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Ref: PFA/KZN/7709/2006/SG

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 – V Pillay (“the complainant”) v Orion Money Purchase Provident Fund (“the first respondent”), M M Pillay Property Investments CC t/a New Millenium Fencing (“the second respondent”)

Introduction

1. This matter concerns the non-payment by a fund of a member’s benefit due to the employer being in arrears with its contributions to the fund.
 - 1.1 The complaint was received by this office on 16 March 2006 and a letter acknowledging receipt thereof was sent to the complainant on 24 March 2006. The response to the complaint, which was forwarded to the complainant, was received by this office on 18 April 2006.
 - 1.2 After considering the written submissions it is considered to be unnecessary to hold a hearing in this matter. The determination and reasons therefore appear below.

Factual background

2. The complainant was employed by the second respondent from 26 July 2004 to 12 September 2005. She became a member of the first respondent on 1 March 2005. During her tenure of membership in the first respondent, she paid monthly contributions, which were deducted from her salary, at a rate of 7.5% of your monthly salary. She left service on 12 September 2005.

M Mhlala (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

Complaint

3. The complainant is aggrieved that to date she has not received her withdrawal benefit. She states that when she enquired from the second respondent the reason why her benefit is still not paid, the second respondent informed her that it is in arrears with the monthly contributions payable to the first respondent. She further states that the second respondent assured her that as soon it updates the monthly contributions to the first respondent her benefit will be paid.

First respondent's response

4. The first respondent contends that it should not be faulted in these circumstances. It contends that the second respondent is blameworthy in this regard. The first respondent submits that it is unable to process the payment of the complainant's benefit for the reason that the second respondent is in arrears with the payment of monthly contributions. It submits further that it has not received a notification of withdrawal form from the second respondent. Notwithstanding numerous attempts by the first respondent to recover the outstanding contributions, the second respondent is persisting in its failure to discharge its obligations. The first respondent states that it has reported this to the Financial Services Board and to the office of the National Director of Public Prosecutions.

Second respondent's response

5. In a letter dated 13 June 2007, this office invited the second respondent to respond to the complaint. No response has been forthcoming.

Determination and reasons therefor

6. The rules of the first respondent enjoin both the complainant and the second respondent to pay monthly contributions at a rate of 7.5% of the complainant's annual salary. The second respondent deducted monthly contributions from the complainant's salary, which were not accounted for to the first respondent. For this reason the first respondent is unable to process the payment on the complainant's benefit. The first respondent cannot be faulted for this. The second respondent is blameworthy in this regard (see *Orion Money Purchase Pension Fund v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 at 3839 F-G). I should add that the second respondent's failure to pay monthly contributions also constitutes a criminal offence in terms of section 37(1) read together with section 13A of the Act, as amended. For that reason this matter will be referred to the office of the National Director of Public Prosecutions for a criminal prosecution.

Relief

7. In the result, I make the following order:

7.1 The first respondent is ordered to compute the value of the withdrawal benefit that the complainant would have been entitled to had the second respondent timeously made the pension contributions due in terms of the rules, less the amount paid and less any deductions authorized in terms of the Act, and to inform the complainant, this office, and the second respondent of such amount, **within two weeks of this determination;**

7.2 The second respondent is directed to pay to the complainant the amount of the benefit computed in paragraph [7.1], **within one week** of the first respondent forwarding the calculation to it, together with interest thereon calculated at 15.5% per annum from 30 April 2005 until the date of payment.

DATED AT CAPE TOWN ON THIS DAY OF 2007

Yours faithfully

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MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR