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Please quote our reference: PFA/KZN/11259/2006/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): MS MSELEKU (“the complainant”) v PRIVATE SECURITY SECTOR PROVIDENT FUND (“the first respondent”)/ NBC FUND ADMINISTRATION SERVICES (“the second respondent”)/ INYATHI SECURITY (“the third respondent”)

1. Introduction

- 1.1 In contention in this complaint is the alleged failure by the first respondent to pay the complainant a withdrawal benefit.
- 1.2 The complaint dated 18 October 2006 was received by this office on 6 November 2006. On 30 November 2006 a letter was sent to the complainant acknowledging receipt thereof. On 29 November 2006 a letter was sent to the second and third respondents giving each until 29 December 2006 to file a response to the complaint. A response dated 6 December 2006 was received from the second respondent. On 10 January 2007 a letter was sent to the complainant giving it until 25 January 2007 to file a reply to the second respondent’s response.
- 1.3 After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

M Mohlala (Adjudicator), C Nkuhlu (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), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

1.4 Save for setting out only those essential facts that are pertinent to the issues raised herein, this tribunal shall not burden this determination by repeating the background facts as they are well-known to the parties.

2. Facts in brief

The complainant was an employee of the third respondent and by virtue of his employment became a member of the first respondent until his services were terminated on 31 May 2006.

3. Complaint

3.1 The complainant states that he was never paid a withdrawal benefit upon his exit from the first respondent.

3.2 The complainant seeks the payment of his withdrawal benefit.

4. The second respondent's response

4.1 The second respondent has filed a response on its behalf and on behalf of the first respondent in its capacity as the administrator of the first respondent.

4.2 The second respondent states that no contributions were ever received from the third respondent from the date of its registration.

4.3 The second respondent contends that it is unable to update the complainant's records and settle his claim until the third respondent brings contributions up to the complainant's date of withdrawal from the first respondent.

5 Determination and reasons therefor

Jurisdiction

5.1 Prior to the determination in ***Mandla Mali v Nabelah Trading CC t/a Security Wise; Private Security Sector Provident***

Fund PFA/WE/7723/2006, this tribunal historically made a decision that these matters do not fall within its jurisdiction. This was reassessed and the decision is that it shall now deal with these matters even when the first respondent is a fund established in terms of a sectoral determination for the private security sector issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1997 and registered as a pension fund with the Registrar of Pension Funds.

- 5.2 Since the decision in **Mandla Mali**, the Pension Funds Act was amended by the Pension Funds Amendment Act, 11 of 2007, which came into operation on 13 September 2007. Section 2(1) as amended clarifies that the Act applies to all registered pension funds and that bargaining council funds not yet registered, have to do so by no later than 1 January 2008.
- 5.3 It follows that this Tribunal does have the necessary jurisdiction to determine this matter.

Late transmission of contributions and submission of schedules

- 5.4 Section 13A of the Act requires every employer to transmit member and employee contributions to a fund within seven days from the end of the month for which it was due.
- 5.5 In terms of regulation 33(2), the person responsible for checking the receipt of electronic transfers into the fund's bank account, or similar person, has to report to the principal officer or the monitoring person:
- 5.5.1 not later than 30 days after the end of the month about the receipt and reconciliation of data; and
- 5.5.2 not later than 22 days after the end of the month about the receipt of contributions.
- 5.6 The monitoring person provided for in section 13A(6) has a duty to report to the board of the fund in writing within seven days after receipt of the reports referred to above about the failure to transmit payments and submit data.
- 5.7 In the present matter, no contributions were received since the registration of the third respondent. The person referred to in regulation 33(2) (a) or (b) had to submit a report about late payment to the monitoring person seven days after the contributions became due. The responsible person should have

been aware of the non-payment of the contributions to the first respondent.

- 5.8 Should the lodging of complaints for non-payment of contributions and non-submission of schedules before the responsible person and the monitoring person have properly executed their duties in terms of regulation 33 be a recurring problem, such complainants may well in future be required to lodge their complaints by way of affidavit, as is normally required in a court of law.

Calculation of late payment interest

- 5.9 The first respondent is entitled to interest on the late contributions received after due date, this interest should be calculated by the second respondent as the administrator of the first respondent. The method of calculation is explained in Circular PF 110. The maximum interest rate is prescribed by Government Notice 338 in *Government Gazette* 22210 of 6 April 2001. As the second respondent is accountable to the first respondent, it is up to the first respondent to give an instruction to the second respondent to do the necessary calculations.

6 Relief

- 6.1 The third respondent is directed to submit the complainant's contributions to the first respondent up to the date of his withdrawal from the first respondent within 7 days of this determination;
- 6.2 The first respondent shall instruct the second respondent to calculate interest on arrear contributions to date of payment in accordance with Circular PF 110 and Government Notice 338 in *Government Gazette* 22210 of 6 April 2001, read with Government Notice 166 in *Government Gazette* 29661 of 26 February 2007 and clause 5 of Schedule 3 of the National Credit Act, 34 of 2005;
- 6.3 The third respondent is directed to pay late payment interest calculated in accordance with paragraph 6.2 within 7 working days of receipt of the calculations from the second respondent;
- 6.4 The first respondent is directed to pay a withdrawal benefit to the complainant within 7 days of receipt of the arrear interest in accordance with paragraph 6.3.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**