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RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): MRSS S FOUCHE, M DE KOCK AND CM SYMINGTON (“the complainants”) v CENTRAL RETIREMENT ANNUITY FUND (“the respondent”)

1. Introduction

- 1.1 This complaint, received by this office on 14 December 2006, concerns the exclusion of the complainants from sharing in the payment of death benefits.
- 1.2 On 15 January 2007, a letter acknowledging receipt was sent to the complainants. On the same day a copy of the complaint was sent to Sanlam Life, requesting a response by no later than 15 February 2007. A comprehensive response was received from Sanlam Life Insurance Limited, on behalf of the Central Retirement Annuity Fund, dated 13 February 2007.
- 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 repeated only to the extent that they are pertinent to the issues raised herein.

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)

Office Manager: L Manuel

2. Facts in brief

- 2.1 The complainants' stepfather, Mr N Strauch, passed away on 5 January 2006. The late Mr Strauch is survived by his former wife, Mrs JM Strauch, five major biological children born during his marriage to Mrs JM Strauch, and three major stepchildren. The deceased never formally adopted any of the stepchildren. The former wife and children are all self-supporting. The deceased did not nominate anyone to receive the death benefits provided for in the policy entered into on his behalf by the respondent.
- 2.2 After their divorce on 28 August 1973, Mr Strauch had to pay R20 maintenance for Mrs Strauch and R30 per month for each of the five children until the age of 18 years or matriculation. Some of the maintenance payments were still in arrear at the date of death. Mr Strauch's second wife passed away on 30 November 2005.
- 2.3 The board of the respondent allocated R42,914 to the deceased's former wife and R10,000 to each of the children.

3. Complaint

The complainants are dissatisfied with being excluded from the distribution made by the board of the respondent. They argue that as the policy was only entered after the deceased married their late mother, they should be included in the distribution.

4 Respondent's Response

- 4.1 Most of the facts set out above have been summarised from the respondent's submission.
- 4.2 Although expressing some doubt as to the jurisdiction of this Office to determine the matter, the respondent submitted a comprehensive response, setting out in detail the steps taken by the board before coming to a decision. This included *inter alia* obtaining full details of the present financial position of each of the persons considered.
- 4.3 It is not necessary to set out the personal details of each beneficiary's asset and liability situation as for the reasons to follow, this would not affect the outcome of this matter.

5. Determination and reasons therefor

- 5.1 Section 37C(1) of the Act provides that notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member shall, subject to certain exceptions that are not applicable in this instance, not form part of the assets in the estate of such a member, but shall be dealt with in the manner set out in that section.
- 5.2 If the fund becomes aware of any dependants of the member, the benefit shall be paid to one or more of such dependants as may be deemed equitable by the board (section 37C(1)(a)). There are no nominees in this instance, so that section 37C(bA) should not be considered.
- 5.3 *Dependant*, in relation to a member, is defined in section 1(1) of the Act, to mean
- (a) a person in respect of whom the member is legally liable for maintenance;
 - (b) a person in respect of whom the member is not legally liable for maintenance, if such person-
 - (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
 - (ii) is the spouse of a member...
 - (iii) is a child of the member, including a posthumous child, an adopted child and an illegitimate child;
 - (c) A person in respect of whom the member would have become legally liable for maintenance, had the member not died.
- 5.4 The complainants have not shown that they qualify as dependants on any of the grounds detailed in the Act. Their only argument for inclusion in the distribution is that the deceased took out the policy whilst married to their mother. They have failed to demonstrate that the deceased had adopted them or that they were financially dependent on the deceased so as to bring them into his sphere of dependant as defined in the Act.
- 5.5 Even if the board, for whatever reason, had wanted to grant some relief to the complainants, it would be precluded in terms of the Act from so doing as the complainants are not dependents as defined in the Act.
- 5.6 In the result, the complainants' complaint is dismissed.

