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Please quote our reference: PFA/GA/5987/2005/RM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 ("THE ACT"): D L BRAY ("COMPLAINANT") v LIFESTYLE RETIREMENT PRESERVER PENSION PLAN ("FIRST RESPONDENT") AND LIBERTY GROUP LIMITED ("SECOND RESPONDENT")**

[1.0] Introduction

[1.1] The complaint concerns the quantum of a death benefit paid by the first respondent to the complainant. It was received by this office on 13 May 2005.

[1.2] A letter acknowledging receipt thereof was sent to the complainant on 17 May 2005. On the same date a letter was dispatched to the second respondent, the first respondent's administrator, giving the respondents until 8 June 2005 to submit a response to the complaint. A response, which was also forwarded to the complainant, was received on 11 June 2005. This office received the complainant's reply on 5 October 2005.

[1.3] After considering the submissions before this tribunal, it is unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefore appear below.

[2.0] Factual Background

[2.1] The complainant is the widow of the late Mr. E.F. Bray ("the deceased"). During June 1999 the deceased invested R279 476.16 in the first respondent and chose a normal retirement date of 10 June 2005. The deceased chose five investment portfolios, four of which were offshore fund portfolios. He passed away on 4 August 2004, where after the first respondent became liable to pay a death benefit in terms of its rules to his dependants and/or nominees.

[3.0] Complaint

[3.1] The complainant advises that she lodged a claim for the deceased's death benefit at the offices of the second respondent on 22 January 2005. Thereafter, she alleges that in February 2005 the second respondent paid her a death benefit of R279 483.12. However, the day after receiving this payment she received a letter, addressed to the deceased, advising that the value of the investment policy in February 2005 was R331 942.24. The complainant then telephoned the second respondent regarding the discrepancy in the amount paid and she was informed that the death benefit is calculated at the time of the deceased's death rather than at the time of payment of the benefit. The difference between the two values, which was R52 459.12, was retained by the second respondent. The complainant requires an explanation for the second respondent not paying the amount of R52 459.12, which she feels she is entitled to receive.

[4.0] Response

[4.1] The principal officer of the first respondent, Mr. J. Wolmarans, submitted a response to the complaint with which the second respondent concurred. He advised that the deceased invested R279 476.16 in the first respondent during June 1999. The illustrative maturity value as at 10 June 2005 was R331 942.24. However, the investment value as at the date of the deceased's death on 4 August 2004 was R279 483.12. After the deduction of tax of R73 476.75 the net amount of R206 006.37 was paid out to the complainant.

[4.2] The principal officer avers that, in terms of rule 5.1, the investment value as at the date of death of the deceased was payable by the first respondent. With regards to the timelines the principal officer advises that the second respondent was notified of the death of the deceased on 25 November 2004, where after various requirements needed to be furnished to the second respondent. The final required document, namely the application for a tax deduction directive from the South African

Revenue Services, was only received on 3 March 2005. The payment to the complainant was made on 9 March 2005.

[4.3] The principal officer then goes on to explain the substantial difference in values between the date of death of the deceased and the letter received by the complainant in February 2005. He explained that out of the five portfolios the deceased was invested in there was a 21.5% increase in the value of the Stanlib Money Market Equity fund during the period in question. The other four portfolios were offshore investments that did not perform as well as the locally based investment during the period. These upward market movements accounted for the higher value of the portfolio indicated in the letter sent to the deceased in February 2005.

[4.4] The principal officer went on to explain that due to "system constraints and limitations" at the time, the second respondent "inadvertently" forwarded a maturity notification letter to the deceased on 26 February 2005. He advises that these system constraints have been addressed and a new process has been implemented to combat similar situations in the future. The principal officer admits that sending the letter was an error and apologises for it.

[5.0] Determination and reasons therefore

[5.1] The crisp issue for determination in this complaint is whether the respondents paid the correct death benefit amount to the complainant or whether she is also entitled to receive the further portfolio returns for the period from 4 August 2004 until 26 February 2005.

[5.2] The fund is a registered fund in terms of the provisions of the Act and it is bound by its rules in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the fund, the members, the employer and any service provider such as the administrator of the fund may only do that what is set forth in the rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E).

[5.3] The relevant rule in the present complaint is rule 5.1 and it reads as follows:

> "5.1 **BENEFIT ON DEATH OF MEMBER**
>
> On the death of a MEMBER a death benefit equal to the balance in the MEMBER'S individual account as determined at the date of death shall be payable as one or more annuities provided that all or any portion of such annuity

> may be taken as a lump sum subject to the agreement of the MANAGEMENT COMMITTEE."

[5.4] It is clear from rule 5.1 that the quantum of the death benefit payable by the first respondent is the balance in the member's individual account as determined at the date of death of the deceased rather than at the date of maturity or date of payment of the benefit. The respondents have confirmed that the balance in the deceased's individual account at the time of his death was R279 483.12 and this is the amount that was paid to the complainant.

[5.5] The subsequent increases in the deceased's individual account due to better market performance in the underlying investment portfolios occurred after his passing away. The first respondent is not bound to pay these increases to the complainant or any other beneficiary because these increases occurred after the deceased's death and the rules do not permit such payments.

[5.6] With regard to the time it took to pay the death benefit to the complainant this tribunal has to consider the rules and section 37C of the Act. Rule 5.2.1 merely states that death benefits will be paid in accordance with the provisions of the Act. The complainant was the deceased's spouse. Therefore, she is a dependant of the deceased and the death benefit had to be paid in terms of section 37C(1)(a) of the Act. The sub-section reads as follows:

> "If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants."

[5.7] In the present matter the principal officer confirmed that the second respondent was informed of the deceased's passing away on 25 November 2004 (not 22 January 2005 as the complainant advised in her complaint). He further advised that various documents were requested and the final requirement, a tax directive from SARS, was only received by the second respondent on 3 March 2005. The death benefit was paid to the complainant on 9 March 2005. Thus, the respondents paid the death benefit within three and a half months from the date of lodgment of the claim to the date of payment. This is well within the twelve month period stipulated in section 37C(1)(a) of the Act. Given that documents had to be properly completed and legal requirements had to be fulfilled before payment of the benefit could be effected, this tribunal is of the view that the respondents did not unreasonably delay in paying out the death benefit to the complainant within three and a half months of receiving the death claim notification.

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

Dated at Johannesburg on this the day of 2008

Yours faithfully

**Mamodupi Mohlala**
**Pension Funds Adjudicator**