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Please quote our ref: PFA/WE/2810/05/SG (CN)

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 ("the Act"): MONEY v LIFESTYLE RETIREMENT ANNUITY FUND & LIBERTY GROUP LIMITED

INTRODUCTION

- [1] This complaint concerns the anticipated levying of costs against a policy taken out by a retirement annuity fund with an insurer for the purpose of funding the fund's liability to pay out a retirement benefit to the member.
- [2] The complaint was received by this office on 24 March 2005, and a letter acknowledging receipt thereof sent to you on 25 April 2005. On the same date a letter was dispatched to the respondents requesting them to respond to the complaint by 16 May 2005. The response dated 12 May 2005 was received on 23 May 2005. A copy of the same appears to have been posted to you by the respondents on 23 May 2005. No reply has been received from you. After considering the written submissions before me I consider it unnecessary to hold a hearing in this matter.
- [3] 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 assurers on the other, in terms of which the life assurers 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

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

fund complaints (including this one) back to the management boards and life assurers 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 Lifestyle Retirement Annuity Fund and the Liberty Group Limited on 19 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 settlement terms were not divulged to this office. However, due to the peculiar facts of this case, the Statement of intent does not appear to apply to it. It is with that brief background that we now determine this complaint in the ordinary course.

THE COMPLAINT

[4] As a member of the Lifestyle Retirement Annuity Fund who claims to have read the numerous articles in the newspapers concerning the deduction of high costs by life assurance companies, you state that you are concerned about the matter, and would like to ensure that when your retirement annuity policies mature, your values will not be diminished by excess costs. You further state that at no stage during the term of the contract have you been advised of the costs being deducted.

[5] You request me to “investigate [your] retirement annuity contracts to ensure that in accordance with legislation pertaining to the Act [you] have not been overcharged with costs deducted by the insurers”.

THE RESPONSE

[6] In a joint response, the respondents state that the cases that you have read about in the papers relate to matters where the fund members have either reduced or terminated their contributions to the funds concerned prior to the contractual retirement dates. They go on to state that since you have neither reduced nor stopped contributions to the fund, those cases have no relevance to your case. According to the respondents, the only deductions that were levied on your contract are those set out in the terms and conditions stipulated in your certificate of membership.

DETERMINATION AND REASONS THEREFOR

[7] You have not alleged that any undisclosed costs or charges were levied on

your contract, nor have you alleged or shown that any other act or omission giving rise to a complaint, as envisaged in the definition of “a complaint”, has been committed by the respondents. Furthermore, you have not intimated to the fund and/or insurer that you intend, in the future, to either reduce or stop your contributions to the fund, nor have the respondents in turn indicated that they intend to levy any undisclosed and unauthorized charges on your contract.

[8] In the circumstances, no “complaint” as defined in section 1 of the Act has arisen. A “complaint” is defined as follows:

“**complaint**” means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging-

- (a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;
- (b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;
- (c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or
- (d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant”.

[9] There being no complaint before me that I have the jurisdiction to investigate and adjudicate upon, I cannot grant you the requested relief.

[10] Our file is now closed.

SIGNED IN CAPE TOWN ON THIS

DAY OF

2006

Yours faithfully,

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VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR