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RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 ("the Act"): PJ VAN HEERDEN v CENTRAL RETIREMENT ANNUITY FUND / SANLAM LIFE INSURANCE LIMITED

Introduction

[1] Having considered the complaint received by this office on 1 July 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") in 1967. The fund invested your monthly contributions of R40.00 in a Sanlam policy which was due to mature in 2007. In April 2002, at the age of 60, you opted for an early retirement benefit which was computed by Sanlam to be in the amount of R194 209.63.

The Complaint

[3] You are dissatisfied with the value of your early retirement benefit of R194 209.63. Your complaint appears to be that at the time of termination of the policy, Sanlam had indicated an illustrative maturity value of almost R400 000.00. You seem to contend that the difference between the illustrative maturity value of the policy and the value of your early retirement benefit is highly disproportionate and that it constitutes a penalty which Sanlam has imposed as a result of the early termination of the policy,

The Responses

The Fund

[4] 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.

[5] On the merits, the fund explains that because you retired before the retirement date originally contracted for, contributions were stopped prematurely with the result that your policy had to be surrendered. The surrender value was, according to the fund, as confirmed by the insurer, calculated correctly according to the actuarial rules which the insurer must have and apply in terms of the Long Term Insurance Act.

[6] The fund has referred to rules 4 and 5 of Part 8 which read as follows:

"Liability

> 4. The liability of the FUND is restricted to the values of the policies and investments in UNIT TRUST SCHEMES held on behalf of a specific MEMBER.
>
> 5. The overall liability of the ASSURER is determined by the conditions of the POLICIES and the ASSURER is not restricted by these rules or any amendments to these rules".

[7] The fund concludes that it fulfilled its duties to you by taking out the policies you selected and by arranging that your contributions be paid as premiums directly to the underwriter under the said policies pursuant to the requirements of regulation 1 of the Act.

<u>The insurer</u>

[8] Sanlam reiterates the technical points raised by the fund and it is therefore unnecessary to canvass them again here.

[9] On the merits, Sanlam explains that in calculating the illustrative maturity value, one of the assumptions is that premiums will be paid until the contractual maturity date. It further states that such values were based on illustrative growth rates, annuity rates and inflation rates and were therefore not guaranteed.

[10] Sanlam further denies that it ever indicated to you an illustrative maturity value of R400 000.00. It would appear that the allegation of an illustrative maturity value of the said amount is not borne out by the documentary evidence at our disposal. In this regard, Sanlam refers me to its letter addressed to you in 19 March 1982, the relevant part of which reads:

> "Hierdie brief bevat inligting omtrent u annuiteitversekering by die Sentrale Uittredingannuiteitsfonds. Die waarde is bereken volgens Sanlam se huidige aannames en berekeningsbasisse.

NORMALE UITKEERDATUM	STERFTE VOORDELE	ILLUSTRATIEWE UITKEERWAARDE
1-09-2007	R9 430	R 239 405

[11] Sanlam further contends that the sum assured plus bonuses as allocated on 1 April 2004 (early termination of contract) in the amount of R248 807.01 (not R400 000.00) were only payable On 1 September 2007. (the original retirement date as per the contract) and the difference between this amount and the early retirement benefit of R194 209.63 is due to the time value of money, as more than five years of the original policy term was outstanding.

[12] The difference therefore, so argues Sanlam, is not a deduction of fees or due to costs but is simply due to discounting a value (the sum assured plus bonuses) payable on a future date (1 September 2007) to a current date (1 April 2002).

Determination and reasons therefor

Technical points

[13] 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 wholely 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).

[14] 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

[15] In light of the fact that you have made the bald allegation without furnishing this office with any form of documentary proof regarding the allegation of the R400 00.00 illustrative value quoted by Sanlam, I find on the probabilities that no such document exists.

[16] On the issue of the difference between the policy value and the early retirement value, paragraph 7 of the policy document reads in part:

> "vervroegde of vertraagde uitkeering
>
> Die Normale Uitkeerdatum kan verander word na enige datum (hierna die "Veranderde Uitkeerdatum" genoem) na die vyf-en-vyftigste en voor die sewentigste verjaarsdaag van die versekerde maar minstens vyf jaar na die Aanvangsdatum in welke geval die bedrag betaalbaar verander sal word soos deur die Aktuaris van Sanlam vasgestel".

[17] In terms of the above the effect of advancing the maturity date is that an adjusted benefit as determined by Sanlam will then become payable.

[18] I am satisfied that the fund value as allocated on 1 April 2002 in the amount of R284 807.01 was only payable on the full term of the contract (1 September 2007) and that the difference between this amount and your early retirement benefit of R194 209.63 is due to the time value of money, as more than 5 years of the original policy term was still outstanding.

[19] The difference is therefore not a deduction of fees, or due to costs but is simply due to discounting a value payable on a future date to a current date. Your complaint is clearly distinguishable on the facts from those cases where a so-called "early termination charge" is levied or where the member has contributed until normal retirement date. You cannot expect to receive the same amount where you contributed more than 5 years less than your chosen retirement period.

[20] 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