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Please quote our reference: PFA/EC/3346/2005/nvc

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): N P Kretzmann v South African Retirement Annuity Fund (“the fund”) and Old Mutual Life Assurance Company (SA) Limited (“Old Mutual” or “the insurer”)

Introduction

- [1] Your complaint concerns the value of your retirement annuity benefit at retirement as compared to the illustrative values provided to you. The complaint was received by this office on 4 May 2005 and a letter acknowledging receipt thereof sent to you on 20 May 2005. On 21 May 2005 a letter was dispatched to the fund giving it until 13 June 2005 to file a response to the complaint. On 14 June 2005 a letter was dispatched to the insurer to file a response by 28 June 2005. The response from the fund dated 11 July 2005 was received on 15 July 2005.
- [2] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life insurers on the other, in terms of which the life insurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life insurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the fund on 18 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the

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Office Manager: L Manuel

settlement terms were not divulged to this office. However, on 8 February 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course. My determination and reasons therefor appear below. As the facts are known to the parties I shall only repeat those facts that are pertinent to understanding this determination.

Factual Background

- [3] You became a member of the fund in February 1991, when you were 47. You made an initial contribution of R15 697 and thereafter contributed at the rate of R150 monthly, escalating annually at 15%. The total amount you contributed to the fund was R81 272. On 1 February 2000, the maturity date, your total retirement benefit was R137 607.30. From this, you were paid a lump sum of R45 869.10 and a monthly annuity of R1 071.25, with effect from 1 February 2000, when you were 56.

Complaint

- [4] Your complaint concerns the poor value of the retirement benefit compared to the illustrative values given to you prior to retirement age. You allege that when you took out the policy the fund advised you that it would pay you R185 000. However, in 1996 this value came down to R162 807, and further decreased to R137 607 in 2000. You state you invested in a smooth bonus portfolio so as not to be subjected to market fluctuations and yet it is Old Mutual's explanation that the investment was influenced by the fall in the market. You add that Old Mutual "misguided" you and that your investment would have been worth R227 000 had you invested the money in a 32-day fixed deposit investment.

The fund's response

Technical point

- [5] The fund raised a technical point, alleging that your grievance concerns the policy value and, as such, constitutes insurance business which falls outside the definition of a complaint in the Act. In this regard it referred to the fact that the fund operates exclusively by way of individual insurance policies issued by Old Mutual to the fund and that the policies issued by Old Mutual in its capacity as long-term insurer are "life policies" as defined in the Long-Term Insurance Act of 1998. The fund also states that the policies issued to the fund are regulated by the Long-Term Insurance Act, that the contributions paid by the members constitute the assets of Old Mutual for which the latter is liable to pay tax. Finally, it says that the only assets of the fund are its claims against Old Mutual in respect of the policies issued to the fund.

Merits

- [6] On the merits, the fund says that it was confirmed by the underwriter that there is no record of any documents in which you were advised of the maturity value escalating to R185 000.
- [7] Further, it states that given the limitation of its liability in terms of rule 6.7, and the underwriter's conclusion that your fund value was correctly calculated, the fund has no further obligation to you.

Determination and reasons therefor

- [8] *Technical point*

With regard to the technical point raised by the fund, I am satisfied that the complaint does not concern long-term Insurance business but actually relates to a retirement annuity fund, namely, the South African Retirement Annuity Fund, which is a pension fund organization as defined in the Act. For the reasons more fully set out in *Schwartz v Central Retirement Annuity Fund and Another* [2005] 5 BPLR 435 (PFA) at paragraphs [17] to [28] and authorities referred to therein and *Louw v Central Retirement Annuity Fund and Another* [2005] 7 BPLR 622 (PFA) at paragraphs [17] to [36], I cannot uphold the contention that this matter constitutes "long-term insurance business" over which I have no jurisdiction.

- [9] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others* [2005] 8 BPLR 655 (C) at 660C - E confirmed the jurisdiction of this office and stated:

"The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant may be exempt in terms of the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of s51 (a) [sic] of the Act. It cannot simply be treated as an illusionary 'go between' the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act's complaint mechanism."

- [10] The technical point is dismissed.

Merits

- [11] On the merits, it is evident that you were cautious in the sense that you did not elect to invest in a moderate to high risk market related portfolio but in Old Mutual's Smoothed Bonus Portfolio. However, you bore some investment risk as you were dependent on the interim and final bonus rates

Vuyani Ngalwana
Pension Funds Adjudicator