



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House
Cnr 5th Street & Norwich Close
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

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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – C CUNNINGHAM (“the complainant”) v EQUIGROW RETIREMENT ANNUITY FUND (“the first respondent”), ARCADIA RETIREMENT ANNUITY FUND (“the second respondent”) & MOMENTUM GROUP LIMITED (“the third respondent”)

1. Introduction

- 1.1 This matter concerns the computation and payment of death benefits payable in terms of the rules of the first and second respondent and the policy documents issued by the third respondent.
- 1.2 The complaint was received by this tribunal on 20 October 2005. On 24 October 2005 letters were dispatched to the respondents giving them until 14 November 2005 to submit their respective responses to the complaint. A response was received from the third respondent on 10 March 2006. Responses were not received from the first and second respondents. On 23 June 2006 a copy of the third respondent’s response was sent to the complainant for a reply by 30 June 2006. A reply was not received from the complainant.
- 1.3 This tribunal shall determine the complaint against the respondents in one determination because the complaint against the first and second respondents is the same. Furthermore, the third respondent submitted a combined response on behalf of all the respondents as it is the administrator and underwriting insurer of the first and second respondents.

M Mohlala (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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

Office Manager: L Manuel

1.4 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor follow.

2. The background facts

2.1 The complainant is the spouse of the late Mr. J Cunningham (“the deceased”). The deceased passed away on 5 August 2003.

2.2 On 1 January 1977 the deceased became a member of the first respondent. At the time the first respondent was administered and underwritten by the Ned-Equity Insurance Company Limited (“the previous underwriting insurer”) but its administration has since been taken over by the third respondent. The complainant’s monthly recurring contributions of R50.00, which were payable for a period of thirty years or until his death, were invested in policy GE6050579 (“policy document A”), which was issued by the previous underwriting insurer. The deceased’s chosen retirement date was 1 January 2007.

2.3 On 1 June 1984 the deceased became a member of the second respondent. At the time the second respondent was also administered and underwritten by the previous underwriting insurer, which has also been taken over by the third respondent. The complainant’s monthly recurring contributions of R53.00 were invested in policy GE16036774 (“policy document B”), which was also issued by the previous underwriting insurer. The deceased’s chosen retirement date was 1 June 2006.

2.4 The deceased passed away on 5 August 2003 and the first and second respondents consequently became liable for the payment of death benefits in terms of their respective rules.

2.5 The third respondent paid the death benefits, which became available for distribution to the deceased’s beneficiaries, to the complainant.

3. The complaint

3.1 The complainant is dissatisfied with the value of the respective death benefits which became payable after the deceased passed away. The complainant states that the final payout of the death benefits, upon the death of the deceased, was “shockingly and traumatically” lower than what she had been led to believe.

4. The response

4.1 *The third respondent’s response in respect of policy document A*

- 4.1.1 The third respondent states that the deceased chose Plan C of policy document A, which provides that on the death of the member the benefit payable would be the “total contributions (assumed to have been paid annually) with interest at 2.5% per annum plus apportioned profits”.
- 4.1.2 According to the third respondent “apportioned profits” was broadly defined as the excess value of the investable portion of contributions, together with compound interest of 5% per annum.
- 4.1.3 The third respondent states that the investable portion of the deceased’s contributions were R44.50 per month. Furthermore, the total contributions paid to date of the deceased’s death was R16 000.00 and the death benefit was R99 782.00. The third respondent states that, the death benefit paid to the complainant was in line with the death benefit value of R97 273.00 which the deceased’s financial adviser quoted in the schedule which he prepared for the deceased on 19 September 2003.
- 4.1.4 Lastly, the third respondent states that the investment return achieved at the date of death of the deceased was 12.9% per annum.

4.2 *The third respondent’s response in respect of policy document B*

- 4.2.1 As regards policy document B, the third respondent stated that the deceased chose to invest his recurring contributions in the “Nedsave with high life cover” plan. According to the third respondent the minimum guaranteed amount payable on death was R16 934.00 plus a level term insurance of R5046.00 which provided for a minimum life cover of R21 980.00. This was specified in clause 11 of the schedule to the membership certificate. According to the third respondent any excess of the fund value over the investable amounts were added and accumulated at a rate of 6% per annum, which consequently resulted in an additional payment of R9 255.00. This resulted in a total death benefit cover of R31 225.00. The third respondent states that this was more than the value of the investment account because of the minimum death cover provision.
- 4.2.2 The third respondent states that the total contributions that were paid was R12 243.00. The third respondent states that the fund return at the date of the deceased’s death was equivalent to 10.2% per annum.

5 Determination and reasons therefor

- 5.1 The first and second respondents are registered retirement annuity funds

