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

### Introduction

- [1] Having considered the complaint received by this office on 2 June 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 is essential for understanding the determination.

### Factual Background

- [2] You became a member of the Central Retirement Annuity Fund (“the fund”) on 1 December 1983 whereupon the fund took out a policy of insurance on your life with Sanlam Life Insurance Limited (“Sanlam”) for the purpose of funding its liability to pay you an annuity on retirement. Your chosen retirement date was 1 December 2015. At the inception of membership, your monthly contributions were R483.29 which increased at irregular intervals from 1 May 1984. On 1 December 1983, in addition to your monthly contribution, you paid an amount of R9 532.00 to the fund. On 1 October 1996 you discontinued your contributions and requested that your benefits in the fund be made paid-up. Just prior to your benefit being made paid-up, you made a contribution to the fund in the amount of R2 683.76. Owing to your request, your retirement date was advanced to 1 May 2003, and your early retirement benefit was quoted on 1 May 2005 as R1 461 159.39. In March 2005, you however, received from Sanlam a benefit statement showing the fund value to be in the region of R2 588 765.00.

### The complaint

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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

- [3] You are aggrieved by the fact that the full investment fund value of R2 588 765.00 quoted by Sanlam is not available to you on early retirement and you aver that the policy makes no provision for this. You further request an explanation for the discrepancy between the full investment fund value and the early retirement benefit of R1 461 159.00.

### The responses

#### The Fund

- [4] The fund has raised two preliminary 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. The second is that your grievance does not constitute a complaint as defined in the Pension Funds Act and for this reason too falls outside my jurisdiction.
- [5] On the merits, the fund argues that since you discontinued fund contributions prior to the retirement date, you failed to comply with Rule 2 of Part 7 which provides that contributions are to be paid until the retirement date.

#### The Insurer

- [6] Sanlam reiterates the technical points raised by the fund and it is therefore unnecessary to canvass them again here.
- [7] On the merits, Sanlam explains that the policy of insurance provides that various amounts and policy provisions would be amended in the event of early retirement and in this regard the full policy fund value would not be available. The insurer further explains that the policy fund value is not a current value, but a future value as on the contractual maturity date of the policy (as at the date of your normal retirement which is 1 December 2015). It is only if you had continued with your contributions until your normal retirement date, it is argued, that you would have been entitled to the retirement benefit (full fund policy value) of R2 588 765.00.

### Determination and reasons therefor

#### The technical point

- [8] 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 *Louw v Central Retirement Annuity Fund and Another* [2005] 7 BPLR 622 (PFA) at paragraphs [17] - [36] and the authorities referred to therein).

- [9] 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 illusionary '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."

### Merits

- [10] Section 13 of the Act provides that the rules of a registered fund are binding on the fund and members, shareholders and officers thereof and on any person who claims under the rules or whose claim is derived from a person so claiming. The import of this section is that the trustees may only do with the fund's assets what is set forth in the rules.

- [11] Rule 2 of Part 7 provides:

"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 proposal on

receipt of...". (my emphasis)

[12] In similar vein, clause 3 of the policy document provides as follows:

“VERVROEGING OF UITSTEL VAN UITKEERVOORDELE

3. Indien die versekerde dit verkies, kan die uitkeervoordele gedeeltelik of ten volle beskikbaar word... By so 'n vervoeging of uitstel word die bedrae en bepalings van hierdie polis verander soos deur Sanlam bepaal”.

[13] It is common cause that you ceased paying fund contributions on 1 October 1996 (that is, prior to normal retirement date) and the policy was made paid up at your behest. In terms of the above, the effect of advancing the maturity date is that an adjusted benefit will then become payable. It follows therefore that in terms of the above you would be entitled to reduced benefits.

[14] I am satisfied that the amount of R2 588 765.00 as appears in your benefit statement of March 2005 refers to the benefit you would have received on the normal retirement date had you continued with your contributions until that date, in contradistinction to an early retirement date. Your case is clearly distinguishable on the facts from those cases dealing with so-called “early termination charges” and non-payment of the illustrative values where the member remained a contributing member until normal retirement date and all conditions have been met.

[15] However, having said that, the relief you seek is not so much a declaratory order on a legal principle. It is rather aimed at securing advice on the proper interpretation of the rules and policy documents as regards the calculation of investment fund values and how they relate to retirement benefits paid by a fund. I cannot grant such a relief because the object of the adjudicator is to investigate actual disputes and rule on them. It is not to give advice.

[16] In the result, our file in this matter is now closed.

DATED at JOHANNESBURG on this                      day of                      2005.

Yours faithfully

VUYANI NGALWANA

**PENSION FUNDS ADJUDICATOR**

Section 30M filing: High Court