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Our ref: PFA/KZN/5309/05/VIA

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – JEREMIAH VAN DER MERWE v CENTRAL RETIREMENT ANNUITY FUND & SANLAM LIFE INSURANCE LIMITED

Introduction

1. This matter concerns the discrepancy between the retirement benefit to which you became entitled and the values illustrated to you in 1996. The complaint was received by this office on 9 September 2005. On 15 September 2005 letters were dispatched to the fund and the insurer giving them until 6 October 2005 to file their respective responses to the complaint. The fund and insurer submitted their respective responses on 6 October 2005 and 11 November 2005. On 15 August 2005 copies of the respective responses were sent to you for a reply by 29 August 2005. A reply was received from you on 2 September 2005.
2. 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 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. This matter was referred for settlement to the fund and administrator on 20 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

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divulged to this office. However, on 11 February 2006 we were informed by you that a settlement had not been reached. It is with that brief background that I consider it unnecessary to hold a hearing in this matter and determine this complaint in the ordinary course.

The Facts

3. On 1 October 1984, at the age of 45, you became a member of the Central Retirement Annuity Fund (“the fund”). The fund is administered by Sanlam Life Insurance Limited (“the insurer”) which is also the investor of its funds. You made monthly recurring contributions to the fund of R50.51 which were invested in a Sanlam policy with policy number 7751231x7 (“the initial policy”). Your chosen retirement date was 1 October 2004.
4. On 1 December 1986 (“the conversion date”) the initial policy was converted to and replaced by Sanlam policy 9476710x0 (“the new policy”). Your chosen retirement date in respect of the new policy was 1 December 2004. The values that had accrued in the initial policy were transferred to the new policy on the conversion date. You made monthly recurring contributions of R101.98 to the fund which were invested in the new policy. On 1 August 1991 you increased your recurring monthly contribution to R156.12.
5. You retired on 1 December 2004 and were paid a retirement benefit of R91 820.05. You elected to take one-third of the proceeds (an amount of R17 820.05) in cash and to use the balance of R74 000.00 to purchase a monthly pension. You are currently receiving a monthly pension of R461.36.

The complaint

6. Your complaint is that during 1996, you requested Sanlam to advise you what pension you would receive if you elected to retire at that stage. According to you, Sanlam indicated that you would be entitled to a monthly pension of R1 018.00 but that if you retired in 2005, you would receive a monthly pension of R1 534.00. On that basis you decided to wait until 2005.
7. However in 2005, you were advised that you were entitled to a monthly pension of R461.36 which is less than a third of what was promised to you in 1996.

The responses

8. The respondents have raised two technical points. Firstly they state that I do not have jurisdiction to investigate and determine this complaint because it constitutes long term insurance business and not pension fund business. According to them your “grievance” is not about the execution of duties by the

Fund (or its administrator), but about the execution of duties by the insurer in terms of the policy. Furthermore because the “grievance” is about a matter domestic to a “long-term policy” as defined in the Long-term Insurance Act 1998 (“the Insurance Act”) it is part of the insurer’s long-term insurance business which is regulated by the Insurance Act. As such so the argument goes, this Tribunal does not have jurisdiction to investigate and adjudicate your complaint.

9. Secondly, they argue that this is not a “complaint” as defined in the Act because the complaint is not about the maladministration of the fund by the board of management (or the administrator).
10. On the merits the respondents state that illustrative values merely give an indication of what the policy benefits (and resultant retirement benefits) possibly could be. As such, they are not contractual promises. According to the respondents this was stated in the benefit statement dated 27 March 1996 (attached to your complaint) as follows:

“VOORBEHOUDE EN VERONDERSTELLINGS

...

Die illustratiewe toekomstige waardes is baseer op werklike ondervinding tot op hede en op aannames oor die toekomstige verloop van sake. Hierdie waardes word nie gewaarborg nie. Wanneer voordele werklik betaalbaar word, word die bedrae bepaal deur die werklike verloop van sake tot op daardie satduim. Die betaling van voordele is in alle gevalle onderworpe aan die bepaling van die polis. Die inflasiekoers gedurende die termyn van die polis sal ‘n invloed hê op die koopkrag van die toekomstige voordele en premies.”

11. The respondents state further that the policy investment grows according to actual bonuses declared and this was stated in the new policy document under the heading “Voorbehoude en Veronderstellings” as follows:

“Die werklike voordele wat die polis bied, sal bepaal word deur die werklike bonuskoerse, kosteverhalings en berekeningsbasisse wat van tyd tot tyd geld.”

