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Please quote our reference: PFA/FS/6274/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): F Solfafa (“the complainant”) v Corporate Selection Retirement Fund (“the first respondent”) and M M Molakeng-Solfafa (“the second respondent”)

1. Introduction

- 1.1 The complaint concerns the distribution of the benefit which became payable as a result of the death of the complainant’s son.
- 1.2 The complaint was received on 9 November 2005 and a letter acknowledging receipt thereof was sent to the complainant on 17 November 2005. On the same date a letter was dispatched to the first respondent requesting it to submit a response to the complaint by 12 December 2005. The response was received on 5 December 2006. The response was sent to the complainant on 17 January 2006 requesting a reply by 6 February 2006. No reply has been received from the complainant.
- 1.3 After considering 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 Monki Martha Molakeng-Solfafa, in her capacity as the deceased’s wife, has a substantial and direct interest in the matter. She was joined as a respondent to the complaint. This office wrote to Mrs Molakeng-Solfafa on 24 January 2007 requesting her response to the complaint by 23

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 Mthuphi (Assistant Adjudicator)

Office Manager: L Manuel

February 2007. Notwithstanding the letter and the request to contact this office, Mrs Molakeng-Solfafa has not responded to the complaint.

3. Complaint

- 3.1 The complainant is dissatisfied that she received only R8 000, being 20% of the death benefit, from the first respondent, after the death of her son, Mr Petrus Molakeng-Solfafa (“the deceased”), on 30 October 2003. An amount of R38 000 was allocated to the deceased’s wife, the second respondent, Mrs Molakeng-Solfafa. The complainant states that the distribution is not just as the deceased nominated her as his beneficiary. She contends that the deceased was only married to Mrs Molakeng-Solfafa for two months before they separated and that he died six months later. She also records that there were no children from this marriage. The complainant suggests that a 50/50 split between herself and Mrs Molakeng-Solfafa would be more appropriate.

4. Response

- 4.1 The first respondent states that it took the following factors into consideration prior to coming to a decision on the distribution of the death benefit:
- 4.1.1 The status of the beneficiaries; thus whether the beneficiary was a dependant or a nominee;
 - 4.1.2 Whether any beneficiary was a minor;
 - 4.1.3 Whether the deceased had a legal duty of support to any of the beneficiaries;
 - 4.1.4 The extent of the financial dependency of a beneficiary;
 - 4.1.5 The value of the death benefit.
- 4.2 The first respondent further states that the widow, who was, and may still be unemployed, received the bulk of the benefit as she was the legal spouse and dependant of the deceased. Although she has earning capacity, given her age, by granting R38 000 to the widow, she would be ensured of a monthly income of R800 per month for about four years, which is a similar amount to that which the complainant is presently receiving by means of the State old age pension. The amount of R8 000 allocated to the complainant would yield an additional R150 per month over four years.
- 4.3 The first respondent contends that it would not be appropriate to grant the full 100% of the benefit to the complainant, with a guaranteed income, as the deceased was also survived by a widow, with no guaranteed income. It states that the nomination was made in 2002 before the deceased got married. The first respondent adds that the complainant only raised the couple’s apparent separation two years after his death, and after the

distribution had already been made. She also did not initially raise her claim that the deceased assisted her financially from time to time, and she did not submit any proof of this.

5. Determination and reasons therefor

- 5.1 The payment of death benefits is regulated by section 37C of the Act, read in conjunction with the definition of “dependant” in section 1 of the Act. The primary purpose of this section is to protect those who were financially dependent on the deceased at the time of death. It is the Board’s responsibility when dealing with the payment of death benefits to conduct a thorough investigation to determine the beneficiaries, to thereafter decide on the allocation among them and then to decide on the most appropriate mode of payment of the benefit allocated. The fact that the deceased nominated the complainant as his sole nominee in itself creates no entitlement to a death benefit.
- 5.2 The issue for determination is whether the discretion bestowed on the trustees in terms of section 37C of the Act was properly exercised. This involves an enquiry as to whether the trustees took account of all relevant considerations, excluded irrelevant considerations, and did not fetter their discretion. Relevant considerations would include (but not be limited to) the wishes of the deceased, the financial status and future earning capacity of each beneficiary, the extent of dependency, ages of beneficiaries, the relationship to the deceased, and the amount available for distribution.
- 5.3 It is evident that the Board did not take a number of relevant factors into consideration prior to the allocation of the death benefit. It appears that the relationship that the deceased had with his wife was not considered. (See *Kruger v Central Retirement Annuity Fund* [2002] 7 BPLR 3643 (PFA).) Nor were her financial circumstances canvassed other than the fact that she was unemployed. For instance no information was requested from her as to what assets she had, and what she may have inherited from the estate. There is also no reference to the Board making enquiries about whether she was qualified for a particular line of work and what her future earning opportunities were. Further, it is apparent that the complainant’s financial circumstances were not considered either. The possibility that she may have been dependent on her deceased son was not investigated, and she was not given the opportunity to prove her factual dependency when she notified the first respondent that the deceased contributed towards her support. It would have been prudent for the Board to consult the next-of kin of the deceased to gain information on the beneficiaries’ circumstances.
- 5.4 From the evidence before this tribunal, it is fairly evident that the first

