



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 reference: PFA/NW/5432/2005/SM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – SJ VAN ASWEGEN (“the complainant”) v LIBERTY GROUP LIMITED (“first respondent”) AND LIFESTYLE RETIREMENT PRESERVER PENSION PLAN (“second respondent”)

1. Introduction

- [1.1] The complaint concerns the alleged failure of the second respondent to allow the complainant to withdraw his pension fund monies and/or to obtain a loan against his pension fund monies invested with the second respondent.
- [1.2] The complaint was received by this office on 4 October 2005. A letter acknowledging receipt thereof was sent to the complainant on 10 October 2005. On the same date a letter was dispatched to the respondent giving it until 28 October 2005 to file its response to the complaint. Responses were received from the first respondent on 8 November 2005 and from the second respondent on 26 October 2005. These responses were forwarded to the complainant on 6 July 2007 and his further submissions were sought by 13 July 2007, in the event that he wished to make any. To date no further submissions were made.

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

- [1.3] Having considered the submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2. Factual Background

- [2.1] The complainant commenced participation in the second respondent with effect from 24 December 2004 and made a single lump sum contribution of R801 668.77 at the commencement of his policy.

3. Complaint

- [3.1] It appears that the complainant's complaint is that he wants the pension money which he preserved with the second respondent to be paid out to him, alternatively he seeks a loan against his pension fund money. The complainant contends that he has a business and that he might have to close it if he does not get his pension monies or a loan from the second respondent.

4. Responses

First respondent's response

- [4.1] Ms S Swiatek filed a response on behalf of the first respondent. She submitted that the complainant is entitled to make a partial or a full withdrawal from the second respondent as his contributions constitutes the full fund invested into the preservation contract. She submitted that the complainant was provided with a retirement preserver contract in terms of which members of existing employer pension or provident funds can transfer their accumulated benefits on termination of service in order to ensure the continued growth of such benefits. She indicated that this product protects benefits from pension or provident funds with tax advantages and with the option of one withdrawal before retirement, should the member require it.
- [4.2] Further, she submitted that members of a retirement preservation fund are entitled to make one withdrawal (partial or total) only when the fund's rules allow it. The balance of any remaining benefit is locked-in until the normal retirement date. She further submitted that the investment account of the complainant must preserve a minimum of R5000.00 after a partial withdrawal. She also indicated that the first R1 800.00 of the withdrawal is tax-free and amounts in excess of this tax-free portion are taxable at the member's marginal rates.

- [4.3] Moreover, she submitted that the actual costs and expenses incurred in respect of the contract in cases where the complainant takes a full withdrawal are as follows:

Commission plus VAT	R27 417.07
Distribution plus marketing costs	R6 854.27
Acquisition costs	R2000.00
Ongoing renewal costs	R275.00
Finance costs on outstanding expenses less recoveries	R3 082.73
Less Commission clawed back	R0.00
Less Expenses Recovered to date via the charges	R6 672.51
Outstanding expenses as at 27/10/2005	R32 956.56

- [4.4] She further pointed out that an amount of R17 756.47 will be deducted from the complainant's benefit for costs. She indicated that the complainant will be entitled to a nett early withdrawal value of R331 780.28.

Second respondent's response

- [4.5] Mr J Wolmarans, the principal officer of the second respondent filed a response on behalf of the second respondent. He submitted that the complainant has access to a withdrawal benefit in terms of Rule 6 of the fund's rules. Therefore, he argued that the complainant's complaint should be dismissed.

5. Determination and reasons therefor

- [5.1] The issue that falls for determination is whether the complainant is entitled to his pension fund monies in part or totally and further whether he is entitled to a loan against his pension fund monies in the second respondent.
- [5.2] The relevant rule which regulates the entitlement to a withdrawal benefit is Rule 6.1 of the second respondent's rules, which reads as follows:

"A MEMBER may at any time after the date of termination of service with his EMPLOYER withdraw all or part of his benefits, other than those which cannot be withdrawn prior to death or NORMAL RETIREMENT DATE in accordance with 3.2.3 above, provided that a partial withdrawal of a benefit shall be allowed once only prior to payment of a retirement benefit to a MEMBER whereafter any benefit entitlement remaining in the PLAN shall be made paid-up and be dealt with in accordance with the RULES relating to retirement or death as the case may be."

- [5.3] Further, the policy document that was issued to the complainant at the

commencement of his policy stated clearly that he is entitled to withdraw his pension in part or full before retirement. The first respondent also indicated that the complainant's investment account must preserve a minimum of R5000.00 after a partial withdrawal. The apposite portions of the policy document entitled "product description" reads as follows:

"This investment may be accessed, in part or in full, at any age before retirement, subject to any restrictions imposed by the transferring fund. Only one such withdrawal is allowed."

[5.4] Therefore, the complainant is entitled to make a full or partial withdrawal at any age before retirement in terms of the policy document read together with Rule 6.1 of the fund's rules. The respondents also confirmed that the complainant is entitled to make a full or partial from the fund as his contributions constitute the full fund invested into the preservation fund. It follows that the complainant's complaint cannot succeed as he has access to his pension monies and there is nothing which suggests that he was refused the right to withdraw his pension fund monies by the respondents.

[5.6] Further, the complainant seeks a loan against his pension fund monies in order to finance his business. However, it is clear that the second respondent's rules do not make provision for the grant of a loan to a member at all. It follows that the complainant is not entitled to obtain a loan from the second respondent.

[5.7] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR