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Please quote our reference: PFA/WE/5446/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): K Isaacs v AZA Day and Night Security (Pty) Limited (“AZA” or “the employer”)

Introduction

[1] Your complaint concerns the failure of the employer to pay the required contributions to the fund on your behalf. The complaint was received on 14 September 2005. As you were not able to advise this office which fund you belonged to, we accordingly made enquiries in this regard on 19 September 2005 when we contacted Penpro Administrators (Pty) Limited (“Penpro”). This administrator responded on 19 September 2005. Since then several emails have been exchanged between yourself, this office and Penpro. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below. As the background facts are well known to the parties, I shall not burden this determination by repeating them here.

Complaint

[2] You are unhappy about the employer’s failure to pay all the contributions that it deducted from your salary to the fund to which you belonged. This fund is therefore unable to pay you your full fund share. You want this tribunal to investigate the matter.

Penpro’s response

[4] Penpro advised that you were a member of the Security Employees National Provident Fund (“the fund”). The fund received contributions for the period, February, March and May 2003, to the total value of only

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

R226.95 on your behalf. Penpro states that it would make payment to you if it received the completed application form.

- [5] Penpro advised that regardless of numerous attempts, no further contributions have been received from AZA.

Determination and reasons therefor

- [6] From the copies of the salary slips that you have submitted, it is evident that your former employer made regular provident fund deductions from your salary. However, it appears that the employer did not pay the contributions (except on three occasions) to the fund in order to secure a benefit for you. My assistants have attempted, on numerous occasions, and over a period of time, to make contact with your former employer, by means of letters, telephone and electronic mail, but without success. Furthermore, the fund advised my assistants that the employer's telephone numbers are no longer in operation, that its mail to the employer is returned, and that the offices no longer exist.
- [7] The evidence shows that the fund did not receive all the contributions which were deducted from your salary by your former employer. Although all our efforts to locate your former employer have been fruitless, I am prepared to make an order against it in the event that you are successful in this regard.
- [8] Further, it is a criminal offence, in terms of section 37 read together with section 13A of the Act, for an employer to fail to pay contributions to the fund after making deductions from the employees' salaries for that purpose. Because this practice at face value constitutes theft, I shall also refer this matter to the prosecution authorities for investigation.

Relief

- [9] The order of this tribunal is as follows:

[9.1] the fund is directed to calculate the benefit, with your assistance if required, that you would have been entitled to in terms of the rules of the fund, had it received the contributions due on your behalf by your former employer, AZA Day and Night Security (Pty) Limited, within four weeks of the date of this determination;

[9.2] the fund is further directed to pay you the current amount being held on your behalf in the fund, less any permissible deductions in terms of relevant legislation, within two weeks of the date of this determination;

[9.3] AZA Day and Night Security (Pty) Limited is ordered to pay you the difference between the amount calculated in [9.1] and the amount paid to you in terms of [9.2], within six weeks of the date hereof, plus interest at the rate of 15.5% per annum, from the date of termination of service to the date of payment.

Dated at Cape Town on this the day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator