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Please quote our reference: PFA/GA/18681/2007/MR/on

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act") –MRS E MARCUS ("the complainant") v EQUITY LINKED RETIRMENT ANNUITY FUND ("the first respondent") and OLD MUTUAL LIFE COMPANY (SA) LIMITED ("the second respondent")

1. Introduction

[1.1] The complaint concerns the withdrawal benefit which has three options for her to exercise.

[1.2] The complaint was received by this office on 4 October 2007. A letter acknowledging receipt thereof was sent to the complainant on 12 October 2007. On the same date a letter was dispatched to the second respondent giving it until 15 November 2007 to file its response to the complaint. A response was received from the first respondent on 29 October 2007. This response was forwarded to the complainant on 21 November 2007. The complainant replied on the 14 December 2007.

[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] Mrs. F Shtein passed away and she has a fund – owned Living Annuity.

[2.2] A one third of the annuity benefit was awarded to each of her 3 nominated

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

beneficiaries and this included the complainant.

[2.3] The beneficiaries had three options available to them in terms of the Fund-owned Living Annuity.

[2.4] *Option 1*: Beneficiary can elect to continue with a Personal Living Annuity and receive between 2.5 % and 17.5 % of the market value over her lifetime.

Option 2: Transfer the proceeds to another compulsory annuity with an insurer of her choice.

Option 3: Payment of an accelerated annuity over 5 years.

3. Complaint

[3.1] Complainant is unhappy with all three options given to her by the Fund. She wants the entire benefit to be paid out to her in one capital amount as opposed to the presented options.

[3.2] Her reasons for the opposition is as follows:

Option 1 and 3: According to Mrs. Marcus, the investment is too long term for her circumstances and annuity funds have been under performing relative to many other investments. Secondly she has been a contributing member of a provident fund for the past 16 years – as far as she is concerned that is sufficient retirement funding investment for her.

Option 2:

Mrs. Marcus believes that this would be a waste of an investment. She stated that after tax this money will be consumed in day to day expenses and this is not what her mother would have wanted at all.

4. Responses

[4.1] This office received responses from Equity Linked Retirement Annuity Fund.

Equity Linked Retirement Annuity Fund's response

[4.2] The first respondent being the Equity Linked Retirement Annuity Fund responded and stated that the original source of the investment was from a Retirement Annuity (SA Retirement Annuity Fund) and transferred to

the first respondent's fund at maturity.

[4.3] The Board of Trustees allocated the total benefit to the three children of the late Mrs. Shtein in three equal shares.

[4.4] Only three options were available to this Fund-owned Living Annuity.

[4.5] The respondent further stated that in terms of the Income tax Act, the full commutation as a lump sum is permitted only if the value does not exceed R50 000, 00. In this regard the respondent could not adhere to the complainant's request as here benefit exceeded R50 000, 00.

5. Determination and reasons therefor

[5.1] According to the Pension Fund Act, a complaint must relate to the administration of pension fund, the investment of its assets or the application of its rules.

[5.2] In addition to the above the complainant must allege one or more of the following:

- that the fund has made a decision outside of its powers
- that the complainant has been prejudiced as a result of maladministration by the fund
- that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or
- that an employer who participates in the fund has not fulfilled its duties in terms of the rules of the fund.

[5.3] Mrs Shtein purchased a Fund-owned Living Annuity which she left when she passed on.

[5.4] The Board of trustees of this fund allocated the total benefit to the three children of Mrs Stein in equal shares among which is the complainant.

[5.5] Three options were made available as to how the benefit can be enjoyed in terms of the rules of the Fund.

[5.6] Mrs. Marcus opposes all 3 of the available options and requested a special option to suite her personal circumstance in which case the Fund is unable to assist her with due to limitations it has in terms of the Tax laws of the country.

[5.7] The Fund has not acted negligently in allocating the benefits to the correct beneficiaries.

[5.8] The Fund has not made a decision outside of its powers.

[5.9] The complainant, from the facts given, has thus not been prejudiced as a result of maladministration by the Fund. The Fund has done what it needed to do in terms of the Act and in terms of its rules. The Fund cannot be forced to act outside of its scope just so it can cater for special needs of beneficiaries.

[5.10] In this regard, I order that the complainant's claim be dismissed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR