



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House  
Sandton Close 2, Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto:enquiries-jhb@pfa.org.za)

Cape Town

2nd Floor, Oakdale House, The Oval  
Oakdale Road, Newlands, 7700  
P O Box 23005, Claremont, 7735  
Tel (021) 674-0209 □ Fax (021) 674-0185  
E-mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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Please quote our ref: PFA/GA/11121/2006/PM

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO 24 of 1956 (“the Act”): ARNSMEYER M (“the complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“first respondent”) and OLD MUTUAL LIFE ASSURANCE COMPANY CC (SA) LIMITED (“second respondent”)**

1. Introduction

- 1.1 The complaint concerns the complainant's dissatisfaction with the monthly annuity payments that she receives from the second respondent.
- 1.2 The complaint was received by this office on 13 October 2006. A letter acknowledging receipt thereof was sent to the complainant on 15 November 2006. On 03 December 2006, a letter was sent to the second respondent informing it about the complaint and giving it until 03 January 2007 to respond to the complaint. A further letter was sent to the second respondent on 26 June 2007 informing it about the complainant and this time, giving it until 03 July to respond to the complaint. A response was received from the second respondent on 12 December 2007. The complainant never made further submissions to the second respondent's response.
- 1.3 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

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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. Factual background

2.1 The complainant took out a retirement annuity policy with the second respondent on 01 October 1989. Due to ill health, the complainant brought the contractual end date of the policy forward from 01 October 2006 to 01 December 2002. The second respondent paid the complainant one third of the lump sum of R21 247.24 on or around 04 December 2002. On 31 December 2002, the complainant started receiving monthly payments of R358.90 from the second respondent.

## 3. The complaint

3.1 The complainant is dissatisfied with the amount that she is receiving as her monthly payments from the second respondent. The complainant feels that the amount is too little and she further submits that the second respondent informed her that she will receive another lump sum in October 2006.

## 4. First respondent's response

4.1 The first respondent submits that the benefit provided under the compulsory purchase annuity is limited to what is provided for in the particular annuity policy contract taken out by the fund on a member's life. The complainant selected a single life annuity guaranteed for 10 years and thereafter for life, she did not exercise the option for an escalating annuity, which is an available option on the form that she signed at the inception of the policy.

4.2 The first respondent further submitted that it only has a specific amount per policy to provide the member's lifelong benefit. The calculation of the benefit is based on the member's option choice at inception of the annuity payments. Once this option is exercised, the fund does not hold surplus funds to escalate annuity payments during the terms of the contract until death of the annuitant.

## 5. Second respondent's response

5.1 The second respondent, in its capacity as administrator, advised that the total income received by the complainant for the past 60 months is R21 534.00. The 10 year guaranteed term for the income will end on 31 December 2012; whereafter the monthly annuity will be paid to the complainant for the rest of her life.

- 5.2 In relation to the two thirds amount that the complainant was expecting in October of 2006, the second respondent submits that the complainant's action of accepting a cash commutation from the fund equalled a maximum cash withdrawal and that no additional funds were due to her as at 01 October 2006.

## 6. Determination and reasons therefor

- 6.1 Section 1(b)(ii) of the Income Tax Act 58 of 1962 defines a retirement annuity fund as follows:

“Retirement annuity fund means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied –

- (a)...
- (b) that the rules of the fund provide
  - (i)...
  - (ii) that not more than one-third of the total value of any annuities to which any person become entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed R1 800 or such other amount as the Minister of Finance may from time to time fix in the *Gazette*;

- 6.2 Commutation in the context of payment of retirement benefits refers to the payment of a member's retirement benefit in the form of a cash lump sum. In terms of the Income Tax Act, upon retirement, only one-third of the maturity value can be commuted to cash. Rule 4.4 of the first respondent provides for commutation upon retirement and it reads thus:

### “4.4 COMMUTATION

- (a) In respect of a MEMBER  
The member shall have the option of commuting for a single payment not more than one-third of the life annuity to which he is entitled, subject to the conditions as set out in the ANNUITY POLICY

Where, however, the aggregate of all life annuities payable under the FUND to a MEMBER is equal to or less than the amount prescribed by legislation from time to time, the MEMBER shall be entitled to commute all such life annuities subject to the conditions set out in the ANNUITY POLICY.

