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Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – HJ NEL (“the complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“the first respondent”), OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED (“the second respondent”) AND METAL INDUSTRIES BENEFITS FUNDS (“the third respondent”)

1. Introduction

- [1.1] The complaint concerns the maturity values of the complainant’s retirement annuities following his retirement on 1 July 2003.
- [1.2] The complaint was received by this office on 31 May 2006. A letter acknowledging receipt thereof was sent to the complainant on 22 June 2006. On the same date letters were dispatched to the first and second respondents giving them until 13 July 2006 to file their responses to the complaint. During our investigation it became apparent that the Metal Industries Benefits Funds had a substantial interest in the matter. Therefore, on 4 October 2007 the Metal Industries Benefits Funds was joined as a third respondent in this matter pursuant to section 30G(d) of the Act.
- [1.3] Responses were received from the first and second respondents jointly on 28 June 2006 and from the third respondent on 4 October 2007. The responses on behalf of the first and second respondents were forwarded to the complainant on 3 July 2006 and his further submissions were sought by 10 July 2006, in the event that he wished to make any. The

M Mohlala (Adjudicator), C Nkuhlu (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), S Muthupi (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

complainant omitted to file any further submissions.

- [1.4] Having considered the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2. Factual Background

- [2.1] The complainant has two retirement policies with the first respondent. Policy number 8161524 commenced on 1 September 1992 with a maturity date of 1 September 2003. Policy number 4363413 commenced on 1 October 1983 with a maturity date of 1 October 2003. The complainant commenced contributing R12 160.20 per annum on policy number 8161524 with a guaranteed retirement value of R168 333.00. The complainant retired on 1 July 2003.
- [2.2] Upon his retirement, the first respondent paid the complainant a one-third cash commutation in the amount of R114 531.03 plus interest in the amount of R1 191.98. An amount of R96 791.76 was deducted from his benefit in respect of tax and the remaining amount was used to purchase a life annuity with Momentum Life.

3. Complaint

- [3.1] The complainant is not satisfied with the maturity values of his retirement annuities. He contends that he received a letter from the second respondent which reflected his retirement value as R100 000.00, which is less than the original amount. Further, the complainant submitted that his retirement value declined by plus or minus R40 000.00 after six months. Therefore, he stated that the amount that was paid to him is not the correct amount that is due to him.
- [3.2] Moreover, the complainant submitted that he was also a member of the third respondent while he was still young. He alleges that he tried on several occasions to get his benefit from the third respondent without success. Thus, he submitted that he is entitled to receive his benefit from the third respondent.

4. Responses

Response on behalf of the first and second respondents

- [4.1] Ms J Van Zyl, the manager (Executive Management Support) of the second respondent filed a response on behalf of the first and the second

respondents. She submitted at the outset that the complainant failed to submit any document which proves that a benefit amount which was initially quoted to him declined. She confirmed that the complainant had two retirement annuities which he decided to mature at the same time on 1 July 2003. She indicated that in cases where more than one retirement annuity is matured at the same time, the policy values are combined and processed under the lowest policy.

- [4.2] She submitted a table which reflects the details of the complainant's policies. It reads as follows:

Policy Number	Date of Entry	Contractual Vesting Date	Contractual Investment Term	Package Type	Type of Portfolio
4363413	01/10/1983	01/10/2003	20 years	Scheme A (with death cover Retirement Annuity)	Reversionary Bonuses
8161524	01/09/1992	01/09/2003	11 years	Flexi-Pension Pure	Performance Profits Balanced

- [4.3] Further, she averred that any values that were previously quoted to the complainant were for illustrative purposes only. She pointed out that illustrative values are not guaranteed and that they depend on future investment performance. She submitted that illustrative values are only used as a tool in financial planning.
- [4.4] She further indicated that policy 4363413 provided an element of life cover during the duration of the policy whilst providing for a maturity value at the end of the policy term. She stated that the vesting value under this policy consists of the sum assured, declared and interim reversionary bonuses and final bonuses and special final bonuses. She indicated that in case of a significant drop in investment markets, the final bonus would normally be adjusted downwards to reflect this drop.
- [4.5] Furthermore, she argued that policy 8161524 was invested in a performance profit balanced portfolio, which comprises 65% equities, 25% interest-bearing assets and 10% property. She indicated that adverse investment conditions could significantly have a positive or negative effect on the fund value in this portfolio. She submitted that the market declined in September 2001 to approximately April 2003 and this had a negative influence on investment returns of especially market related portfolios. She further indicated that both policies were claimed during the decline in the market but still achieved an overall positive return. She submitted a table

which shows the effect of the market on the policies. It reads as follows:

