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Please quote our ref: PFA/GA/14593/2007/MD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“the Act”): P I NTSHANANA (“the complainant”) v CONTRACT CLEANING NATIONAL PROVIDENT FUND (“the first respondent”) AND REVMAR HOTEL CLEANING SERVICES CC (“the second respondent”)

1. Introduction

- 1.1 This complaint concerns the allegation of failure by the respondents to pay out the complainant’s withdrawal benefit.
- 1.2 The complaint was received by this office on 12 June 2007. On 2 October 2007, a letter acknowledging receipt thereof was sent to the complainant. On the same date, this complaint was dispatched to the first respondent to file its response on 2 November 2007. On 26 February 2008, NBC Holdings (PTY) Ltd (“the administrator”) submitted a response on behalf of the first respondent. On 24 April 2008, the second respondent was joined as a respondent in terms of section 30G (d) and a response to the complaint was sought from it to be submitted by 7 May 2008. This office received a response dated 7 May 2008 from the second respondent. Unfortunately, our records do not show that a letter seeking a reply was dispatched to the complainant.
- 1.3 Having considered the written submissions before me, I find it unnecessary to hold a hearing. My determination and reasons therefor appear below.

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (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 Ray (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mballo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Senior Accountant: F Mantsho, Accountant: R Soldaat

2. Factual Background

- 2.1 The complainant was employed as a cleaner by the second respondent from 2004 until 8 October 2006 when her services were terminated. The complainant became a member of the first respondent by virtue of the said employment.
- 2.2 Subsequent to the termination of her services, the complainant has not received her withdrawal benefit.

3. Complaint

- 3.1 The complainant is aggrieved by the non payment of her withdrawal benefit by the respondents. She states that, after the termination of her services, she submitted all the relevant documents to her supervisor for the processing of her claim but nothing has materialised since then.
- 3.2 The complainant requests this office to recover her withdrawal benefit from the respondents.

4. Response

4.1 First respondent's response

- 4.1.1 This office received a response submitted on behalf of the first respondent from Ms Marsha Clarke, the administrator's consultant.
- 4.1.2 She submits that the second respondent had been making payments to the first respondent without submitting contribution schedules. She further states that, on 5 October 2007, they had a meeting to discuss the situation and that the second respondent has since submitted the contribution schedules which the first respondent cannot reconcile.
- 4.1.3 She points out that they are working with the second respondent to resolve the issue.

4.2 Second respondent's response

- 4.2.1 Mr Johan Ebersohn, the manager of corporate and legal affairs division of the second respondent, submitted a response on its behalf.
- 4.2.2 He states that, the second respondent joined the first respondent in July 2005 and that provident fund contributions were paid over to the first respondent and proof of payments thereof was given to the administrator.
- 4.2.3 He further states that, the second respondent's bookkeeper made a mistake of submitting payments without attaching the contribution schedules of its employees. He contends that, subsequent to the discovery of the said omission by the second respondent in May 2007, it has submitted all the contribution schedules for the update of records by the administrator.
- 4.2.4 He further contends that, the administrator is taking long to update its records and that the second respondent has honoured its responsibilities towards the complainant as the first respondent has been aware of the matter since May 2007.

5. Determination and reasons therefor

- 5.1 The issues that fall to be determined, in my view are; **(i)** whether the board of trustees of the first respondent failed to carry out their duties as explicated in the Act and, **(ii)** whether the second respondent failed to perform its duties properly, having due regard to its failure to submit the complainant's contribution schedules to the first respondent timeously.
- 5.2 It becomes imperative to visit the relevant provision of section 7D of the Act which reads as follows :-

“DUTIES OF THE BOARD”

The duties of a board shall be to –

- (a).....
- (b).....
- (c).....
- (d) take all reasonable steps to ensure that contributions are paid timeously to the fund in accordance with this Act;

- 5.3 It is common cause that the second respondent joined the first respondent as a participating employer in July 2005. The second respondent stated that the omission of the submission of contribution schedules was discovered in May 2007. On the other

hand, the first respondent states that it started to have meetings to discuss the issue on 5 October 2007.

- 5.4 It is unequivocally clear that the first respondent became aware of the failure to submit the contribution schedules by the second respondent, almost two years after it had joined it as a participating employer. In light of the above, there is not even a shred of a slightest doubt that the first respondent failed to discharge its responsibilities as explicated in the Act as it has not advanced any reasons as to why it took such a long time for it to discover that the second respondent was not submitting its contribution schedules. The only inescapable conclusion is that the first respondent failed to take all reasonable steps to ensure that contributions by the second respondent are paid timeously and that contribution schedules are submitted.
- 5.5 Section 13A (1) of the Act provides that the employer of any member of a registered fund shall pay the following to the fund in full, namely:

- “(a) any contribution which, in terms of the rules of the fund, is to be deducted from the member’s remuneration; and
- (b) any contribution for which the employer is liable in terms of those rules;

Section 13A (2) states that:-

- (a) The minimum information to be furnished to the fund by every employer with regard to the payments of contributions made by the employer in terms of subsection (1), shall be as prescribed by regulation ;and
- (b) If that information does not accompany the payment of a contribution, the information shall be transmitted to the fund concerned not later than 15 days after the end of the month in respect of the month of which the payment was made.”

- 5.6 Section 13A (3) (a) (i) also states that such contribution must be paid directly into the fund’s account and section 13 A (3) (a) (ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable. If the employer fails to transmit contributions to the fund within the prescribed period, interest at the usury rate is payable thereon by the employer. Section 13A(7) provides that interest at the rate prescribed by the Minister of Finance shall be payable on the amount of any contribution not

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR