



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR  
(HELD IN JOHANNESBURG)**

CASE NO: PFA/NW/5078/2005/RM

In the complaint between:

P J BARKER

Complainant

and

**M1 LATEX PRODUCTS PROVIDENT FUND**

**First Respondent**

**LIBERTY GROUP LIMITED**

**Second Respondent**

**M1 LATEX PRODUCTS (PTY) LTD. t/a  
THE KIT GROUP**

**Third Respondent**

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**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS  
ACT, NO. 24 OF 1956 (“the Act”)**

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1.0. Introduction

1.1 The complaint concerns the quantum of a withdrawal benefit payable to the complainant and contribution rates to the first respondent. The

complainant alleges that she did not receive her full benefit because there were discrepancies in the quantum of contributions that were made to the first respondent by the third respondent. These misstatements led to a smaller withdrawal benefit accruing to the complainant from the first respondent.

- 1.2 The complaint was received by this office on 17 August 2005. A letter acknowledging receipt of the complaint was sent on 20 September 2005. On the same date letters were dispatched to the respondents giving them until 11 October 2005 to respond to the complaint. Responses from the second respondent, who is the administrator of the first respondent, were received on 17 October 2005 and 7 July 2006. The third respondent sent responses on 22 May 2006 and 2 August 2006. The complainant sent replies to the respondents' responses on 23 November 2005, 5 April 2006 and 29 May 2006.
- 1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. This tribunal's determination and its reasons therefor appear below.

## 2.0 Factual Background

- 2.1 The complainant commenced employment as a sales representative with the third respondent in August 1994, at which time it was trading as Alexandra Workwear. By virtue of her employment the complainant commenced membership of the first respondent from October 1995. The first respondent is administered by the second respondent. The complainant resigned from employment on 3 June 2005.
- 2.2 The first respondent became liable to pay the complainant a withdrawal benefit following her decision to resign from employment. According to a

schedule provided by the second respondent the complainant's withdrawal benefit as at 25 September 2005 amounted to R34 705.26. The complainant decided not to complete a withdrawal notification form because she awaits the outcome of her complaint to this tribunal. As a result, the first respondent has not yet paid the complainant her withdrawal benefit.

### 3.0 Complaint

3.1 The complainant's complaint is twofold and can be summarized as follows:

3.1.1 The complainant is aggrieved that while members did not have to contribute to the first respondent in terms of its rules, the third respondent deducted monthly contributions from her salary.

3.1.2 Secondly, the complainant is dissatisfied with the monthly contributions that were made to the first respondent, alleging that the third respondent contributed less than what was required of it in terms of the first respondent's rules.

3.2 The complainant also complains about the tax that was deducted from her salary through the years of her employment. However, this is a tax-related complaint which ought to be directed to the South African Revenue Service ("SARS"). This tribunal is a specialist pensions tribunal established by statute to deal exclusively with pensions-related complaints, so it does not have jurisdiction in respect of the complainant's tax complaint. Contact details for SARS appear at the foot of this determination.

#### 4.0 Responses

4.1 The second respondent, who administers the first respondent, confirmed the facts outlined in paragraph 2.1 and 2.2 *supra*. It further advised that the complainant remains a member of the first respondent because it has not received her withdrawal notification form as yet. The complainant was admitted as a “category E” member. In terms of the rules, members were not required to contribute to the first respondent, while the third respondent had to contribute at a rate of 12% of category E members’ fund salary. These contributions included the costs of insured benefits and administration charges, so the net retirement funding contributions would necessarily be lower than the gross employer contributions. The second respondent attached a schedule detailing the payments it received from the third respondent. According to the information provided by the second respondent, the third respondent contributed a gross amount of R39 260.80 on the complainant’s behalf. This amount was calculated using a 12% contribution rate and the following fund salary for the complainant:

Period	Monthly fund salary used
31 October 1995 to 31 July 1996	R2 250.00
31 August 1996 to 31 July 1997	R2 475.00
31 August 1997 to 31 July 1999	R2 722.50
31 August 1999 to 31 May 2005	R2 994.75

4.2 The second respondent advised that the complainant’s share of fund at 25 September 2005 was R34 705.26. As regards the complainant’s allegation that contributions were deducted from her salary, the second respondent advised that the third respondent needed to answer this question and they could not proffer a response in this regard. In terms of the Act and rules the third respondent is liable for deducting and paying

over contributions to the first respondent and the third respondent also has to provide the first respondent with information regarding pensionable emoluments and percentage contributions.

- 4.3 The third respondent also responded to the complaint. They advised that the complainant commenced employment in 1994. In June 1999 Alexandra Workwear, for whom the complainant worked for until then, merged with the third respondent. As a result, the Alexandra Workwear Provident Fund changed names to that of the first respondent effective 1 June 1999. Subsequent to the merger the first respondent only included six staff members. Three members exited the first respondent since then and only one new member joined in 2004. The administration fees in relation to the gross contributions were high because of the small number of members. The third respondent goes on to state that as a result of the low number of members, "little if not no attention" was given to the first respondent from the third respondent's perspective.
- 4.4 The third respondent admits that it found that the contributions made on behalf of the complainant were understated by an amount of R65.62 per month. The third respondent did a calculation of the shortfall from June 1999 adjusted for interest of 12% *per annum* and determined the shortfall in the sum of R7 220.30. The third respondent used a monthly salary of R4 250, a 10% contribution rate and a 12% interest rate. Thus, it calculated that it ought to have paid R65.62 per month extra to the first respondent from May 2005 in respect of the complainant. If interest at 10% per annum was added to this shortfall it owed the first respondent an additional R7 220.30 in respect of the complainant.
- 4.5 Lastly, the third respondent advised that it attempted to contact the complainant regarding the signing of her withdrawal notification form and their settlement offer, but without any success.

## 5.0 Determination and reasons therefor

### 5.1 *Introduction*

5.1.1 The first respondent is a registered pension fund in terms of the provisions of the Act and it is bound by its rules and the law in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the first respondent, the members, the employer and any service provider such as the administrator of the first respondent may only do that which is set forth in the rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E). Thus, the complainant's complaints must be determined with reference to the prevailing fund rules and the law pertaining to the complaint.

### 5.2 *Deduction of contributions from the complainant's salary*

5.2.1 According to the schedule to the first respondent's rules members are not required to contribute to the first respondent. The first and second respondents have confirmed that only the third respondent is required to contribute to the first respondent. See paragraph 5.3.1 *infra* for the third respondent's contribution rate. According to the complainant the third respondent deducted a total of R20 746.50 from her salary in respect of provident fund contributions for the period commencing 1 November 1995 until her resignation in June 2005. The complainant provided copies of her payslips, which clearly indicate that provident fund contributions were deducted from her salary each month.

5.2.2 The third respondent has not disputed that provident fund deductions were made from the complainant's salary, neither has it averred that the

complainant was on a cost-to-company package that included provident fund contributions. Thus, the third respondent's deduction of provident fund contributions from the complainant's salary was contrary to the rules and unlawful because the first respondent is a non-contributory fund for its members. Therefore, the third respondent must pay back to the complainant all provident fund deductions it made from her salary, which totalled R20 746.50 until June 2005.

### 5.3 *Third respondent's contribution rate to the first respondent*

#### 5.3.1 The third respondent's contribution rate to the first respondent in terms of the requirements of the schedule to the rules is as follows:

"In respect of Category E, the Employer shall contribute 1/12 of 6% of Fund Salary each month, and shall contribute in respect of Past Service Benefits, 1/12 of 6% of Fund Salary each month.

This contribution include (*sic*):

- The cost of any Insured Benefits
- The base administration fee payable by the Fund to the insurer in terms of the Policy

The above contributions shall be utilised to secure both future service benefits as well as Past Service benefits for a Member on the basis of one year Past Service for each year of actual service completed under the Fund.

"Past Service" for purposes of the above shall in respect of a Member mean, the number of years of service in the same or similar industry or occupation as recognized by the Employer prior to becoming a Member of the Fund but shall in no instance be recognised earlier than age 18.

Employer's contributions shall continue to be paid in respect of Deferred Members until the date of actual retirement."

5.3.2 The second respondent has confirmed that the complainant is a category E member and the contribution rate was 12% of fund salary. “Fund salary” is defined in the rules as follows:

““Fund Salary” shall mean a MEMBER’S basic annual salary or wages and such other emoluments payable to a MEMBER as the EMPLOYER shall decide.

Any changes in FUND SALARY shall, for purposes of these RULES, take effect on the REVISION DATE coincident with or immediately following the change or such other date as agreed in writing between the EMPLOYER and the ADMINISTRATOR.”

5.3.3 Contrary to the submission by the first and second respondents, the complainant’s fund salary was not R2 994.75 a month from August 1999 to June 2005. The third respondent confirmed in its response that the complainant’s fund salary was in fact R4 250 a month from May 1999 onwards. According to the definition of fund salary (see paragraph 5.3.2 *supra*) the complainant’s fund salary ought to have been adjusted to R4 250 a month at the latest by the revision date, which would have been 1 August 1999 in this case, but this was not done. Thus, the first and second respondents used the incorrect fund salary when computing the contributions payable by the third respondent in respect of the complainant.

5.3.4 Furthermore, while the first and second respondents used a contribution rate of 12% of fund salary, the third respondent used a 10% contribution rate.

