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Please quote our ref: PFA/GA/10014/2006/LN

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 ("the Act"): N E MQWATHI ("the complainant") v SHARPER IMAGE PRODUCTS PROVIDENT FUND ("the first respondent"), INVESTEC EMPLOYEE BENEFITS ("the second respondent")

1. Introduction

- 1.1 This complaint concerns the payment of an outstanding withdrawal benefit by the first respondent which is due to the complainant.
- 1.2 The complaint was received by this office on 22 August 2006. A letter acknowledging receipt thereof was sent to the complainant on 15 September 2006. On the same date a letter was dispatched to the second respondent giving it until 13 October 2007 to file its response to the complaint. Another letter was dispatched to the second respondent on 11 October 2007 giving it until 18 October 2007 to file its response to the complaint. This office received a response from the second respondent on 23 January 2007 and on 28 August 2007 respectively.
- 1.3 Having considered the written submissions filed before this office, it is 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 herein.

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 Coler (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 Factual background

2.1 The complainant was employed by Nox Wholesalers ("the employer") and her contract was terminated in 2005. She was a member of the first respondent and ceased to be a member in December 2005. During that time she was contributing to the first respondent. She received her withdrawal benefit and felt that the benefit computed to her was not fair.

3. Complaint

3.1 The complainant's complains about payment of her outstanding withdrawal benefit that is due to her.

4. Response

4.1 Mr. Simon Hebron and Mr. Gordon Malcolm filed a response on behalf of the first respondent. They submitted that the complainant was a member of the first respondent and Nox Wholesalers Provident Fund ("the fund"). They submitted further that the complaint relates to a provident fund benefit paid to the complainant. The complainant is querying the amount of the benefit that was paid to her after leaving the employ of her employer in December 2005. The complainant wants to know if she was paid the right amount and if that amount that was paid, was fair.

4.2 They further submitted that according to their records, the complainant was paid an amount of R13 801.89 on the 29 July 2006. This amount was paid from the first respondent. In addition to the above amount, there is a further amount that is due to be paid from the Nox Wholesalers Provident Fund. According to information received from the current fund administrators (Liberty Life Limited). This amount is R6 075.19. The amount has not been paid to the member yet due to a section 14 transfer that must take place. This transfer relates to the transfer of the Nox Wholesalers Provident Fund into the first respondent.

4.3 According to the records of the brokers (Isafam), the employer only recently signed the required forms and this resulted in delayed payment. The second respondent does not have further information in terms of when this payment will be made to the complainant because the section 14 transfer must first be approved by the FSB. They also submitted that the complainant would not be paid the full amount of

R6 075.19 because there would be an income tax deduction to this amount.

- 4.4 Finally it was decided that the complainant is entitled to a further payment from the Nox Wholesalers Provident Fund and the amount of this future payment is R6 075 (less applicable taxes).

5. Determination and reasons therefor

- 5.1 None of the parties dispute the fact that the complainant is entitled to her outstanding withdrawal benefit and ought to have received it last year. However, a purely administrative requirement of the administrator, namely to transfer the complainant withdrawal benefit of R6 075.19 to the first respondent has not been initiated. This has resulted in the complainant not receiving her benefit.
- 5.2 The delay in effecting payment to the above monies to the complainant is inexcusable. This office understands the fact that section 14 transfer has to be first approved by the FSB. It is the duty of the first respondent to facilitate that process in expedient manner to avoid prejudice to the complainant. It appears from the complaint that when the complainant received her withdrawal benefit of R13 801.89 she was not informed that there was an amount of R6 075.19 which is due to her which needs to be transferred to the first respondent before it can be paid to her.
- 5.3 Based on the above information, the conduct of the first respondent in this matter is to be severely deprecated. It is now trite law that the first respondent as a pension fund at the very least owes a duty of good faith to its employees (see *Rwexwana v Idaho Spur Provident Fund and Others (2005) 7 BPLR 640 (PFA)* and *Tek Corporation Provident Fund and others v Lorentz (2000) 3 BPLR 227 (SCA)* at 235C). As a result of this omission (be it intention or negligent), the complainant has been deprived of her withdrawal pension benefit for almost a year. Had the complainant been legally represented in this matter, this office would have had no hesitation in making a costs order in her favour.
- 5.4 In terms of sections 7C and 7D of the Act the first respondent is required to, *inter alia*, act with due care, diligence, good faith and impartiality in respect of all members and beneficiaries.

6 Relief

In the result, this office makes the following order:

- 6.1. It is hereby declared that the first respondent had no right in law to delay payment of withdrawal benefit to the complainant.
- 6.2. The first respondent is ordered within six weeks of this determination to pay an amount R6 075.19 (subject to tax) which is due to the complainant with interest thereon at the rate of 15.5% per annum reckoned from the date when the employer signed the section 14 transfer forms.

DATED AT JOHANNESBURG ON THIS THE
2008.

DAY OF

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**