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RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – J M BEETS v CENTRAL RETIREMENT ANNUITY FUND / SANLAM LIFE INSURANCE LIMITED (“Sanlam”)

Introduction

- [1] Having considered the complaint received by this office on 6 May 2005 and further written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

Factual Background

- [2] You became a member of the Central Retirement Annuity Fund (“the fund”) on 1 August 1992. The fund (administered by Sanlam) invested your monthly contributions of R525.77 to the fund (which were to increase at a rate of 15% on each anniversary) in a Sanlam policy with a maturity date of 1 August 2018. On 1 December 2001, you reduced your monthly contributions from R1 849.63 to R1 031.00. On 1 April 2005, your contribution was increased with R103.09 per month from R1 568.03 to R1 671.12. The 15% premium growth rate remained constant during all this period.

The complaint

- [3] Your complaint is that the illustrative maturity value indicated to you by Sanlam in April 2005 after a premium increase of R103.09 per month is substantially less than the illustrative maturity value originally indicated to you at the inception of the policy in 1992. You contend that in 1992, Sanlam had given an illustrative value of R3 753 411.00 at a 12% growth rate and an illustrative value of R5 214 061.00 at a 15% growth rate. You further

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Office Manager: L Manuel

contend that in April 2005, Sanlam indicated an illustrative value of R1 258 385.00 at a “low-inflation scenario” and an illustrative value of R1 995 510.00 at “high-inflation scenario” with a premium growth rate of 15% per annum.

- [4] You are of the view that you have kept your part of the bargain while Sanlam’s promises have turned out to be false.

The responses

The Fund

- [5] The fund has raised two technical points. The first is that what is at issue in this matter is “long-term insurance business” which is regulated by the Long Term Insurance Act and not the Pension Funds Act. The second is that your grievance does not constitute a complaint as defined in the Act and for this reason too falls outside my jurisdiction.
- [6] The fund is surprisingly silent on the merits of the matter.

The Insurer

- [7] The insurer explains that the calculation of illustrative maturity values presupposed the payment of all contributions until the maturity date with the illustrative investment growth at the illustrative rate. It further states that illustrative values are based on illustrative growth rates and inflation rates at the time the illustrations are done and are not guaranteed.
- [8] The insurer refers me to a section of the policy document entitled “VOORBEHOUDE EN VERONDERSTELLINGS” which states:

“Die illustratiewe waardes in hierdie opgawe is bereken volgens die LOA se voordeelillustrasie ooreenkoms en word nie gewaborg nie. Die waardes word teen twee veronderstelde bonuskoerse getoon om ‘n aanduiding te gee van hoe ‘n verskil in bonuskoerse die uitendelike voordele sal bēinvloed. Die illustrasie is nie ‘n voorspelling van die werklike voordele wat betaalbaar sal wees nie ... Illustratiewe waardes in hierde opgawe is onderworpe daaraan en bereken in die veronderstelling dat:

-Die premies met 15% per jaar verhoog sal word en dat voordele aangepas word soos ooreengekom”.

- [9] Sanlam argues that had you not reduced your contributions in December 2001, some seventeen years prior to the contractual maturity date and the 15% premium increase continued, your monthly contributions would have been in the amount of R2 813.05 in April 2005, in contradistinction to your actual monthly contribution of R1 671.12. This, so argues Sanlam, led to a

reduction in expected contributions of R630 000.00 over the duration of the policy. Resultantly, the argument goes, the illustrative values would be substantially lower due to the reduction in premiums. Sanlam claims that this was, by way of a policy endorsement issued to you in 2001, indicated in the form of lower illustrative values of R1 352 441.00 at 6% per annum growth rate and R2 375 386.00 at 12% per annum growth rate with 15% premium growth rate.

- [10] The insurer further explains that since 1994, the inflation rates have experienced a dramatic decline and that the effect of lower illustration rates is to reduce the illustrative values and that the reason for the declining illustrative values is lower inflation rate and not the low growth of the policy. The inflation rate experienced a decline from 15.6% in 1991 to 1.4% in 2004, which according to Sanlam explains the reduction in illustrative values. Sanlam claims and this is not disputed that this was illustrated to you in April 2005.
- [11] The insurer further states that during 1992 the illustrated rates of 15% and 12% were in line with investment returns earned and inflation rates at that stage. The investment rates were lower, on average, over the term of the policy until 2005 than the rates used in the illustrations. This had the effect that premiums invested in the policy increased at a lower rate than illustrated. This in turn leads to a reduction in illustrative values.

Determination and reasons therefor

- [12] The Central Retirement Annuity Fund is a pension fund as defined in the Pension Funds Act, 24 of 1956. The provisions of that Act, including chapter VA (which confers jurisdiction on the Adjudicator to investigate and determine complaints against pension funds) therefore apply to it. That its assets consist wholly of insurance policies does not alter the position. Therefore Sanlam's argument that the matter concerns the "operation of a life policy" which excludes my jurisdiction cannot be sustained. (See *Du Plessis v Lifestyle Retirement Annuity Fund & Another* [2005] 5 BPLR 383 (PFA); *Gagiano v Lifestyle Retirement Annuity Fund & Another* [2005] 6 BPLR 474 (PFA); *Geldenhuis v Lifestyle Retirement Annuity Fund and Another* [2005] 5 BPLR 394 (PFA) and the authorities referred to therein).
- [13] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in the as yet unreported decision in *Central Retirement Annuity Fund v Adjudicator of Pension Funds, FE de Beer & Another*, Cape Of Good Hope Provincial Division Case No. 3404/05 (handed down on 20 October 2005) ("the de Beer judgment"), at page 9, confirmed the jurisdiction of this office and stated:

"The basis of the complaint was that applicant [Central Retirement Annuity Fund]

as the holder of the policy on the life of a member, was neither obliged nor entitled simply to allow Sanlam Life [the insurer] to charge whatever costs and charges it chose to levy and to accept whatever investment bonuses that it chose to declare from time to time without first satisfying itself through its own management committee of the reasonableness or adequacy thereof.

The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant may be exempt in terms of the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of s51(a) [sic] of the Act. It cannot simply be treated as an illusory 'go between' the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act's complaint mechanism."

- [14] It is in the nature of the market-related portfolios that investors carry the investment risk. This means that you suffer the effect of poor investment returns but at the same time receive the benefits of favourable investment returns.
- [15] I am satisfied that the fact that the illustrative values were not guaranteed and depended on actual growth rates was sufficiently spelt out in the policy (see paragraph 7 above).
- [16] Furthermore you have not attacked the basis for the illustrative values nor have you shown that the fund was maladministered by the adoption of the illustrative values.
- [17] In any event, in view of the fact that your retirement benefit is only due and payable on 1 August 2018, your complaint is premature. How the market conditions might pan out between now and your chosen retirement date is anyone's guess. In other words, the cause of your complaint has actually not yet materialised. The function of this Tribunal is to deal not with hypothetical but with complaints that have actually taken place.

Relief

- [18] In the result, your complaint cannot succeed.

DATED at JOHANNESBURG on this day of 2005.

Yours faithfully

VUYANI NGALWANA

PENSION FUNDS ADJUDICATOR

Section 30M filing: High Court