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Please quote our ref: PFA/GA/12753/2007/PM

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO 24 of 1956 (“the Act”): TANTASWA AND OTHERS (“the complainants”) v PRIVATE SECURITY SECTOR PROVIDENT FUND (“the first respondent”); SECURITY ENFORCEMENT AGENCY t/a CITI GUARDS (“the second respondent”) and NBC HOLDINGS (“the third respondent”)

1. Introduction

- 1.1 The complaint concerns the non payment of a withdrawal benefit by the first respondent to the complainants upon the complainants leaving the employ of the second respondent.
- 1.2 The complaint was received by this office on 26 February 2007. A letter acknowledging receipt of the was sent to the complainant on 19 March 2007. On the same date, a letter was sent to the third respondent informing it about the complaint and giving it until 19 April 2007 to respond to the complaint. On 08 November 2007, a letter was sent to the second respondent informing it about the complaint and giving it until 28 November 2007 to respond to the complaint. A response was received from the third respondent on 28 September 2007. A response was received from the second respondent on 28 November 2007. No reply was received from the complainants.
- 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.

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

2. Factual background

2.1 The complainants were members of the first respondent by virtue of their being the employees of the second respondent. On June 2005, the complainants were dismissed by the second respondent. Upon their dismissals, the complainants submitted their withdrawal notification form to the first respondent on 22 May 2006. The complainants are:

- Tyesi - 32
- Mphuti Sello Samuel - 39
- Shange Mbuyiseni - 30
- Gamade Mnikazi - 30

2.2 Upon submitting their withdrawal notification forms, the complainants were advised that they each owed the second respondent an amount of R6 916.00 and the second respondent also alleged that the complainants had stolen some goods from the second respondent's premises.

3. The complaint

3.1 The complainants are aggrieved by the fact that they have not been paid their withdrawal benefit that is due to them. The complainants allege that they were never arrested or charged and that a case of theft was never opened against them. The complainants therefore request payment of their withdrawal benefit since the second respondent has not complied with the requirements of section 37D of the Act.

4. Second respondent's response

4.1 The second respondent submitted that the complainants were suspects in a theft case but they were, however, dismissed on the grounds of intimidation and absconding. Upon their dismissal, the complainants opened a case against the second respondent with the Commission for Conciliation, Mediation and Arbitration, which they lost. The second respondent further submitted that a case of theft was opened against the complainants with the South African Police Service at the Benoni Police Station and that both Tantaswa Ntyesi and Shange Mbuyiseni were arrested. Shange's Mbuyiseni's contributions for July 2005 until December 2005 were paid to the third respondent on 13 December 2006; proof thereof was attached to the second respondent's response.

5. Third respondent's response

5.1 The third respondent in its capacity as administrator of the first respondent submitted that it received withdrawal notification forms on behalf of the complainants and the outcome is as follows:

- Tantaswa Tyesi

This complainant withdrew from the first respondent on 30 June 2005; her benefit was paid by the first respondent in terms of its rules as follows:

Gross benefit	: R2 141.52
Less Tax	: R61.47
Nett benefit	: R2 080.05

- Sello Samuel Mphuti

This complainant withdrew from the first respondent on 30 June 2005 and his benefit was paid to him on 21 May 2007 as follows:

Gross benefit	: R2 171.02
Less tax	: R66.78
Nett benefit	: R2 104.24

5.2 With regard to Thulani Mnikazi Gumede, the third respondent submitted that no original bank statement and certified copy of identity document were received from him or the second respondent on his behalf, as is required when a withdrawal claim is lodged. The third respondent then advised that the complainant should send the above mentioned documents to it urgently.

5.3 With regard to Mbuyiseni Shange, the third respondent advised that it has not paid the withdrawal benefit because there are outstanding contributions for the months of July 2005 until December 2005.

6. Determination and reasons therefor

6.1 The two complainants, Tantaswa Tyesi and Sello Samuel Mphuti have been paid their withdrawal benefits therefore this leg of the complaint falls away. It appears that the first respondent has decided to pay the complainants their withdrawal benefit even after the theft allegations against them.

Mamodupi Mohlala
Pension Funds Adjudicator