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Please quote our reference: PFA/WE/12230/2007/PM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act") – AL JONATHAN ("the complainant") v ILLOVO SUGAR PENSION FUND ("the respondent")**

## 1. Introduction

1.1 The complaint concerns the delay by the respondent to pay a death benefit to the complainant.

1.2 The complaint was received by this office on 22 June 2006. A letter acknowledging receipt thereof was sent to the complainant on 11 August 2006. On the same date a letter was dispatched to the respondent giving it until 12 September 2006 to file its response to the complaint. A response was received from the respondent on 30 August 2006. This response was forwarded to the complainant on 04 September 2006. The complainant however omitted to reply.

1.3 After reviewing the written submissions it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

## 2. Factual Background

2.1 The complainant and Mr R. Febric ("the deceased") were long time partners at the time of his death. The deceased was employed by Illovo Sugar Ltd until his death on 31 October 2005. At the same time he was a

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), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

member of the respondent by virtue of his employment contract with Illovo Sugar Ltd. The complainant alleges that she has not been paid her benefit, and that the deceased's son is understood to be the sole beneficiary.

## 3. **Complaint**

3.1 The complainant is unhappy about the respondent's delay to pay her a benefit.

## 4. **Response**

4.1 This office received a response from the respondent.

4.2 The respondent states that the distribution of death benefits in respect of the deceased has not been finalised by the Board of Management. As no decision has been made on the distribution of benefit there can be no cause for complaint. The allegation made by the complainant that the benefits were paid to the deceased's son is incorrect.

4.3 This office called the respondent on 28 September 2007 with the sole purpose of establishing whether the distribution has been effected. The respondent confirmed that the distribution has not yet been effected and the trustees requested some outstanding information recently. The respondent further stated that the investigation is already underway. Thus, the respondent will be able to effect distribution in a month's time or two month's time.

4.4 The respondent submits that this is a frivolous complaint to which it cannot respond.

## 5. **Determination and reasons therefor**

5.1 Section 37C(1)(a) of the Act provides that :

> "If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants."

5.2 The fund has a twelve month period to locate and trace the dependants of the deceased member in terms of section 37C(1)(a) of the Act. The member passed away on 31 October 2005. More than twenty three months have elapsed since his death, and the respondent has still to date not completed its investigation. This delay is wholly unreasonable.

5.3 As no decision has been made by the respondent regarding the distribution of the death benefit, it is premature to review any allocation. The appropriate relief is to order the fund to complete its investigation and pay the benefit.

6. **Relief**

6.1 In the result, the order of this tribunal is as follows :

6.1.1 The respondent is ordered to complete its investigation, and effect distribution of the benefit in terms of section 37C of the Act, together with interest at a rate of 15,5% from 1 November 2006 until date of payment, within 6 weeks of the date of this determination.

DATED AT CAPE TOWN ON THIS DAY OF 2007.

Yours faithfully

**MAMODUPI MOHLALA**
PENSION FUNDS ADJUDICATOR