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Please quote our ref: PFA/WE/9011/2006/TW

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): S RIETOFF (“the complainant”) v DEL MONTE SAPCO PENSION FUND (“the first respondent”) / LIBERTY LIFE (“the second respondent”)**

1. Introduction

- 1.1 The complaint concerns the complainant’s dissatisfaction with the non-payment of his full retirement benefit following his retirement on 30 April 2006.
- 1.2 The complaint was received by this office on 15 June 2006. On 19 June 2006 a letter acknowledging receipt of the complaint was sent to the complainant. On the same date a letter was dispatched to the respondent informing it about the complaint and giving it until 10 July 2006 to respond to the complaint. A response was received from the respondent on 19 July 2006. On 21 July 2006 a letter was addressed to the complainant giving him until 21 August 2006 to file a reply to the respondent’s response. The complainant submitted a reply on 27 July 2006.
- 1.3 After considering the written submissions filed before this tribunal, it is unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only those facts that are relevant to the issues raised herein shall be repeated. The

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainant was employed by Del Monte SA until his retirement on 30 April 2006. He was a member of the first respondent by virtue of such employment.
- 2.2 Upon his retirement, the complainant elected to remain in service for a further two months after his normal retirement date.

3. Complaint

- 3.1 Firstly, the complainant is aggrieved that the first respondent has not paid him his 1/3 commutation since his exit from service in April 2006. Secondly, the complainant's first monthly pension from the second respondent was paid late and he alleges that it is not the amount that was agreed upon.
- 3.2 The complainant contends that the Minister of Finance reduced retirement fund tax from 19% to 8% in his budget speech in February 2006. He wishes to know when this comes into effect and also how such reduction is going to affect the value of his benefit.

4. Second Respondent's Response

- 4.1 Mr Steve Naylor, filed a response on behalf of the first and second respondents. He submits that the complainant failed to first lodge his complaint with the first respondent as required before approaching this tribunal for assistance. He confirms that the complainant retired from service two months after reaching his normal retirement age. He proceeds to explain how the complainant's benefit was calculated in terms of the rules of the first respondent. He contends that the calculations are appropriate and therefore they do not understand the complainant's statement that the numbers are not what they agreed upon.
- 4.2 He explains that all pensions are payable monthly in arrears and that the complainant's first pension should have been paid on 31 May 2006 but it was only paid on 9 June 2006 due to "various calculations having to be performed." However, he guarantees that the complainant's future pension payments will be payable on the last day of each month. He avers that with regard to the lump sum, the initial tax directive to SARS was rejected for technical reasons.

As a result, it is further averred, that the second respondent paid the complainant R30 000.00 advance payment on the lump sum on 25 May 2006. He submits that the balance of the complainant's 1/3 commutation was paid on 19 June 2006 in the amount of R 261 384.48. The tax payable on this amount was R41 604.82.

- 4.3 Mr Naylor further states that the second respondent is calculating the late payment interest due to the complainant on his monthly pension as well as his lump sum benefit. He undertakes that the first respondent will contact the complainant to arrange payment once the calculation has been completed.

## 5. Determination and reasons therefor

- 5.1 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules. Rule 4 of the first respondent's rules read with rule 31 regulates the payment of retirement pensions and in particular, late retirement. The apposite portion of Rule 4 reads as follows:

"4.1 Normal Retirement

An annual pension equal to 2.5% of the MEMBER'S FINAL SALARY multiplied by the number of his complete years of MEMBERSHIP, plus a proportionate amount of the appropriate yearly pension in respect of each additional month of MEMBERSHIP.

4.3 Late Retirement

4.3.1 If no further contributions are made

An annual pension equal to the MEMBER'S pension calculated as in RULE 4.1, increased by 0.75%, or such other percentage as shall be agreed upon between the VALUATOR and the BOARD in consultation with the PRINCIPAL EMPLOYER, for each month by which the MEMBER'S date of actual retirement succeeds his NORMAL RETIREMENT DATE.

4.3.2 If the MEMBER and/or EMPLOYER continue/s to contribute

An annual pension equal to –

4.3.2.1 the pension in RULE 4.3.1

plus

4.3.2.2 such additional pension as shall be purchased by any additional contributions in terms of RULE 31 invested in terms of the GROUP RETIREMENT POLICY until the date of actual retirement.

## 31. Late Retirement Pension

- 31.1 A MEMBER may, with his EMPLOYER'S consent, remain on in SERVICE after his NORMAL RETIREMENT DATE, become a DEFERRED PENSIONER and defer payment of his pension until the date of his actual retirement.
- 31.2 A DEFERRED PENSIONER shall be entitled to a pension as described in RULE 4.3.
- 31.3 A DEFERRED PENSIONER may, with his EMPLOYER'S consent, continue his contributions, if any, from his NORMAL RETIREMENT DATE to the actual date of his retirement at such amount as shall be agreed between the DEFERRED PENSIONER and the EMPLOYER.
- 31.4 The EMPLOYER may contribute its contributions from the DEFERRED PENSIONER'S NORMAL RETIREMENT DATE to his actual date of retirement.

5.2 It is common cause that the complainant retired two months after his normal retirement date. The complainant's retirement benefit was accordingly calculated based on the rules of the first respondent in relation to members who elect late retirement. It was indicated that the complainant was provided with a benefit quotation which reflects his late retirement benefit. The second respondent submitted a breakdown of the complainant's benefit which reads as follows:

Final salary (average over 36 months prior to NRD)	R139 464X
Service to NRD (1/4/1978 – 1/3/2006) = 27 years 11 months	27.9167X
Accrual rate 0.022	0.022
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Increased for late retirement	R85 654.14pa $\times [1 + (2 \times 0.0075)]$
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Pension purchased by 2 month's member contributions	R86938.95
Net Returns	R719.97X2+ R10.82
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	R1450.76
Member chose a joint life annuity with his spouse for this portion, therefore using the joint life annuity factor at 30 April 2006 of 12.795912, equivalent annual pension is R113.38	
Total pension before commutation	R 86 938.95+
	R 113.38
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	R 87 052.33

In terms of Rule 32, the complainant would be entitled to commute 1/3 of his total pension using Fedsure's annuity rates at the date of retirement. The

annuity rate for a single life pension guaranteed for 5 years, which is the basic pension offered by the fund was 11.475484

1/3 commutation	R	87
052.33/Fedsure's annuity rates		x11.475484
		<hr/>
		R332 989.20

This calculation could have probably been calculated as:

Normal Pension at late retirement (R86 938.95/3 X 11.475484)	R332 555.51
Plus 1/3 of value of additional contribution (R1 450.76/3)	R483.59
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	R333 039.10

Using the agglomerated pension, the reduced pension is R58 034.89 per annum.

- 5.3 It is evident from the above breakdown that the complainant received his full retirement benefit in terms of the rules of the first respondent. It follows therefore that the first respondent correctly calculated the complainant's benefit. I am satisfied that the amounts reflected in the above breakdown are the correct amounts which the complainant should have received upon his retirement.
- 5.4 With regards to the question as to when the retirement fund tax will be effected, this aspect of relief that the complainant seeks is aimed at securing advice. I cannot grant such a relief because the object of the Adjudicator is to investigate actual disputes and rule on them, it is not to offer advice. In the premises, this tribunal finds that the complainant's complaint cannot succeed and is therefore dismissed.

DATED AT JOHANNESBURG ON THIS                      DAY OF                      2008.

Yours faithfully

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**MAMODUPI MOHLALA**  
PENSION FUNDS ADJUDICATOR