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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – GE RENS v CENTRAL RETIREMENT ANNUITY FUND & SANLAM LIFE INSURANCE LIMITED

Introduction

- [1] This matter concerns the value of your retirement benefit. Your complaint was received by this office on 13 July 2005 and a letter acknowledging receipt thereof sent to you on 29 September 2005. On 29 September 2005 a letter was dispatched to the respondents giving them until 24 October 2005 to file their responses to the complaint. The responses were all received on 24 October 2005. On 26 October 2005 the responses were sent to you for a reply by 9 November 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.
- [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 for settlement to the Central Retirement Annuity Fund and Sanlam Life Insurance Ltd on 12 September 2006. Sanlam informed us that the parties

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

Office Manager: L Manuel

in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course.

Facts

- [3] You became a member of the Central Retirement Annuity Fund (“the fund”) on 1 September 1987 whereupon Sanlam Life Insurance Company Limited (“Sanlam”), both the administrator and the underwriter of the fund, issued a policy of insurance to the fund on your life. Your chosen date of retirement was 1 September 2001. You paid monthly contributions of R100 which were to increase annually by 10%.
- [4] When you retired on 1 September 2001, a retirement benefit of R65 359.38 accrued to you. You elected to receive the one-third in cash (R21 786.46) and with the balance of R43 572.92 you purchased a policy in your own name (the policy is invested in Sanlam’s Capital Retention Plan) which pays you a monthly income of R331 and also provides for a benefit of R43 572.92 in the event of your death.

Complaint

- [5] You are dissatisfied with the fact that you only received R21 786.46 in cash (which is the one-third of your total benefit of R65 359.38) after having paid contributions to the fund for almost 15 years. You state that you were under the impression that a payment of R80 532 would be paid to you as illustrated in your policy contract with Sanlam.
- [6] You want to receive the full proceeds of your retirement benefit in cash.
- [7] You are also aggrieved that you have to pay a monthly premium of R52.40 in your current policy in order to provide for your death cover.

Response

- [8] The fund and Sanlam in its capacity as the fund’s administrator and insurer have responded to your complaint. For the purposes of this determination, I shall deal with their responses jointly and refer to them collectively as “the respondents”.

Technical points

- [9] The respondents submit that your grievance is not about the execution of duties by the fund or its administrator, and does not constitute a “complaint” as defined in the Act. Further, that I do not have jurisdiction to deal with your matter as it falls under the jurisdiction of the Long-Term

Insurance Ombudsman.

Merits

- [10] Regarding your dissatisfaction with the retirement benefit amount that accrued to you (R65 359.38), the respondents state that when you commenced membership with the fund, you were presented with illustrative values. These values are based on illustrative growth rates, illustrative annuity rates and inflation rates applicable at the respective times at which the illustrations were done.
- [11] When you joined the fund in September 1987, one of the maturity values illustrated in the policy contract was the R80 532.00 (that you now claim you should have received). The respondents submit that this was in line with the investment returns earned by the fund and inflation rates experienced at that stage. However, the bonus rates were lower, on average, over the term of the policy than the rates used in illustrations. The effect was that the policy's investment increased at a lower rate than illustrated, which in turn resulted in the actual value received (R65 359.38) being lower than the illustrated value.
- [12] The respondents give the following breakdown of your retirement benefit:

Total premiums paid up to 31/08/2001	R 30 981.24
Less: Total policy fees and administration charges	R 1 998.18
Equals: Total premiums available for investment	R 28 983.06
Plus: Investment return	R 36 376.32
Equals: Gross maturity value on 1 September 2001	R 65 359.38

- [13] With regard to your complaint that you want to receive your full benefit in a cash lump sum, the respondents state that the terms of the policy contract state that when you retire, you may opt to receive a maximum of one-third of the benefit as cash and the balance you will receive in the form of a pension. The respondents refer to the third paragraph under the heading "Uiteensetting, Uitkeervoordede" of the policy contract as authority for this. It reads:

"Hoogstens een derde van die beskikbare bedrag mag in kontant geneem word. Die oorblywende deel moet in die vorm van 'n pensioen geneem word."

