HEAD OFFICE
Johannesburg
2nd Floor, Sandown House
Sandton Close 2, 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/6529/2005/PM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act") – R CONA ("the complainant") v PRIVATE SECURITY SECTOR PROVIDENT FUND ("the first respondent") AND ARCHER SECURITY SERVICES ("the second respondent")

1. Introduction

1.1 The complaint concerns the non-payment of the complainant's benefit by the first respondent, a registered pension fund.

1.2 The complaint was received by this office on 18 November2005. A letter acknowledging receipt thereof was sent to the complainant on 13 September 2006. On 18 September 2006 a letter was dispatched to the first respondent giving it until 18 October 2006 to file its response to the complaint. Another letter was dispatched to the second respondent on 18 September 2006 giving it until 18 October 2006 to file its response to the complaint. A response was received from the first respondent on 3 November 2006. No response was received from the second respondent. The first respondent's response was forwarded to the complainant on 12 July 2007. The complainant however omitted to reply.

1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

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 Mothupi (Snr 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

2.1 The complainant was employed as a security officer by the second respondent from 19 September 2002 until his resignation on 22 April 2005. At the same time he was a member of the first respondent by virtue of his employment.

2.2 Subsequent to the termination of the complainant's employment and exit from the fund, a withdrawal benefit became payable to him by the first respondent. However, the complainant's benefit has not been paid by the first respondent, because the second respondent has failed to submit the claim form to the first respondent as required by the fund rules.

Complaint

3.1 The complainant is essentially unhappy about the first respondent non-payment of his withdrawal benefit. According to the complainant he was informed that the reason for the non-payment is that the second respondent has failed to pay monthly contributions over to the first respondent from December 2002 until 30 April 2005. The complainant is accordingly requesting the assistance of this tribunal to enable him to receive his full withdrawal benefit.

4. **Response**

4.1 The first respondent states that according to its records, no claim has been filed in favour of the complainant by the second respondent. The first respondent states that a request has been forwarded to the second respondent to submit the claim on behalf of the complainant. Moreover, the first respondent advises that the complainant must approach the second respondent and obtain a duly completed and signed copy of his claim and file it with the fund.

4.2 The first respondent confirms that there is no indication on its records that the contributions by the second respondent were in arrears.

5. **Determination and reasons therefor**

5.1 It is evident that the complainant's employment was terminated in April 2005. The six months waiting period in terms of the fund rules expired in October 2005. It follows therefore that the complainant's benefit should have been paid on 1 November 2005. The complainant's benefit has, however, not been paid by the first respondent, because a purely administrative requirement of the fund has not been met by the second

respondent. The first respondent has also been unsuccessful in persuading the second respondent to submit the termination claim form.

5.2 The conduct of the second respondent which is the sole of the delay in effecting payment of the complainant's benefit is to be severely deprecated. The second respondent owes a duty of good faith, care and diligence to its employees (see *Tek Corporation Provident Fund & Others v Lorentz* [2002] 3 BPLR 227 (SCA), at 235C). Moreover, the second respondent is required in terms of the fund rules to forward the relevant documentation to the first respondent for payment of benefits to members or their beneficiaries. It is evident that the second respondent has failed to comply with its fiduciary duties and also its failure is contrary to the fund rules.

5.3 Furthermore, it has been held by this tribunal that it is the duty of an employer to complete a withdrawal claim form indicating the cause of the termination of the complainant's employment within a reasonable time (see *Rwexwana v Idaho Spur Provident Fund and Others* [2005] 7 BPLR 640 (PFA), at paragraph 11). As a result of the second respondent's extraordinarily lengthy delay, the complainant has been deprived the use of his benefit for more than two years. The appropriate relief will be to put the complainant in a position he would have been had the second respondent submitted the termination claim form to the first respondent within a reasonable time.

5.4 Regarding the complainant's allegations that the second respondent has failed to pay the contributions regularly, there is no basis for the relief sought because the first respondent confirms that there is no shred of evidence to suggest same according to its records.

6. **Relief**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The second respondent is directed to properly complete, sign and stamp a withdrawal notification claim form for the complainant, and to submit it to the first respondent **within one week** of receipt of this determination.

6.1.2 In the event that the second respondent fails to submit a withdrawal claim form within the period set out in paragraph 6.1.1 *supra*, the first respondent is directed to deal with the matter based on the information furnished by the complainant **within one week** of receipt of such information.

6.1.3 The first respondent is further directed to calculate the benefit that the complainant is entitled to in terms of the fund rules, and to pay

the complainant the said benefit, less any deductions permitted by the Act, **within one week** of receipt of the information referred to either in paragraph 6.1.1 *supra*, or paragraph 6.1.2 *supra.*

6.1.4 The first respondent is further directed to calculate interest on the value of the benefit calculated in paragraph 6.1.3 *supra* at a rate of 15,5% per annum from 1 November 2005 until the date of payment, and to inform this tribunal and the second respondent of such amount, **within one week** of receipt of the information referred to either in paragraph 6.1. 1 *supra*, or paragraph 6.1.2 *supra.*

6.1.5 The second respondent is further directed to pay the complainant the amount of the benefit computed in paragraph 6.1.4 *supra*, **within one week** of receipt of such calculation from the first respondent.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR