



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 reference: PFA/WE/2707/2005/nvc

**Per registered mail**

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): A van Breda v Central Retirement Annuity Fund and Sanlam Life Insurance Limited (“Sanlam” or “the insurer”)**

Introduction

[1] Having considered the complaint received by this office on 14 March 2005 and further written submissions, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. I shall set out the facts in so far as essential for understanding the determination.

Factual Background

[2] You became a member of the fund (and your contributions were invested in policy number 40343479x8) on 1 April 2002. Your initial monthly contribution to the fund was R1 000 which was to increase by 10% on 1 April of each succeeding year. Your assets in the fund under this policy were invested in Sanlam’s International Equity Fund.

[3] On 1 September 2002 you requested the fund to purchase another policy investment from Sanlam (under policy 40421964x4). Your initial monthly contribution was R 1 000 which was to increase to R 1 114 on 1

---

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

September 2003. (There is no further information on this policy's premium escalation.) Your assets in the fund under this policy were invested in Sanlam's International Hedge Fund.

- [4] Without your consent, with effect from 30 November 2003, Sanlam cancelled the debit orders in terms of which the contributions were paid by you to the fund when they did not receive tax clearances from the South African Revenue Service ("SARS") in respect of these policies.
- [5] A "premium termination fee" of R 14 418.34 was charged in respect of the first underlying policy, while R 11 529.75 was charged in respect of the second.

### Complaint

- [6] You are dissatisfied with the charging of the "premium termination fees". You have requested this tribunal to investigate this matter.

### Response by fund

- [7] The fund has raised a technical point in response to the complaint, and has also dealt with the merits. The technical point is that you have not submitted a "complaint" as defined in the Pension Funds Act as it is not about the "maladministration of the Fund" but is in effect about the execution of duties by the insurer under the policy - namely about the internal operation of the policy, notably the operation and application of the rules of the policy, which constitute "long-term insurance business" as defined in, and regulated under, the Long Term Insurance Act.
- [8] The fund points out that rule 2 of part 7 deals with the situation when contributions cease and it states:

"If a member's contributions cease after he has already paid sufficient contributions so that the policy issued on his life has a paid-up value in accordance with the practice of the assurer, the assurer converts the policy to a paid-up policy for reduced benefits."

### Sanlam's response

- [9] Sanlam states that before starting with contributions earmarked for the policies, a tax clearance certificate has to be obtained from SARS. As long as the premiums are payable on the policies, the life assured is required to provide tax clearance certificates every 12 months.
- [10] The insurer also states that it was made clear that regular tax clearance is required and if this it was not given, the premiums would be stopped and the consequences of this termination was disclosed to you. You were

advised what amount would be distributable towards the fees by illustrating the policy investment value at low and high inflation scenarios at specified dates.

- [11] It is further argued by the insurer that the fund and the administrator have acted in accordance with the rules of the fund, the Pension Funds Act and the Income Tax Act, and have fulfilled the fund's duties to you. Particularly, reliance is placed on a clause of the policy document as justification for the charging of a "premium termination fee". The clause, which is contained in the summary of the policy document reads:

**"Can payment of recurring premiums (if applicable) be stopped?"**

Yes. If the sum to which the value of the policy investment has grown, less a premium termination fee, exceeds the minimum of the foreign currency equivalent of R 1 500.00, the policy will be maintained without further premium payments. This minimum will increase from time to time.

If payment of recurring premiums is stopped before the option date, this premium termination fee currently consists of the following:

- the foreign currency equivalent of R 200.00, plus
- a percentage of the value of the policy investment at the time, plus
- a percentage of the savings premium at the time.

These percentages depend on the size of the savings premium, the amount of the negotiated commission, and when payment of recurring premiums is stopped. At present, if payment of recurring premiums is stopped on or after the option date, no premium termination fee will be charged. We may change this from time to time."

- [12] The insurer also seeks to justify the charging of a "premium termination fee" by arguing as follows:

"Most of the expenses with respect to policies are incurred at the commencement of the policy ("upfront costs") or when the contributions are increased and are recovered by means of fees which are charged over the term of the policy. When the policy fees were calculated, it was assumed that the contractual premium would be paid up to the end of the policy term. Should the premium payments be discontinued (i.e. have the policy made paid –up), the insurer would no longer be able to recover these costs from future charges as these will now stop.

Sanlam reduces the benefits by the charging of a premium termination fee."

- [13] Sanlam concludes that it has acted in accordance with the rules that an insurer must apply and as approved by its statutory actuary and as required by section 46 and 52(3) of the Insurance Act.

Determination and reasons therefor

### Technical point

- [14] There is no merit in the technical point raised by the fund. The crux of this complaint does not constitute long term insurance business, but actually relates to a retirement annuity fund, which is a pension fund organization as defined in the Act. For the reasons more fully set out in *Schwartz v Central Retirement Annuity Fund and Another* [2005] 5 BPLR 43 (PFA) at paragraphs [12] to [28] and authorities referred to therein, I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.
- [15] This complaint is in fact a “complaint” as defined, in that it relates to the administration of the fund by the administrator and essentially alleges an act of maladministration in the instance through its levying of a charge the levying which is not provided for in the rules. The decision in *Armaments Development and Production Corporation of SA Ltd v Murphy NO and Others* [1999] 11 BPLR 227 (C) at 231C puts it beyond doubt that a complaint concerning the maladministration of the fund by the person administering it or performing any of the functions prescribed in the Act or rules for such person, is a complaint as envisaged in the Act. Therefore this technical point cannot succeed.

### The merits

- [16] At the heart of this complaint is the question whether the rules of the fund authorize the levying by the insurer of a “premium termination fee”. Nowhere in the rules is there mention of such a fee or of any other fee when contributions are terminated prematurely.
- [17] Rule 2 of Part 7 on contributions provides:
- “Term of contributions  
2. A MEMBER’s CONTRIBUTIONS are payable during the period determined in the POLICY issued on his life.
- If a MEMBER’s CONTRIBUTIONS cease after he has already paid sufficient CONTRIBUTIONS so that the POLICY issued on his life has a paid-up value in accordance with the practice of the ASSURER, the ASSURER converts the POLICY to a paid-up POLICY for reduced benefits. The MEMBER will then have the right to apply for reinstatement of his benefits, partially or in full, and the MANAGEMENT COMMITTEE in consultation with the ASSURER will consider such a proposal on receipt of...”
- [18] There is no definition of “paid-up policy” or “paid-up value” in the rules, and certainly no mention that in converting the policy to a “paid-up policy” for reduced benefits the insurer may charge a premium termination or adjustment fee.
- [19] I have been provided with documents setting out the requirements by the

South African Revenue Services and the South African Reserve Bank that their continued permission is a prerequisite for the conversion of the rand into foreign currency, every 12 months. Further, tax clearance from SARS is necessary on an annual basis for any off-shore investment. Once this permission is no longer forthcoming, the payment of premiums will be stopped. But the failure to meet these requirements does not authorize the insurer to levy unlawful costs upon termination of contributions.

[20] The clause in the policy document on which the insurer purports to rely provides that the “premium termination fee” consists of a sum of R 200.00, plus an unspecified percentage of the value of the policy investment at the time, plus an unspecified percentage of the savings premium at the time.

[21] Sanlam illustrates the fund value for the first underlying policy as at 1 December 2003, when it was made paid, up as follows:

Total premiums paid till 30 November 2003	R 20 800.00
Less policy charges	R 2 004.56
Net investment amount	R 18 795.44
Plus: Investment return	- R 1 827.43
Fund value on 12/03/2004 before policy was made paid-up	R 16 966.01
Less the premium termination fee	R 14 418.34
Equals the fund value immediately after being made paid-up	R 2 549.67

The second underlying policy, which lapsed, was calculated as follows:

Total premiums paid in until 30 November 2003	R 15 342.00
Less Total policy charges	R 1 485.84
Net investment amount	R 13 858.16
Plus: Investment return	- R 2 205.52
Fund value on 12/03/2004 before policy was made paid-up	R 11 653.64
Less the premium termination fee	R 11 529.75
Equals the fund value immediately after being made fully paid-up; policy lapsed	R 123.89

[22] Neither the rules of the fund nor the policy documents provide for the levying of the “premium termination fees” shown in the above calculations.

[23] The fund, being a registered pension fund organization, 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 charging of any fee upon the premature termination of contributions, neither the fund nor the insurer may charge it.

- [24] As the Supreme Court of Appeal held in *Tek Corporation Provident Fund and others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28], the trustees of a fund may do with the fund's assets only what is set out in the rules. The charging of a "premium termination fee" which exceeds the R200-00 that is stated in the policy document not being provided for in the rules nor precisely set out in the policy document, the insurer has no authority to charge it.

### Relief

- [25] In the result, both Sanlam Life Insurance Limited and the fund (the one paying, the other to be absolved) are jointly and severally ordered forthwith to credit your investment accounts in the fund with the premium termination fee of R 14 418.34 in respect of policy number 40343479x6 and with the premium termination fee of R 11 529.75 in respect of policy number 40421964x4, together with interest on those amounts, calculated at 15.5% per annum from the date of this determination until the date of crediting.

SIGNED IN CAPE TOWN ON THIS                      DAY OF                      2005.

Yours faithfully

**VUYANI NGALWANA**  
**PENSION FUNDS ADJUDICATOR**

Cc: The Principal Officer  
Central Retirement Annuity Fund  
P.O. Box 1  
SANLAMHOF  
7532

FAX: 021- 957 1507

Mr. PG Jonker  
Legal Advisor: Sanlam Life  
SANLAMHOF

FAX: 021-947-2653

Section 30M Filing: Magistrate's Court