



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House
Sandton Close 2, Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town

2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our reference: PFA/EC/17471/2007/PM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – L SIMAKADE (“the complainant”) v PRIVATE SECURITY SECTOR PROVIDENT FUND (“the first respondent”) AND SCORE FORCE SECURITY (“the second respondent”)

1. **Introduction**

- 1.1 The complaint concerns the failure of the second respondent to pay contributions to the first respondent, and the first respondent’s consequent inability to pay the complainant’s full withdrawal benefit.
- 1.2 The complaint was received by this office on 24 August 2007. A letter acknowledging receipt thereof was sent to the complainant on 13 September 2007. On 18 September 2007 a letter was dispatched to the first respondent giving it until 18 October 2007 to file its response to the complaint. Another letter was dispatched to the second respondent on 23 October 2007 giving it until 8 November 2007 to file its response to the complaint. A response was received from the first respondent on 8 October 2007. No response was received from the second respondent. The first respondent’s response was forwarded to the complainant on 31 October 2007. The complainant however omitted to reply.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. **Factual Background**

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

2.1 The complainant was employed by the second respondent from August 2000 until October 2004. At the same time he was a member of the first respondent.

2.2 Upon the complainant's exit from the fund, the first respondent was unable to pay his full withdrawal benefit due to the failure by the second respondent to pay contributions over to the first respondent.

3. **Complaint**

3.1 The complainant is essentially unhappy about the first respondent's failure to pay his withdrawal benefit even though he made the application for the payment of his benefit in December 2004.

4. **Response**

4.1 The first respondent confirms that according to the fund's records the last payment received from the second respondent was for September 2003, and the last schedule received was for April 2004. The first respondent states that it is therefore unable to update the complainant's records further than September 2003, and also unable to calculate and pay out any benefits to the complainant since he left subsequent to that date.

4.2 According to the first respondent, they did not receive any notification that the second respondent has been liquidated and as per their knowledge it is just a default employer.

5. **Determination and reasons therefor**

5.1 The second respondent has a duty placed on it by the rules of the first respondent and the provisions of section 13A(1)(a) of the Act to pay contributions to the first respondent, and the first respondent in turn has a duty to pay out benefits to the members. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable.

5.2 The extent of the first respondent's liability is limited to the amount by which the benefit in question has been funded. Thus, if no contributions have been paid to the first respondent, it cannot be held liable to pay any benefit to the complainant. The complainant is entitled to recover the loss of his benefits from the second respondent (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C), at paragraph 3839 F-G).

5.3 Thus, the appropriate relief is that which has the effect of placing the complainant in the position he would have been had the second respondent regularly and timeously paid the contributions. It is not clear at this stage what the value of the complainant's benefit would have been had the second respondent timeously and fully paid its contributions to the first respondent. However, the administrator of the first respondent is in a position to calculate the said amount.

6. **Relief**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is hereby ordered to pay to the complainant the amount of the benefit it is currently holding on behalf of the complainant, within two weeks of the date of this determination;

6.1.2 The first respondent is further ordered to compute the value of the withdrawal benefit that the complainant would have been entitled to had the second respondent timeously made the contributions due in terms of the rules, less amounts paid in terms of paragraph 6.1.1 *supra*, and less any deductions permitted by the Act, together with interest calculated at 15,5% per annum from 1 November 2004 until date of payment, and to inform this Tribunal and the second respondent of such amount, within three weeks of the date of this determination.

6.1.3 The second respondent is ordered to pay the complainant the amount of the benefit computed in paragraph 6.1.2 above, within one week of receiving the calculations from the first respondent, together with interest calculated at 15,5% per annum from 1 November 2004 until the date of payment.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR