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Please quote our ref: PFA/GA/6547/05/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the ACT”): L E MALEKING (“the complainant”) v MOMENTUM PENSION PRESERVATION FUND (“the respondent”)

1. Introduction

- [1.1] This matter concerns the complainant’s dissatisfaction regarding the quantum of the withdrawal benefit paid by the respondent.
- [1.2] The complaint was received by this office on 29 November 2005. A letter acknowledging receipt of the complainant was sent to the complainant on 2 December 2005. On the same date a letter was dispatched to the respondent giving it until 23 December 2005 to file a response to the complaint. On 19 January 2006, the respondent furnished a response in the matter. On 14 February 2006, this tribunal forwarded the response to the complainant for her further submissions. The complainant did not file her further submissions.
- [1.3] After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

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

2. The facts

- [2.1] On 23 January 2003, the complainant effected a transfer in the amount of R54 173.55 to the respondent. Thus, with effect from 4 February 2003, the complainant became a member of the respondent.
- [2.2] Following the complainant assuming membership in the respondent, the respondent furnished the complainant with a document entitled "The key features of your investment" ("the policy document") in which pertinent details about the complainant's funds in the respondent would be governed and determined. In terms of the policy document the complainant's invested amount of R54 173.55 was invested for a period of 21 years and 11 months which would have fallen due for withdrawal on 23 January 2025. Further, in terms of the policy document the complainant's invested funds were invested in the "Euro Money Market" portfolio.
- [2.3] On 23 April 2004, the complainant withdrew from the respondent. Therefore, with effect from 6 May 2004, as the respondent became liable to pay her a withdrawal benefit the complainant's gross withdrawal benefit of R45 185.88 became payable. The respondent deducted R7 809.45 from her gross benefit in respect of tax, thus the net withdrawal benefit payable to the complainant became R37 376.43 which was transferred into her bank account.

3. The complaint

- [3.1] The complaint is about the complainant's dissatisfaction regarding the lesser withdrawal benefit paid by the respondent.
- [3.2] The complainant submits that upon withdrawing from the respondent, the respondent failed to add interest in her invested funds (R54 173.55) with the Respondent.
- [3.3] Further, the complainant alleges that the respondent deducted R8 987.67 from the amount she invested.

4. The respondent's response

- [4.1] Mr J Mathee, the respondent's principal officer responded on behalf of the respondent.
- [4.2] The respondent submits that at the commencement of the complainant's membership in the respondent she was furnished with a copy of the breakdown of costs that would be levied from the gross invested amount and about the ongoing charges. Further, the respondent submits that it levied an initial charge from the gross invested amount of R677.17 which was explained in the copy of the breakdown of costs.

[4.3] Further, the respondent submits that the “fund administration fee” which was also levied from the gross invested amount was also explained to the complainant in the copy of the breakdown of costs. Furthermore, the respondent explains the ongoing monthly charges as being equivalent to 0,6% per annum of the capital which further equals about 0,05% per month. Therefore, the respondent submits that a total of R864.03 was levied against the complainant’s contract while in force.

[4.4] The respondent avers that a final administration fee in the amount of R500.00 was charged against the complainant’s invested funds when the complainant withdrew from the fund. The respondent submits that the charge was possible because the contract between the respondent and the complainant provides that such administration fee will be charged in the event of early termination.

[4.5] The respondent submits that as the complainant’s funds were invested in the Euro Money Market portfolio which is based on interest bearing investments, the unit price in this portfolio dropped from R1.396125700 per unit at the date of investment to R1.234740300 per unit as at the date of surrender. The respondent therefore says in the complainant’s selected portfolio there had been negative growth of -11.56% from 23 January 2003, (date of inception) to 23 March (date of surrender).

5. Determination and reasons therefor

[5.1] The complainant complains about a lesser withdrawal benefit paid to her by the respondent. The complainant submits that given the period (1 year and 11 months) that her funds were invested the respondent should have paid her a more substantial withdrawal benefit.

[5.2] In terms of the policy document supplied to the complainant by the respondent the complainant selected that her gross invested amount of R54 173.55 be invested in the Euro Money Market portfolio for an investment term of 21 years and 11 months. However, when the complainant withdrew from the respondent after being a member of the respondent for a period of 1 year and 11 months the respondent paid her a lesser withdrawal benefit in the net amount of R37 376.43. The policy document provides that if the complainant makes any changes to her investment contract after the start date, such changes may affect the values and benefits of the investment.

[5.3] Further, from the invested amount the respondent deducted an amount of R677.17 in respect of an initial charge which in terms of the policy document such amount is defined as a charge which covers the initial expenses associated with the investment and is deducted from the contractual lump sum. Further, the respondent deducted a fund fee which in terms of the policy document is a fee that covers fund related administration costs and it

