

**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR
(HELD AT CAPE TOWN)**

CASE NO: PFA/WE/3607/05/LS

In the complaint between:

BF Kornik

Complainant

and

South African Retirement Annuity Fund

First respondent

Old Mutual Life Assurance Company (SA) Limited

Second respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24
OF 1956 (“the Act”)**

Introduction

[1] This complaint concerns the fees charged by the South African Retirement Annuity Fund (“the fund”) and/or Old Mutual Life Assurance Company (SA) Limited (“Old Mutual”) when the complainant ceased paying contributions.

Facts

[2] The complainant became a member of the fund on 1 February 1991. Her chosen date of retirement was 1 January 2001. On 1 March 2000, the complainant ceased her contributions to the fund.

Complaint

- [3] The complainant contends that despite her request to the fund to provide her with a list of the fees that were charged by it when she ceased paying contributions, she has still not received the information. She states:

“I stopped my contributions some years later.

I now need to have a list of all charges applied to this policy.

In that regard I wrote to the respondent on 28 April 2005 requesting a list of all charges of all kinds levied on my policy number 7273759 when it was made paid up.”

Response

- [4] In its initial response to the complaint, the fund contended that it had already provided the complainant with the information in a letter dated 8 April 2005 addressed to the complainant. (This letter is fully canvassed in my determination).
- [5] However the letter of 8 April 2005 failed to explain what the charges levied were for. Therefore by way of a letter dated 11 August 2005, my assistant requested the fund to provide a further breakdown.
- [6] The fund responded in a letter dated 31 August 2005 and raised, for the first time, two technical points. The first is that the complainant’s grievance concerns the policy value and, as such, constitutes insurance business which falls outside the

definition of a complaint in the Pension Funds Act. In this regard it referred to the fact that the fund operates exclusively by way of individual insurance policies issued by Old Mutual to the fund, that the policies issued by Old Mutual in its capacity as long-term insurer are “life policies” as defined in the Long-Term Insurance Act of 1998, that the policies issued to the fund are regulated by the Long-Term Insurance Act, that the contributions paid by the members constitute the assets of Old Mutual for which the latter is liable to pay tax, and finally that the only assets of the fund are its claims against Old Mutual in respect of the policies issued to the fund.

[7] The second technical point is that, given the limitation of its liability in terms of rule 6.7 and the underwriter’s conclusion that the complainant’s fund value was correctly calculated, the fund has no further obligation to the complainant.

[8] On the merits, the fund attached an actuarial services memorandum dated 30 August 2003 which purports to provide a breakdown of all the fees that were deducted. (This memorandum is dealt with fully in my determination below).

Determination and reasons therefor

Technical points

[9] With regard to the first technical point raised by the fund, I am satisfied that the complaint does not concern long-term insurance business but actually relates to a retirement annuity fund, namely, the South African 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 & Another* [2005] 5 BPLR 435 (PFA) at paragraphs [17] to [28] and the as yet unreported ruling in *Louw v Central Retirement Annuity Fund & Another* (Case no. PFA/GA/1811/2004/RM), I cannot uphold the contention that in so far as the complainant's grievance constitutes "long term insurance business", it is not a complaint as defined in the Act. The first technical point is therefore dismissed.

[10] With regard to the second technical point, rule 6.7 referred to reads:

"All benefits payable by the FUND to MEMBERS and LIVES ASSURED are fully secured by the UNDERWRITER by means of ANNUITY POLICIES or CEDED POLICIES. The FUND'S liability in respect of benefits payable at retirement, death, ill-health retirement or disability shall not exceed the amount or amounts payable in terms of the ANNUITY POLICIES or CEDED POLICIES ..."

[11] Rule 6.7 is dealing with *benefits* which become payable. The complainant is not entitled to any benefit from the fund at this stage. The sole issue in this instance is the fees debited from the complainant's contributions in the investment account. Therefore rule 6.7 has no application. The second technical point is also dismissed.

Merits

[12] Section 7D(c) of the Pension Funds Act reads as follows:

"The duties of the board shall be to

...

(c) ensure that adequate and appropriate information is communicated to the members of the

fund informing them of their rights, benefits and duties in terms of the rules of the fund ...”

[13] The letter of 8 April 2005 which, according to the fund, provided the complainant with the information she requested *prior* to her lodging a complaint with this office sets out the fund’s rate of return, year by year, for the period 1 February 1991 to 1 February 2005. It also provides a schedule outlining, on a month-by-month basis from February 1991 to May 2005, the complainant’s fund value, the charges deducted, the interest earned and the contributions paid.

[14] However the schedule fails to indicate what the charges were for or how they were calculated. In March 1994 for example, a fee of R498.08 was charged whereas in all the months prior to that, a fee of between R12.73 and R14.75 was charged. No explanation is given for this. Again in April 2000 a fee of R8933 was charged. However nowhere in the schedule is this explained or even referred to. One would have expected at a least an explanatory note relating to these amounts. It was for this reason that a further breakdown was requested.

[15] The memorandum subsequently received is all of fifteen pages long. However only on page 14 is the actual issue at hand addressed for the first time. Paragraphs 48 and 49 of that page read:

“48. The determination of the paid-up value in accordance with these [actuarial] rules and provisions of Section 52 of the LTA Act resulted in a benefit reduction of R8933.00 as at March 2000.

49. In addition, the charges that were levied in respect of the policy is set out in Annexure “**B**”, a schedule setting out a detailed breakdown, from inception of the policy to date, of what each

charge levied in respect of the policy was for and the amount thereof.”

[16] Annexure B referred to reads as follows:

“Breakdown of monthly charges

The recurring premium expense levy is 1,25%

01/02/1991 01/02/1993

Charge of R12.73

Administration fee	3.40
Premium expense charge	9.33

01/02/1993 01/02/1994

Charge of R14.75

Administration fee	4.40
Premium expense charge	10.35

01/02/1993 Lump sum for the amount of R19 000.00

Charge of R493.68

Administration Fee	4.40
Single premium expense fee	493.68

01/02/1994 01/02/2000

Charge of R23.09

Administration fee	4.40
Premium expense charge	18.69

01/03/2000 01/08/2005

Charge of R7.65

Administration fee	7.65"
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[17] With regard to paragraph 48, to simply say that the figure of R8933 was calculated in accordance with the actuarial rules and section 52 of the Long-term Insurance Act hardly enlightens one as to the nature and amount of the fees charged.

[18] With regard to paragraph 49, the only additional information which the schedule in annexure B provides which is not provided in the previous schedule (see paragraph

12) is a breakdown of the total monthly charge into a fee for administration and a premium expense levy.

[19] It seems to me that the fund has misconstrued the complainant's simple request for a breakdown of all fees which were deducted. This is evident in the great lengths to which the drafter of the memorandum goes (before dealing with the actual issue) to provide the reasons why a premium cessation fee of R8933 could be deducted in the first place. The complainant is not contesting the fund's authority to deduct the fees. She simply wants to know their nature and amount.

[20] In light of the above, the appropriate relief is to order the fund to provide a breakdown of all debits effected to date including the composition of R8933 that was deducted.

Relief

[21] In the result the order of this tribunal is as follows:

21.1 The fund and/or Old Mutual is ordered, within 14 days of this ruling, to provide the complainant and this tribunal with a detailed breakdown of the composition of the amount of R8933 that was deducted, with specific reference to what each amount represents.

21.2 The fund and/or Old Mutual is further ordered, within 14 days of this

