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Please quote reference: PFA/KZN/11781/2006/SG

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): T Coetsee (“the complainant”) v South African Retirement Annuity Fund (“1<sup>st</sup> Respondent”) / Alexander Forbes Financial Services (“2<sup>nd</sup> Respondent”)**

1 Introduction

- 1.1 This matter concerns a member’s withdrawal from a retirement annuity fund before the retirement date set by the fund, as well as the advice given by an intermediary to a member of the fund.
- 1.2 The complaint was received by this office on 4 November 2006 and a letter acknowledging receipt thereof was sent to the complainant on 2 January 2007.
- 1.3 The responses to the complaint, which was forwarded to the complainant, were received by this office on 1 February 2007. After considering the written submissions before me, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

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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 Factual background

- [2.1] The complainant commenced permanent employment with the second respondent and by virtue of his employment he became a member of the first respondent. He exited the first respondent on 31 August 2006 and a retirement benefit of R26 215,68 became payable to him.

## 3 The complaint

- [3.1] The complaint is threefold. The first leg of the complaint relates to the computation of the retirement benefit that the complainant received when he exited the fund.
- [3.2] The bone of contention is that the complainant received a lesser benefit than he would have received had the second respondent's missing contributions been included in the calculation of his benefit. The complainant avers that during his tenure of membership monthly deductions of R352,07 were made from his salary (which represent his own contributions to the first respondent) and same were accounted for to the first respondent. He further avers that the second respondent was required to pay contributions on his behalf to the first respondent at a rate of 12% of his pensionable salary. However, he contends that that the first respondent's contributions were not included in the computation of the benefit that he received.
- [3.2] The second leg of the complaint relates to the retirement age. The complainant contends that he was forced to retire at the age of 60 years.
- [3.3] The third leg of the complaint relates to the administration and insured benefit costs that were levied against the complainant's contributions in the fund. He contends that these costs seem to be exorbitant if regard is had to the total amount of the contributions he paid to the fund and the favourable economic climate at the time.

## 4 The response

- [4.1] With regard the first leg of the complaint, the first respondent dismisses as misconceived the contention that the second respondent's contributions were not included in the computation of the complainant's benefit. It contends that in terms of its rules members do not pay contributions. It is only the second respondent that is required to contribute (at a rate of 12% of the pensionable salary) to it on behalf of its members. It submits that the monthly contributions of R352,07 upon which the complainant seeks to rely were contributions paid by the second respondent as required by the fund rules.

- [4.2] To bolster its contention, the first respondent draws the attention of this tribunal to the relevant clause in the employment contract between the complainant and the second respondent which succinctly reads:

*“You will be required to join the Company’s Provident Fund and will be subject to the rules of such Fund, as amended from time to time. The company will be responsible for the total contribution to such Fund and this contribution will be included in your total cost to company package, as set out above. The contribution will be calculated as 10.71% of your total cost to company package (or 12% of your pensionable salary). You may elect to increase this Company contribution to 13,5% of your pensionable salary. **(Pensionable salary: Total cost to company package excluding the contribution to the Provident Fund)**”.*  
(emphasis added)

- [4.2] The first respondent submits that at retirement you were entitled to an annuity of such amount as can be purchased by your fund credit. As at the date of retirement, it is submitted, your fund credit was the total sum of R26 215,68. It contends that the complainant received his benefit in full and in terms of its rules.
- [4.3] With regard the second leg of the complaint, the first respondent contends that its rules clearly set the retirement age at 60 years, and thus the contention that the complainant was forced to retire is ill-founded.
- [4.4] With regard to the third leg of the complaint, the first respondent argues that the administration and insured benefit costs were levied against the complainant’s invested as authorized by its rules. It contends that it rules clearly stipulates that in each monthly contribution payable to the fund, a certain portion is firstly appropriated towards the administration and insured benefit costs and the remainder is allocated towards the investment of the member. It contends that at all material times it acted within the scope of its rules.

## 5 Determination and reasons therefor

- [5.1] The first respondent is a non-contributory fund and as such its members do not pay contributions to it. The first respondent’s rules only enjoin the second respondent to pay contribution to the first respondent on behalf of its employees. That much was even made clear to the complainant when he commenced permanent employment with the second respondent. The clause in the employment contract referred to in paragraph [4.2] above bears testimony to this.
- [5.2] The complainant’s allegation that the monthly contributions of R352,07 were deducted from his salary and paid to the first respondent is

