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Please quote our ref: PFA/GA/8791/06/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the ACT”): A J SETIBA (“the complainant”) v LIFESTYLE RETIREMENT PRESERVER PROVIDENT PLAN (“THE FIRST RESPONDENT”), AGFAPHOTO, SOUTH AFRICA (PTY) LTD (“the second respondent”) & BAYER GROUP PROVIDENT FUND (“the third respondent”)

1. Introduction

- 1.1 The complaint concerns the alleged refusal by the first respondent to allow the complainant to make a once off withdrawal from the third respondent.
- 1.2 The complaint was received by this office on 29 May 2006. On 14 June 2006, a letter acknowledging receipt of the complaint was sent to the complainant. On the same date letters were dispatched to the first respondent giving it until 6 July 2006, to file a response to the complaint. On 6 June 2006, the first respondent furnished a response. On 4 July 2006, this office forwarded the response received in this matter to the complainant for further submissions, if any.
- 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. The factual background

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (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), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 2.1 The complainant was employed by Agfaphoto, South Africa (Pty) Ltd (“the second respondent”) until he was retrenched. By virtue of his employment the complainant became a member of the Bayer Group Provident Fund (“the third respondent. Upon his retrenchment and with effect from 31 October 2005 the third respondent became liable to pay a withdrawal benefit to the complainant. A net withdrawal benefit of an amount of R451 866.96 became available for payment to him.
- 2.2 With effect from 16 November 2005, the complainant resolved to transfer his withdrawal benefit from the third respondent to the first respondent.
- 2.3 It is common cause that the complainant made a housing loan and had used his fund credit in the third respondent as security for such loan. Therefore, upon his withdrawal benefit becoming payable to him the third respondent deducted an amount of R24 735.43 in respect of the loan amount in terms of section 37D of the Act.
- 2.4 Upon the complainant assuming membership in the first respondent he requested to make the once-off withdrawal against his fund as is permitted in terms of the South African Revenue Services Practice Note RF 1/98 (“the practice note”). However, the first respondent denied such request.

3. The complaint

- 3.1 The complainant’s complaint is that the first respondent refuses to allow him to make the once-off withdrawal.
- 3.2 The complainant submits that the third respondent did not have authority to deduct the housing loan amount.

4. The first respondent’s response

- 4.1 Mr J Wolmarans, the first respondent’s principal officer submitted a response on behalf of the first respondent.
- 4.2 However, in providing clarity regarding the merits of the complaint he submitted to this office documents which he says pertain to the transfer of the complainant’s benefit from the third respondent to the first respondent which indicated that the complainant’s housing loan deduction amounted to his once-off withdrawal from the third respondent and that the complainant was apprised of this fact.

5. Determination and reasons therefor

- 5.1 Pursuant to the complainant becoming a member of the first respondent, his funds in the respondent are governed in terms of the first respondent's rules. The complainant's normal retirement age in terms of the first respondent's rules is "not younger than 55 and not older than 69". The first respondent's rules are subject to the Practice note which *inter alia* regulates the respondent's member's withdrawal benefits. Clause 5 of the practice note provides that the first respondent may not pay more than one withdrawal benefit to the complainant. Further, it provides that any amount deducted from the translocation benefit (Bayer Group Provident Fund) including deductions in terms of the Act, is regarded as the complainant's first and final withdrawal benefit from the first respondent (preservation fund). On perusal of rule 6.3 of the first respondent's rules in their entirety it is evident that the complainant is only entitled to claim a withdrawal benefit from the third respondent and/or the respondent on one occasion. The complainant has made one cash withdrawal subsequent to joining the first respondent and any further withdrawal from the respondent will not only be contrary to rule 6.3 but will be contrary to the directive issued in terms of the practice note read together with Addendum "A" thereto issued subsequently to clarify certain issues raised in the first practice note (see *Wyness v Protektor Preservation Pension Fund* [2004] 4 BPLR 5649 (PFA) at pp.5651 – 5653).
- 5.2 The first respondent was further entitled to the deduction made in respect of the housing loan in terms of section 37D of the Act against the complainant's withdrawal benefit prior to him joining the respondent. This was lawful and constitutes his first and final withdrawal from the first respondent. There is no merit in the complainant's argument that such deduction was executed without his authority as such authority is not required.
- 5.3 In the result, the complainant's complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**