



HEAD OFFICE  
Johannesburg  
3<sup>rd</sup> Floor, Digital House  
Cnr 5<sup>th</sup> Street & Park Lane  
Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town  
2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

---

Please quote our ref: PFA/KZN/3596/05/LS

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS  
ACT 24, OF 1956 (“the Act”) – K GOVENDER v UNIVERSAL RETIREMENT  
ANNUITY FUND & SAGE LIFE**

Introduction

- [1] Having considered the complaint received by this office on 25 May 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.
- [2] As the facts are well-known to all parties I shall not burden this ruling by repeating them in detail here.

Complaint

- [3] You became a member of the Universal Retirement Annuity Fund (“the fund”) on 1 May 2000. Your chosen retirement age was 60 years. During November 2003 you instructed the fund to make the “policy” paid-up with effect from 1 January 2004.
- [4] You state that the fund initially quoted you a paid-up value of R18 595.54. However on 4 May 2005 the fund quoted you a revised paid-up value of R31 806. On further objection by you, the fund gave you a final adjusted figure of R27 891.81. You turned 55 years of age on 26 May 2004 and

---

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 Mballo (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), Solomzi Gcelu (Assistant Adjudicator)

Office Manager: L Manuel

received this amount as an early retirement benefit accordingly.

- [5] Your complaint is that despite having paid contributions to the fund in the sum of R49 450, you received only R27 891.81. You contest the fund's explanation that you incurred a penalty for ceasing contributions early and have requested my assistance in this regard.

### Response

- [6] The response appears to be filed on behalf of both the fund and Sage Life ("the insurer").
- [7] The respondents have raised a technical point that your grievance does not constitute a complaint as defined in the Pension Funds Act and that I therefore do not have jurisdiction to determine the matter.
- [8] On the merits, the respondents contend that the rules as read with the policy document authorized the insurer to make the deductions it did. The following breakdown has been provided:

|   |             |
|---|-------------|
| “ Contributions made                      | R45450.00   |
| Policy fees and allocation costs (10.67%) | (R5476.66)  |
| Mortality charges                         | (R94.50)    |
| Negative portfolio growth                 | (R2692.88)  |
| Portfolio switching charges               | (R332.32)   |
| Paid-up charges                           | (R8964.03)  |
| Early retirement value at 30 May 2005     | R27891.81 “ |

- [9] In the alternative the respondents contend that the paid-up value constitutes a penalty as set out in the Conventional Penalties Act and that, considering the substantial costs involved in conducting long-term insurance business and managing and administering the fund, the penalty is not out of proportion to the prejudice suffered by the life assurer, Sage Life.
- [10] My assistant also requested an explanation from the fund as to why three different paid-up values were quoted to you. This, given its own reference to section 52(3) of the Long-Term Insurance Act which requires that the rules must *prescribe* the basis on which and methods by which a long-term policy is valued. The fund's response in this regard was that the figure of R31 806 was erroneous due to a clerical error on the part of the administrators. In its initial response it states that it could find no record of a value of R18 595.54 ever having been supplied to you.

### Determination and reasons therefor

#### *Jurisdiction*

- [11] I am satisfied that your grievance is in fact a “complaint” as defined, in that it relates to the administration of the fund and essentially alleges an act of maladministration of the fund by the insurer through the levying of a penalty or penalties not provided for in the rules or policy document. (See *Schwartz v Central Retirement Annuity Fund and Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28]).

### *Merits*

- [12] What the trustees of a pension fund organisation may or may not do is decreed by the fund rules. If what they propose to do is not within the powers conferred upon them by the rules, they may not do it (*Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at para [28]).
- [13] The question for determination is whether in terms of the rules or policy document the respondents were authorised to make the deductions.
- [14] In this regard the respondents have referred to the following clauses in the rules:

Clause 8 which reads:

“A member may make periodic and single contributions to the fund including lump sum contributions by way of transfers of his interest in any approved pension, provident or other retirement annuity fund, subject to such conditions as the insurer may impose.”

