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Please quote our ref: PFA/WE/6378/05/NS

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): YC CARTER v ORION MONEY PURCHASE PROVIDENT FUND (“the fund”) / OLD MUTUAL LIFE ASSURANCE (“Old Mutual” or “the administrator”) & CAPE TOWN COMMUNITY HOUSING COMPANY (PTY) LTD**

**Introduction**

[1] Your complaint concerns the calculation of a withdrawal benefit that you received from the fund. The complaint was received by this office on 12 November 2005 and a letter acknowledging receipt thereof was dispatched to you on 17 November 2005. On the same date letters were dispatched to the respondents giving them until 8 December 2005 to file responses to your complaint. On 9 December 2005 a response was filed by Old Mutual on behalf of the fund. Old Mutual copied you with a response. On 12 December 2005 a response was received from the employer. A copy of the response was sent to you on 19 January 2006 for a reply by no later than 1 February 2006. No reply was received from you. I consider it unnecessary to hold a hearing in this matter. My determination, together with reasons therefor, is set out below.

**Complaint**

[2] You commenced service with the employer on 1 March 2003. You became a member of the fund (which is underwritten and administered by Old Mutual) on 1 November 2003 by virtue of your employment until you resigned on 29 February 2004. Upon termination of your service, you

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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), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

received a benefit of R7054.97 for the period 1 November 2003 to 29 February 2004.

- [3] You state that the fund did not include the contributions that were allegedly made by the employer in respect of the period 1 July 2003 to 1 November 2003, when calculating your benefit. You state further that prior to your resignation, the employer made an undertaking to backdate the contributions to 1 July 2003. In this regard, a communiqué was issued to all staff members offering them company benefits which included, inter alia, a provident fund and a medical aid allowance.
- [4] While the medical aid allowances were indeed backdated to 1 July 2003 as undertaken by the employer, the provident fund contributions were not. When you enquired about this discrepancy, you were informed that the aforesaid contributions would not appear on your salary advice slip because all the members of the fund are non-contributory members.
- [5] You are now demanding payment of R9 104. 40 together with interest in respect of the outstanding contributions for the period 1 July 2003 to 1 November 2003 and a letter of apology from both respondents.

### **Old Mutual's response**

- [6] Old Mutual states that the administration records of the fund indicate that you became a member of the fund with effect from 1 November 2003 and your employer became a participating employer in the fund on the same date.
- [7] Old Mutual confirms that all members of the fund are non-contributory members. The employer contributes at a rate of 14%. According to Old Mutual the fund's records do not indicate that the employer made supplementary contributions in order to backdate the contributions to 1 July 2003 as alleged by you.
- [8] Old Mutual confirms that when you exited the fund you were paid a withdrawal benefit which was calculated in terms of the rules of the fund.
- [9] It contends that your complaint relates to an agreement made between the employer and the employees and as such it is not in a position to comment thereon and requests that the complaint against the fund be dismissed.

### **Employer's response**

- [10] The employer states that the rate of contribution to the fund was approved

at its Remuneration Committee Meeting held on 3 September 2003. It confirms that it subsequently became a participating employer in the fund with effect from 1 November 2003. It disputes that it undertook to backdate the contributions to 1 July 2003. It states that no member of staff was authorized by the Board of Directors to advise the employees that the contributions would be backdated, nor is there any record of communication to the staff confirming such a fact. The employer concludes that the rules of the fund confirm its participation date as 1 November 2003, which is the first date of its liability for the payment of contributions to the fund.

### **Determination and reasons therefor**

- [11] Section 13 of the Act, states that the rules of a registered fund are binding on the fund's members, shareholders and officers thereof, and any person claiming under the rules, or whose claim is derived from a person so claiming. Furthermore, the trustee's powers are circumscribed by the rules of the fund (see *Tek Corporation Provident Fund and Others v Lorentz* [2002] 3 BPLR 227 (SCA) at 239 D-H).
- [12] It is common cause that the employer became a participating employer in the fund on 1 November 2003. Naturally, the employer was then required to commence contributing to the fund with effect from the date of its participation in the fund. It is clear from the evidence before me that the employer has made regular contributions to the fund from 1 November 2003 to 29 February 2004 as required by the rules. The evidence suggests that the fund did not receive contributions from the employer for the period prior to 1 November 2003. There is no obligation upon the employer to pay the aforesaid contributions in terms of the rules of the fund. For this reason, the fund cannot be held liable for the payment of those contributions.
- [13] In my view, the fund is correct in its contention that your complaint relates to an agreement made between you and the employer. This is, in my view, a labour dispute, over which I have no jurisdiction. In terms of Section 1 of the Act, any complaint lodged with this office must relate to one of three aspects of a pension fund organization (as defined in the Act), namely, the administration of the fund, the investment of its fund or the interpretation and application of its rules.
- [14] Although it may be arguable that your complaint relates to the interpretation and application of the fund's rules, your complaint does not allege that the fund has acted improperly or that it is guilty of maladministration. Nor is there any allegation that the employer has not fulfilled its duties in terms of *the rules of the fund*. Your complaint stems from the failure of the employer to perform in terms of the undertaking that

was allegedly made by it to its staff members to back date the contributions to 1 July 2003. Such conduct on the part of the employer may or may not have constituted an unfair labour practice in terms of the applicable labour relations legislation. Whatever the case may be, such a dispute falls outside my jurisdiction and I may not investigate it.

[15] In the result, the complaint is dismissed.

Dated at Cape Town on this the                      day of                      2007.

Yours faithfully

**Vuyani Ngalwana**  
**Pension Funds Adjudicator**