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Our ref:PFA/KZN/6246/2005/SG

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): B E Duma v Orion Money Purchase Provident Fund/ Old Mutual Life Assurance Co (SA) Ltd

Introduction

1. This matter relates to the entitlement or otherwise of a member of a pension fund, to the payment of a withdrawal benefit upon the transfer of the business of the fund to another fund.
2. The complaint was received by this office on 7 November 2005, and a letter acknowledging receipt thereof was sent to you on 16 November 2005. The response to the complaint was received by this office on 12 December 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

The Factual Background

3. You have been employed by Roman Workers Trust (“the employer”) since 1998. The employer was a participating employer in the Orion Money Purchase Provident Fund (“the fund”) until 1 September 2003. The fund assets and liabilities in respect of the members are to be transferred to another fund in terms of section 14 of the Act, but no approval has as yet been received from the Registrar.

The complaint

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)

Office Manager: L Manuel

4. Your complaint is that you have “resigned” from the fund and thus you are entitled to a withdrawal benefit.

The Fund’s response

5. The fund contends that you are still in the employment of the employer and in terms of its rules you are not entitled to a withdrawal benefit. It further contends that you are under the mistaken impression that when the participation of the employer in the fund was discontinued you became entitled to a withdrawal benefit. The fund contends that this is not so because upon the approval of section 14 by the Registrar of Pension Fund the assets and liabilities of members will be transferred to another fund.

Determination and reasons therefor

6. The participation of the employer in the fund discontinued on 1 September 2005 and its assets and liabilities are in the process of being transferred to another fund administered by NBC. The transfer takes place under section 14 of the Act and this entails the approval of the transfer by the Registrar of Pension Funds.
7. You are still in service and the discontinuation of the participation of the employer in the fund does not entitle you to a withdrawal benefit. All what it means is that upon the completion of the transfer, your membership will be transferred to another fund. However, the transfer needs to be approved by the Registrar. Your contention that you are entitled to a withdrawal benefit from the fund cannot be sustained.
8. In the result, your complaint cannot succeed.

DATED AT CAPE TOWN ON THIS DAY OF 2007

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator