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Please quote our ref: PFA/GA/16624/2007/LM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): THE PRIVATE SECURITY SECTOR PROVIDENT FUND (“the complainant”) v JAN KOK (“the respondent”)

1. Introduction

- 1.1 This complaint, received by this office on 27 July 2007, concerns the registration of an employer with a pension fund established in terms of a sectoral determination. The complainant also claims as ancillary relief an order that the respondent be prohibited from applying for the liquidation of the business.
- 1.2 On 12 December 2007, a copy of the complaint was sent to the respondent, which furnished a response by way of a letter received on 8 January 2008. A copy of the response was forwarded to the complainant on 7 March 2008 for a reply. The complainant failed to furnish its reply.
- 1.3 Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

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

2. Complaint

2.1 The complainant, a fund established in terms of Sectoral Determination 6: Private Security Sector, South Africa issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1997, and registered as a pension fund with the Registrar of Pension Funds, asked for an order that

2.1.1 the respondent be prohibited from applying for liquidation of the business;

2.1.2 the respondent be compelled within 7 working days to register with the complainant by completing an application form, a copy of which is attached to the complaint, or by applying for an exemption.

3. Respondent's Response

3.1 A response was received from the respondent.

3.2 The respondent acknowledged that he did not register with the complainant and stated that due to his ill-health his business would be "dormant" in January 2008.

4. Determination and reasons therefor

Prohibition against applying for liquidation

4.1 The complainant requests an order that the respondent be prohibited from applying for liquidation of the business.

4.2 The respondent as cited is a natural person. It follows that his or her estate could at best be sequestrated upon application to a court. An order restraining him or her from applying for the liquidation of the business could be described as an attempt at restraining him or her from doing the impossible.

4.3 Such an order would be inappropriate.

Order to compel respondent to join

4.4 The second prayer is for an order compelling the respondent to register with the complainant or to apply for an exemption.

4.5 Clause 24.1 (1) of the Sectoral Determination provides for the membership of each employee falling within the scope of the Sectoral Determination of the complainant.

- 4.6 An employer cannot *join* the complainant or become a member thereof. It can participate in the complainant by deducting contributions from the remuneration due to an *eligible employee*, as defined, and transmitting this amount, together with its own contribution and a prescribed schedule, to the complainant.
- 4.7 *Eligible employee* is in the definition in the Rules of the complainant defined to limit participation to
- persons performing certain classes of work as defined in sub clauses (41) to (46) of Sectoral Determination 3 of 2000;
 - who do not fall under the jurisdiction of any other wage determination, sectoral determination or bargaining council agreement; and
 - who have completed 6 months continuous permanent employment with any of the employers within the Private Security Sector immediately prior to joining the complainant;
 - but excludes an employee employed by an employer who has been granted exemption to participate in the complainant in terms of Rule 3.1.2 of the respondent.
- 4.8 There is no direct requirement in the Sectoral Determination or the Rules of the complainant for employers to register with the complainant. Certain duties are placed on employers by the Sectoral Determination and the Rules of the complainant, such as to deduct and transmit contributions, and to submit schedules. It follows that before an employer can be ordered to deduct and transmit contributions to the complainant, and in the process be *registered* with the complainant, it must be clear it the employer employs at least one person who qualifies as an *eligible employee* as defined in the Rules of the respondent.
- 4.9 The respondent has admitted that he has not registered with the complainant and alleged that his business will cease to operate in January 2008 due to his ill-health. He has neither denied nor confirmed that he employs security personnel. However, the response was submitted to the complainant on 7 March 2008 for a reply, but no reply was forthcoming. If these facts were not correct, the complainant had sufficient opportunity to place its views before this tribunal.
- 4.10 As it has not been shown that the respondent employs any eligible employees, as defined, it would serve no purpose to order the

