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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – N. EDGECOMBE v CENTRAL RETIREMENT ANNUITY FUND (“the fund”) and SANLAM LIFE INSURANCE LTD (“Sanlam”)

Introduction

[1] Having considered the complaint received by this office on 14 April 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. 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 on 20 January 2006. The parties were given 30 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 divulged to this office. However, on 9 March 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course.

The complaint

V Ngalwana (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalu (Assistant Adjudicator), R Maharaj (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), Solomzi Gcelu (Assistant Adjudicator)

Office Manager: L Manuel

- [2] Your complaint concerns the value of your retirement benefit from the fund which was appreciably less than you had been led to believe on inception of your membership. You state that you had been assured that you would receive at least R708 000, but on maturity of the underlying policy, when you reached 65, you were only paid an amount of R428 719. For this you rely on a letter sent to you by Sanlam on 23 March 1992.

Response

- [3] The fund has raised a technical point that your grievance constitutes long-term insurance business that is regulated by the Long-Term Insurance Act and not the Pension Funds Act. On this basis it states that I do not have jurisdiction to determine the matter.

- [4] On the merits, the respondents claim that you were never “promised” the amount you claim in respect of the underlying policy (no 10294568X0). The amount of R708 000 appearing under the heading of “Illustrative maturity value” on the letter dated 23 March 1992, was, according to the fund, provided purely for illustrative purposes. It also contends that you have not furnished the complete document, as certain further particulars were contained overleaf. In this regard the fund has drawn attention to the second sentence of the letter which reads:

“Please also see further particulars overleaf.”

- [5] The fund states that while it has not kept records of correspondence from 1992, it has in its possession a similar annual report sent to another member. Since these were of a generic nature, the fund claims that the content of the letter would have been the same. It alleges that this letter contains information indicating clearly that the illustration is only a possible value should certain assumptions regarding the future materialize. In particular, an assumed growth rate of 15% was referred to.

- [6] Further illustrative values were furnished on the policy document, which showed possible benefits of R491 941 at an assumed growth rate of 12% and R672 600 at a rate of 15%. The minimum maturity value, according to the fund, was set out on the same page as guaranteeing an amount of R232 541, provided all contributions were duly paid timeously.

- [7] The fund further contends that the following information appears on the policy document under the heading “Provisos and Assumptions”

“Information supplied in this statement is subject to the provisions of the policy. The actual benefits afforded by this policy shall be determined by the actual growth rates and bases of calculation applicable from time to time...”

The illustrative values in this statement have been calculated in accordance with the benefit illustration agreement of the LOA and are not guaranteed. They are shown at two assumed growth rates to illustrate how a difference in growth rates will influence the eventual proceeds.”

- [8] In explanation of the growth on your investment not being in line with the initial illustrations given, the fund has submitted that one fundamental underlying assumption, the inflation rate used, has not been borne out by subsequent events. At the time that you joined the fund the illustrated rate of 15% was in line with investment returns earned at that stage. Since then the inflation rate has experienced a dramatic decline to 1.4% in 2004. This decline, claims the fund, is indicative of the decline in investment returns experienced over the same term since investment returns in general move in line with inflation.
- [9] Since you obtained R428 719 at retirement date (maturity of the policy), the fund claims that you have received the benefit to which you were entitled in terms of the rules and policy, being well in excess of the guaranteed minimum.

Determination and reasons therefor

Point in limine

- [10] There is no merit to the preliminary point raised by the fund. 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. For the reasons more fully set out in *JJ Schwartz v Central Retirement Annuity Fund & Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28] and *Louw v Central Retirement Annuity Fund & Another* BPLR [2005] 7 BPLR at paragraphs [17] to [36], I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.
- [11] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds and others* [2005] 8 BPLR 655 (C) at 660C - E (handed down on 20 October 2005) (“the de Beer judgment”) confirmed the jurisdiction of this office and stated:

“The basis of the complaint was that applicant [Central Retirement Annuity Fund] as the holder of the policy on the life of a member, was neither obliged nor entitled simply to allow Sanlam Life [the insurer] to charge whatever costs and charges it chose to levy and to accept whatever investment bonuses that it chose to declare from time to time without first satisfying itself through its own management committee of the reasonableness or adequacy thereof.

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 s51(a) [sic] of the Act. It cannot simply be treated as an illusory '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."

- [12] Furthermore in so far as your complaint implicitly relates to the administration of the fund and/or the investment of its funds and it is implicit therein that you have suffered prejudice (in that your fund value has been drastically reduced) in consequence of the maladministration of the fund (in the form of the levying of undisclosed charges), your grievance constitutes a complaint as defined. (See *Louw* at paragraphs [11] to [15].

Merits

- [13] With regard to your contention that you are entitled to the illustrative values quoted to you when you joined the fund, or those appearing on subsequent statements, I must agree with the fund that they did not amount to a representation of your future entitlement, but rather illustrated by means of a projected estimate, based on certain assumptions, the growth that you might expect should those assumptions be met. The policy document was in fact quite specific on the minimum guaranteed amount.
- [14] In light of the above, I am satisfied that there was sufficient disclosure on the part of the respondents that the illustrative values were not guaranteed and depended on the bonus rates declared and the average rate of inflation during the period of your membership.
- [15] A significant factor in the decline in the growth of your benefit is the lower inflation rate, which has affected investment returns for all financial institutions. Because the inflation rate reduced, so did interest rates, and consequently returns on most investments. Illustrative values made ten years ago were based on high inflationary scenarios (employing estimated rates of return of 12% to 15%). Since the inflation rate has reduced significantly to around 5% in recent years, it is perhaps not surprising that the investment returns obtained by the fund over the same period have also substantially decreased. The assumptions on which the earlier illustrative values were predicated therefore no longer hold true.
- [16] In view of the above I am unable to award relief on the basis of your complaint. It is clear that the representation you seek to rely on was given for illustrative purposes only, and that the assumptions underlying the

