



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 ref: PFA/KZN/12106/07/MQ

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – S L TEMBE (“the complainant”) v ALEXANDER FORBES RETIREMENT FUND (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the distribution of a death benefit by the fund following the death of Ms N M Zungu (“the deceased”).
- 1.2 The complaint was received by this office on 15 January 2007. A letter acknowledging receipt thereof was sent to the complainant on 31 January 2007. On the same day a letter was dispatched to the respondent giving it until 05 March 2007 to file its response to the complaint. The response was received from the respondent on 02 March 2007 and a copy of same was forwarded to the complainant on 5 April 2007. The complainant’s reply was received on 30 March 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.

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (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 Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

2. Factual Background

2.1 The complainant alleges that he is the beneficiary of the Ms N M Zungu, who passed away on 24 January 2006. Ms Zungu was a member of the respondent during the time of her death, and thus a benefit became payable as a result of her death.

3. Complaint

3.1 The complainant is aggrieved by the respondents delay to finalise the distribution of the death benefit.

4. Response

4.1 This office received a response from the respondent.

4.2 The respondent submits that in terms of Section 37C of the Act the trustees are required to conduct an investigation to identify the dependants and nominees and to distribute the benefit in the manner they deem equitable.

4.3 The respondent contends that the trustees are currently reviewing the matter and the documentation submitted as a result of the investigation. Thereafter the trustees' resolution will be finalised.

4.4 The respondent concedes that the benefit is not distributed yet due to the delays caused by the beneficiaries' failure to submit relevant information.

5. Determination and reasons therefor

5.1 The distribution of the death benefit is governed by section 37C of the Act. Section 37C gives the board an unfettered discretion to distribute a death benefit among the dependants and nominees of the deceased in a manner and proportion that it is just and equitable. In exercising its discretion, the board must take into account a number of relevant factors, such as but not limited to: the age of the parties; the relationship with the deceased; extent of dependence; financial affairs of the beneficiaries; and the wishes of the deceased (see *Moir v Reef Group Pension Plan & Others* [2000] 6 BPLR (PFA) at 629F-H).

- 5.2 Further, section 37C affords the board a period of one year to conduct its investigation and locate the dependants of the deceased. The section places a duty on the board to conduct investigations and to effect payment to the beneficiaries. The deceased passed away on 24 January 2006. 21 months have elapsed since the deceased's death and the investigation is not yet finalised to the prejudice of the beneficiaries.
- 5.3 As no decision has been made, this Tribunal is unable to make a ruling on the trustees' decision regarding the distribution of the death benefit.
- 5.4 The appropriate relief in this matter is to order the board to conclude its investigation and distribute the death benefit among the beneficiaries.
- 6. Relief**
- 6.1 In the result, the order of this Tribunal is as follows:
- 6.1.1 The board of management of the respondent is directed to complete its investigation and distribute the death benefit in accordance with section 37C of the Act, together with interest thereon at the rate of 15.5% from 25 January 2007 to date of final payment, within 6 weeks from date of this determination.

DATED AT CAPE TOWN ON THIS THE DAY OF 2007

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR