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Please quote our reference: PFA/KZN/13381/2007/NVC

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): M Rughbeer (“the complainant”) v Alexander Forbes Retirement Fund (“the first respondent”) and Alexander Forbes Group Limited (“the second respondent”)**

**1. Introduction**

- 1.1 The complaint concerns the amount of the retirement benefit granted to the complainant.
- 1.2 The complaint was received by this office on 16 April 2007. A letter acknowledging receipt thereof was sent to the complainant on 9 May 2007. On 4 May 2007 a letter was dispatched to the first respondent, giving it until 4 June 2007 to file its response to the complaint. The response on behalf of both the respondents was received on 4 June 2007. The response was sent to the complainant on 9 July 2007 requesting a reply by 24 July 2007. No reply has been received from the complainant.
- 1.3 After reviewing the written submissions before me, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

**2. Complaint**

- 2.1 The complainant’s daughter, Mr Asha Naidoo, lodged the complaint on his behalf. Ms Naidoo states that her father, Mr M Rughbeer, retired at the age of 65 in July 2007 (should be 2006). He elected to transfer the proceeds of the benefit to Metropolitan Life Limited. She states that an official from the second respondent, the fund administrator, advised her

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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 Mthuphi (Assistant Adjudicator)

Office Manager: L Manuel

father prior to his retirement that he would receive from the pension fund, R58 846.06 of which R29 423.02 will be in a cash and the balance would go into an annuity account and from the retirement fund, he would receive R320 303.50, to be transferred into the annuity account.

- 2.2 Ms Naidoo states that her father received R29 423.02 in cash and R58 846.02 was transferred into his annuity account. The official from the second respondent subsequently advised them that he made a mistake and that no further benefits were payable to Mr Rughbeer. Ms Naidoo states that she is dissatisfied that he has not returned her calls or faxes, has not explained why the mistake was made and she requests this tribunal to assist her to clarify the matter.

### **3. Response**

- 3.1 The respondents state that Mr Rughbeer, who was employed by Jurgens CI (Pty) Limited, transferred from the Jurgens Group Pension Fund to the first respondent (Pension Section) which is an umbrella fund, on 1 March 2003.
- 3.2 The respondents state that the total retirement benefit due to Mr Rughbeer was R90 154.90 of which R29 423.02 was paid to him in cash, after tax was deducted and R58 846.06 was paid to Metropolitan Life Limited on his behalf to purchase an annuity.
- 3.3 The respondents state that the amount of R320 303.50 that Ms Naidoo refers to was reflected in a "Compulsory Purchase Life Annuity Declaration Form" forwarded in error by the second respondent to Metropolitan Life Limited. They contend that it was an honest mistake on the part of the second respondent but that it subsequently forwarded documents reflecting the correct amount to Metropolitan Life Limited.
- 3.4 According to the respondents the complainant was entitled to his Fund Credit and growth thereon, plus the transfer value from the Jurgens Group Pension Fund. He was obliged to purchase a pension with two thirds of the benefit.
- 3.5 The respondents further deny not reacting appropriately or timeously to Ms Naidoo's calls and letters. They also state that payment was made within two weeks of receipt of the original completed retirement application form.
- 3.6 The respondents state that any benefit payable by a fund is regulated by the rules of the particular fund and the right or entitlement to a benefit arises from the rules, which are binding in terms of the Act.
- 3.7 The respondents assert that any payment to Mr Rughbeer of the higher

benefit would have resulted in unfair enrichment, at the expense of the fund which would then have been impoverished. They conclude that a member does not acquire a right to a benefit based on a promise which was made erroneously and requests that the complaint be dismissed.

#### 4. **Determination and reasons therefor**

4.1 Section 13 of the Act sets out the binding force of the rules. As the Supreme Court of Appeal stated in *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28] the trustees may only do with the fund's assets what is set forth in the rules. Thus, if what they propose to do is not within the powers conferred on them by the rules, they may not do it. Therefore, in order to ascertain the member's entitlement the rules of the fund must be examined.

4.2 In terms of rule 9 of the Special Rules applicable to Jurgens CI (Pty) Ltd, the retirement benefit is set out in General Rule 5 and is a pension that can be purchased with the Fund Credit, which is the sum of the "Member's Portion" and the "Employer's Portion". In terms of the definition of "Member's Portion" in rule 2 of the General Rules, it is equal to the member's contributions applied towards retirement funding (additional disability cover may be deducted from the member's contributions), plus transfer amounts from other funds, plus any additional voluntary contributions that the member made, plus investment return. "Employer's Portion" is made up of the employer's contributions applied towards retirement funding and, if applicable, a past service benefit from the "Previous Fund", calculated on actuarial principles, plus additional voluntary contributions that the employer may make towards greater benefits for the members or for the funding of the past service benefit.

4.3 Mr Rughbeer's "Fund Credit" was calculated as follows:

"Member Contributions	3,267.54
Employer Contributions	4,857.61
<i>Transferred Portion</i>	43,331.25
Plus: Total investment growth on all contributions	36,812.68
Less: Forfeiture on Non Entitled Employer Portion	<u>0.00</u>
<b>GROSS BENEFIT</b>	<b><u>88,269.08</u></b>
Plus interest from disinvestment date to date of payment	<u>1,885.82</u>
<b>TOTAL</b>	<b><u>90,154.90</u></b>

4.4 This office is satisfied that Mr Rughbeer received the benefit to which he was entitled in terms of the rules. He therefore has no contractual claim against the fund.

4.5 The question is does he have a delictual claim against the fund? To succeed with a claim for damages for delictual misrepresentation (or maladministration) the complainant has to prove that the

misrepresentation (or maladministration) caused him to suffer loss. As stated, the complainant was never entitled to the R320 303.50 in terms of the rules. There is furthermore no evidence that the “misrepresentation” caused him to act to his prejudice. Therefore in the absence of proof of the loss suffered, the complainant cannot succeed in a delictual claim against the fund either.

**5. Relief**

5.1 The complaint is dismissed.

Dated at Cape Town on this the                      day of                      2007.

Yours faithfully

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