



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](mailto: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](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

---

Please quote our ref: PFA/GA/14778/2007/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 ANDCASHTEC CC T/A MBA SECURITY (“the respondent”)**

1. Introduction

- 1.1 This complaint, received by this office on 4 July 2007, concerns the payment of contributions to a pension fund and the furnishing of information regarding the contributions. 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 16 July 2007, a copy of the complaint was sent to the respondent, which responded on 18 July 2007.
- 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

The complainant, a provident fund established in terms of a sectoral

---

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

determination, asked for an order that

- 2.1 the respondent be prohibited from applying for liquidation of the business;
- 2.2 the respondent be compelled within 7 working days to make the payment of contributions from 31 May 2007 to date, to the complainant's banking account;
- 2.3 the respondent be compelled within 7 working days to submit schedules from 30 April 2007 to date of determination to the complainant;
- 2.4 the administrator of the complainant, NBC Holdings (Pty) Limited, be compelled to calculate late payment interest and submit the calculations to the respondent for payment;
- 2.5 the respondent to pay late payment interest within 7 working days of receipt of the calculations;
- 2.6 the administrator to calculate repudiated amounts for death and disability claims ("Repudiated Amounts") plus late payment interest in terms of the complainant's policy and to revert to the respondent within 7 working days of receiving this determination; and
- 2.7 the respondent to pay the Repudiated Amounts within 7 working days of receipt of the information from the administrator.

### 3 Respondent's Response

- 3.1 In its response, the respondent states that it had received several emails from the complainant stating that they were in arrears with contributions and schedules, going back to August 2006.
- 3.2 Further communication with the complainant followed on a number of occasions. Details are omitted in this determination, as the complaint is limited to the payment of contributions for the month ending 31 May 2007 and the submission of schedules up to 30 April 2007.
- 3.3 The respondent further stated that he communicated with various officials and employees of the complainant's administrators, including the Divisional Director, Mr Govender.
- 3.4 The respondent also states that the director was requested to send a representative to communicate with its employees as the employees

weren't satisfied that the money had indeed been paid over to the fund.

- 3.5 The respondent also attached proof of payment of contributions and copies of full schedules as submitted to the complainant.

#### 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 This application would apply to an application to court. It would not include the passing of a resolution for voluntary winding-up, be it for a members' or creditors' voluntary winding-up.
- 4.3 The respondent is only one of a number of entities that may apply to court for winding-up. Other possible applicants would include one or more creditors, as well as one or more members (section 66(1) of the Close Corporations Act, 69 of 1984, read with section 36(1) of the Companies Act, 61 of 1973.)
- 4.4 A blanket prohibition against applying to court for relief would be inappropriate. Access to the courts, albeit to have disputes settled, is one of the fundamentals set out in Chapter 2, the Bill of Rights, of the Constitution of the Republic of South Africa, Act 106 of 1996. An order denying a person the right to approach a court for relief would be unconstitutional.
- 4.5 Such an order would under the circumstances also be inappropriate. The order, if granted, could readily be circumvented and rendered ineffective, as it would not restrain any other party, including one or more members of the respondent itself, from applying to court for relief in their individual capacity. I am not willing to consider granting an order that could so easily be circumvented.

##### *Late transmission of contributions and submission of schedules*

- 4.6 Section 13A of the Act requires every employer to transmit member and employee contributions to a fund within seven days from the end of the month for which it was due.
- 4.7 In terms of regulation 33(2), the person responsible for checking the receipt of electronic transfers into the fund's bank account, or similar

person, has to report to the principal officer or the monitoring person

4.7.1 not later than 30 days after the end of the month about the receipt and reconciliation of data; and

4.7.2 not later than 22 days after the end of the month about the receipt of contributions.

4.8 The monitoring person provided for in section 13A(6) has a duty to report to the board of the complainant in writing within seven days after receipt of the reports referred to above about the failure to transmit payments and submit data.

4.9 In the present matter, payment for May 2007 was transmitted timeously on 7 June 2007. It is clear that the person responsible for checking the receipt of electronic transfers into the fund's bank account, referred to in regulation 33(2)(a), failed to ensure that the electronic transfers were properly checked.

4.10 The principal officer or the monitoring person should in future ensure that the complainant's records are properly updated and checked before accepting a report in terms of regulation 33(2), before reporting non-payment and non-submission of schedules to the board, and before a complaint is lodged with this Office.

4.11 As the lodging of complaints for non-payment of contributions and non-submission of schedules before the responsible person and the monitoring person have properly executed their duties in terms of regulation 33 would seem to be a recurring problem, such complainants will have only themselves to blame should they in future be required to lodge their complaints by way of an affidavit, as is normally required in a court of law.

*Prayers 4, 5, 6 and 7*

4.12 The fourth prayer is that the administrator be ordered to calculate late payment. There was no late payment and the complaint is dismissed.

4.13 The fifth prayer is that the respondent be ordered to pay late payment interest. There was no late payment and the complaint is dismissed.

4.14 As there was no late payment, grounds prayers 6 and 7 are dismissed.

4.15 In the result, prayers 1, 2, 3, 4, 5, 6 and 7 of the application are refused and the application is dismissed.

