



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th 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

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/EC/4566/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): A Gadaba v Metropolitan Retirement Annuity Fund (“the fund”) and Metropolitan Life Limited (“Metropolitan”)

Introduction

- [1] Your complaint concerns the amount of your monthly pension which you consider insufficient. The complaint was received on 22 July 2005 and a letter acknowledging receipt thereof was sent to you on 3 August 2005. On 4 August 2005 letters were dispatched to the respondents requesting them to submit responses to your complaint by 25 August 2005. After requesting an extension, the response was received on 12 September 2005. The fund sent you a copy of the response on 21 February 2006. On 25 August 2006 this office also sent the response to you for a reply by 15 September 2006. No reply has been received.
- [2] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the fund on 17 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the

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

complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However, on 6 March 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course. 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. I shall set out the facts as far as essential for understanding this determination.

Factual Background

- [3] You commenced contributing to the fund on 1 December 1990, electing a maturity date of 1 December 2003, when you would be 60. As at the maturity date the total contributions made to the fund amounted to R25 560 and the retirement value on 1 December 2003 was R39 827. You elected to receive one third in cash. On 11 November 2003 you were paid R13 275.67, and the balance is being utilized to pay you a fixed monthly pension of R187. 83.

Complaint

- [4] You are unhappy about the poor monthly pension that you are receiving and request that this pension be increased to R300 per month, or alternatively, that you be paid the two-thirds of the benefit that is being held by the fund.

The response

- [5] Metropolitan confirms that the policy is held in the name of the fund.
- [6] Metropolitan states that you were given the option at retirement not to commute a portion of the benefit in cash so that the total proceeds could be used to purchase a pension which would have amounted to R301.81 per month. It adds that you were invited to consult one of Metropolitan's consultants, and at all times it communicated fully with you, setting out your options clearly.
- [7] According to Metropolitan you were given a quote prior to retirement which reflected the estimated monthly pension of R187.83 and you accepted the quote and proceeded to apply for retirement benefits.
- [8] The respondents state that they are under no legal obligation to increase the annuity to R300 per month. Further, should the annuity be increased, it would be to the detriment of the other pensioners, since the only assets the fund has are insurance policies in respect of its other members.

Therefore, it concludes, the fund does not have any assets to provide the enhancement to your pension.

- [9] Metropolitan advises that rule A3.2 of the fund prohibits you from taking more than one-third of your benefit in cash and the fund is therefore not in a position to pay you the remaining two-thirds held in the fund.
- [10] The respondents conclude that your complaint should be dismissed.

Determination and reasons therefor

- [11] In terms of rule A3.5, benefits which are payable to a member, are payable in terms of the policy on the member's life. The policy document indicates that a fixed pension of R187.83 is payable to you, effective from 1 December 2003, for life.
- [12] As tax legislation and the rules of the fund prohibit you from taking more than one-third of your benefit in cash, you are not allowed to withdraw the balance of the benefit being held in the fund, and your complaint in this regard is therefore dismissed.
- [13] The next enquiry relates to your entitlement to annual pension increases, and whether there is any statutory provision which supersedes the rules or the terms and conditions of the policy. The new minimum benefit legislation enacted with a commencement date of 7 December 2001 provides for certain minimum pension increases to be paid by a pension fund organization as defined in the Act. That a retirement annuity fund is by definition a pension fund organization cannot be disputed. The fund is also approved as a pension fund as defined in the Income Tax Act 58 of 1962. The minimum benefit requirements are couched in terms which are peremptory and therefore override anything to the contrary contained in the rules of a fund. The provisions pertaining to minimum pension increases are contained in sections 14A and 14B.
- [14] While it is not known how the fund currently determines pension increases, it is subject to the terms of section 14B(4). Every pension fund organization must establish and implement a minimum pension increase policy in terms of section 14B(3)(a). The board of management of a pension fund will have to establish and implement a policy with regard to minimum pension increases to be granted to pensioners (section 14B(3)(a)). The minimum pension increase policy must aim to award a percentage of the consumer price index (CPI) or some other measure of price inflation which is deemed suitable, and it must also deal with how often the increases will be granted. A factor that must be taken into account in formulating this policy is the affordability of increases. Depending on the financial performance and structure of the fund, the

percentage pension increase could well be zero. This is particularly likely in respect of members who have elected so-called “level annuities”, in which the amount available on retirement is used in production of a fixed monthly pension without increases. But that is not a decision to be taken arbitrarily. Clear reasons for it must be communicated to pensioners in an intelligible manner.

- [15] In terms of section 14B(3)(a), the beneficiaries of the minimum pension increases are all pensioners, such as yourself, who receive a pension from a pension fund organization.
- [16] Section 14A makes it clear that the minimum pension increase must be implemented from the date of the first valuation after the commencement date (7 December 2001).
- [17] I am of the view that on the plain meaning of the language in the section, the fund is obliged to comply with the minimum pension increase provisions contained in sections 14A and 14B. There is no exemption in the Act for retirement annuity funds, such as the present respondent fund, and it is therefore bound to implement these provisions from the effective date of its actuarial valuation (see *Ngubane v South African Retirement Annuity Fund and Another* [2005] 6 BPLR 516 (PFA) at 520 paragraphs [11] to [17]).
- [18] Since it is not known what the last date of the fund’s actuarial valuation was (after 7 December 2001), it must be established so that the relevant sections of the Act pertaining to the minimum pension increases can be applied.

Relief

- [19] In the result, the order of this tribunal is:
- [19.1] the board of management of the fund is directed to advise you and this tribunal in writing by no later than two weeks from the date of this determination the date since 7 December 2001 of the fund’s last actuarial valuation;
- [19.2] if this date has occurred, the board of management of the fund is directed to establish and implement a policy in terms of section 14B(3) of the Act with regard to minimum pension increases, within six weeks of the date of this determination;
- [19.3] the board of management is further directed to inform you and this tribunal of its policy to be adopted in terms of

minimum pension increases, within seven days of arriving at its decision.

Dated at Cape Town on this the day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator