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Please quote our reference: PFA/GA/5894/2005/SM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“the Act”): S MOALUSI (“the complainant”) v DIEPMEADOW PENSION FUND (“the first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LTD (“the second respondent”)**

1. Introduction

- [1.1] The complaint concerns the alleged incorrect computation of the complainant’s early retirement benefit by the respondents following his retirement on 31 January 2003.
- [1.2] The complaint was received by this office on 18 October 2005. A letter acknowledging receipt thereof was sent to the complainant on 21 October 2005. On the same date a letter was dispatched to the second respondent giving it until 11 November 2005 to file its response to the complaint. A response was received from Old Mutual Employee Benefits (“the administrator”) on 17 November 2005. This response was forwarded to the complainant on 29 November 2005. On 16 January 2006, this office received the complainant’s further submissions.
- [1.3] After considering the written 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

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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 Mphhephu (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

pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

## 2.Factual Background

- [2.1] The complainant was employed as a metro police officer from 1 March 1987 until he took an early retirement on 31 January 2003. The complainant was a member of the first respondent and made regular contributions by deductions from his salary. Upon taking an early retirement, the complainant became entitled to receive an early retirement benefit from the first respondent.
- [2.2] The complainant received an amount of R209 597.00 as an advance payment from the administrator on 22 May 2003. The complainant received a further amount of R141 233.42 plus interest in the sum of R5 714.21 on 23 July 2003. Further, the complainant also received an amount of R44 680.68 plus interest in the sum of R3 731.60 on 28 August 2003. Moreover, an amount of R37 478.22 was deposited into the complainant's account in respect of free shares issued by the administrator due to demutualisation and listing in 1999.

## 3.Complaint

- [3.1] The complainant's complaint is that the administrator did not calculate his early retirement benefit properly. The complainant contends that the amount of interest that were added on the amounts of R141 233.42 and R44 680.68 indicate that his retirement benefit was not calculated properly. The complainant also alleges that the first payment of R209 597.00 did not include interest.
- [3.2] Further, the complainant submitted that the amount of R37 478.22 in respect of the demutualisation shares is inconsistent with his own calculations. The complainant stated that he should have received R38 485.63 in respect of the demutualisation shares according to his calculations. Moreover, the complainant submitted that the administrator indicated that the total amount that was paid to him is R442 495.13 while the South African Revenue Services ("SARS") indicated that the total amount was R421 464.54.

## 4. Response

- [4.1] The administrator submitted a breakdown of payments that were made in respect of the complainant's retirement benefit. The breakdown indicates that the complainant received an amount of R209 597.00 as an advance payment on 22 May 2003. It also indicates that the complainant received an amount of R146 947.63 which included interest in the sum of R5

714.21 on 23 July 2003 and a further amount of R48 472.28 with interest in the sum of R3 791.60 on 28 August 2003. Further, the breakdown indicates the following:

Commutation:	R395 511.10
D & L Benefit:	R25 953.44
Sub Total:	R421 464.54
Interest:	R21 030.59
Total:	R442 495.13

[4.2] It referred to a letter which the complainant sent to it on 13 May 2003 in which he requested an advance payment of R209 597.00 as he could not be paid a retirement benefit due to outstanding contributions to the first respondent. It further submitted that the difference in the amounts of R442 495.13 and R421 464.54 is in respect of interest in the sum of R21 030.59 that was added to the complainant's lump sum early retirement benefit. Further, it submitted a copy of an IRP 3e from SARS which indicates that no tax is to be deducted from the complainant's early retirement benefit.

[4.3] With regards to the calculation of the complainant's demutualisation shares, it submitted a breakdown of calculation which read as follows:

<b>Capital Amount</b> (Share proceeds)	R26 124.44
Late payment interest	R11 524.78
SUB TOTAL	R37 649.22
Min: R171 expenses	R171.00
Min: IRP3 Tax (IRP certificate no)	R0.00
Electronically transferred to your account at Standard Bank	R37 478.22

[4.4] Moreover, it submitted that the amount of interest in respect of the late payment of benefits that was added on the amounts of R141 233.42 and R44 680.68 was calculated at the rate of 10%. It submitted that interest was calculated from 1 February 2003 until 18 July 2003 in respect of the amount of R141 233.42 and from 1 February 2003 until 28 August 2003 for the amount of R44 680.68.

#### 5. Determination and reasons therefor

[5.1] What the trustees of a registered fund may do is authorised in the fund's rules (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-G and section 13 of the Act).

[5.2] The apposite portion of Rule 4.1 of the first respondent's rules read as follows:

"1. An annual pension shall become payable to a MEMBER on:

- (i) ...
- (ii) Retirement before the NORMAL RETIREMENT DATE (early

retirement).

If a MEMBER has completed five years of continuous service with the EMPLOYER (unless the EMPLOYER waives this requirement) he may, with the EMPLOYER'S consent, retire from service of the EMPLOYER on the first day of any month that is within the ten-year period immediately preceding his NORMAL RETIREMENT DATE.

(iii) ...

2. Amount of Pension

The amount of annual pension payable in respect of any MEMBER who retires shall be equal to

(i) ...

(ii) in respect of retirement before the NORMAL RETIREMENT DATE (Rule 4.1.1(ii), the pension determined in accordance with Rule 4.1.2 (i) based on PENSIONABLE SERVICE and FINAL AVERAGE SALARY as at the early retirement date, reduced by 4 per cent per annum [sic] for the period between the early and NORMAL RETIREMENT DATES, save that if a MEMBER'S early retirement is in terms of the last paragraph of Rule 4.1.1 (ii) no percentage reduction shall apply."

[5.3] The complaint in essence is that the administrator did not compute the complainant's early retirement benefit correctly. Firstly, the complainant is not satisfied with the difference in the amount of interest that was added on the amounts of R141 233.42 and R44 680.68. The administrator indicated that the amount of interest in respect of late payment was calculated at the rate of 10%. It further indicated that interest at the rate of 10% (R6 500.61) was added to the amount of R141 233.42 from 1 February 2003 until 18 July 2003. It also added 10% interest (R2 558.43) to the amount of R44 680.68 from 1 February 2003 until 28 August 2003. The complainant did not submit anything which indicates that he suffered a loss as a result of the calculation of these interests. Further, the administrator is not required, in terms of its first respondent's rules to add interest on the advance payment of R209 597.00.

[5.4] Further, the complainant submitted that the amount of R37 478.22 that was paid to him in respect of the demutualisation shares was not calculated properly. However, the administrator submitted a breakdown of calculation which shows how it arrived at the amount of the complainant's demutualisation share. It explains that the complainant's share consists of his share proceeds in the sum of R26 124.44 plus late payment interest in the amount of R11 524.78. An amount of R171.00 was deducted in respect of expenses and the balance was paid to the complainant. The complainant stated that he should have received an amount of R38 485.63 and he bases his assertion on share percentages starting from 14.5%, 14%, 6.5% and 6.5%. However, the complainant failed to explain how he arrived at these share percentages and the amount of R38 485.63. Further, he did not submit anything to dispute the calculations of his benefit by the administrator. Therefore, this aspect of the complainant's

complaint cannot succeed.

[5.5] Moreover, the complainant stated that the administrator indicated that the total amount that was paid to him was R442 495.13 while SARS indicated that the total amount was R421 464.54. The administrator submitted that the difference in the two amounts was in respect of interest in the sum of R21 030.59 that was added to the complainant's lump sum early retirement benefit of R421 464.54. Further it submitted an IRP 3e from SARS which indicates that no tax should be deducted from the complainant's early retirement benefit. Thus, it is clear that the difference in the two amounts was merely in respect of the amount of interest that was added to the complainant's early retirement benefit. Therefore, the complainant did not suffer any loss or prejudice in this regard.

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

Dated at Johannesburg on this the                      day of                      2008.

Yours faithfully

**MAMODUPI MOHLALA**  
PENSION FUNDS ADJUDICATOR