



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

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
Website: www.pfa.org.za

Please quote our ref: PFA/GA/21186/2007/LCM

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 HEIDI KIDD T/A GENESIS SECURITY SERVICES (“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 December 2007, a copy of the complaint was sent to the respondent, who furnished a response by way of a letter received on 10 January 2008. A copy of the response was forwarded to the complainant on 28 February 2008 for a reply. The complainant failed to furnish a reply.
- 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

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 Mballo (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

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

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 The respondent submits that she commenced operations in the security business in March 2007, but as the business proved to be unprofitable and unsuccessful the operations were ceased in September 2007.

3.2 Further, the respondent submits that in September 2007, she duly informed the Private Security Industry Regulatory Authority "PSIRA" regarding the ceasing of operations and PSIRA confirmed the ceasing of the respondent's operations in a letter (letter attached) dated 10 January 2008.

3.2 Due to the fact that the respondent ceased its operations it submits that it cannot be a participant in the complainant as it does not have employees.

4. Determination and reasons therefor

Order to compel respondent to join

4.1 The second prayer is for an order compelling the respondent to register with the Fund or to apply for an exemption.

4.2 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.

4.3 Clause 24.1 (1) provides for the membership of each employee falling within the scope of the Determination of the complainant.

4.4 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.

4.5 *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.

4.6 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.

4.7 Following this tribunal receiving the respondent's response, on 28 February 2008, such response was forwarded to the complainant. The complainant failed to supply its reply in the matter. As the complainant has failed to dispel its onus to rebut the respondent's response particularly that the respondent has in its employ eligible employees as defined in the rules. Further, as it cannot be ascertained (due to the complainant's failure to prove) that following the lodgement of the complaint the respondent indeed continued to fail to become a member of the complaint. Furthermore, on the basis that the complainant submits that it ceased operating in the security business and the fact that there is proof to this, this tribunal cannot further investigate the complaint.

4.8 In the result, the complaint is dismissed.

