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Please quote our reference: PFA/EC/9145/2006/PGM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – D LUTHULI (“the complainant”) v THE CONTRACT CLEANING NATIONAL PROVIDENT FUND (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the delay by the respondent, a registered pension fund, to pay the complainant’s withdrawal benefit upon the termination of her membership thereof.
- 1.2 The complaint was received by this office on 14 June 2006. A letter acknowledging receipt thereof was sent to the complainant on 12 March 2007. On the same date a letter was dispatched to the respondent giving it until 11 April 2007 to file its response to the complaint. A response was received from the respondent on 27 June 2008. This response was forwarded to the complainant on 27 June 2008. 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

- 2.1 The complainant was employed by Fidelity Supercare Cleaning Services (Pty) Ltd (“the employer”) from 3 July 2000 until 31 May 2004. She became a member of the respondent from 1 December 2001 until 31 May

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

2004 by virtue of her employment. Subsequent to the termination of the complainant's employment, she requested the respondent to pay her withdrawal benefit. However, the respondent has still not paid the complainant's withdrawal benefit.

3. **Complaint**

- 3.1 The complainant is essentially unhappy about the respondent's failure and accordingly requests this tribunal to direct the respondent to pay her withdrawal benefit.

4. **Response**

- 4.1 The respondent states that the complainant has been contacted and was advised that the fund requires a copy of her identity document and the latest original bank statement in order to settle her claim.

5. **Determination and reasons therefor**

- 5.1 Section 13 of the Act provides that the rules of a registered fund are binding on the fund, its members, shareholders and officers, and on any person who claims under the rules or whose claim is derived from a person so claiming. Because of the binding effect of the rules on the fund, the fund may only pay out to its members those benefits provided for in its rules. That was emphasized by the Supreme Court of Appeal in *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA), at 239D-E, where Marais JA stated as follows:

“What the trustees may do with the fund's assets is set forth in the rules. If what they propose to do (or have been asked to do) is not within the powers conferred upon them by the rules, they may not do it.”

- 5.2 The relevant rule regulating the payment of a withdrawal benefit in the rules of the fund is rule 7.3, which reads as follows:

“7.3 Payment of Benefit

7.3.1 The benefit in terms of this Rule shall be paid to the Member as a lump sum after a period of three months from the date on which the Member left Service.

7.3.2

- 5.3 In the present matter, it is patently clear that the complainant's employment was terminated on 31 May 2004. In terms of rule 7.3.1 *supra* a member's withdrawal benefit shall be paid after a period of three months from the date of termination of his or her service. It follows therefore that the complainant's benefit should have been paid by the

respondent after a period of three months from the date on which her services were terminated. In other words, the complainant was entitled to receive a payment of her benefit from the respondent on 1 September 2004 in terms of the fund rules.

- 5.4 More than four years have elapsed since the termination of the complainant's employment. However, the complainant to date has still not been paid her withdrawal benefit by the respondent. This extraordinarily lengthy delay is wholly unreasonable and unacceptable. Thus, the appropriate relief will be to order the respondent to pay the complainant's withdrawal benefit.

6. **Relief**

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

6.1.1 The respondent is directed to pay the complainant's withdrawal benefit, less any deductions permitted by the Act, together with interest at a rate of 15,5% from 1 September 2004 until date of payment, within 2 weeks of the date of this determination.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR