

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR  
(HELD IN JOHANNESBURG)**

CASE NO: PFA/GA/3182/2005/RM

In the complaint between:

**C N Dempster**

**Complainant**

and

**South African Retirement Annuity Fund**

**1<sup>st</sup> Respondent**

**Old Mutual Life Assurance Company (SA) Limited**

**2<sup>nd</sup> Respondent**

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24  
OF 1956**

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Introduction

[1] This complaint concerns the manner of payment of a retirement benefit by a retirement annuity fund. The complainant is currently experiencing financial difficulties so she seeks payment as a lump sum of her remaining two-third Investment Value in the fund, which was utilised to purchase an annuity that currently provides her with a small monthly pension. In determining this matter, I am bound first-and-foremost to consider what is permitted by the rules of the fund, which is often subject to legislation. If the relief sought by the complainant is

impermissible in terms of the rules of the fund, I am bound to dismiss the complaint, even though what is sought may appear to be the most convenient solution to the complainant's present financial woes.

### Factual background

[2] The complainant made contributions to the South African Retirement Annuity Fund ("the fund") in respect of a retirement annuity, which is underwritten and administered by Old Mutual Life Assurance Company (SA) Limited ("the insurer"). She turned 55 in October 2003. Her retirement annuity became payable in November 2003, at which stage she elected to commute one-third of its value as a cash lump sum and the remainder was utilised to purchase a monthly annuity that provides her with a pension of approximately R219.00.

### The complaint

[3] The complainant is experiencing financial difficulties at present. In attempting to extricate herself from this crisis, she now wants to commute the capital value of her retirement annuity as a lump sum, thus foregoing the monthly pension of R219.00 that she currently receives. The fund and insurer have refused to accede to her request.

The response

- [4] The fund responded to the complaint, submitting that it is prevented by legislation from agreeing to the complainant's request. It made specific reference to the definition of a "retirement annuity fund" in section 1 of the Income Tax Act, 1962. Effectively, the fund submits that the law precludes it from paying out to the complainant as a cash lump sum her remaining two-third retirement value in the fund.

Determination and reasons therefor

- [5] The definition of a retirement annuity fund as contained in Section 1 of the Income Tax Act 58 of 1962 gives an insight into what conditions or limitations a retirement annuity fund must comply with in order for it to get approval from the Commissioner for Inland Revenue for income tax purposes. The effect of such approval is that members' contributions to the fund are to an extent deductible from their income for purposes of calculating taxable income or assessed loss, as the case may be, favourable tax treatment of income in the fund (subject to retirement fund tax) and preferential tax treatment on the payment of benefits. For present purposes, the relevant portion of the definition is to the following effect:

“**retirement annuity fund**” means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in

question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act No.24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

(a)...

(b) that the rules of the fund provide-

(i)...

(ii) that no more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed R1 800 or such other amount as the Minister of Finance may from time to time fix by notice in the *Gazette*;..."

[6] In order to obtain and maintain the fund's "approved status", rule 4.4(a) provides as follows:

**"4.4. COMMUTATION**

(a) In respect of a MEMBER :

The MEMBER shall have the option of commuting for a single payment not more than one-third of the life annuity to which he is entitled, subject to the

conditions as set out in the ANNUITY POLICY.

Where, however, the aggregate of all life annuities payable under the FUND to a MEMBER is equal to or less than the amount prescribed by legislation from time to time, the MEMBER shall be entitled to commute all such life annuities subject to the conditions set out in the ANNUITY POLICY.”

- [7] The fund is a retirement annuity fund, and in order for it to reap the benefits of being approved as such, it has to comply with the provisions of the Income Tax Act, one of which is that its rules must provide for the payment of only up to a maximum of one-third of the value of the annuity payable to a member as cash, with the remainder being used to purchase a compulsory annuity.
- [8] Section 13 of the Pension Funds Act, 1956 provides that the registered rules of a fund are binding on the fund, its members, shareholders and officers, and on any person who claims under the rules or whose claim is derived from a person so claiming. Because of the binding effect of the rules on the fund, the fund may only pay out to its members those benefits provided for in its registered rules. That much was emphasised by the Supreme Court of Appeal in *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA), at 239D-E, where Marais JA stated as follows:

“What the trustees may do with the fund’s assets is set forth in the rules. If what they propose to do (or have been ordered to do) is not within the powers conferred upon them by the rules, they



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Appearances: All parties not legally represented

S30M filing: Magistrate's Court