to settle a number of outstanding fines in a good faith effort to clear its record with WASPA.

Should the IP satisfy the WASPA Code of Conduct and Finance working groups that it has resolved all outstanding fines, the 6 month suspension may be lifted, provided that if the IP is found guilty of contravening any provision of the WASPA Code in any new complaint lodged within the next 6 months, it is recommended that the 6 month suspension should again be invoked *de novo* by the adjudicator who adjudicates that complaint.