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Please quote our reference: PFA/MP/14085/2007/SM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – HHS MANZINI (“the complainant”) v IMATU RETIREMENT FUND (“the first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED (“the second respondent”)

1. Introduction

- [1.1] The complaint concerns the alleged failure of the first respondent to pay the complainant an amount of R27 5750.00 that was transferred from Sala Pension fund to it on 1 February 1998.
- [1.2] The complaint was initially received by this office on 20 July 2005. However, the complainant was subsequently advised to lodge a new complaint, which was received on 16 May 2007. Unfortunately there is no record which indicates that a letter acknowledging receipt thereof was sent to the complainant. On 15 December 2007 a letter was dispatched to the first respondent giving it until 15 February 2008 to file its response to the complaint.
- [1.3] A joint response on behalf of the second respondent and Sala Pension Fund was received on 3 April 2006. This office also received responses from Simeka Consultants and Actuaries on 4 March 2008 and from Mr S Samons, the principal officer of the National Fund for Municipal Workers on 23 April 2008.
- [1.4] The responses on behalf of the Sala Pension Fund and the respondents were forwarded to the complainant on 3 April 2008 and 5 May 2008

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

respectively. The complainant omitted to file any further submissions.

- [1.5] Having considered the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2. Factual Background

- [2.1] The complainant was employed by Witbank Municipality (“the employer”) from October 1987 until 1998. The complainant was a member of the first respondent by virtue of his employment until he withdrew from the fund on 1 February 1998. The first respondent subsequently changed its name to the National Fund for Municipal Workers.
- [2.2] Upon his withdrawal from the first respondent, the complainant’s total benefit in the Sala Pension Fund amounted to R101 191.78. An amount of R27 750.00 was transferred from Sala Pension Fund to the first respondent and the remaining portion was paid to the complainant.

3. Complaint

- [3.1] The complaint is that the first respondent failed to pay the complainant the amount of R27 750.00 that was transferred to it upon his withdrawal from the Sala Pension Fund. Further, the complainant submitted that the second respondent confirmed in a letter dated 3 April 2006 that an amount (R27 750.00) is due to him from the first respondent.

4. Responses

Response on behalf of Sala Pension Fund and the second respondent

- [4.1] Mrs B Mogale, the legal advisor of the second respondent, filed a response on behalf of the second respondent and Sala Pension Fund. She submitted at the outset that the respondents do not have documents relating to the complainant’s complaint as it relates to a matter that arose seven years ago. Further, she pointed out that the administration of the Sala Pension Fund was done in Johannesburg and documents were not electronically scanned for easy access.
- [4.2] However, she indicated that according to the records at their disposal the complainant’s total benefit amounted to R101 191.78 upon his exit from the Sala Pension Fund. She submitted that the complainant’s benefit was paid out as follows:

"Transfer to IMATU	- R27 750.00
Interest paid to IMATU	- R252.76
Paid to member	- R72 000.00
Interest paid to member	- R1,189.02"

- [4.3] She indicated that the amount of R72 000.00 represented a housing loan amount which was kept in the Sala Pension Fund prior to the transfer. She stated that the Sala Pension Fund would after receiving a lease from a financial institution pay the amount to the complainant directly and the complainant would then settle the housing loan with the financial institution.
- [4.4] Further, she pointed out that the amount of R28 002.76 was transferred to the first respondent on 28 February 1998, which is made of up of R27 750.00 plus interest for the month of February. However, she submitted that the complainant has a claim against the first respondent for the amount of R28 002.76.

Response on behalf of the first respondent

- [4.5] Mr S Samons confirmed that the first respondent subsequently changed its name to the National Fund for Municipal Workers. He submitted that Sala Pension Fund transferred an amount of R28 003.00, which is made up of R27 750.00 plus interest of R253.00, in terms of section 14 of the Act to the first respondent. He indicated that the above amount constitutes the complainant's fund credit from October 1987 until January 1998. He submitted that the full amount was debited to the complainant's fund record.
- [4.6] Further, he pointed out that the above amount plus contributions for the period of membership of the fund and interest thereon in the amount of R86 337.78, less tax of R1935.64 was paid to the complainant. He further submitted that the full transfer value was included in the amount that was paid out to the complainant.

5. Determination and reasons therefore

- [5.1] The issue that falls for determination is whether the first respondent failed to pay the complainant the amount of R27 5750.00 that was transferred to it from the Sala Pension Fund.
- [5.2] It is common cause that the complainant's total benefit upon his withdrawal from the Sala Pension Fund amounted to R101 191.78. The administrator of the Sala Pension Fund (Old Mutual Life Assurance Company (SA) Ltd) indicated that an amount of R27 750.00, which

included interest in the sum of R252.76, was transferred to the first respondent upon the complainant's withdrawal. It further indicated that an amount of R72 000.00 plus interest in the sum of R1 189.02 was paid to the complainant. Thus, the administrator of the Sala Pension Fund confirmed that the complainant is owed a total amount of R28 002.76 by the first respondent.

- [5.3] The principal officer of the first respondent, which is now known as the National Fund for Municipal Workers, confirmed that the complainant's benefit in the amount of R28 002.00 was transferred to it in terms of section 14 of the Act. He indicated that a total amount of R86 337.78, less tax in the sum of R1935.64 was paid to the complainant on 26 January 2000. He further pointed out that this amount included the complainant's transfer value in the amount of R28 003.00. The principal officer submitted an IRF5 (Employee Tax Certificate) and a letter from Sanlam Life Insurance Limited which reflects the payment of the above amount to the complainant.
- [5.4] The complainant was invited to submit further submission regarding the response from the principal officer of the first respondent but failed to do so. Therefore, the complainant did not submit anything to dispute the veracity of the first respondent's response regarding the payment of the amount that was transferred to it. Thus, in the absence of any contrary evidence from the complainant, the first respondent's submissions should be accepted. In any event the first respondent submitted documentary evidence which attests to the fact that the complainant's benefit that was transferred to it upon his withdrawal from the Sala Pension Fund has been paid out to him.
- [5.5] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.
Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR