

Mediation Segment 2

General

Information

Preliminary Round
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LOAN AND BEHOLD

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By Param Bhamra



Loan and Behold

- 1) Mr. Ralph Verstappen is the proprietor of "Verstappen Craft Emporium," a small retail business specializing in local handicrafts, operating for the past 15 years. Approximately three years ago (April 2022), seeking to expand his business by renovating his existing storefront and launching an e-commerce platform, Mr. Verstappen approached Norris Commercial Bank for a business loan.
- 2) After submitting a detailed business plan and undergoing the required financial assessments, Norris Commercial Bank, represented by their Senior Loan Officer, Ms. Mary Benz, approved a secured business loan of 25 million USD for Mr. Verstappen.
- 3) The loan agreement, signed in May 2022, stipulated a repayment term of 7 years with an initial floating interest rate of 11% per annum, calculated based on the bank's Prime Lending Rate (PLR) plus a margin. The security provided by Mr. Verstappen included the commercial property owned by him and a personal guarantee.
- 4) For the first 18 months, Mr. Verstappen maintained timely repayments without issue, and his business expansion showed initial promise, although online sales took longer to gain traction than projected.
- 5) In December 2023, Mr. Verstappen received his loan statement which reflected a significant increase in his monthly instalment amount. Upon closer inspection, he noted the applicable interest rate had been increased by the bank to 13.5% per annum, effective from November 2023.
- 6) Concurrently, he noticed a charge labelled "Annual Account Maintenance Fee" of \$5,000 debited from his linked current account, a fee he had not previously incurred or recalled being explicitly mentioned during the loan signing process. Mr. Verstappen contacted Ms. Benz at Norris Commercial Bank to inquire about both the interest rate hike and the new fee.
- 7) Norris Commercial Bank, through Ms. Benz, informed Mr. Verstappen that the interest rate increase was implemented across the board for similar loan categories due to changed market conditions and an increase in the bank's internal benchmark rate (linked to the PLR).



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- 8) They assert that the loan agreement explicitly states the interest rate is floating and subject to revision at the bank's discretion based on defined market indicators and policy, and that notification via the monthly statement constitutes adequate notice as per the agreed terms and conditions booklet provided at the time of signing.
- 9) Mr. Verstappen contends that while he understood the rate was floating, he was verbally assured by Ms. Benz during the initial discussions that significant hikes were unlikely in the first few years and that any revision would be preceded by a separate, formal written communication at least 30 days in advance, outlining the specific reasons. He claims he never received such formal communication, only discovering the hike through the statement after the increased instalment was due. He further argues a 2.5% hike is excessive and disproportionate, severely impacting his business's cash flow, which is still recovering from the expansion costs and slower-than-expected online revenue growth.
- 10) Regarding the \$5,000 Annual Account Maintenance Fee, Norris Commercial Bank states this fee is part of their standard schedule of charges for business loan accounts of this nature and is detailed within the comprehensive terms and conditions booklet provided to Mr. Verstappen when the loan was sanctioned. They maintain it covers administrative costs associated with managing the loan account annually.
- 11) Mr. Verstappen disputes this charge vehemently. He claims this specific fee was never highlighted or explained to him during the loan application process or at the time of signing the primary loan agreement documents. He states he reviewed the main agreement pages he signed carefully and saw no mention of this specific fee, and while he received a booklet, he believes such a recurring fee should have been explicitly listed on the primary agreement or a separate, signed schedule of charges.
- 12) He feels this fee was applied without his explicit awareness or clear prior consent, appearing unexpectedly on his statement over 18 months after the loan commenced. Furthermore, due to the strain caused by the increased interest payment, Mr. Verstappen missed the January 2024 instalment payment date by 5 days and the March 2024 payment by 8 days.



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- 13) The bank subsequently levied late payment charges amounting to \$1,800 for each instance, plus applicable taxes, as per the agreement. Mr. Verstappen acknowledges the payments were delayed but argues the delays were a direct result of the unexpected and, in his view, improperly notified interest rate hike, which disrupted his financial planning.
- 14) He requests a waiver of at least one of the late payment charges, citing the bank's actions regarding the interest rate as the primary cause for the delay. The bank maintains that the late fees are non-negotiable and automatically applied by the system based on the contractual terms, irrespective of the reason for delay.
- 15) Mr. Verstappen is currently struggling to meet the higher instalments and is concerned about the accumulating charges. Communication between Mr. Verstappen and Ms. Benz has become strained, with Mr. Verstappen feeling unheard and the bank insisting on adherence to the contractual terms.
- 16) Mr. Verstappen seeks a revision of the interest rate back to a mutually agreeable level (or at least a less steep increase) and a reversal of the Annual Account Maintenance Fee and at least one set of late payment charges. Norris Commercial Bank seeks adherence to the revised interest rate and payment of all levied fees as per the agreement.
- 17) After several rounds of tense communication yielded no resolution, and facing the prospect of protracted and costly legal proceedings which could further strain his business resources and potentially damage the long-standing (though now troubled) banking relationship, Mr. Verstappen formally proposed exploring mediation as an alternative dispute resolution mechanism.
- 18) Recognizing the potential benefits of a faster, less adversarial process that could preserve resources and potentially lead to a more flexible outcome compared to litigation, Norris Commercial Bank, represented by Ms. Benz after internal consultation, agreed to participate in the mediation process in good faith, hoping to find a mutually acceptable way forward.

