



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/2752/2005/PM

Re: FINAL DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – M E MAFAKALA (“the complainant”) v CORPORATE SELECTION RETIREMENT FUND (“the first respondent”) AND HIGHLAND PAVING & CONSTRUCTION CC (“the second respondent”)

1. **Introduction**

- 1.1 The complaint concerns the failure of the second respondent to pay contributions to the first respondent, and the first respondent’s consequent inability to pay the complainant’s full withdrawal benefit.
- 1.2 The complaint was received by this office on 18 March 2005. A letter acknowledging receipt thereof was sent to the complainant on 31 March 2005. On 30 March 2005 a letter was dispatched to the first respondent giving it until 21 April 2005 to file its response to the complaint. Another letter was dispatched to the second respondent on 11 May 2005 giving it until 25 May 2005 to file its response to the complaint. A response was received from the first respondent on 3 May 2005. No response was received from the second respondent. The first respondent’s response was forwarded to the complainant on 4 August 2005. The complainant however omitted to reply.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (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), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 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**

- 2.1 On 12 October 2005, a preliminary determination was handed down in this matter in which my predecessor ordered the first respondent to appoint an independent firm of auditors to:

- 2.1.1 calculate the benefit to which the complainant would have been entitled had the second respondent paid to the fund all contributions payable (including the additional voluntary contributions) in terms of the rules,

and to

- 2.1.2 determine the actual contributions paid over to the fund by the second respondent in respect of the complainant.

- 2.2 The full facts appear from the preliminary determination aforesaid.

3. **Independent Auditor's report**

- 3.1 This office received a report from Sizwe Ntsaluba VSP, an independent firm of auditors.

- 3.2 With respect to the first order, the auditors advise as follows:

- 3.2.1 It was established that the voluntary contributions for the complainant should have been based on 5 percent of his annual salary, whilst the second respondent's normal contribution would be 3 percent of fund salary in terms of the fund's rules.

- 3.2.2 The auditors state that from the review of the complainant's salary records it was established that the actual voluntary contributions deducted from his salary amounted to R6 754.89, and also the second respondent's normal contributions amounted to R1 274.81. They submit that the total withdrawal benefit payable to the complainant amounts to R10 054.69.

- 3.3 With respect to the second order, the auditors advise as follows:

- 3.3.1 The actual voluntary contributions paid over to the first respondent by the complainant amounts to R5000.00, and the second respondent's contributions amounted to R2 086.01. The total

actual contributions paid over by the second respondent to the first respondent in respect of the complainant excluding interest amounts to R7 086.01.

5. **Determination and reasons therefor**

- 5.1 In the present matter, it is evident that the total benefit the complainant would have been entitled had the second respondent paid all contributions to the first respondent including interest amounts to R10 637.63. It is also evident that the total actual contributions paid over to the first respondent by the second respondent in respect of the complainant excluding interest amounts to R7 086.01. It follows that the second respondent failed to pay all the contributions to the first respondent during the complainant's membership. The evidence indicates that the complainant was entitled to receive R10 054.69 inclusive of interest when he exited the fund.
- 5.2 The second respondent has a duty placed on it by the rules of the first respondent and the provisions of section 13A(1)(a) of the Act to pay contributions to the first respondent, and the first respondent in turn has a duty to pay out benefits to the members. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable.
- 5.3 The extent of the first respondent's liability is limited to the amount by which the benefit in question has been funded. Thus, if no contributions have been paid to the first respondent, it cannot be held liable to pay any benefit to the complainant. The complainant is entitled to recover the loss of his benefits from the second respondent (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C), at paragraph 3839 F-G).
- 5.4 Thus, the appropriate relief is that which has the effect of placing the complainant in the position he would have been had the second respondent regularly and timeously paid all the contributions to the first respondent in terms of the fund's rules and the Act.

6. **Relief**

- 6.1 In the result, the order of this Tribunal is as follows:
- 6.1.1 The first respondent is hereby ordered to calculate the current interest of the complainant's actual benefit at 15,5% per annum

from 1 February 2005 until date of payment in line with the findings of the independent auditor's report, less amounts already paid to the complainant, and less any deductions permitted by the Act, and to inform this Tribunal and the second respondent of such amount, within three weeks of the date of this determination;

- 6.1.2 The second respondent is ordered to pay the complainant the amount of the benefit computed in paragraph 6.1.1 above, within one week of receiving the calculations from the first respondent, together with interest calculated at 15,5% per annum from 1 February 2005 until the date of payment.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR