



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

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
Website: www.pfa.org.za

Please quote our reference: PFA/GA/13087/2007/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”):- AR WOLHUNTER (“the complainant”) v OLD MUTUAL STAFF RETIREMENT FUND (“the first respondent”) /OLD MUTUAL (“the second respondent”)

1. Introduction

1.1 This complaint relates to the alleged unpaid demutualization pension benefit. A complaint dated 15 March 2007 was received by this office on 22 March 2007. On 8 May 2007 a letter was sent to the complainant acknowledging receipt thereof. On 9 May 2007 a letter was sent to the second respondent giving it until 8 June 2007 to file its response to the complaint. The first respondent has filed its response 14 September 2007. A letter was sent to the complainant on 7 November 2007 asking him to file a reply to the response on or before 21 November 2007. The complainant has failed to submit his reply thereto.

1.2 After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

2.1 The complainant was an employee of the second respondent from 1 May 1990 and in terms of his contract of employment, he became a

M Mohlala (Adjudicator), C Nkuhlu (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), S Mothupi (Senior Assistant Adjudicator), T Dooka (Snr Assistant Adjudicator), L Mbalo (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), A Mqinyana (Assistant Adjudicator), T Nawane (Assistant Adjudicator), B Mahlalela (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat, HR Manager: P Mhlambi

member of the Old Mutual Staff Pension, Spouses and Provident Fund.

2.2 On 1 January 1997 the complainant voluntarily transferred his membership to the first respondent and subsequently exited from the first respondent on 30 November 1999 following his resignation from the second respondent.

2.3 The complainant's net withdrawal benefit in the amount of R238 120,86 was paid into his bank account on 28 January 2000.

3. Complaint

3.1 The complainant states that he is entitled to the excess funds as a result of the demutualization of the second respondent because he was a member of the first respondent.

3.2 The complainant further state that he was informed by the South African Receiver of Revenue that certain benefits are alleged to have been paid to him by the first respondent, which benefits the complainant did not receive.

4. First Respondent's Response

The first respondent states that the final demutualization and listing amount of R7 837, 04 was paid to the complainant on 8 May 2001.

5. Determination and reasons therefor

5.1 The complaint's complaint is vague in that it relates to either the alleged unpaid fund surplus or the unpaid demutualization shares of the second respondent. If this complaint relates to the former, then this tribunal have no jurisdiction to adjudicate upon this matter by virtue of section 30H(4) of the Act which reads that:

"The Adjudicator shall not have jurisdiction over complaints in connection with a scheme for the apportionment of surplus in terms of section 15B which relate to the decisions taken by the board or any stakeholder in the fund or any specialist tribunal convened in terms of section 15K".

5.2 If the complainant relates to the latter, it must be noted that the first respondent has not only denied that it has not paid the complainant his final demutualization and listing benefit, but it has also provided documentary proof to that effect being annexure "B" to the response. The complainant must discharge the onus in an ordinary civil matter on a balance of probabilities, (see *Jayber (Pty) Ltd v Miller and Others 1980 (4) SA 280 (W)*).

5.3 It is the finding of this tribunal that the complainant has not discharged this onus on him. The complainant also did not reply to the first respondent's response.

6. This complaint cannot succeed and is therefore dismissed.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**