Policy No	Date of Early Retiral	Fund Value @ 01/07/2003	Reduction in Benefit	Gross Early Retiral Consideration	Guaranteed Vesting Value
4363413	01/07/2003	R29 999 10	R315.00 (1.0%)	R29 684 10	R7 166.00 @ 10/2003
8161524	01/07/2003	R314 949 77	R1 040.78 (0.33%)	R313 908.99	R287 362.00 @ 09/2003
TOTALS				R343 593.09	

- [4.6] She also submitted that the complainant received a total amount of R114 531.03 plus interest in the amount of R1 191.98 as a one-third cash commutation and the remaining amount of R229 062.06 (two-thirds) was used to purchase a life annuity with Momentum Life. Moreover, she indicated that the final maturity values of the policies exceed the guaranteed maturity values.

Response on behalf of the third respondent

- [4.7] The third respondent submitted that the complainant has contributed to it from 1959 to 1963. It indicated that it has never received any documents or application form from the complainant regarding the payment of his benefit. It further submitted that the complainant's claim will be processed as soon as it receives the required application forms.

5. Determination and reasons therefor

- [5.1] The issue that falls for determination is whether the maturity values of the complainant's retirement annuities as indicated by the respondents represents the correct values that are due to him.
- [5.2] Since it is impossible for life insurance companies to give accurate predictions of the value of future benefits, they employ illustrative growth rates as a basis for estimating the value of future benefits. This is especially so in market-linked portfolios. Thus, two illustrative growth rates are normally used: a higher one to illustrate future values against a higher inflationary backdrop, and a lower one using a lower inflationary environment as a backdrop.
- [5.3] *In casu*, the complainant submitted that he received a letter from the second respondent which reflected his retirement values as R100 000.00, which is less than the original amount that was quoted to him. However, the respondents indicated that they do not have any records which

indicate that an amount of R100 000.00 was given to the complainant as his retirement value. Further, the complainant failed to submit any document which prove that the amount of R100 000.00 was indicated as his retirement value or that it declined by R40 000.00 after six months.

- [5.4] In any event, it is evident that the complainant's retirement capital was based on certain assumptions as stated in the policy contracts. The respondents submitted that the complainant's illustrative values were not guaranteed and that they depend on future investment performance. Further, the factors affecting the complainant's actual benefit were stated in the policy contracts. The apposite portion of policy contract number 8161524 that was issued to the complainant reads as follows under the heading "Investment Portfolio" :

"Contributions under this policy are invested in the Performance Profits Portfolio. Each month OLD MUTUAL will adjust the Accumulation Account with Performance Profits which depend on the value of the assets in the portfolio and are therefore subject to market fluctuations."

- [5.5] Thus, it is clear that the policy contract provided that the illustrative values under this policy depend, *inter alia*, on the value of the assets in the portfolio and is subject to market fluctuations. The respondents indicated that there was a decline in the market in September 2001 until April 2003 and that this had a negative effect on the investment returns on market-linked portfolios. It is further clear that the investment returns on policy 4363413 also depend on the performance of the investment market.
- [5.6] Therefore, I am satisfied that the complainant accepted his policies with full knowledge of the factors affecting his actual maturity values. It is clear that the decline in the market between September 2001 and April 2003 affected the actual maturity values of the complainant's policies.
- [5.7] The complainant also alleges that he was a member of the third respondent while he was still young. He further alleges that he tried to get payment of his benefit from the third respondent without success. However, the complainant failed to provide any details regarding his membership of the third respondent or the fact that it failed to pay him his benefit. Further, the complainant did not dispute the third respondent's submission that it has never received any application forms from him regarding the payment of his benefit.
- [5.8] In any event, this aspect of the complainant's complaint is time-barred in

terms of section 30I(1) of the Act. In terms of section 30I(1) of the Act, the Adjudicator is precluded from investigating a complaint in respect of a complaint which arose more than three years from the date that the complaint was lodged. *In casu*, the third respondent submitted that its records indicate that the complainant contributed to it from 1959 until 1963.

[5.9] Thus, a period of approximately 43 years passed before the complainant lodged his complaint with this office. There has been an inordinate delay in lodging this complaint and on this basis alone this aspect of the complainant's complaint falls to be dismissed.

[5.10] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR