



HEAD OFFICE
Johannesburg
1st Floor, Norfolk House
Cnr 5th Street & Norwich Close
Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town
2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – J VAN ZYL v CENTRAL RETIREMENT ANNUITY FUND AND SANLAM LIFE ASSURANCE LIMITED

Introduction

- [1] Having considered the complaint received by this office on 6 April 2005, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.
- [2] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred to the respondents on 20 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However, Sanlam did not reply to our letter dated 20 January 2006.

Facts

- [3] You became a member of the Central Retirement Annuity Fund (“the fund”) in 1981. The fund invested your monthly contributions of R30 to the fund in

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 (Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabehete (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

a Sanlam policy (policy number 3992598X7, hereinafter referred to as "Policy A"). Policy A was due to mature on 1 October 2013. You requested to make this policy paid-up with effect from 1 December 1985. During 1987 you requested a complete alteration to this policy. This policy was replaced by policy 9678957x3 (hereinafter referred to as "Policy B").

- [4] The inception date of Policy B was on 1 July 1987. Policy B was due to mature on 1 July 2013. You paid monthly contributions of R30 to the fund. These monies were invested by the fund in Sanlam's Reversionary Bonus Series.
- [5] On 1 March 1989 you commenced paying additional monthly contributions of R40.40 to the fund (which increased annually on 1 March with 15%). The fund invested these contributions in a third Sanlam policy (policy number 10537416x9, hereinafter referred to as "Policy C"), in Sanlam's Stable Bonus Series. Policy C was due to mature on 1 March 2014.
- [6] On 1 June 1990 you commenced paying additional monthly contributions of R50.51 to the fund (which increased annually on 1 June with 15%). The fund invested these contributions in a fourth Sanlam policy (policy number 11323690x5, hereinafter referred to as "Policy D"), Sanlam's Stable Bonus Series. Policy D was due to mature on 1 June 2013.
- [7] You have tabulated your policy details as at the inception date to date of lodgment as follows:

Policy Number	9678957x3 (Policy B)	10537416x9 (Policy C)	11323690x5 (Policy D)
Product	Retirement Annuity	Retirement Annuity	Retirement Annuity
Inception Date	Jul-87	Mar-89	Jun-90
Retirement age	66	66	66
Portfolio	Reversionary	Stable	Stable
Premium	29.7	378.09	353.8
Total Premiums paid	6296.4	26744.04	28550.04
Investment value-Current	33517.35	31599.71	29776.72
Illustrative value quoted in 1992	90600	301200	258900
Current Illustrative value	45171	176688	155066
Death benefit	40698	31377	32028
Disability Benefit	40698	31377	32028
ERB benefit	21448.19	25321.64	23514.88

Complaint

- [8] Firstly, you complain that policy B has outperformed policies C and D notwithstanding the fact that the total premiums that you have paid in respect of policy B, the amount of R6296.40, is markedly less than that paid in respect of policies C and D, the amounts of R31 599.71 and R29 776.72 respectively.

- [9] Secondly, you complain that the illustrative values quoted in 1992 have almost halved vis-à-vis the current illustrative values and that even these illustrative values may not be reached upon maturity.
- [10] Thirdly, you aver that the current investment values of the policies and illustrative values should be much higher given the portfolios that you invested in unless, you argue, negative returns were declared year after year.
- [11] You, fourthly, complain that the costs associated with early retirement are too prohibitive for you to exercise that option, which means that you are stuck with the respondents for the next 10 years.
- [12] You, lastly, complain that Sanlam did not deliver on the promises it made.

The response

- [13] Ms DE Ozrovech, the principal officer of the fund, has filed a response on the respondents' behalf. The fund has raised two technical points. The first is that what is at issue in this matter is "long-term insurance business" which is regulated by the Long-Term Insurance Act. The second is that your grievance does not constitute a complaint as defined in the Pension Funds Act and for this reason too falls outside my jurisdiction.
- [14] The fund submits that it fulfilled its duties to you under its rules and therefore, has nothing to answer in respect your complaint.
- [15] The fund has further responded to your complaint on the merits.
- [16] The fund submits that policy B was a continuation of a previous policy thus at policy B's inception date credit was given for previous premiums paid. The fund further submits that because policy B is a reversionary bonus policy and policies C and D are stable bonus policies they cannot be compared since the reversionary bonus policy includes future bonuses whereas the stable bonus policies merely comprise the accumulation of premiums less charges and does not include future bonuses.
- [17] With regards to the complaint that your current illustrative values are almost half that of the illustrative values given to you in 1992, the fund states that the main reason for the decrease in illustrative values from 1992 till now is that prior to and during 1992 maturity values were illustrated at 12% and 15%. In contrast, maturity values are now illustrated at a low inflation scenario of between 4% to 6%. The fund submits that the inflation rate has experienced a dramatic decline from 13.7% in 1992 to 1.4% in 2004, which explains the discrepancy between the illustrative values of 1992 and the current illustrative values. Further, the fund submits that this decline in the

inflation rate is indicative of the decline in investment returns experienced over the same term as investment returns in general move in line with inflation. The fund, moreover, submits that the purpose of illustrations is merely to give an indication of possible values if certain assumptions about the future materialize.

[18] With regards to your complaint that your current investment account values should be much higher unless bonuses were negative, the fund had this to say: The average return per annum on premiums paid in since 1 October 1981 under policy B was 8% if the early retirement benefit of R21 743.00 was taken on 1 June 2005. The average investment return per annum on policy C was 8.6% and 8.3% on policy D respectively. Sanlam submits that it is satisfied that your current investment accounts were correctly calculated.

[19] The fund submits that where the member terminates his policy prematurely costs are deducted in terms of the respective policies.

[20] Lastly, Sanlam submits that it is acting in accordance with the policies.

Determination and reasons therefor

Technical points

[21] There is no merit in the technical points raised by the respondents because the crux of this complaint does not constitute long term insurance business, but actually relates to a retirement annuity fund, which is a pension fund organization as defined in the Act. For the reasons more fully set out in *Louw v Central Retirement Annuity Fund and Another* [2005] 7 BPLR 622 (PFA) at paragraphs [11] to [36] and the authorities referred to therein, I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.

[22] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds & Another*, [2005] 8 BPLR 655 (C), (“the de Beer judgment”), at 660C-E confirmed the jurisdiction of this office and stated:

“The Rules of the Fund set out its essential purpose as being to provide benefits to members upon retirement. The fact that applicant may be exempt in terms of the applicable law from audit cannot exempt it from playing a role in the fulfillment of its purpose. In any event, applicant is a pension fund organization and has separate legal personality in terms of s51(a) [sic] of the Act. It cannot simply be treated as an illusory ‘go between’ the members such as second respondent and Sanlam Life. It should be accountable to its members and hence be subject to the discipline of the Act’s complaint mechanism.”

[23] Furthermore in so far as your complaint relates to the administration of the

fund and/or the investment of its funds and that you allege that you have suffered prejudice in consequence of the maladministration of the fund, your grievance constitutes a complaint as defined, contrary to the respondents' contention.

[24] The technical points are therefore dismissed.

Merits

Higher investment value on policy in proportion to premiums paid

[25] Essentially the fund gives two reasons to explain the higher investment value of policy B as compared to policies C and D. Firstly, the fund submits that it included premiums from a previous policy and secondly, by virtue of policy B being a reversionary bonus policy it included future bonuses whereas the stable bonus policies (C and D) did not include future bonuses.

Illustrative values

[26] I am satisfied with the respondents' explanation of the difference between the 1992 illustrative values provided as compared to the current illustrative values provided. The fact is that the illustrative values are not guaranteed and depend on actual growth rates, annuity rates and inflation rates. There has been a significant drop in the inflation rate over the past decade. That illustrative values are not guaranteed was sufficiently spelt out in the policy documents. In this regard I refer you to policy B under the heading "Voorbehoude en Veronderstellings", the relevant part of which reads as follows:

"Die illustratiewe waardes in hierdie opgawe word nie gewaarborg nie."

[27] Policy C and policy D contain a similar provision and the investment returns, further, declined. Furthermore, you have not attacked the basis for the illustrative values nor have you shown that the fund was maladministered by the adoption of the illustrative values.

Current Investment Values should be higher

[28] The fund has indicated that the average return annually on premiums paid in since 1 October 1981 under policy B was 8% (if the early retirement benefit of R21 743.00 was taken on 1 June 2005) and the average investment return per annum on policy C was 8.6% and on policy D was 8.3%. You have simply made the bald allegation that the investment values should be higher without providing any support for such contention.

Costs attendant on retiring early