- [14] The respondents also refer to clause 3.1 of Part 8 of the fund rules in support of their contention. Rule 3.1 of Part 8 reads:

“Commutation

3.1 At most one-third of the pension intended in the preceding paragraph 1.1, can be commuted to a lump sum, but if the pension before commutation does not exceed R1 800 per year or any other amount determined from time to time by the Minister of Finance in the Government Gazette, the full pension can be commuted.”

[15] With regards to your dissatisfaction with paying the death cover premium of R52.40, the respondents state that the Capital Retention plan in which you are invested consists of a life policy which guarantees the capital amount of R43 572.92 for which a monthly premium of R52.40 is payable.

Determination and reasons therefor

Jurisdiction

[16] There is no merit to the preliminary points raised by the respondents. 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 *JJ Schwartz v Central Retirement Annuity Fund & Another* [2005] 5 BPLR 435 (PFA) at paragraphs [12] to [28] and *Louw v Central Retirement Annuity Fund & Another* BPLR [2005] 7 BPLR at paragraphs [17] to [36], I cannot uphold the contention that this matter constitutes “long term insurance business” over which I have no jurisdiction.

[17] Furthermore, Davis J (in whose judgment Le Grange AJ concurred) in *Central Retirement Annuity Fund v Adjudicator of Pension Funds and others* [2005] 8 BPLR 655 (C) at 660C - E (handed down on 20 October 2005) (“the de Beer judgment”) 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.”

[18] The technical points are therefore dismissed.

Merits

[19] As the Supreme Court of Appeal stated in *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]), the trustees may only do with the fund’s assets what is set forth in the rules. If what they propose to do is not within the powers conferred on them by the

- rules, they may not do it. That the rules of a fund are king is confirmed by section 13 of the Act.
- [20] With regards to your dissatisfaction with the benefit amount of R65 359.38 of which R21 786.46 you commuted in cash, as opposed to the illustrated value of R80 532 you expected to receive, I am satisfied that there was sufficient disclosure on the part of the insurer in the policy contract that the illustrative values reflected under “voordele op uitkeerdatum” in the policy contract were not guaranteed but depended on bonus rates declared and the average rate of inflation during the period of your membership.
- [21] With regards to your complaint to receive the full proceeds of your retirement benefit in cash, the clause in the policy document under the Afrikaans title “Uiteensetting, Uitkeervoordele”, to which the respondents refer, does not permit you to receive the full proceeds of your benefit in cash. Similarly clause 3.1 of Part 8 of the rules provides that at most one-third may be taken in cash unless the pension before commutation does not exceed R1 800 per year.
- [22] Further, in terms of the definition of retirement annuity fund in section 1 of the Income Tax Act, an annuity can only be commuted for a single payment if the annual amount of such an annuity does not exceed R1 800. Put differently only if the total annual annuity is less than R1 800 a member of a fund will be entitled to take the full amount of the annuity in cash.
- [23] When you became entitled to the payment of the retirement benefit of R65 359.38 in September 2001, your total annual annuity before commutation was R8 050.44 which is in excess of R1 800.00. Therefore in terms of the rules, the policy document and the Income Tax Act, you are not entitled to commute your full benefit.
- [24] With regards to your dissatisfaction with the premium of R52.40 deducted from your monthly pension for death cover, you signed a form on 23 August 2001 electing the death cover for which a premium is payable. This was your election to which you are now bound.
- [25] I am also satisfied with the breakdown of your benefit (which you did not dispute) provided by the insurer that your total contributions as at 31/08/2001 amounted to R30 981.24 and your total benefit after adding investment return and deducting policy fees and administration fees, amounted to R65 359.38.

Relief

- [26] In the result your complaint cannot succeed.

Dated at Cape Town on this day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator