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Please quote our reference: PFA/WE/12590/2007/PGM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – N NTWANA (“the complainant”) v PRIVATE SECURITY SECTOR PROVIDENT FUND (“the first respondent”) AND ARCHER SECURITY SERVICES (“the second respondent”)

1. **Introduction**

- 1.1 The complaint concerns the failure of the second respondent to pay contributions to the first respondent, and the first respondent’s consequent inability to pay the complainant’s full withdrawal benefit.
- 1.2 The complaint was received by this office on 14 February 2007. A letter acknowledging receipt thereof was sent to the complainant on 13 April 2007. On the same date a letter was dispatched to the first respondent giving it until 14 May 2007 to file its response to the complaint. Another letter was dispatched to the second respondent on 13 April 2007 giving it until 14 May 2007 to file its response to the complaint. A response was received from the first respondent on 5 December 2007. No response was received from the second respondent.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. **Factual Background**

- 2.1 The complainant was employed as a security officer by the second respondent until June 2006. The complainant alleges that she became

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 Mbalo (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

the member of the first respondent from December 2002, at which point the second respondent effected monthly deductions from her salary for contributions to the first respondent.

- 2.2 When the complainant's employment was terminated in April 2006, the first respondent did not pay her benefit. According to the complainant, she was informed that the reason therefore is that the second respondent had failed to pay the contributions over to the first respondent.

3. **Complaint**

- 3.1 The complainant is essentially unhappy about the respondent's failure to pay his contributions over to the first respondent, and is requesting that the second respondent be ordered to compensate him for the financial loss suffered.

4. **Response**

- 4.1 This office received a response from the first respondent.
- 4.2 The first respondent states that according to the fund's records the complainant has not been paid her benefit because the second respondent has failed to submit contribution schedules as required by the fund's rules and regulation 33 of the Regulations to the Act. The first respondent states that the main purpose of contribution schedules is to enable the fund's administrators to allocate the correct and accurate contributions to each member's fund credit.
- 4.3 According to the first respondent, the second respondent also failed to submit contributions from October 2005 to June 2006. The first respondent states that the complainant's estimated fund credit is R1 198.08. The first respondent states that the fund would be willing to pay out the complainant's benefit should this office so direct.

5. **Determination and reasons therefor**

- 5.1 The second respondent has a duty placed on it by the rules of the first respondent and the provisions of section 13A(1)(a) of the Act to pay contributions to the first respondent, and the first respondent in turn has a duty to pay out benefits to the members. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable.

- 5.2 The extent of the first respondent's liability is limited to the amount by which the benefit in question has been funded. Thus, if no contributions have been paid to the first respondent, it cannot be held liable to pay any benefit to the complainant. The complainant is entitled to recover the loss of his benefits from the second respondent (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C), at paragraph 3839 F-G).
- 5.3 Thus, the appropriate relief is that which has the effect of placing the complainant in the position he would have been had the second respondent regularly and timeously paid the contributions. It is not clear at this stage what the value of the complainant's benefit would have been had the second respondent timeously and fully paid its contributions to the first respondent. However, the administrator of the first respondent is in a position to calculate the said amount.

6. **Relief**

- 6.1 In the result, the order of this Tribunal is as follows:
- 6.1.1 The first respondent is hereby ordered to pay to the complainant the amount of the withdrawal benefit it is currently holding, within one week of this determination;
- 6.1.2 The first respondent is further ordered to compute the value of the withdrawal benefit that the complainant would have been entitled to had the second respondent timeously made the contributions due in terms of the rules, less amounts paid in terms of paragraph 6.1.1 *supra*, and less any deductions permitted by the Act, together with interest calculated at 15,5% per annum from 1 July 2006 until date of payment, and to inform this Tribunal and the second respondent of such amount, within three weeks of this determination;
- 6.1.3 The second respondent is directed to pay to the complainant the amount of the benefit computed in paragraph 6.1.2 *supra*, within one week of receiving the calculations from the first respondent; together with interest calculated at 15.5% per annum from 1 July 2006 until the date of payment.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR