



HEAD OFFICE

Johannesburg

2nd Floor, Sandown 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

Please quote our ref: PFA/GA/10819/2006/EMD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): BM NDWANDWE & OTHERS (“the complainants”) v ESKORT NATIONAL PROVIDENT FUND REG NO 12/8/33094 (“the first respondent”) / ALEXANDER FORBES RETIREMENT FUND (PROVIDENT SECTION) REG NO 12/8/33094 (“the second respondent”) / ALEXANDER FORBES LIFE LIMITED (“the third respondent”)

1. Introduction

- 1.1 This complaint, dated 3 October 2006, concerns the transfer of 49 members of the first respondent to the second respondent.
- 1.2 On 13 October 2006, a letter acknowledging receipt was sent to the complainants. On the same day, a copy of the complaint was sent to the employer, Eskort Limited, as well as to the administrator of the second respondent, cited herein as the third respondent. A response was requested by no later than 13 November 2006. The third respondent submitted a response on behalf of the second respondent dated 6 November 2006. A copy of the response was sent to the complainants for comment on 8 December 2006 with a request that they indicate by no later than 22 December 2006 whether or not they wished to proceed with the complaint. No response was received.
- 1.3 Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be

M Mohlala (Adjudicator), C Nkuhlu (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), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

repeated only to the extent that they are pertinent to the issues raised herein.

2. Facts in brief

- 2.1 The complainants were advised during August 2005 that their membership of the first respondent would be terminated and that they would be transferred to the second respondent.
- 2.2 The complainants believed that they were members of the “NBC Food and Allied Provident Fund”.

3. Complaint

The complainants did not wish their fund membership to be transferred, as they believed that they would be losing their housing loans should they be transferred.

4. Second and Third Respondents' Response

- 4.1 The third respondent, on behalf of the second respondent, advised that the complainants currently belong to the first respondent, administered by NBC, and not to the NBC Food and Allied Provident Fund.
- 4.2 The third respondent further explained that with effect from 1 August 2005, certain members of the first respondent were transferred in terms of section 14 of the Act to the second respondent. The section 14 transfer was still awaiting approval by the Registrar, who was not willing to grant approval until the transferor fund's surplus apportionment scheme had been approved.
- 4.3 All members of the first respondent were advised of the transfer and were given a full breakdown of the substantial enhancements which the transfer would bring. A copy of the communication was attached.
- 4.4 The second respondent also offered pension-backed housing loans. As approval of the section 14 transfer was still outstanding, current fund credits only consisted of contributions made with effect from 1 August 2005. As soon as the transfer had been approved, members would be eligible for housing loans based on their full fund credit.
- 4.5 The third respondent submitted that the complaint had arisen from a misconception on the part of the complainants as regards their rights and benefits under the transferee fund. It was also submitted that the second and third respondents had made all reasonable efforts to

