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Please quote our ref: PFA/GA/15092/2007/LM

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): THE PRIVATE SECURITY SECTOR PROVIDENT FUND (“the complainant”) v SR SECURITY (“the respondent”)**

1. Introduction

- 1.1 This complaint, received by this office on 27 July 2007, concerns the registration of an employer with a pension fund established in terms of a sectoral determination. The complainant also claims as ancillary relief an order that the respondent be prohibited from applying for the liquidation of the business.
- 1.2 On 16 July 2007, a copy of the complaint was sent to the respondent, which furnished a response by way of a letter received on 16 August 2007. A copy of the response was forwarded to the complainant on 7 April 2008 for a reply. The complainant failed to furnish its reply.
- 1.3 Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised

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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

herein.

## 2. Complaint

The complainant, a provident fund established in terms of Sectoral Determination 6: Private Security Sector, South Africa (“the Sectoral Determination”) issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1997, and registered as a pension fund with the Registrar of Pension Funds, asked for an order that

- 2.1 the respondent be prohibited from applying for liquidation of the business;
- 2.2 the respondent be compelled within 7 working days to make the payment of contributions from 30 November 2005 to date, to the complainant’s banking account;
- 2.3 the respondent be compelled within 7 working days to submit schedules from 28 February 2006 to date of determination to the complainant;
- 2.4 the administrator of the complainant, NBC Holdings (Pty) Limited, be compelled to calculate late payment interest and submit the calculations to the respondent for payment;
- 2.5 the respondent to pay late payment interest within 7 working days of receipt of the calculations;
- 2.6 the administrator to calculate repudiated amounts for death and disability claims (“Repudiated Amounts”) plus late payment interest in terms of the complainant’s policy and to revert to the respondent within 7 working days of receiving this determination; and
- 2.7 the respondent to pay the Repudiated Amounts within 7 working days of receipt of the information from the administrator

## 3. Respondent’s Response

- 3.1 The respondent attached a copy of deposit slip as proof of payment of contributions and copies of schedules which were submitted to the complainant in respect of January 2006 to January 2007.

## 4. Determination and reasons therefor

*Prohibition against applying for liquidation*

- 4.1 The complainant requests an order that the respondent be prohibited from applying for liquidation of the business.
- 4.2 This application would apply to an application to court. It would not include the passing of a resolution for voluntary winding-up, be it for a members' or creditors' voluntary winding-up.
- 4.3 The respondent is only one of a number of entities that may apply to court for winding-up. Other possible applicants would include one or more creditors, as well as one or more members (section 66(1) of the Close Corporations Act, 69 of 1984, read with section 36(1) of the Companies Act, 61 of 1973 or section 346 of the Companies Act, 61 of 1973.)
- 4.4 A blanket prohibition against applying to court for relief would be inappropriate. Access to the courts, albeit to have disputes settled, is one of the fundamentals set out in Chapter 2, the Bill of Rights, of the Constitution of the Republic of South Africa, Act 108 of 1996. An order denying a person the right to approach a court for relief would be unconstitutional.
- 4.5 Such an order would under the circumstances also be inappropriate. The order, if granted, could readily be circumvented and rendered ineffective, as it would not restrain any other party, including one or more members of the respondent itself, from applying to court for relief in their individual capacity. I am not willing to consider granting an order that could so easily be circumvented.

*Late transmission of contributions and submission of schedules*

- 4.6 Section 13A of the Act requires every employer to transmit member and employee contributions to a fund within seven days from the end of the month for which it was due.
- 4.7 In terms of regulation 33(2), the person responsible for checking the receipt of electronic transfers into the fund's bank account, or similar person, has to report to the principal officer or the monitoring person
  - 4.7.1 not later than 30 days after the end of the month about the receipt and reconciliation of data; and
  - 4.7.2 not later than 22 days after the end of the month about the receipt of contributions.
- 4.8 The monitoring person provided for in section 13A(6) has a duty to



**MAMODUPI MOHLALA  
PENSION FUNDS ADJUDICATOR**