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Please quote our reference: PFA/GA/14872/2007/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”): C N TSHAZI (“the complainant”) v DEAPMEADOW PENSION FUND (“the first respondent”) / OLD MUTUAL CORPORATE (“the second respondent”) / LIBERTY LIFE (“the third respondent”)

1. Introduction

- 1.1 This complaint relates to an unpaid death benefit. The complaint dated 14 June 2007 was received by this office on the same date. On 27 July 2007 a letter was sent to the second respondent giving it until 29 August 2007 to file its response. The third respondent has filed its response to the complaint dated 29 August 2007. This tribunal is also in possession of the second respondent’s response dated 04 May 2007
- 1.2 After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefore appear below.

2. Complaint

- 2.1 The complainant states that she is the surviving spouse of the late Mr David Somawala Tshazi (“the deceased”) who died on 2 August 2002. The complainant and the deceased have five children.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (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), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 2.2 The deceased was an employee of Soweto Municipality Central Camp ("the employer") from 12 April 1986 until his death and for that period he was a member of the first respondent.
- 2.3 The complainant states that immediately after the death of the deceased she had notified the employer and submitted the necessary documentation with the first respondent.
- 2.4 The complainant further states that she was promised that the deceased's death benefit will be paid out in a short space of time but nothing has happened since she lodged the claim with the first respondent.
- 2.5 The complainant seeks the payment of the death benefit.

3 Second Respondent's Response

- 3.1 The second respondent states that the board of trustees of the first respondent terminated its administration services with effect from 31 July 2003 and the new appointed administrators are the third respondent.
- 3.2 The second respondent states further that all the assets of the first respondent were transferred to the third respondent's bank account number 002335396 with effect from 1 August 2003.

4. Third Respondent's Response

- 4.1 The third respondent states that it became the administrator of the first respondent in October 2004 when the first respondent had previously become paid-up, meaning that no contributions were payable and that the records reflected the accrued benefit as the share of the fund of each member to be paid out when the member leaves the employ.
- 4.2 The third respondent states that it has received notification of the death of the deceased on 17 August 2006 and it was not clear why the previous administrator Old Mutual had not paid out the deceased's benefit.
- 4.3 The third respondent further states that the deceased's gross death benefit was R54 799.45 which in terms of the trustees decision was distributed on 2 October 2006 as follows:
 - R24 799.45 paid into complainant's FNB account electronically

- R30 000.00 paid into BOE Trust Account for the benefit of the complainant's minor children

5 Complainant's Reply

- 5.1 The complainant states in reply that the amount of R54 799.45 mentioned in paragraph 4.3 of this determination does not represent the deceased's gross death benefit but a gratuity, which was due to the deceased's "leave and bonuses".
- 5.2 The complainant refers to a letter sent by the second respondent to the first respondent dated 28 November 2006 confirming that the complainant's monthly spouse's pension is still pending and that this spouse pensions was not included with the pending benefits lists that were forwarded to the third respondent when the first respondent transferred, in that letter the second respondent requested an up-to-date calculation of the cost of the spouse's pension in order for the complainant to receive spousal pension.

6 Determination and reasons thereof.

- 6.1 This complainant relates to the unpaid death benefit that was eventually paid on 2 October 2006. The complainant is dissatisfied in that she states that the monies that were paid to her were not death benefits, but a gratuity with was due to the deceased's leave and bonuses.
- 6.2 The complainant is incorrect in its submission, first and foremost it is inconceivable that the third respondent which is an insurance entity will pay a gratuity to the complainant due to the deceased's leave and bonuses. It is the finding of this tribunal that the monies paid by the third respondent to the complainant and her minor children on 2 October 2006 represents the death benefits.
- 6.3 It is important to note that the rules of the first respondent provides for the payment of the death benefit and spousal pension when a member dies before the normal retirement age. Rule 5.1 of the first respondent states that

"If a MEMBER dies whilst still in service, the following benefits will become payable:

(a) Death before the normal retirement date

(i) CASH

A life assurance benefit. The amount of life assurance benefit shall, subject to the provisions of the rule 7.9, be equal to the greater of

(aa) All the MEMBERS'S own contributions (including "assessed contributions" as defined in rule 3.4 and the INITIAL AMOUNT, if applicable), together with 10 per cent per annum compound interest thereon; and

(bb) once the MEMBER'S ANNUAL SALARY.

PLUS

(ii) PENSION

A SPOUSE'S pension payable to the MEMEBER'S SPOUSE

The SPOUSE'S pension shall be as set out in rule 5.4.1 and shall be payable as set out in rule 5.7.

6.4 The respondent's trustees have identified the complainant and her minor children as the dependents and/or beneficiaries of the deceased. Rule 5.8 of the first respondent states that

"The death benefits (other than the joint pension payable to the designated dependant and the spouses pension payable in terms of these rules) will, in terms of section 37C of the Act , be payable

1. to the members dependants or, as may be deemed equitable by the trustees, to one of such dependants or in proportions to some of or all of such dependants

2.

6.5 This tribunal is satisfied that the death benefit were paid by the third respondent in terms of the rules of the first respondent and section 37C of the Act. The complainant is not receiving her spousal pension benefit, this is evidenced by a letter by the second respondent to the first respondent dated 28 November 2006 mentioned in paragraph 5.2 above.

6.6 It must be noted that in terms of rule 5.1 (a)(ii) of the first respondent mentioned in paragraph 6.3 above, read with rules 5.4, 5.5, 5.6 and 5.7 , the complainant is entitled to receive spousal pension benefits. It is the finding of this tribunal that the complainant is entitled to the payment of the spousal pension benefits.

7 This complaint pertaining to the failure of the third respondent to pay spousal pension succeeds and the following order is made:

7.1 The third respondent is directed to calculate the complainant's spousal pension benefit within two weeks of this determination.

7.2 The respondent is directed to effect the payment of such spousal pension benefit within two weeks after it has been determined.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR