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Please quote our reference: PFA/GA/7335/2006/CMS

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): GJ PUTTER (“the complainant”) v MM RETIREMENT ANNUITY FUND (“the first respondent”)/ MOMENTUM GROUP LIMITED (“the second respondent”)**

1. Introduction

- 1.1 At issue in this complaint is the enforceability or otherwise of a court order allegedly issued against the first respondent.
- 1.2 The complaint was received by this office on 7 February 2006. On 10 May 2006 a letter was sent to the complainant acknowledging receipt of the complaint. On the same date a letter was sent to the first and second respondents giving each until 31 May 2006 to file a response to the complaint. The second respondent has filed a response dated 15 May 2006 on its behalf and on behalf of the first respondent. On 4 June 2006 a letter was sent to the complainant requesting her to file a reply to the response on or before 18 June 2007. No reply was received from the complainant.
- 1.3 After considering all the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainant and Mr AJH Putter (“Mr Putter”) had been married in community of property. Mr Putter was a member of the first respondent which was administered by Southern Life.

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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

- 2.2 On 18 October 1999 the complainant and Mr Putter were divorced in terms of an order granted by the Transvaal Provincial Division where a settlement agreement was reached which was made an order of court.
  - 2.3 Clause 3.1 of the settlement agreement dealing with the pension consequences, reads:

“Defendant agrees that an endorsement be made against his annuity that one half of his pension be calculated in terms of Section 7 of Act 70 of 1979 over to the plaintiff with effect when the defendant is entitled to it”.
  - 2.4 On 17 July 2000 the second respondent replaced Southern Life as the administrator of the first respondent.
  - 2.5 During June 2003, on request by Mr Putter, his retirement benefit was transferred to Sanlam to purchase an annuity with policy number 18774547x6.
3. Complaint
- 3.1 The complainant states that Southern Life which was the previous administrator of the first respondent has blatantly ignored the court order.
  - 3.2 The complainant further states that the second respondent, as the successor-in-title of Southern Life should be held liable for the omission of Southern Life to endorse its records in terms of the divorce order.
  - 3.3 The complainant further states that the second respondent refuses to divulge certain information in relation to Mr Putter.
  - 3.4 The complainant seeks the payment of the divorce benefit.
4. Second Respondent's response
- 4.1 The second respondent has provided a response on its behalf and on behalf of the first respondent.
  - 4.2 The second respondent states that no instructions were given to Southern Life in relation to the pension interest of Mr Putter.

4.3 The second respondent further states that clause 3.1 of the settlement agreement does not meet the legal requirements relating to the notification of the first respondent of the assignment of the member spouse's pension interest to the non-member spouse.

4.4 The second respondent further contends that the complainant's only relief is a personal claim against Mr Putter.

## 5 Determination and reasons therefor

5.1 This complaint relates to the alleged non-payment of the divorce benefit to the complainant by the second respondent. The complainant alleges that she is entitled to the payment of the divorce benefit in terms of the divorce order granted on 18 October 1999. Section 7(8) of the Divorce Act provides as follows:

"Notwithstanding the provisions of any other law or of the rules of any pension fund-

(a) the court granting a decree of divorce in respect of a member of such a fund, may make an order that-

(i) any part of pension interest of that member which, by virtue of subsection (7), is due or assigned to the other party to the other party to the divorce action concerned, shall be paid by that other party when any pension benefits accrue in respect of that member;

(ii) an endorsement be made in the records of that fund that part of the pension interest concerned is so payable to that other party.

(b) any law which applies in relation to the reduction, assignment, transfer, cession, pledge, hypothecation or attachment of the pension benefits, or any right in respect thereof, in that fund, shall apply mutatis mutandis with regard to the right of that other party in respect to that part of the pension interest concerned." (Own underlining)

5.2 Clause 3.1 of the settlement agreement dealing with the pension consequence of the complainant and Mr Putter does not state the value of the pension interest the complainant will be entitled to when the benefit accrues to Mr Putter, it also does not mention that the records of the relevant fund be endorsed and lastly, it does not mention the name of the fund of which the records should be endorsed.

5.3 In light of the above it is the finding of this tribunal that clause 3.1 of the settlement agreement does not fall within the ambit of section 7(8)(a)(ii) of the Divorce Act mentioned in paragraph 5.1 of this determination.

- 5.4 It is of utmost importance that parties to a divorce proceedings be cautious of the wording and/or formulation of their settlement agreements, more especially clauses dealing with the pension consequences, this was highlighted in the matter of ***Old Mutual Life Assurance Company (SA) Limited and Another v Swemmer [2004] 4 BPLR 5581 (SCA)*** at paragraph 26, where it was held that:

“This case cogently illustrates the importance of deeds of settlement and divorce orders relating to pension interest being formulated very carefully indeed in order to ensure that they fall within the ambit of subsection 7(7) and 7(8) of the Act...If this is done, then all that would be required of the pension fund in question is to perform the administrative functions to give effect to the order, without the rights of the fund or the relationship between the fund and the member spouse being affected in any way.”

- 5.5 In light of the above, it is the finding of this tribunal that there is no fault that can be attributed to Southern Life or its successor-in-title, being the second respondent in this instance, for the non-endorsement of the records in relation to the pension interest of the parties on the ground that clause 3.1 of the settlement agreement is null and void.
6. This complaint cannot succeed and is therefore dismissed.

SIGNED IN JOHANNESBURG ON THIS            DAY OF            2008.

Yours faithfully

**MAMODUPI MOHLALA**  
**PENSION FUNDS ADJUDICATOR**