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Please quote our reference: PFA/KZN/4998/05/CN

**RE: DETERMINATION IN TERMS OF SECTION 30 OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): LP SIMPKINS v MM RETIREMENT ANNUITY FUND & MOMENTUM GROUP LIMITED**

Introduction

1. This matter concerns the refusal of an insurer to commute for cash a further amount from the remaining two-thirds of a retirement benefit that was used to purchase a compulsory lifetime annuity.
2. The complaint was received by this office on 24 August 2005 and a letter acknowledging receipt thereof sent to you on 30 August 2005. On 26 August 2005 a letter was dispatched to the respondents giving them until 16 September 2005 to file a response to the complaint. The response dated 20 September 2005 was received on 21 September 2005. On 22 September 2005 the response was sent to you for a reply by 12 October 2005. A reply was received from you on 6 October 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.
3. 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

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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 Mballo (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator)

Office Manager: L Manuel

view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office.

4. This matter was referred for settlement to the MM Retirement Annuity Fund and Momentum Group Limited on 19 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. The parties to this complaint have failed to reach a settlement in this case. The details of disagreement were not communicated to us.
5. It is with that brief background that we now determine this complaint in the ordinary course.

### Facts

6. You were a member of the MM Retirement Annuity Fund ("the fund"), which is administered by Momentum Group Limited ("the insurer") until 24 May 2004 when you retired. From the retirement benefit of R46 081.27, you commuted one-third thereof (R14 782.95) for cash, and the balance (R29 565.90) was used to purchase a compulsory life annuity from the insurer in your own name.
7. Upon the purchase of the annuity, the fund was discharged of any further liability towards you.
8. Subsequent thereto, you fell into financial difficulties and requested the insurer and the fund to pay out a portion of the amount that has been set aside for the purchase of an annuity.

### The complaint

9. You contend that the insurer should have due regard to your unfortunate situation and "assist" you by advancing you an amount of R10 000 from the annuity.

### The response

10. The insurer states that as the annuity that was purchased with the proceeds of your retirement benefit is a so-called GN18 annuity, the fund has been released from any further liability towards you. It further submits that the insurer cannot commute the annuity that is currently in payment for cash because the General Note 18 specifically states that, among

other things, the annuity so purchased must be compulsory, non-commutable, payable for and based on, the lifetime of the retiring member.

Determination and reasons therefor

11. Rule 6.4 governs the payment of annuities, and provides that annuities shall be payable in accordance with the Act and the Income Tax Act of 1962 as amended. The rule further provides that all annuities purchased by a member shall be owned by the annuitant and that as soon as that annuity has been purchased, the fund shall be discharged from any further liability to the annuitant.
12. The relevant provision of the Income Tax Act is the definition of "retirement annuity fund" contained in section 1(b)(ii), which provides that in order for such a fund to be approved for income tax purposes, its rules must provide that not more than one-third of the total value of any annuities to which any person becomes entitled may be commuted for a single cash payment (except where the annual amount thereof does not exceed R1 800).
13. As already stated rule 6.4 makes the payment of annuities subject to the provisions of the Income Tax Act. The fund was therefore bound by its own rules and by the provisions of the Income Tax Act to only allow you to commute a maximum of one-third of the retirement benefit for cash, otherwise it would have lost its approval status. Having purchased an annuity in your own name with the remaining two-thirds, the fund has discharged all its liability towards you.
14. In so far as the insurer is concerned, it cannot pay out the annuity amount contrary to the provisions of the rules of the fund which purchased the annuity and General Note 18 which governs such annuities.
15. As much as I have sympathy for your situation, I cannot order the fund or the insurer to act contrary to the provisions of the rules and the applicable legislation.
16. In the result the complaint cannot be upheld.

**SIGNED IN CAPE TOWN ON THIS**

**DAY OF**

**2006**

Yours faithfully

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**VUYANI NGALWANA**  
**PENSION FUNDS ADJUDICATOR**