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Please quote our ref: PFA/GA/17158/2007/EMD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): THE BOARD OF MANAGEMENT OF THE PRIVATE SECURITY SECTOR PROVIDENT FUND (“the complainant”) v HENLO SECURITY TRUST (“the respondent”)

1. Introduction

- 1.1 This complaint, received by this office on 27 July 2007, concerns the registration of an employer with a pension fund established in terms of a sectoral determination. The complainant also claims as ancillary relief an order that the respondent be prohibited from applying for the liquidation of the business.
- 1.2 On 13 September 2007, a copy of the complaint was sent to the respondent, which submitted a response received on 3 January 2008. A copy of the response was submitted to the complainant on 7 March 2008 for a reply, but no reply was received.
- 1.3 Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

2. Complaint

- 2.1 The complainant, a provident fund established in terms of a sectoral determination, asked for an order that

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

- 2.1.1 the respondent be prohibited from applying for liquidation of the business;
- 2.1.2 the respondent be compelled within 7 working days to register with the Fund by completing an application form, a copy of which is attached to the complaint, or by applying for an exemption.

3 Respondent's Response

- 3.1 One of the former trustees of the respondent, H G Schoombie, submitted a detailed response showing that the security business was taken over with effect from 1 April 2002 by ADT Security. This included the employment contracts with the security personnel.
- 3.2 One of the documents attached to the response is a copy of an inspection report of the Private Security Regulatory Authority dated 21 February 2007. The report states in paragraph 27 that the business is no longer involved in installing, repairing and servicing alarms, it only installs X-Panda gates which are not monitored.
- 3.3 The report states further that the business has no employees.

4. Determination and reasons therefor

Prohibition against applying for liquidation

- 4.1 The complainant requests an order that the respondent be prohibited from applying for liquidation of the business.
- 4.2 As the respondent is a trust, it could at best be sequestered upon application to a court. An order restraining it from applying for the liquidation of the business could be described as an attempt at restraining it from doing the impossible.
- 4.3 Such an order would be inappropriate.

Order to compel respondent to join

- 4.4 The second prayer is for an order compelling the respondent to register with the Fund or to apply for an exemption.
- 4.5 The complainant is a fund established in terms of Sectoral Determination 6: Private Security Sector, South Africa issued by the Minister of Labour under the Basic Conditions of Employment Act, 75

of 1997, and registered as a pension fund with the Registrar of Pension Funds.

- 4.6 Clause 24.1 (1) provides for the membership of each employee falling within the scope of the Determination of the complainant.
- 4.7 An employer cannot *join* the complainant or become a member thereof. It can participate in the complainant by deducting contributions from the remuneration due to an *eligible employee*, as defined, and transmitting this amount, together with its own contribution and a prescribed schedule, to the complainant.
- 4.8 *Eligible employee* is in the definition in the Rules of the complainant defined to limit participation to
- persons performing certain classes of work as defined in sub clauses (41) to (46) of Sectoral Determination 3 of 2000;
 - who do not fall under the jurisdiction of any other wage determination, sectoral determination or bargaining council agreement; and
 - who have completed 6 months continuous permanent employment with any of the employers within the Private Security Sector immediately prior to joining the complainant;
 - but excludes an employee employed by an employer who has been granted exemption to participate in the complainant in terms of Rule 3.1.2.
- 4.9 There is no direct requirement in the Sectoral Determination or the Rules of the complainant for employers to register with the complainant. Certain duties are placed on employers by the Sectoral Determination and the Rules, such as to deduct and transmit contributions, and to submit schedules. It follows that before an employer can be ordered to deduct and transmit contributions to the complainant, and in the process be *registered* with the complainant, it must be clear it the employer employs at least one person who qualifies as an *eligible employee* as defined in the Rules.
- 4.10 The respondent only installs X-Panda gates which are not monitored. It has no employees. It follows that it has no *eligible employees*, as defined.

