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RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 ("the Act"): S JUDNARAIN v MM RETIREMENT ANNUITY FUND & MOMENTUM GROUP LIMITED

Introduction

- [1] This matter relates to the actual maturity value paid out to a member of a retirement annuity fund, as against the different illustrative maturity values that were reflected on the benefit statements issued to the member over the years.
- [2] The complaint was received by this office on 29 March 2005, and a letter acknowledging receipt thereof was sent to you on 25 April 2005. On the same date a letter was dispatched to the respondents giving them until 16 May 2005 to file a response to the complaint. The response dated 16 May 2005 was received on 23 May 2005. A further response, which was copied to you, was received from the respondents on 24 October 2005. A reply was received from you on 13 March 2006. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.
- [3] 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

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Office Manager: L Manuel

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.

- [4] This matter was referred for settlement to the fund and administrator on 30 January 2006. The parties were given 30 ordinary days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. No offer of settlement appears to have been made in this matter. It is with that brief background that we now determine this complaint in the ordinary course.

The complaint

- [5] You are dissatisfied with the amount of the retirement benefit that became available to you on 1 January 2005, a sum of R24 140, and are contending that it falls far below what was illustrated in the benefit statements that you received over the years from 1 May 1993 to 1 January 2004.
- [6] In your reply, you have expressed your dissatisfaction with your having been restricted to commuting for cash only a maximum of one-third of the retirement benefit. You have demanded that the remaining two-thirds be paid out to you to enable you to invest the same in a unit trust arrangement of your choice.

The response

- [7] In its first joint response filed on behalf of both respondents, the insurer states that you were invested in the Master Managed Portfolio, which is a high-risk market related portfolio, and that you paid contributions of R50.00 per month from 1 January 1984 until 31 December 2004, which in total amounted to R12 000. The insurer further states that the retirement benefit that became available to you was R24 140 and that the average growth of the portfolio over that period was 10.45%.
- [8] On the issue of the illustrated values, the insurer submits that illustrative

growth rates are used to calculate future values as it would be impossible to give an exact maturity value, because nobody knows in advance how the stock markets will perform. According to the insurer, the projected rates that were used between 1985 and 1993 were based on the average inflation rate which at the time was 15%. It further submits that as inflation began to drop, so did the returns, and that this had the effect of rendering the 15% illustrations unrealistic when compared to actual investment performance. The insurer states that in 1993 the top rate for illustrating benefits was dropped to 12%, which illustrative rate has again been left behind by the falling inflation rate, which has fallen down to an average of 7% between 1994 and 2003.

- [9] The insurer further submits that the illustrative values are not promises of what an investor will receive, and that it is the actual performance of the investments, which has over the past few years been affected by the volatile investment markets, that determines the amount of the eventual benefit. It goes on to state that the illustrations that were provided to you were done fairly and in accordance with industry standards, especially in light of the fact that the insurer always includes the following statement whenever it provides members with illustrative values:

“Values may change daily as they are dependent on the actual performance of the underlying assets, as well as any transaction that we processed after the quote date. Future values are for illustration purposes only; we do not guarantee them and we calculate them using an industry standard basis.”

- [10] In its second response, the insurer states that no debits were deducted from your pension interest and that the only charge or cost that was deducted from the investment was a policy fee of R480 (debited at the rate of R2.00 per month over the term of membership).
- [11] On the issue of the commutation of the entire annuity for cash, the insurer states that it is bound by the provisions of the Income Tax Act to only allow the commutation for cash of an amount not exceeding one-third of the amount of the annuity. It goes on to state that currently it is only if the entire annuity is below R22 500 that the member can commute the entire amount for cash.

Determination and reasons therefor

- [12] The fund, like any other registered retirement fund organization, is bound by the provisions of its rules, the applicable legislation and the common law. Thus, the trustees may not do anything with the assets of the fund unless they

are authorised to do it by the rules of the fund. Rule 6.4.1 provides that any annuity payable to a member or a beneficiary shall be paid in accordance with the Act and the Income Tax Act 1962 as amended. The relevant provision of the Income Tax Act for present purposes is the definition of “retirement annuity fund” which is contained in section 1 of the Act. In terms of the section, in order for a retirement annuity fund to receive tax approval status from the Commissioner, its rules shall, *inter alia*, provide that no more than one-third of the total value of the annuities to which any person becomes entitled shall be commuted for a single cash payment, unless the annual amount of such annuities does not exceed R1 800 or such other amount as the Minister may from time to time fix by notice in the Gazette.

- [13] General Note 16, issued by the South African Revenue Service on 15 September 1997 confirms the above provision of the Income Tax Act, and is also binding on retirement annuity funds.
- [14] As the amount of your annuity exceeds R1 800 per annum, the fund may not allow you to commute the total amount for cash. That leg of your complaint is dismissed.
- [15] Regarding the illustrative values, it is indeed so that they are not guaranteed but are merely illustrations of what the value of a member’s benefit might be if certain assumptions are met. For example, on your policy statement as at 1 March 2003, the illustrative maturity value at a rate of return of 5% is reflected as R22 205.00 while at the rate of return of 10% it is R22 724.00. It is further stated thereon that future values are not guaranteed but are for illustrative purposes only.
- [16] The insurer has explained that the fluctuations in the illustrative maturity values were caused by the downward adjustment of illustrative rates, which in turn was necessitated by the falling inflation rate. The value of your investment being dependent on the actual performance of the underlying assets, it had to be affected as well when the underlying assets, which were invested in a high-risk market related portfolio, were affected by the volatile investment markets.
- [17] In light of the above, I am satisfied that there was sufficient disclosure on the part of the respondents that the illustrative values are not guaranteed and depend on the actual performance of the underlying assets. It has also neither been alleged nor proved that the insurer acted unreasonably in providing the illustrations, or that the fund was mal-administered by adopting the illustrations, nor that you have suffered any loss as a result thereof.

[18] In the result, the complaint cannot succeed.

SIGNED IN CAPE TOWN ON THIS DAY OF 2006

Yours faithfully,

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VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR