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Please quote our reference: PFA/GA/2713/2005/RM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“THE ACT”): E P KHUNOU v FEDCRAW PROVIDENT FUND (“THE FUND”), LIBERTY GROUP LIMITED AND METROPOLITAN LIFE LIMITED**

Introduction

- [1] The complaint concerns the amount of the withdrawal benefit you received from the fund. It was received by this office on 25 January 2005. A letter acknowledging receipt thereof was sent to you on 9 March 2005. A letter was dispatched to the fund giving it until 29 March 2005 to submit its response to the complaint. The fund indicated that it needed further information from the fund administrator before responding to your complaint. Another letter was dispatched to the respondents giving them until 10 August 2006 to submit their responses to the complaint. Responses were received from Liberty Group Limited (“the previous administrator”) on 24 May 2006 and from Metropolitan Life (“the present administrator”) on 10 August 2006. These responses were also forwarded to you on 23 August 2006. On 25 August 2006 this office received your reply. After considering the submissions before me, I find it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. As the background facts are well known to all the parties, I shall only repeat those facts that are pertinent to the issues raised herein.

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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

### Factual Background

- [2] You were employed by Edgars Group Stores from 18 October 1976 until you resigned on 5 February 2003. By virtue of your employment you were a member of the fund. On or about October 2001 you received a contribution statement from the fund which reflected your total withdrawal benefits as R238 596.69. You also received a further statement in October 2002 which reflected your total withdrawal benefit as R190 522.92. After making an inquiry about the discrepancies in the two withdrawal benefits the fund informed you that there was an error in the statement that was sent to you in 2001. The fund indicated that the statement that was sent to you in 2002 reflected the correct amount of your withdrawal benefit.
- [3] You then started making some inquiries from the fund about your total contributions after tendering your resignation. The present administrator informed you that your funds were transferred to Investec as Fedsure was liquidated. You were also informed that Mufaro Financial Services had been appointed as brokers to the fund. You then tried to get some answers from the brokers but you did not get any assistance. After approaching a firm of attorneys for assistance, the previous administrator told you that your total withdrawal benefit was R189 624.70. This comprised your total contributions from 1976 until 2001. You were also informed that your contributions were with the present administrator as from 2001 until the date of your resignation.
- [4] It is also clear that you applied for a home loan of R30 000.00 from the fund in 1998. You made the loan application under the impression that you were borrowing from the fund. You also applied for another loan of R17 000.00 from the fund during the same year. The fund informed you that the loans will be borrowed from Investec as Fedsure was liquidated. In 2001, you applied for another loan of R10 000 from the fund. You also obtained another loan of R47 000.00 from the fund in the same year. You stated that you were never told that the loans of R10 000 and R47 000.00 would be borrowed from Standard Bank ("the bank"). Therefore, you alleged that the loans from the bank were made without your informed consent and that you only knew about the loans from Investec.
- [5] The fund sent you a home loan facility statement which reflected the total amount which is outstanding as well as monthly repayments made. The home loan statement reflected the repayment of your loan as R295.87 per month and not R780.00 as you have initially agreed with the fund. The present administrator informed you that your total contribution is R8 728.48 which will be transferred into your bank account. You alleged that you only received an amount of R1500.00 after sometime.

### Complaint

- [6] From the various submissions made to the fund and to this office the crux of your complaint is that a deduction of R295.87 was made from your salary per month instead of the agreed amount of R780.00 for the repayment of your home loan of R57 000.00. This resulted in higher interest rates being charged and accrued to your capital amount. You are therefore not satisfied with the lesser amount you received as your withdrawal benefit from the fund. You are also not satisfied with the fact that the amount that was outstanding when you resigned was R65 006.24 and you don't know what happened to the money that was deducted from your salary for the repayment of your home loan. You also stated that the present administrator of the fund delayed the submission of your IRP5 to the South African Revenue Services ("SARS") and this resulted in you being penalised.

### Responses

- [7] The previous administrator of the fund submitted that the fund loaned money to members for housing loan purposes. During the course of 2001, this function was taken over by the bank whereby it entered into housing loan agreements with the members. The existing housing loans which had been made by the fund were taken over by the bank and members were repaying their loans to the bank. At the time when the housing loans were taken over by the bank, you had loaned an amount of R47 000 for housing purposes. Your monthly repayment was R295.87. When this arrangement came into effect, the bank settled the capital amount of R47 000 with the fund, but did not take into account the interest of R10 103.43 that was due on the capital and therefore the interest remained outstanding. As a result of the outstanding interest, the amount of R295.87 continued to be deducted from your salary.
- [8] The administrator then settled this amount and paid you R2 973.76 on 3 March 2006. After the bank took over the housing loan arrangement, you loaned another amount of R10 000 in 2001. Your repayments were then reflected as R780 per month and you received a statement which indicated that this amount was credited to your home loan account with the bank. After your resignation, the bank indicated that an amount of R65 006.24 was due to it in respect of your home loan. As a result this amount was deducted from your withdrawal benefit. The administrator submitted that your benefit was recalculated from R189 624.70 to R194 943.36. Late payment interest of R8 803.84 was also due and this resulted in your total gross withdrawal benefit as R203 747.20. The administrator then paid you R76 535.26 after deducting R65 006.24 for your home loan at the bank together with R10 103.43 which was paid to the fund and income tax of R37 979.77. In addition to the above, there was a further amount of R14 122.50 which was due to you. This amount was transferred to the present administrator on 18 December 2003 as they had taken over the administration of the fund at that time.

- [9] The present administrator also submitted its response and indicated that the administration of the fund was taken over by it on 1 September 2001. The present administrator indicated that they paid you benefit amounting to R4 648.18 on 9 February 2004. This amount was only for the period that they have received your contributions, being 1 September 2001 to date of exit on 31 January 2003. A letter confirming the payment was sent to you on 17 February 2004. It later came to light that the previous administrator of the fund had deposited an amount of R14 122.50 that was due to you into the bank account of the present administrator of the fund. The administrator indicated that this amount will be paid to you in the course of the week beginning 14 August 2006. However, it was indicated that this amount is before tax.
- [10] The present administrator also stated that you owed SARS arrear taxes. As a result you paid arrear taxes of R7 238.86 out of a lump sum payment of R8 728.48. The administrator also indicated to you that they regretted the fact that your benefit was not paid in full due to the fact that the transferee administrator failed to provide them with the necessary details of money that was paid into their account.

#### Determination and reasons therefor

- [11] Following your resignation from employment you became entitled to a withdrawal benefit from the fund. After making some inquiries about your total contribution the previous administrator of the fund told you that your total withdrawal benefit was R189 624.70. This consisted of your total contribution from the year 1976 until 2001. You were also informed that your contributions were with the present administrator of the fund as from 2001 until the date of your resignation in 2003.
- [12] It is clear that the discrepancies with regard to your initial withdrawal benefit as reflected in the statements of 2001 and 2002 were corrected by the first administrator. This is because the administrator recalculated your withdrawal benefit from R189 624.70 to R194 943.96. Late payment interest of R8 803.84 was also added to the amount and this resulted in your total gross withdrawal benefit as R204 747.20. The administrator then paid you R76 535.26 after deducting R65 006.24 for your home loan at the bank together with R10 103.43 which was used to settle the outstanding interest on the home loan taken from the fund and income tax of R37 979.77. In addition to the above amount, there was a further amount of R14 122.50 which was transferred to the present administrator.
- [13] Before the present administrator of the fund paid you your withdrawal benefit it was discovered that you had loaned an amount of R47 000 for housing purposes. Your monthly repayment was R295.87 before the housing loans were taken over by the bank. The bank settled the capital amount of R47 000

when it took over the housing loans from the fund together with interest due to your capital in the sum of R2 973.76. This amount was paid to you on 3 March 2006.

- [14] You also loaned another amount of R10 000 in 2001 after the bank took over the housing loan arrangement. Your repayment was reflected as R780 per month and you received a statement which indicated that this amount was credited to your home loan account with the bank. After your resignation, the bank indicated that an amount of R65 006.24 was due to it in respect of your home loan. As a result this amount was then deducted from your withdrawal benefit.
- [15] In terms of section 37D(1)(a)(i) of the Act a registered fund may deduct any amount due to it in respect of a loan granted to a member in terms of section 19 (5). It is therefore clear that the fund is entitled, in terms of the Act to deduct the amount of the home loan that was granted to you from your withdrawal benefit. It is clear that the present administrator also paid your benefit amounting to R4 648.18 on 9 February 2004. This amount was only for the period that they have received your contribution, being 1 September 2001 to date of exit on 31 January 2003. A letter confirming the payment was sent to you on 17 February 2004. The present administrator of the fund also became aware that the previous administrator of the fund had deposited an amount of R14 122.50 that was due to you into their bank account. An amount of R14 026.82 was paid to you on 11 October 2006 and a letter confirming payment was sent to you. The fund also indicated that there was a further amount of R2 667.33 that was refunded to you for overpayment of your home loan.
- [16] It is also clear that you owed SARS arrear taxes of R7 238.86. As a result of this, you paid R1 489.62 in arrear taxes in respect of your withdrawal benefit. Therefore your complaint regarding the penalty you paid to SARS was not related to the late submission of your IRP5. Rule 23 states that all benefits in terms the rules of the fund are subject to tax in terms of the Income Tax Act, 1962.
- [17] It is clear that the fund paid your withdrawal benefit in terms of rule 6.2.2 which authorises the fund to pay the value of the member's contribution invested plus the value of the member's share of his transferred credits if any, on termination of service. There is nothing which suggests that the fund did not pay your benefit according to this rule or that they still owe you a portion of the benefit. This tribunal is satisfied that the amount of R4 648.18 that was paid to you by the present administrator together with R14 026.82 represents the remaining amounts that were owed to you by the fund.
- [18] In the result, your complaint cannot succeed.

