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Re: COMPLAINT IN TERMS OF SECTION 30A OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): N B Mentz v Investec Investment Linked Retirement Annuity Fund (“the fund”)

Introduction

- [1] Having considered the complaint received by this office on 16 August 2005 and further written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.
- [2] As the background facts are well known to all the parties, I shall only repeat those facts that are pertinent to the issues raised herein.

Factual Background

- [3] Your client, Mr N B Mentz, invested R 177 303 in the fund with effect from 3 June 2005. He received the contract from the fund on 22 July 2005. On 10 August 2005 he contacted his broker at Verso Investment Services advising him that he wished to cancel the investment. The broker advised him that it was in order as he was within the “30 day cooling off period”. On 15 August 2005 the broker contacted Mr Mentz, advising him that Investec “is refusing to pay back the money”.

Complaint

- [4] Mr Mentz’ complaint concerns the fund’s refusal to pay him back the money that he had paid into the fund, alleging that the documents which were provided to him refer to the member’s right to cancel an investment within the “cooling off” period. Further, “Verso” said that he could cancel the investment. He wants this tribunal to investigate the matter.

Fund’s response

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalu (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), Solomzi Gcelu (Assistant Adjudicator)

Office Manager: L Manuel

- [5] The fund states that neither the rules of the fund, nor the Act, nor the application form, completed by Mr Mentz, make provision for the cancellation of the investment in the retirement annuity fund within a “cooling off” period. The complaint should therefore be dismissed.

Determination and reasons therefor

- [6] Point 5 of the “Statutory Notice to Long-Term Insurance Policyholders”, which was furnished to this office by Mr Mentz, is signed by him and his broker, Mr W W Borthwick, Verso Investment Services, on 18 May 2005, and states:

“In most cases you have the right to cancel a policy in writing within 30 days of receipt of the summary contemplated in section 48 from the insurer”.

- [7] The notice is addressed to the policyholder, which is, in a retirement annuity scenario, the fund. But the fund appears not to be a party to the document that was signed by Mr Mentz and the broker, yet the wording in the notice states that “you” have the right to cancel, implying it to be the member of the fund. Furthermore, the words, “in most cases” are wide and confer no rights to the policyholder or the member and need to be qualified in order to ascertain particularly when the cooling-off period may be applied. (It is not known to which section 48 this point refers to.)

- [8] The “Client Pack” issued by Investec Asset Management contains the terms and conditions of “IMS” (Investec Management Services, being the administrators of the fund) and point 5.7 states:

“In the event of the Investor exercising his discretion to withdraw from an investment within any cooling-off period as defined in any applicable legislation from time to time, the Investor will be refunded...”

- [9] This point as it stands also does not confer a right on a member of the fund to cancel his investment and the applicable legislation must be consulted in order to ascertain if such a right exists.

- [10] The fund being a registered retirement annuity fund falls within the definition of “pension fund organization” and therefore the Pension Funds Act applies. In terms of section 13 of the Act, the rules of the fund are binding on its members, officials and stakeholders.

- [11] Both the Act and the rules of the fund are silent on a member’s right to cancel an investment in the fund within a “cooling-off” period. They do not contain a definition of “cooling-off” period or when it applies.

- [12] Rule 8.6 on membership states:

“Each Member shall remain a Member until the full benefit due to him under these Rules has been discharged. No Member shall be entitled to any benefit prior to his fifty-fifth birthday or his Selected Retirement Date, whichever is the earlier, other than on death or disability.”

(The “selected retirement date” being between the ages fifty-five and seventy, set out in rule 12.)

- [13] Therefore, no provision is made in the rules to terminate membership of the fund prior to the selected retirement date.
- [14] The fund is bound by its rules, and can thus only do what its rules authorize it to. There being no reference in the rules to the member’s right to cancel his membership or the investment in a cooling-off period or for that matter any other period, it may not allow such cancellation.
- [15] In effect, once Mr Mentz was admitted to membership of the retirement annuity fund, he was bound by its rules to remain a member until one or other of the events that would result in the payment of a benefit arises.
- [16] In the result, Mr Mentz’ complaint cannot succeed.
- [17] Should Mr Mentz have a grievance particularly against his broker, he may approach the FAIS Ombud for assistance in this respect. His contact details appear at the foot on this letter.

Dated at Cape Town on this the day of 2005.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator

Section 30M Filing: Magistrate's Court