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Please quote our reference: PFA/GA/13722/2007/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): PB DE KLERK & OTHERS ("the complainants") v FUNDS AT WORK UMBRELLA PROVIDENT FUND ("first respondent") / MOMENTUM GROUP LIMITED ("second respondent")

1. Introduction

- 1.1 This complaint relates to the distribution of a death benefit.
- 1.2 A complaint dated 30 April 2007 was received by this office on the 15 May 2007. A letter acknowledging receipt thereof was sent to the complainant on 4 June 2007 and on the same day a letter was sent to the respondents giving them until 2 July 2007 to file their responses dated 23 March 2007 received by this office.
- 1.3 After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complainants, Pieter B De Klerk, Johannes H De Klerk and Philippus De Klerk are the sons of Mr. Phillipus Lodewicus De Klerk ("the deceased") who passed away on 21 December 2006.
- 2.2 The deceased was previously married to Mrs Magarieta Jacob De Kerk who passed away on 1 June 2005. The complainants are children born

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrobbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mthupi (Assistant Adjudicator)

Office Manager: L Manuel

out of this relationship with the deceased. When the deceased died, he was married to Mrs Magdalena Magrietha De Klerk (“the surviving spouse”).

3. Complaint

- 3.1 The complainants are aggrieved by the decision of the trustees of the first respondent to award the entire benefit of R423 220.70 to the deceased’s surviving spouse.
- 3.2 The complainants state that they disagree with the decision of the trustees of the first respondent on the following basis;
 - 3.2.1 the complainants had a long standing relationship with the deceased as his children;
 - 3.2.2 all complainants are normal salary earners;
 - 3.2.3 the surviving spouse had a senior position at CNA before and during her marriage to the deceased, and she earns a substantial salary which is fairly comparable to that of the complainants;
 - 3.2.4 the total period of the relationship between the surviving spouse and the deceased after the death of the deceased’s previous spouse was 18 months of which only four months was in marriage;
 - 3.2.4 the surviving spouse like the complainants is totally financially independent; and
 - 3.2.5 there being no special need for maintenance for any party, the complainants status as dependants as defined by the Act should be given cognizance.
- 3.3 The complainants submit that the proceeds of the benefit should be distributed equally amongst all the parties.

4. Respondents’ Response

- 4.1 Ms Hettie Joubert, the principal officer of the first respondent submitted a response on behalf of the respondents stating that the deceased was employed by Allman Labour Solutions CC (“ the employer”) with effect from 01 May 2002 until his death on 21 December 2006.
- 4.2 Second respondent states further that the death benefit payable in

respect of the deceased amounted to R423 220.70. The deceased did not complete a nomination form. The trustees of the first respondent conducted an investigation upon the death of the deceased to identify the deceased's dependants and/or nominated beneficiaries. The following persons were identified:

- 4.2.1 Mrs Magdalena Magrietha De Klerk, surviving spouse of the deceased.
- 4.2.2 Three major children namely, Pieter Barendse De Klerk, Johannes Hermanus De Klerk, and Phillipus Lowedicus De Klerk.
- 4.3 The trustees of the first respondent decided to make payment of the entire death benefit in the amount of R423 220.70 to the surviving spouse of the deceased.
- 4.4 The second respondent states that trustees of the first respondent, in allocating the death benefit took into account the, age of the dependants, their relationship with the deceased, the dependants' respective current financial situation, their future earning capacity and employment prospects, the wishes of the deceased and the amount which is available for distribution.

5. Determination and reasons therefor

- 5.1 Section 37C(1)(a) of the Act regulates the distribution of the benefit and reads:

“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 all such dependants.”

- 5.2 The trustees of the first respondent have identified the dependants of the deceased. The trustees duty is to distribute and allocate the death benefit in an equitable manner. In *Sithole v ICS Provident Fund and Another* [2002] 4 BPLR 430 (PFA) at paragraph 24, it was held that
 “When making an equitable distribution amongst dependants the board of management has to consider the following factors

- the age of dependants
- the relationship with the deceased
- the extent of dependency
- the wishes of the deceased placed either in the nomination form and / or his last will, and
- financial affairs of the dependants including their future earning capacity potential.”

