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Please quote our reference: PFA/EC/8657/2006/AM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): J NGCIKI (“the complainant”) v ABSA HOME EMPLOYEES PROVIDENT FUND (“the respondent”)

1. Introduction

- 1.1 The complaint concerns the withdrawal benefit that was received by the complainant when he exited the respondent.
- 1.2 An initial complaint was received on 22 May 2006, but due to insufficient information contained therein on 25 May 2006, this office sent the complainant a letter acknowledging receipt of his complaint and requested him to reformulate his complaint. A reformulated complaint dated 24 July 2006 was received on 27 July 2006 and a letter acknowledging receipt thereof was sent to the complainant on 5 September 2006. On the same date a letter was dispatched to the respondent giving it until 5 October 2006 to file its response to the complaint. On 3 October 2006 a response dated 27 September 2006 was received from the respondent. This response was forwarded to the complainant on 6 October 2006. The complainant, however, omitted to reply.
- 1.3 After considering all the written submissions presented, it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefor appear below.

2. Factual Background

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

- 2.1 The complainant left Steward Davidson Limited (the “employer”) during 2004, while he was a member of the respondent. He left his employer in 2004 and received a withdrawal benefit of R24,114.62 from the respondent.

3. Complaint

- 3.1 The complainant is unhappy with the amount of the benefit that he received. He claims that according to his calculation he was supposed to receive an estimated amount of R86 000.00, but instead he was only paid an amount of R24, 114.62 by the respondent, and accordingly requests this tribunal to assist him to recover the balance of his benefit.

4. Responses

- 4.1 This office received a response from the respondent.
- 4.2 The respondent states that the complainant was a member from 1 March 1999 until his exit on 1 December 2004. It further states that the complainant received a benefit which was calculated in terms of its rules. The yearly contributions of the said benefit were as follows:

“Fund Credit as in February 2003	R13,176.08
Balance of Contributions as at –February 2004	R18,411.05
Balance of Contributions as at –February 2005	R24,052.00
Balance of Contributions as at –March 2005	R24,197.39”

- 4.3 It further states that it was previously administered by Fedsure until 1999, and thereafter by Investec Employee Benefits. The management and administration was later taken over by ABSA Consultants and Actuaries on 1 February 2003, on which date it was converted from an insured to privately administered fund. On 1 February 2003, Investec Employee Benefits calculated the member’s share of fund for transfer onto the administration platform of the new administrators, Absa Consultants and Actuaries. The amount of R 13,176.08 reflects the member’s portion as at 1 February 2003.
- 4.4 The respondent concedes that this amount is less than expected by the employer and member.
- 4.5 The respondent further states that, while it was administered by the Investec, too high returns were declared in the Fedsure Guarantee Fund Portfolio which resulted in investment losses (bonuses declared in the past exceeded the actual returns earned on the portfolio). For this reason a zero final bonus was declared for the years 2000 and 2001 respectively.

Further significant losses were incurred in 2001, mainly as a result of the poor performance of equity holdings and the revaluation of previously overvalued property. The returns (gross of fees and tax) for the year ending 2001 were 0%, and in 2003, they were 4.5%.

5. Determination and reasons therefor

5.1 Section 13 of the Act states that the rules of a registered fund are binding on the fund's members, shareholders and officers thereof, and any person claiming under the rules, or whose claim is derived from a person so claiming. Furthermore, the trustee's powers are circumscribed by the rules of the fund (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239 D-H).

5.2 Section 9 of the respondent's rules regulates the payment of a withdrawal benefit and stipulates as follows:

If a member leaves the service of the PARTICIPATING EMPLOYER before reaching NORMAL RETIREMENT DATE and is not entitled to any other benefit in terms of these rules, the MEMBER shall be entitled to either of the benefits available under section 9.1 or 9.2, as elected by the MEMBER.

5.3 Section 9.1 provides for the Cash Benefit and reads:

"A lump sum benefit equal to the Member's Equitable Share in the Fund at the date of termination of service shall be paid by the Fund, whereafter the former Member shall have no further claim against the Fund."

5.4 No legal grounds have been provided by the complainant as to the basis on which he disputes the calculation of his benefit. It follows therefore, that the complainant has made out no case to suggest that his benefit was calculated incorrectly other than that, according to his own calculation he was supposed to receive a benefit of R86 000.00. The complainant did not provide this office with a breakdown of how his calculation of R86 000 is made up, nor has he furnished the office with proof and /or documentation upon which his claim or calculation is based.

5.5 It is quite clear from the response received from the respondent, as well as section 9 of its rules, that the fund in question is a defined contribution fund. The benefits conferred in terms of this section are not based on pensionable salary and pensionable service as is the case in defined benefit funds, but are based on an accumulation of contributions together with investment returns.

5.6 In the light of the above reasons, the complainant's allegation that he should have received R86 000.00 instead of the amount that he received is unfounded.

6. **Relief**

6.1 The complaint is dismissed.

DATED AT JOHANNESBURG ON THIS DAY OF 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR