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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): E. JULYAN v CENTRAL RETIREMENT ANNUITY FUND (“the fund”) and SANLAM LIFE ASSURANCE LTD (“Sanlam”)**

**Introduction**

- [1] This matter concerns the decreasing maturity values of your retirement annuity. Your complaint was received by this office on 30 May 2005 and a letter acknowledging receipt thereof was sent to you on 3 June 2005. On 3 June 2005 a letter was dispatched to the respondents giving them until 24 June 2005 to file a response to the complaint. A response dated 24 June 2005 was received from the fund on the same date, which was copied to you. No further comments were received from you, despite an invitation to reply to the response.
- [2] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for

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V Ngalwana (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), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

settlement to the parties on 20 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However, on 5 July 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course.

- [3] After considering the written submissions before me, I am of the view that a hearing is not necessary in this matter. My determination, together with reasons therefor, is set out below.

### **Complaint**

- [4] Your complaint is that the projected values of your benefit in the fund have declined rapidly from 1996 when you decided to link disability and life cover to your retirement annuity. You joined the fund in March 1984 with contributions of R30 monthly escalating on an annual basis by 10%. At that stage the projected maturity value of your benefit was R387 017 with reversionary bonuses and R508 424 with reversionary bonuses and claim bonuses. During July 1996 you elected to link life and disability cover of R141 578 to your retirement funding. You were then advised that you could expect maturity values between R309 237 and R531 560. From that time to the present the values have declined rapidly. The latest estimates you quote are R112 183 at a low inflation scenario and R229 519 at a high one. You have asked me to investigate this matter as you have based the supplementation of your pension on these representations.

### **Response**

- [5] The fund has taken the preliminary point that I lack jurisdiction to investigate the matter. In the fund's opinion your grievance concerns the execution of duties by the insurer and not the fund, and ought therefore to be regulated by the Long-term Insurance Act, 1998. It furthermore asserts that your grievance does not amount to a "complaint" that falls within the definition set out in section 1 of the (Pension Funds) Act.
- [6] On the merits the fund states that the illustrative maturity values were not guaranteed, and were calculated based on illustrative growth rates and inflation rates applicable at the respective times at which the illustrations were done. The fund has also drawn attention to the statement in the policy document which qualified the illustrative values in the following terms:

“Die illustratiewe waardes in hierdie opgawe is bereken volgens die LOA se voordeel-illustrasieooreenkoms en word nie gewaarborg nie. Die waardes word teen twee veronderstelde bonuskoerse getoon om ‘n aanduiding te gee van hoe ‘n verskil in bonuskoerse die uiteindelijke voordele sal beïnvloed. Die illustrasie is nie ‘n voorspelling van die werklike voordele wat betaalbaar sal wees nie.”

- [7] During 1996 the values were illustrated at both 11% and 14% to indicate the impact of different investment growth rates. Although the rates at which values were illustrated in 1996 were reasonable, the fund contends it certainly would not be the case today. Since you joined the fund, the rates at which maturity values are illustrated have been adjusted a number of times. The current recommended growth rate for illustrating future values is between 4% and 6% for low inflation scenarios and between 8% and 10% for high inflation scenarios.
- [8] According to the fund, the effect of lower illustration rates is to decrease the illustrative values. The major reason for your declining illustrative values is the lower illustration rates used and not any negative growth of the policy. The fund also states that the decline in investment returns has been a result of the decline in the inflation rate, since investment returns in general move in line with inflation. The inflation rate has experienced a decline from 7.3% in 1996 to 1.4% in 2004, and as a result bonus rates over the term of the policy have also decreased.
- [9] The fund therefore concludes that there is no basis for your complaint.

### **Determination and reasons therefor**

- [10] There is no merit to the preliminary point raised by the fund. The crux of this complaint does not constitute long term insurance business, but actually relates to a retirement annuity fund, which is a pension fund organization as defined in the Act. For the reasons more fully set out in *JJ Schwartz v Central Retirement Annuity Fund & Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28] and *Louw v Central Retirement Annuity Fund & Another* BPLR [2005] 7 BPLR at paragraphs [17] to [36], I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.
- [11] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds and others* [2005] 8 BPLR 655 (C) at 660C - E (handed down on 20 October 2005) (“the de Beer judgment”) confirmed the jurisdiction of this office and stated:

“The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant may be exempt in terms of

the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of s51(a) [sic] of the Act. It cannot simply be treated as an illusionary 'go between' the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act's complaint mechanism."

- [12] Furthermore in so far as your complaint implicitly relates to the administration of the fund and/or the investment of its funds and you allege you have suffered prejudice in that your fund value has been drastically reduced in consequence of the maladministration of the fund, your grievance constitutes a complaint as defined. (See *Louw* at paragraphs [11] to [15].)
- [13] Regarding the merits, it is clear that the projected fund values were given to you for illustrative purposes only, and that those projections, based as they were on the underlying assumptions such as investment return, were dependent on those assumptions being fulfilled. It is apparent from the significant drop in return rates recommended by the LOA for use in illustrative values that those predictions have not held true. Obviously, therefore, your illustrative value cannot remain unchanged. In the result, Sanlam cannot be held to any of the illustrative values.

### **Relief**

- [14] For the reasons set out above the complaint cannot succeed.

DATED AT CAPE TOWN ON THIS THE                      DAY OF                      2006.

Yours faithfully

**VUYANI NGALWANA**  
PENSION FUNDS ADJUDICATOR