



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
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/WE/6776/2005/NVC

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): F Thomas (“the complainant”) v Sevcor Security & Consultants cc (“the respondent”)

1. Introduction

- 1.1 The complaint concerns deductions from the complainant’s salary by the respondent without his consent, and its refusal to reimburse the complainant.
- 1.2 The complaint was received on 17 January 2006 and a letter acknowledging receipt thereof was sent to the complainant on 19 January 2006. On 25 January 2006 a letter was dispatched to the respondent requesting it to submit a response to the complaint by 19 February 2006. The response was received on 31 January 2006. An additional response was requested from the respondent on 29 March 2007 and received on 23 April 2007.
- 1.3 After considering the written submissions it is considered unnecessary to hold a hearing in this matter.

The determination and reasons therefor appear below.

2. Complaint

- 2.1 *Deduction of contributions without employee’s consent and refusal to reimburse*

The complainant is dissatisfied that the respondent, in whose service he

M Mhlala (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)

Office Manager: L Manuel

has been since 18 March 2003, deducted certain monies from his salary over a period of time, without consulting him and without his consent. He states the respondent established two retirement annuity policies at Liberty Group Limited (“Liberty”) for him, but the policies lapsed and the respondent refuses to reimburse him with the money it deducted from his salary to finance the policies.

2.3 Failure to pay contributions to a fund

The complainant is also dissatisfied that the respondent did not pay the contributions to a fund.

2.4 Failure to pay contributions to NBC Holdings Limited (“NBC”)

The complainant states that the respondent was not registered as set out in the Government Gazette No 27992, dated 9 September 2005, and was meant to pay the pension contributions to the Private Security Sector Provident Fund (“the PSSP fund”) administered by NBC but it did not do so.

3. Response

3.1 The respondent states that the policies with Liberty may not be paid prior to a member reaching the age of 55. Schedules with details of the policies were expected from Liberty and would be forwarded to the employees by the respondent.

3.2 The respondent states that it had no alternative but to terminate the policies, taken out for its employees, when it became legally obliged to participate in the PSSP fund, administered by NBC, in terms of the conditions set out by the Private Security Industry Regulatory Authority.

3.3 In its response received by this office on 23 April 2007 the respondent states that the complainant contributed to the Charter Life Retirement Annuity Fund, underwritten by Liberty, from January 2005 to September 2005, at the monthly rate of R75.00. The total contributed was therefore R675.00, but the respondent reimbursed him with R150.00 in November 2005, leaving a current fund credit of R525.00. The respondent states that the policy was ceded to the complainant and it is now up to him to continue with it. It contends that it has no authority to intervene in respect of the retirement annuities held at Liberty.

4. Liberty’s response

4.1 On 30 April 2007 this office established telephonically from Liberty that two retirement annuity policies were established for the complainant under

Charter Life. Liberty Active subsequently took over all the Charter Life policies, which are underwritten by Liberty.

- 4.2 Liberty advised that the policies which were established for the complainant have lapsed. They no longer exist. Liberty indicated that the reason for this is that there were insufficient funds to sustain the policies.

NBC's response

- 4.3 NBC states that Sevcor Security & Consultants cc registered with it as a participating employer in the PSSP fund on 1 November 2005. On 23 March 2007 NBC advised this office that the respondent had re-registered with effect from 1 February 2007, but no member data had been submitted to NBC.

5. Determination and reasons therefor

- 5.1 *Deduction of contributions without employee's consent and refusal to reimburse*

The complainant's primary concern appears to be that the respondent made deductions from his salary without consulting him and without his consent, and that he has not been reimbursed with these contributions. Concerning the deductions made for the establishment of the retirement annuities which have not been reimbursed to the complainant, amounting to R525.00, which policies have subsequently lapsed, the complaint relates to the respondent's conduct and the employment contract between the complainant and the respondent. The rules of a retirement annuity fund do not provide for any obligation on an employer, and this aspect of the complaint does not constitute a "complaint" as defined in the Act. I do not have jurisdiction to investigate any matter relating to the employee/employer relationship. As the complainant has referred this aspect of the matter to the CCMA, but without a result, he may have to seek legal advice if he wishes to take the matter forward.

- 5.2 *Failure to pay contributions to a fund*

After diligent investigation by this office it could not be established whether the policies were individual life policies, or in a retirement annuity fund. Since the complainant has not identified the fund, this office was unable to obtain the rules of the fund to inspect it and to investigate if the respondent was obliged to pay contributions to a specified fund. This aspect of the complaint is also dismissed.

