



HEAD OFFICE

Johannesburg

1<sup>st</sup> Floor, Norfolk House  
Cnr 5<sup>th</sup> Street & Norwich Close  
Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto: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](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 ("the Act") - JH MARTINDALE v PROTEKTOR PRESERVATION PENSION FUND**

Introduction

- [1] The complaint was received by this office on 26 September 2005 and a letter acknowledging receipt thereof sent to the complainant on 21 October 2005. On 21 October 2005 a letter was dispatched to the respondent giving them until 14 November 2005 to file a response to the complaint. The response was received from the respondents. A reply was received from the complainant on 9 January 2006. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Complaint

- [2] You retired in 1993 whereupon the fund purchased an annuity from Old Mutual (in its own name) from which it pays you a monthly pension of R2 341.06. Your total retirement benefit was R166 760.24 of which R13 300.24 you elected to receive in cash. Your complaint is that you have received no pension increases since your retirement.

Response

- [3] The fund has submitted its pensioner increase policy which was only finalized in February of this year. In terms thereof, members who retired prior to August 2000 shall receive pension increases pursuant to the annuity product chosen by the member when he or she retired. According to the fund, since you elected a so-called level annuity which does not

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V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

provide for any increases, you are not entitled to any pension increases.

- [4] The fund explains that it has no assets other than policies of insurance and for this reason it does not generate any surplus from which to grant additional future increases to pensioners over and above those given in terms of the policy.

Determination and reasons therefor

- [5] Since the policy was purchased in the name of the fund, you continue to be a (pensioner) member of the fund and thus the fund (not Old Mutual from which the annuity was purchased) continues to be liable for your pension.
- [6] The Act prescribes that after the commencement of the new surplus legislation on 7 December 2001, within a certain period all funds must provide for minimum pension increases to pensioners.
- [7] Section 14A and 14B of the Act are the relevant sections. They essentially require that every pension fund organization must establish and implement a minimum pension increase policy which must aim to award a percentage of the consumer price index (CPI) or some other measure of price inflation which is deemed suitable and also deal with how often the increases will be granted. The minimum pension increase is then, in simple terms the minimum of inflation-related increases (as set out in the minimum pension increases policy aforementioned) and increases that can be afforded with reference to which is sometimes termed the "Notional Pensioner Accumulation Account".
- [8] As regards the fund's contention that it has no assets other than policies of insurance, the manner in which the fund structures the assets backing its liabilities is irrelevant to its obligations in terms of the Act. Furthermore the reference to the structure of the fund precluding actuarial surplus I take to refer to the measure contained in section 14B(4)(b) of the Act concerning the funding situation in the fund. Even if this is correct, (in which case the measure would be a nil increase), the section still directs the fund to adopt the greater of this measure and the increase resulting from application of the policy described in section 14B(3)(a) of the Act. As stated, such must "aim to award a percentage of the consumer price index, or some other measure of price inflation which is deemed suitable by the board".
- [9] The implication for the fund is that it cannot rely on the fact that your chosen annuity is a level annuity and, as such, did not provide for built-in increases. The fund is obliged to comply with the minimum pension increase provisions contained in section 14A and 14B of the Act. The Act requires the fund to, at the very least, ascertain whether it can afford to

give its pensioners a pension increase during the year. If not, and the conclusion is objectively reasonable, then no pension increase for that year can reasonably be paid.

- [10] Given that the fund's pensioner increase policy as it stands is based on an incorrect interpretation of the Act, the appropriate order is to declare the policy as it stands invalid and to remit the matter back to the board for a fresh decision as to the appropriate minimum pension increase policy to be adopted pursuant to the requirements of sections 14A and 14B.

Relief

- [11] In the result I make the following order:

- [11.1] The fund's pensioner increase policy as at February 2006 is hereby declared invalid.
- [11.2] The fund is ordered to establish and implement a pension increase policy as required in terms of section 14B(3) of the Pension Funds Act, 24 of 1956 within 6 weeks of the date of this determination.
- [11.3] If the fund should fail to do this within the stipulated period, the complainant is free to approach this office on the same papers for relief.

DATED AT CAPE TOWN ON THIS THE      DAY OF                                  2006.

Yours faithfully

**VUYANI NGALWANA**  
PENSION FUNDS ADJUDICATOR