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Please quote our reference: PFA/KZN/17867/2007/PM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – D SARABJIT (“the complainant”) v BRIDGE SHIPPING PENSION FUND (“the respondent”)**

1. **Introduction**

- 1.1 The complaint concerns the computation of a death benefit by the respondent following the death of its member, Mr R Sarabjit (“the deceased”), on 23 March 2006.
- 1.2 The complaint was received by this office on 28 August 2007. A letter acknowledging receipt thereof was sent to the complainant on 12 October 2007. On 16 October 2007 a letter was dispatched to the respondent giving it until 16 November 2007 to file its response to the complaint. A response was received from the respondent on 25 October 2007. This response was forwarded to the complainant on 26 October 2007. The complainant however omitted to reply.

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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 The complainant is the deceased's father and a nominated beneficiary. The deceased was the member of the respondent from October 1998 until he passed away on March 2006. Following his passing away a benefit in the amount of R320 887.62 became available for distribution to his beneficiaries. The benefit was distributed among the beneficiaries as follows:

"Dhunrajh Sarabjit (complainant and deceased's father)	60%
Navindra Sarabijt (brother)	20%
Shakira Sarabijt (sister)	20%"

- 2.2 The complainant queries the total amount of benefit (R320 887.62) available for distribution among the deceased's beneficiaries.

## 3. **Complaint**

- 3.1 The complainant is essentially unhappy about the value of the benefit, whether it was correctly computed.
- 3.2 The complainant requests this office to investigate the amount of the benefit payable to the deceased's beneficiaries.

## 4. **Response**

- 4.1 This office received a response from the respondent.
- 4.2 The respondent confirms the deceased's membership of the fund until his date of death. The respondent further confirms that the issue is how the benefit has been calculated from October 1998 until March 2006.
- 4.3 The respondent provided a table illustrating both the employer's and employee's contributions from the date the deceased joined the fund until his date of death. The respondent states that the total employer contributions is R89 609.88, and the employee contributions stands at R64 007.10. The respondent states that the growth on the deceased's share of the fund during the full period from October 1998 to March 2006 amounted to R23 664.51. The respondent also provided a spreadsheet detailing the fund expenses which amounts to R35 586.12 for the duration of the same period.

- 4.4 Moreover, the respondent advises that the deceased had a home loan of R96 800.00 from the fund. At the time of his death he had managed to repay only R40 833.36 in respect of the home loan. The respondent states that the outstanding balance of the home loan in the amount of R76 614.24 including interest was deducted from the benefit.
- 4.5 The respondent states that in addition to the share of the fund, the deceased received a death benefit. The respondent states that the value of the benefit amounted to R339 804.00. The respondent confirms that the deceased's annual salary was R339 804.00 at the time of his death. According to the respondent, the claim in respect of the deceased was administered and paid into trust as follows:

“Total Share of Fund	R 163 485.85
Death Benefit	R 339 804.00
Less Home Loan	R 76 614.24
Less Tax	<u>R 105 787.99</u>
Net Benefit Paid	R 320 887.62”

- 4.6 The respondent concludes by stating that the benefit has been calculated correctly and the correct benefit has been paid into trust.

## 5. **Determination and reasons therefor**

- 5.1 Section 13 states that subject to the provisions of the Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from the person so claiming. The Supreme Court of Appeal reiterated this principle in *Tek Corporation Provident Fund & Others v Lorentz* [2002] 3 BPLR 227 (SCA), at paragraph 28, when it stated that the trustees may only do with the Fund's assets what is set forth in the rules. If what they propose to do is not within the powers conferred on them by the rules, they may not do it.
- 5.2 The relevant rule regulating the death benefit in the rules of the fund is Rule 6.6.4, which reads as follows:

“Upon the death of a MEMBER, other than an EXECUTIVE or a SENIOR MANAGER, who dies in SERVICE before, the earlier of attaining age 70 or the date of his actual retirement , and leaves no DEPENDANTS, there shall be payable an INSURED DEATH BENEFIT of a lump sum benefit equal to the:

6.6.3.1 The MEMBER'S SHARE, and

6.6.3.2 A multiple of once the MEMBER'S FUND SALARY.”

- 5.3 In the present matter, there is documentary proof that the deceased's beneficiaries stand to receive a benefit which consists of an insured

death benefit of R339 804.00, which is made of deceased's annual salary of R339 804.00 multiply by one, and also the member's share of fund.

5.4 The relevant rule regulating expenses in the fund's rules is Rule 5.6, which reads:

"5.6.1 All expenses related to the management, investment and administration of the FUND, including the cost of audit and of actuarial investigations, the cost of insurance premiums in respect of INSURED DEATH BENEFITS, the cost of liability cover in respect of the BOARD, Financial Services Board levies, consultancy fees, legal fees, costs in respect of training of BOARD MEMBERS and bank charges shall be borne by the FUND."

5.5 Moreover, rule 5.2.1 of the fund's rules provides that:

"The EMPLOYER shall contribute to the FUND each month for retirement benefits in respect of a MEMBER in its employ an amount equal to 10.5% of one twelfth of his FUND SALARY, provided that:

5.2.1.1 The BOARD shall review the quantum of the cost in rule 5.6.1 and 2.3.4 at the time the financial statements are adopted, in order to ensure that a sufficient proportion of the EMPLOYER'S contribution goes towards retirement provision."

5.6 *In casu*, it is clear that the respondent is allowed to deduct from the employer's contributions audit fees, actuarial fees, administration fees, bank charges, fidelity cover, FSB levy, RSC levies, reinsurance premiums and trustee training in terms of the rules. These deductions are permissible under the rules of the fund. It follows that this Tribunal cannot order the trustees to act contrary to the fund's rules.

5.7 Moreover, section 37D of the Act allows the following types of deductions:

- "1. Amounts due to the fund in respect of housing loans granted to the member by the fund (section 37D(a)(i)).
2. Amounts due to South African Revenue Services in accordance with Income Tax 58 of 1962(section 37D(1)(a))."

5.8 In the present matter, it is evident that the respondent deducted tax and a home loan from the benefit. These deductions are permissible in terms of section 37D of the Act. There is no basis in law to offer relief to the complainant since no evidence exists to suggest that the benefit was not correctly computed by the respondent. Thus, the benefit available for distribution to the deceased's beneficiaries was correctly computed by the respondent.

6 **Relief**

6.1 In the result, the complaint is dismissed.

DATED AT CAPE TOWN ON THIS            DAY OF            2008.

Yours faithfully

**MAMODUPI MOHLALA**  
PENSION FUNDS ADJUDICATOR