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Please quote our ref: PFA/KZN/4072/05 /KM

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): D. BOOTHWAY v UMGENI WATER RETIREMENT FUND (“the fund”)**

Introduction

[1] This matter concerns the amount of your client’s withdrawal benefit from the fund. The complaint was received by this office on 21 June 2005. On 7 July 2005 a letter was dispatched to the respondent giving it until 28 July 2005 to file a response to the complaint. The response dated 29 July 2005 was received on the same date. On 10 August the response was sent to you for a reply by 17 August 2005. No reply was received. Having examined and investigated the complaint, I consider it unnecessary to hold a hearing in this matter. My determination, together with reasons therefor, is set out below.

Complaint

[2] Your client, Mr Boothway, received a benefit statement dated 1 July 2003 from the fund, a defined benefit scheme, reflecting a cash withdrawal benefit of R582 842, calculated on the basis of his discounted actuarial value in the fund, should he exit the fund at the time of compilation of the statement. The actuarial value was computed, *inter alia*, on your client’s then salary of R551 387 per annum, and his executive status in the fund.

[3] Subsequent to that, with effect from 1 October 2003, your client’s salary reduced to R197 100 per annum, and he was no longer treated as an

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V Ngalwana (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), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

executive for fund purposes. He then apparently received a benefit statement in October 2004 (which has not been furnished) reflecting an unspecified amount in respect of the cash withdrawal benefit. He was allegedly assured (by whom it is not stated) that the cash withdrawal benefit was correct. You were requested to amplify on this aspect in a letter addressed to you by a member of my staff dated 10 August 2005. In response you sent the benefit statement of 1 October 2003 referred to above.

- [4] Your client resigned in December 2004 and became entitled to a withdrawal benefit from the fund. His benefit, calculated in accordance with the rules then in force specifying actuarial value, amounted to R341 998.
- [5] Your client's complaint is that, had he been advised of the true state of affairs, in other words that his withdrawal benefit would reduce so dramatically on reduction of his annual salary, he would have elected instead to resign, thus receiving the more favourable benefit.

#### Response

- [6] The fund has replied that it operates as a defined benefit scheme. Your client's withdrawal benefit was consequently computed on the basis of his actuarial value in the fund. It was therefore dependent on his annual salary at the time of termination of employment. The reduction in value was therefore consonant with the reduction in his salary. The fund therefore contends that he received the benefit to which he was entitled in terms of the fund rules.
- [7] Additionally, the fund has stated that, pursuant to a rule amendment approved by the Registrar of Pension Funds on 21 June 2005, retrospective to 1 July 2003, your client will receive an augmented benefit of R408 272. This is because the amendment provides for a withdrawal benefit that is the greater of the Minimum Individual Reserve and the amended Withdrawal Benefit calculated as set out in the response, a copy of which was forwarded to you.
- [8] The fund also submits that the amount depicted on the benefit statement of 1 October 2003 was not a guaranteed amount, nor an entitlement, but a projection based on the assumptions (including your client's annual salary) then in place. It therefore reiterates that your client received his due entitlement in terms of the rules, calculated as at the time of his exit from the fund, and that the complaint ought consequently to be dismissed.

### Determination and reasons therefor

- [9] Your client's complaint has been formulated in terms of loss sustained as a result of a misrepresentation made to him with regard to the sustained value of his cash withdrawal benefit, despite his reduction in salary. The misrepresentation relied on occurred in conjunction with a benefit statement sent to him in October 2004. This statement has not been made available for inspection, nor have the circumstances of the misrepresentation been described despite an invitation to elaborate. However, there is a more serious bar to your client's case, and that is that the alleged misrepresentation occurred nearly a year after the removal of his executive status and reduction in salary. There is therefore no causal link between the misrepresentation and your client's decision to accept the new employment circumstances.
- [10] In terms of the rules of the fund your client was entitled on his resignation to a withdrawal benefit calculated with reference to his actuarial value in the fund. The actuarial value was in turn dependent on his final salary. That changed, to the detriment of your client's financial interest in the fund, with effect from the date of his reduction in salary in October 2003. That was the time at which your client ought to have sought professional advice concerning the impact of his reduction in salary on his overall financial position. Based on the information elicited he could have elected to resign rather than accept a lower remuneration package. No representation, or misrepresentation, made after that date could have been instrumental in his decision to continue in employment.
- [11] There is therefore no causal relationship between the alleged misrepresentation and any loss suffered by your client. You have therefore established no grounds on which relief can be granted.
- [12] However, I would draw your attention to General Rule 8.6, which confers on the employer a discretion to enhance any benefit payable by the fund, subject to such conditions as the fund valuator may impose. Your client is therefore entitled to approach the employer and ask it to exercise its discretion in his favour in terms of this rule. If such discretion is unreasonably exercised, it may give rise to a separate complaint.

### Relief

- [13] The complaint is dismissed.

DATED AT CAPE TOWN ON THIS THE                      DAY OF                      2006.

Yours faithfully

**VUYANI NGALWANA**  
PENSION FUNDS ADJUDICATOR

cc: Ms M Scholtz  
Alexander Forbes  
**Fax: (011) 263 1698**

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**Section 30M Filing:**                      High Court