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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act") – C RIDGARD v CENTRAL RETIREMENT ANNUITY FUND & SANLAM

Introduction

[1] Having considered the complaint received by this office on 6 May 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

Facts

[2] You became a member of the Central Retirement Annuity Fund ("the fund") on 1 June 1990 whereupon the fund took out a policy of insurance on your life with Sanlam Insurance Limited ("Sanlam") for the purpose of funding its liability to pay you an annuity on retirement. The fund is administered by Sanlam and its assets are managed by Sanlam.

[3] Your initial monthly contribution was R515.46 which was to increase annually in accordance with the rate of the consumer price index.

[4] On 1 July 1990 you paid an additional lump sum of R12 776.74 into your investment account. On 1 January 1991 you reduced your monthly contribution to R127.51. With effect from 1 March 1994, you increased your monthly contribution from R185.78 to R423.17. At the same time you changed the annual contribution increase to 10% per annum.

[5] On your chosen date of retirement on 1 June 2005, you had various options as to the manner in which you wanted to receive your retirement benefit. You refer in particular to the option to receive a pension of R1 808.13 per month using the full proceeds of your maturity value

indicated as R215 392.35 in the document attached as annexure D to your complaint.

Complaint

[6] Your complaint is that the pension of R1 808.13 per month is almost exactly half of the pension quoted to you when you joined the fund. (The "Statement of Benefits" document attached as annexure A to your complaint indicated that an illustrative maturity value of R249 165 could purchase an annual pension of R43 075 which translates to a monthly pension of R3 589.58).

[7] You contend that Sanlam has not fulfilled its contractual duties to you and has thereby undermined your efforts to be independent in your old age. In 1990 when you joined the fund, Sanlam assumed an inflation rate of 15% per annum in the illustrative values provided to you whereas in the period of your membership, the inflation rate reached a high of only 7.10% per annum and a low of 5.4% per annum. You question these poor predictions on the part of Sanlam's actuaries and contend that "they have to have known that their quotation was unrealistic right from the inception of [your] contract". For this reason you contend that Sanlam should be ordered to honour their promises. I understand this to mean that it should be ordered to pay you the illustrative pension which was quoted to you when you joined the fund.

Response

[8] 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.

Illustrative values

[9] With regard to your grievance that the maturity value of your underlying policy is so much lower than the illustrated maturity values quoted to you when you joined the fund, the respondents state that illustrative values are based on illustrative growth rates, illustrative annuity rates and inflation rates applicable at the respective times at which the illustrations were done. Illustrative values are furthermore not guaranteed.

[10] The respondents state that the policy documents indicated that the actual maturity benefit would be determined by the actual growth rates, cost of recoveries and basis of calculation applicable from time to time. The

inflation rate experienced a dramatic decline from 15.6% in 1991 to 1.4% in 2004 which explains the discrepancy between the illustrated values and the value of the benefit you received.

Inflation rates

[11] With regard to your contention that Sanlam must have known that the inflation rates applied in the illustrative values were 'unrealistic', the respondents state that mainstream inflation averaged 14.3% and 15.6% in 1990 and 1991 respectively. Therefore the rates at which the values were illustrated (12% and 15%) when you joined the fund in 1990 were in line with the inflation rates at that time and were therefore reasonably assumed.

Determination and reasons therefor

Technical points

[12] 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 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], I cannot uphold the contention that this matter constitutes "long term insurance business" over which I have no jurisdiction.

[13] In so far as your complaint relates implicitly 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 you have been paid a lesser benefit than what you expected) in consequence of the maladministration of the fund by the administering insurer, your grievance constitutes a complaint as defined.

[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), at page 9, confirmed the jurisdiction of this office over retirement annuity funds 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] With regard to your contention that you are entitled to the illustrative values quoted to you when you joined the fund, I refer you to the section under the heading "Provisos and assumptions" of the "Statement of Benefits" document (attached as annexure A to your complaint) wherein it reads:

> "Information supplied in this statement is subject to the provisions of the policy. The actual benefits afforded by this policy shall be determined by the actual growth rates, cost recoveries and bases of calculation applicable from time to time.
>
> The purchasing power of the premium and the illustrative values will depend on the inflation rate for the duration of the policy.
>
> On retirement before the contractual maturity date, Sanlam shall determine the available maturity value. This value may be less than the balance of the Investment Account at the same time.
>
> The illustrative values in this statement have been calculated in accordance with the benefit illustration agreement of the LOA and are not guaranteed. They are shown at two assumed growth rates to illustrate how a difference in growth rates will influence the eventual proceeds."

[16] I also refer you to the "Statement of Assurance on 01/10/2000" document (attached as annexure B to your complaint) under the heading "Provisos and assumptions" wherein it reads:

> "The benefits set out above are subject to the stipulations of the respective policy contracts.
> The different illustrative values indicate how a difference in bonus rate and rates of return will influence the actual proceeds.
> …
> Please bear the following in mind:
> - Illustrative values are not predictions of the actual benefits
> - Actual benefits will be determined by actual bonus rates and rates of return in future
> - Actual benefits will be reduced by any debt or premiums in arrears on the policy."

[17] In light of the above, I am satisfied that there was sufficient disclosure on the part of the respondents that the illustrative values were not guaranteed and depended on the bonus rates declared and the average rate of

inflation during the period of your membership.

[18] I also note that on page one of your annexure B, the illustrative proceeds are determined using an assumed rate of inflation of 12% per annum and 6% per annum respectively. On an assumed rate of inflation of 6% per annum, a maturity value of R207 568 is indicated if the return on investment achieved is 10% per annum and a maturity value of R196 465 is indicated if the return on investment achieved is nil.

[19] Therefore the maturity value of R217 554.79 which you received was greater than the revised illustrative maturity values provided to you on 1 October 2000 some 5 years before you retired.

[20] With regard to your issue with what you term the 'unrealistic' inflation rates used, given that the average annual mainstream inflation rate was 14.3% per annum in 1990, 15.6% per annum in 1991 and 13.7% per annum in 1992, I do not think that assuming a rate of inflation of between 12% and 15% in June 1991 (the date of the "Statement of benefits" document to which you make specific reference) was unrealistic. In any event, as stated, subsequent illustrative values provided to you some 5 years before you retired assumed a rate of inflation of 6% per annum which was more in line with the actual rate of inflation by the time you retired.

[21] It should also be borne in mind that you did not maintain your initial contribution rate for the entire period of your membership. For example on 1 January 1991 you reduced your contribution rate from an initial contribution of R515.46 per month to R127.51 per month (which you did not increase for over three years thereafter). This could also have had an effect on the retirement benefit you received.

Relief

[22] In the result, your complaint cannot succeed.

DATED AT CAPE TOWN ON THIS THE DAY OF 2005.

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrate's Court