5.3.5 What emerges is a litany of errors regarding the contribution rates and fund salary applicable to the complainant. In fact, the fund salaries used by the first and second respondents bear almost no resemblance to that

used by the third respondent, nor, for what it is worth since the complainant was not required to contribute to the first respondent in the first place, do they correlate with the deductions that were made from the complainant's salary. The wrong fund salary was used and the third respondent also used the wrong contribution rate. This has resulted in an understatement of the complainant's withdrawal benefit.

5.3.6 Section 13A(2)(a) of the Act stipulates that employers must furnish certain minimum information regarding payment of contributions to funds and the minimum information that is required is prescribed in regulation 33, published in Government Notice 98 of January 1962. The relevant sections for the purposes of this determination read as follows:

"33. Requirements in terms of section 13A of Act

(1) Minimum information to be furnished by every employer to the fund with regard to payments of contributions in terms of section 13A (2) of the Act, shall consist of at least the following:

(a) Initial Contribution Statement:

(i) Name of the fund; identification of the fund (e.g. registration number); period in respect of which the contribution is payable;

(ii) name and address of the employer or pay-point which made the deduction; responsible person to contact at the employer or pay-point;

(iii) full name, date of birth, ID number or employer pay number, or other means of identification, date of membership, pensionable emoluments of member and percentage or amount of contributions, split between member and employer as well as an indication of any additional voluntary contributions paid.

(b) Subsequent Contribution Statement:

In respect of each contribution period either-

- (i) the information required in paragraph (a) (i) and (ii) above and part or all of the information contained in paragraph (a) (iii) above; or
- (ii) a reconciliation with the contribution statement for the previous period showing any differences in the data such as additions as a result of new members, reductions as a result of membership terminations, adjustments as a result of changes in pensionable emoluments or the payment of additional voluntary contributions or other information and corrections due to errors.”

5.3.7 Thus, it was the third respondent’s responsibility to inform the first and second respondents about any changes in the complainant’s fund salary which, with hindsight, was not done. Rule 12.9 deals with any misstatement of information. The relevant sub-section for the purposes of this determination is sub-section 12.9.2, which reads as follows:

“On the discovery of any material misstatement or non-disclosure of information, all benefits and contributions affected by such misstatement or non-disclosure shall be adjusted as soon as is practical after such discovery.”

5.3.8 The third respondent has admitted that it underpaid contributions in respect of the complainant. Further, from the responses proffered by the first and third respondents, it is evident that the first respondent used an understated fund salary in respect of the complainant from August 1999 onwards. These errors constitute “material misstatement or non-disclosure of information” and fall to be corrected in terms of sub-rule 12.9.2. The first and second respondents need to compute the correct contribution amounts that were payable by the third respondent in respect of the complainant using a fund salary of R4 250 per month from August 1999 onwards and a contribution rate of 12% per month of the complainant’s fund salary. The third respondent will have to pay the

difference between what was already paid to the first respondent and the correct contribution amounts computed for the complainant.

## 6.0 Relief

6.1 In the result, this tribunal makes the following order:

6.1.1 The third respondent is ordered to pay to the complainant all provident fund contributions that were deducted from the complainant's salary from November 1995 until June 2005, together with interest thereon at the rate of 15.5% *per annum* on each monthly amount computed from the date each deduction was made until the date of payment, within 4 weeks of the date of this determination.

6.1.2 The second respondent is ordered to compute the contributions that the third respondent ought to have paid to the first respondent in respect of the complainant from August 1999 to June 2005 using a fund salary of R4 250 per month and a 12% contribution rate, and deduct from this amount the contributions that were actually received from the third respondent in respect of the complainant. The second respondent must additionally add to the amounts so computed the first respondent's investment returns from August 1999 to June 2005 that would have accrued to the complainant's account had her correct contribution amounts notionally been invested from the date they ought to have been received by the first respondent. Copies of the full computation of the outstanding amounts payable by the third respondent are to be provided to the complainant, the third respondent and this tribunal in writing within 10 days of the date of this determination.

- 6.1.3 The third respondent is ordered to pay to the first respondent the total amount of additional contributions in respect of the complainant plus investment returns thereon as calculated by the second respondent in paragraph 6.1.2 *supra*, within 7 days of receipt of the breakdown from the second respondent.
- 6.1.4 The first respondent is ordered to pay to the complainant her full withdrawal benefit computed in terms of its rules, within 7 days of receipt of the additional amounts mentioned in paragraph 6.1.3 *supra*, less any permissible deductions in terms of sections 37A and 37D of the Pension Funds Act, 24 of 1956.

Dated at Johannesburg on this the                      day of                      2008

Yours faithfully

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**Mamodupi Mohlala**  
**Pension Funds Adjudicator**