Clause 10 which reads:

“If any periodic contribution is not paid within the period of grace as specified for the assurance, the member shall be deemed to have discontinued such contributions and he shall retain, if applicable, such fully paid-up, reduced benefits as the insurer shall determine. Subject to such terms and conditions as the insurer may specify, the member may recommence periodic contributions and may pay arrear contributions.”

Clause 9 which reads:

“Any item may, upon written request in such form as may be prescribed from time to time by Sage Life, be converted to a reduced paid-up assurance on such terms and conditions as will be quoted at the time of request.”

- [15] None of the above clauses authorize the deduction of a fee for early cessation of contributions. Clause 10 refers to ‘paid-up reduced benefits’ but nowhere is a paid-up benefit defined. Furthermore the clause fails to specify how the benefit is to be reduced. Similarly clause 9 refers to ‘reduced paid-up assurance’. This gives no indication at all that a penalty is chargeable on the early cessation of contributions. You are therefore

- entitled to repayment of the amount of R8964.03 which was deducted as a penalty for ceasing contributions early.
- [16] Although not referred to by the respondents, clause 5 of the rules does appear to authorize the debiting of administration charges and the cost of life cover. But that is not the clause on which they rely and I cannot, as a creature of statute with no inherent powers, plead their case for them and grant relief in accordance with my own pleading.
- [17] The respondents' argument in the alternative that the Conventional Penalties Act authorized the deduction of the charges can also not be sustained. This Act contemplates an express agreement between the parties that a penalty shall be payable in the event that the contract between them is breached by any party. As explained above, there is no provision in either the rules or the policy document for a charge on early cessation of contributions. Therefore there was no agreement between yourself and the respondents in this regard and the Conventional Penalties Act accordingly has no application.
- [18] Part 5 of the rules governs modes of payment. On your retirement you became eligible for an annuity for life. However, several options arose with regard to how this benefit was applied. In terms of rule 5(a), you could elect to utilize only a portion of your proceeds and defer receipt of the balance until a later selected retirement date. In terms of rule 5(c) you could elect to receive, in lieu of the annuity, an adjusted annuity payable until the death of the survivor of yourself and a nominated dependant. In terms of rule 5(d) you could elect to commute a portion not exceeding one-third of the total amount of the annuity for a single cash payment. In terms of the same rule, if the annuity did not exceed R1800 per annum you could elect to commute the full annuity. You exercised the last option. However, in view of the unlawful deduction of "paid-up charges" which may well have affected the value of your life annuity, you are entitled to re-elect on the basis of a higher benefit the option that best suits you.

### Relief

- [19] In the result I make the following order:
- 19.1 The fund is ordered forthwith to calculate the amount that would have been available for the purchase of a pension, had the premium termination fee of R8964.03 not been deducted;
  - 19.2 The fund is further ordered, by no later than 21 October 2005, to advise you of your options in terms of the rules with regard to the amount calculated in terms of paragraph 19.1

above;

- 19.3 The fund is directed to implement payment or transfer of the benefit as per your election within one week of your advising it of the option selected, having regard to any amounts already paid and any deductions in terms of section 37A and 37D of the Act;
- 19.4 The fund is ordered further to pay interest on the amount of the payment or transfer in paragraph 19.3 above at the *mora* rate of 15,5% per annum reckoned from 26 May 2004 to date of payment or transfer.

DATED AT CAPE TOWN ON THIS THE 11<sup>th</sup> DAY OF OCTOBER 2005.

Yours faithfully

**VUYANI NGALWANA**  
PENSION FUNDS ADJUDICATOR

Cc: DG Halley  
Deputy Principal Officer  
Universal Retirement Annuity Fund  
Per fax: 011 838 5246

**Registered address of Fund**

Sage Life Ltd  
P.O. Box 290  
JOHANNESBURG  
2000

Section 30M Filing: Magistrates' Court