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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – PETER CLAUDE BOND (“the complainant”) v GALAXY PRESERVATION PENSION FUND (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the refusal of the first respondent to undertake to pay the full capital in cash on retirement.
- 1.2 The complainant is also dissatisfied with a previous ruling of this tribunal in respect of himself and the Galaxy Preservation Provident Fund, and have requested that that complaint be reopened and re-determined. The complaint was received on 27 December 2005 and a letter acknowledging receipt thereof was sent to the complainant on 31 January 2006. On 30 January a letter was dispatched to the first respondent requesting it to submit a response to the complaint by 20 February 2006. A response, dated 2 March 2006, was received on 3 March 2006, a copy of which was forwarded to the complainant. No reply has been received from the complainant.
- 1.3 Having had regard to the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

M Mohlala (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), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

2. Complaint

- 2.1 The complainant left his employment with First Rand Bank Ltd in March 1997 and became entitled to a withdrawal benefit of R409 243, which he elected to transfer to the Galaxy Preservation Provident Fund (“the provident fund”). The complainant’s previous complaint to this office under case number PFA/EC/4403/05/Z/VIA concerned the refusal of the provident fund to allow him a further withdrawal benefit. A determination was handed down in respect of that dispute on 17 January 2006.
- 2.2 The principal officer of the provident fund, Ms Gamble, stated in the course of responding to the complainant’s earlier complaint that it had become apparent that his withdrawal benefit was incorrectly transferred to the above fund instead of to the pension fund (the respondent fund in the present complaint). It was further stated that this error would be rectified.
- 2.3 The complainant’s present complaint arises from the consequences of his change of membership from the provident fund to the pension fund. He asked the respondent for a guarantee that he would be allowed to access the entire capital at retirement. The respondent has refused. The complainant now approaches this tribunal requesting that it re-open the first dispute regarding his once-off withdrawal. In the event that the complainant is not successful in respect of that issue, he has requested this tribunal to direct the respondent to confirm in writing that it will pay out his full capital when he retires.

3. The response

- 3.1 Regarding the complainant’s first complaint (that this tribunal re-open his previous case) the respondent states that he has not essentially raised any new facts in regard thereto, and that it should therefore be dismissed.
- 3.2 Concerning the complainant’s entitlement to a full cash benefit on retirement, the respondent states that this is prohibited by the rules of the respondent which only allow for a cash commutation of up to one third of the complainant’s benefit. The rules are structured so as to preserve the preferential tax status of the respondent by aligning it to the requirements of income tax legislation.
- 3.3 Explaining the incorrect assignation of the complainant’s transfer benefit to the provident preservation rather than the pension preservation fund, the respondent claims that this was occasioned by an ambiguous application form submitted on his behalf. On this form the transfer is indicated variously as being to the “provident” fund (on page 4) and to the “pension” fund (on page 9). The respondent furthermore contends that the complainant’s

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR