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Please quote our ref: PFA/WE/4865/05/LS

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – L FINNAN v CENTRAL RETIREMENT ANNUITY FUND & SANLAM LIFE INSURANCE LIMITED**

Introduction

- [1] Having considered the complaint received by this office on 17 August 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.
- [2] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the fund on 20 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However according to the fund's letter dated 10 February 2006, it is apparent that the parties in this complaint have failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course.

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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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

## Facts

- [3] You became a member of the Central Retirement Annuity Fund (“the fund”) with effect from 1 September 1994. The fund is administered by Sanlam Life which also invests its assets. At the inception of your membership Sanlam Life issued a policy of insurance to the fund on your life. Your initial monthly contribution was R200 subject to an annual increase of 10%.
- [4] On 1 September 2005 you retired. You elected to receive one-third of your retirement benefit in cash, an amount of R18 275.15. The balance was used to purchase a fixed monthly pension of R282.71.

## Complaint

- [5] You state as follows:

“The reason why I am so unhappy is that they are taking my money so as to pay me a monthly income. I have never heard of any woman at the age of 66 yrs not getting her full money.”

- [6] You go on to state as follows:

“I have no other income and no children so why must my money go to other people. All the years I have sacrificed to pay the monthly premium. [sic]”

- [7] You are also unhappy with the monthly pension of R282.71 which you now receive. You state that when you joined the fund, your broker advised you that you would receive a monthly pension of between R1 100 and R1 200 on your retirement.

## Response

- [8] The fund and the administering insurer have both submitted a response to your complaint. I shall deal with them together and refer to them collectively as “the respondents”.
- [9] The respondents have raised a technical point that your grievance constitutes long-term insurance business that is regulated by the Long-Term Insurance Act and not the Pension Funds Act. In particular they contend that your grievance is not a complaint as defined in the Pension Funds Act. On this basis they state that I do not have jurisdiction to determine the matter.

## *Merits*

- [10] The respondents state that the illustrative values provided at the time you joined the fund were based on illustrative growth rates, illustrative annuity

rates and inflation rates applicable at the time you joined the fund. Furthermore the illustrative values were not guaranteed. Therefore you are not entitled thereto as of right.

- [11] The respondents also state that the fact that the illustrative values were not guaranteed was disclosed in the policy documents.
- [12] The respondents provide essentially two reasons to explain why you received a lower pension than originally illustrated. Firstly the inflation rate experienced a dramatic decline from 1994 when you joined the fund to 2005 when you retired. Secondly, since you cancelled the automatic increase in the contribution rate, the contributions received were R1 300 less than the total contributions assumed in the illustrative values. This also had an effect on the benefit you received.

### Determination and reasons therefor

#### *Technical points*

- [13] There is no merit in the technical points raised by the respondents because 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 Pension Funds Act. For the reasons more fully set out in *JJ Schwartz v Central Retirement Annuity Fund & Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28] and *Louw v Central Retirement Annuity Fund & Another* BPLR [2005] 7 BPLR at paragraphs [17] to [36], I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.
- [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 and others* [2005] 8 BPLR 655 (C) at 660C - E (handed down on 20 October 2005) (“the de Beer judgment”) confirmed the jurisdiction of this office and stated:
- “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.”
- [15] Furthermore in so far as your complaint implicitly relates to the administration of the fund and/or the investment of its funds and it is implicit therein that you have suffered prejudice (in that your fund value

has been drastically reduced) in consequence of the perceived maladministration of the fund, your grievance constitutes a complaint as defined. (See *Louw* at paragraphs [11] to [15]).

- [16] In any event, that your letter of complaint does not, in precise terms, make the averments required to constitute a complaint as defined is no reason by itself for a dismissal thereof as not constituting a complaint. Such an approach would be too formalistic, thus ignoring the purpose of the Act. The Cape High Court said the following in this regard in the *de Beer* judgment (660E-H):

“Applicant’s contention regarding the second respondent’s letter is based upon a formalistic reading of the complaints procedure as provided for in the Act. On this reading, the letter generated by second respondent would not constitute a proper complaint as defined. But this submission ignores the purpose of the Act. The structure of chapter VA of the Act is aimed at ensuring an effective, inexpensive and expeditious resolution of pension complaints by members, many of whom may not be able to afford legal advice and would therefore be compelled to formulate their complaint without any legal assistance or a complete understanding of the intricacies of the legal relationship between the respective parties, as in the case between Sanlam and applicant.

In my view, second respondent’s letter contains sufficient averments (as described above) to fall within the definition of a complaint. To construe a complaint as urged upon us by applicant would run counter to the very purpose of the complaints procedure provided for in the Act.”

### Merits

#### *Commutation*

- [17] In terms of the definition of “retirement annuity fund” in section 1 of the Income Tax Act, an annuity can only be commuted for a single payment if the annual amount of such annuity does not exceed R1 800. Put differently if the total annual annuity is less than R1 800 the full amount may be taken in cash.
- [18] When you became entitled to the payment of a retirement benefit your total annual annuity before commutation was R54 825.45. Therefore in terms of the Income Tax Act you were only entitled to commute one-third thereof, an amount of R18 275.15.
- [19] Therefore this aspect of your complaint cannot succeed.

#### *The monthly pension*

- [20] You state in your complaint that your expectation that you would receive a monthly pension of between R1 200 and R1 300 on retirement was based on the advice received from you broker. An issue concerning your broker

falls outside of my jurisdiction. The forum having jurisdiction over financial advisors generally is the Ombud for Financial Services Providers or the Statutory Ombud. His contact details appear at the foot of this determination.

- [21] The fund has assumed that your expectation to a greater pension was based on the illustrative values which were provided to you at the time you joined the fund (even though you do not state as much in your complaint).
- [22] An illustrative value is, as its name suggests, not a guaranteed value but a value calculated on the basis of various assumptions. These assumptions include the contributions which the fund expects to receive for the duration of membership, the interest rate and inflation rate for the period of membership. Where those assumptions fail to materialize (for example the contributions received are lower than assumed or the interest rate is better or worse than expected), it stands to reason that the illustrative values will be out of kilter with actual values. The extent of their inaccuracy will depend on the extent to which the assumptions used in their calculation failed to materialize.
- [23] In your case, in calculating the illustrative values, the fund assumed that your contribution rate would increase annually by 10% as this is what you opted for when you joined the fund. However it is common cause that you cancelled the annual increase at some point during your membership. This would have contributed to the discrepancy between the illustrative value of your pension and its actual value.
- [24] The illustrative values also assumed an interest rate of between 11% and 14% which was in line with investment returns earned and inflation rates in 1994 when you joined the fund. As it turned out, by the time you retired in 2005, the inflation rate had declined dramatically from 8.8% in 1994 to 1.4% in 2005. This in turn affected the interest rate. This factor too contributed to the discrepancy between the illustrative value of your pension and its actual value.
- [25] You furthermore do not allege that the assumptions used by the fund in the calculation of the illustrative values were unreasonable.
- [26] The fact that the illustrative values were not guaranteed was expressly stated in your policy document in the section titled "Statement of benefits" under the heading "provisos and assumptions" the relevant part of which reads:

"The actual benefits afforded by this policy shall be determined by the actual bonus rates, cost recoveries and bases of calculation applicable from time to time

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