12. The respondents state that the actual declared bonuses were, on average, lower than the rates used in the illustrations which explains the discrepancy between the retirement benefit you received and the retirement value illustrated to you in 1996.
13. Regarding your dissatisfaction with your monthly pension of R461.36 as compared with what was illustrated to you in 1996, the respondents explain that whereas the prevailing long-term interest rate when the illustration was done in March 1996 was 15% per annum, when you retired in December 2004, the long-term interest rate had reduced to 9% per annum. This,

together with the lower-than illustrated maturity values resulted in a lower retirement benefit than anticipated.

14. Finally the respondents point out that part of your contributions were allocated to risk benefits which you selected. Taking this into account, the retirement benefit of R91 820.05 represents an actual annual rate of return of 13.80%.

Determination and reasons therefor

Technical points

15. There is no merit in the technical points raised by the respondents. The crux of this complaint does not constitute long-term insurance business, but actually relates to a retirement annuity fund, which is a pension fund organization as defined in the Act. The provisions of the Act, including chapter VA (which confers jurisdiction on the Adjudicator to investigate and determine complaints against pension funds) therefore apply to it. For the reasons more fully set out in *Schwartz v Central Retirement Annuity Fund and Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28] and authorities referred to therein and *Louw v Central Retirement Annuity Fund and Another* [2005] 7 BPLR 622 (PFA) at paragraphs [17] to [36] I cannot uphold the contention that this matter constitutes “long-term insurance business” over which I have no jurisdiction.

16. Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Fund & Others* [2005] 8 BPLR 655 (C) (“the *De Beer* judgment”) at 660C-E confirmed the jurisdiction of this office and stated:

“The rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant may be exempt in terms of the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of section 51(a) [sic] of the Act. It cannot simply be treated as an illusionary “go between” the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act’s complaint mechanism.”

17. In so far as your complaint relates implicitly to the administration of the fund and/or the investment of its funds and alleges prejudice in consequence of the maladministration of the fund, your grievance constitutes a complaint as defined (see *Louw* at paragraphs [11] to [15]).

The merits

18. It appears that you have misinterpreted the benefit statement dated 27 March 1996 attached to your complaint. You correctly state that the figure of

R18 410 per annum (which translates into a monthly pension of R1 534) was the retirement benefit value illustrated to you assuming you retired in December 2004. However the figure of R12 226 (which translates into a monthly pension of R1 018.33) was not, as you assumed, an illustration of the retirement benefit you could expect to receive if you retired in 1996. Rather it was the illustrative retirement benefit calculated on the assumption that you retired in December 2004 but elected to receive one third of your benefit in cash (the “enkelbedrag” of R37 850). Therefore it is more appropriate to compare the monthly annuity figure of R1 018.33 (quoted to you in 1996 on the assumption that you retired in December 2004 and elected to receive one third of your benefit in cash) and the monthly pension of R461.36 that you are in fact receiving after commutation.

19. Be that as it may, the fact remains that the “maturity value” of R91 820.05 that you received was lower than the “maturity value” of R113 549 illustrated to you in 1996 (see the figure appearing under the heading “Opbrenings” in the benefit statement dated 27 March 1996).
20. An illustrative value is, as its name suggests, not a guaranteed value but a value calculated on the basis of various assumptions. These assumptions include the contributions which the fund expects to receive for the duration of membership, the interest rate and inflation rate for the period of membership. Where those assumptions fail to materialize it stands to reason that the illustrative values will be out of kilter with actual values. The extent of their inaccuracy will depend on the extent to which the assumptions used in their calculation failed to materialize.
21. In your case, in calculating the illustrative values, the fund assumed an interest rate of 15% per annum which was in line with the prevailing interest rate in 1996 when the illustrations were done. As it turned out, by the time you retired in 2004, the interest rate had declined dramatically to 9% per annum. The rate of inflation too declined from 7.3% in 1996 to 1.4% in 2004.
22. There is no evidence that the fund misled you in this regard. On the contrary, I am satisfied that the fact that illustrative values were not guaranteed and depended on actual growth rates, annuity rates and inflation rates was adequately disclosed to you in the policy document and the benefit statement dated 27 March 1996. (Refer to the quotations in paragraphs 10 and 11 above).
23. You have also not attacked the basis (or method used) for calculating the illustrative values nor have you shown that the fund was maladministered by the adoption of the illustrative values.
24. For the above reasons, you are not entitled to the value illustrated to you in 1996.

Relief

25. In the result your complaint cannot succeed.

SIGNED AT CAPE TOWN ON THIS DAY OF

2007

Yours faithfully

VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR