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Please quote our reference: PFA/MP/3437/2005/RM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“THE ACT”) – S J MASHEGOANA (“the complainant”) v FOODCORP GROUP PROVIDENT FUND (“the first respondent”); C.H. LIVESTOCK C.C. (“the second respondent”) AND ALEXANDER FORBES FINANCIAL SERVICES (“the third respondent”)

1. Introduction

- 1.1 The complaint concerns the payment of a death benefit by the first respondent.
- 1.2 This complainant was received by this office on 12 May 2005. A letter acknowledging receipt of the complaint was sent on 25 August 2005. On the same date a letter was dispatched to Alexander Forbes Financial Services (“the third respondent”) asking it to respond to the complaint by 16 September 2005. A letter was dispatched to C.H. Livestock C.C. (“the first respondent”) on 2 August 2006, asking it to respond to the complaint by 23 August 2006. A response, which was also copied to the complainant, was received from the third respondent on 16 September 2005.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefore appear below.

2. Factual background

- 2.1 The complainant’s brother-in-law, Mr. M.M. Maimela (“the deceased”), worked for the second respondent from 1 June 1998 until he passed away

M Mohlala (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), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

Office Manager: L Manuel

on 29 January 2005. The complainant alleges that he belonged to the first respondent, but that it failed to pay any benefit to the deceased's dependants after his passing away. The first respondent is administered by the third respondent.

3. Complaint

- 3.1 The complainant's complaint is that the first respondent has allegedly failed to pay any benefit to the deceased's dependants after his passing away.

4. Response

- 4.1 The third respondent responded to the complaint on behalf of the first respondent and itself. Firstly, the third respondent notes that there is no written authority attached to the complainant's complaint for him to act on behalf of the deceased's dependants.

- 4.2 The third respondent advises that the deceased's employer is not part of the employer group Foodcorp Group (Pty) Ltd. The complaint has been lodged against the first respondent, in which the deceased's former employer, Foodcorp Group (Pty) Ltd currently participates. The deceased's employer has never been a participating employer in the first respondent.

- 4.3 According to the first respondent's records the deceased was formerly employed by a company by the name of Karoo Ochse ("the previous employer") from January 1993 to July 1996. The previous employer was a participating employer in the first respondent. The deceased was a member of the first respondent from 1 January 1993 until 31 July 1996 when his net withdrawal benefit of R7 001.55 was paid to him as a result of his retrenchment. The deceased ceased to be a member of the first respondent when his benefit was paid out to him. At the time of his passing away he was not employed by a participating employer in the first respondent and was not a member of the first respondent. Therefore, no fund benefit was payable to his dependants.

5. Determination and reasons therefor

- 5.1 The complaint issue is whether the first respondent is liable to pay any benefit to the deceased's dependants as a result of his passing away on 29 January 2005. I note the third respondent's submission that the complainant to submit any written letter of authority from the deceased's dependants authorizing him act on their behalf. In terms of the definition of a "complainant" in section 1 of the Act, a complainant means:

- “(a) any person who is, or who claims to be-
- (i) a member or former member of a fund;
 - (ii) a beneficiary or former beneficiary of a fund;
 - (iii) an employer who participates in a fund;
- (b) any group of persons referred to in paragraph (a) (i), (ii) or (iii)
- (c) a board of a fund or member thereof; or
- (d) any person who has an interest in a complaint;”

- 5.2 The complainant does not fall into any of sub-sections (a), (b) or (c) of the definition of a complaint in the Act. What remains to be considered is whether he is a person who has an interest in the complaint in terms of sub-section (d) of the definition of a complaint. The mere fact that the complainant is the deceased’s brother-in-law does not qualify him as a person having an interest in this complaint. The complainant has not averred that he is a dependant of the deceased, or that he is entitled to receive any benefit whatsoever from the first respondent. In fact, it is evident that any benefit that may be due by the first respondent would be payable to the deceased’s wife and children because they are his dependants. Therefore, I am of the view that the complainant does not have sufficient interest in this complaint to be considered a “complainant” as defined in section 1 of the Act. What is required of the complainant is a written authority to act on their behalf from the deceased’s dependants. However, for the sake of completeness and to bring closure I move to consider the merits of the complaint.
- 5.3 The third respondent has advised that the deceased was a member of the first respondent until 31 July 1996 when he was retrenched by his previous employer. As a result of his retrenchment he could no longer be a member of the first respondent, so the first respondent had to pay a withdrawal benefit to him in terms of its rules. The first respondent did so by depositing a withdrawal benefit of R7 001.55 into his bank account. The deceased ceased to be a member of the first respondent on 31 July 1996, which means that no further benefit was payable to him or his dependants after this date.
- 5.4 The third respondent confirmed that the deceased’s employer was not a participating employer in the first respondent. My assistant telephoned the second respondent and staff in its human resources department advised that the second respondent does not have a company pension fund. The deceased received his full benefit from the first respondent when he exited it in July 1996. At the time of his passing away the deceased was not a member of the first respondent and the second respondent did not have a company pension fund. Therefore, no benefit is payable to the deceased’s

dependants from the first respondent.

5.5 In the result, this complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR