



HEAD OFFICE
Johannesburg
1st Floor, Norfolk 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 reference: PFA/KZN/4074/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): M S Geraud v Sappi Pension Fund (“the fund”)

Introduction

- [1] Your complaint concerns the amount repayable in respect of a loan made to you against your interest in the pension fund. The complaint was received on 21 June 2005 and a letter acknowledging receipt thereof was sent to you on 5 July 2005. On 6 July a letter was dispatched to the fund requesting it to submit a response to your complaint by 27 July 2005. The fund’s response dated 27 July 2005 was received on 2 August 2005. On 11 August 2005 the response was sent to you for a reply by 18 August 2005. Your reply was received on 6 September 2005. This office requested the fund for further information in its letter dated 6 February 2006 and received the fund’s response in this regard on 14 February 2006. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.
- [2] As the facts are well known to the parties I shall only repeat those facts that are essential for understanding this determination.

Factual Background

- [3] You joined Sappi Saiccor Company (Pty) Limited (“the employer”) on 5 January 1989. You subsequently became a member of the fund. Over a period of time you obtained three housing loans from Standard Bank of South Africa Limited (“Standard Bank”), secured against your pension interest in the fund. The repayments were deducted from your salary on a

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

monthly basis.

Complaint

- [4] You allege that you have repaid the loan (to Standard Bank) in excess of what was due by you. You want to be reimbursed with the amount overpaid by you.

The fund's response

- [5] The fund states that you obtained the following housing loans from Standard Bank:

| | |
|------------------|-------------------|
| “31 January 1997 | R 7 325.12 |
| 30 April 1997 | R 3 100.00 |
| 8 July 1999 | <u>R 3 200.00</u> |
| Total | R13 625.12 “ |

- [6] The fund submitted a letter dated 9 January 2006 from Standard Bank in which it is stated that the loans were granted at the prime rate less 0.25%, meaning that at inception of the first loan the rate charged was 18.75% per annum, but it varied regularly, decreasing to 10.50% per annum on 18 April 2005. Standard Bank attached your housing loan statement showing a nil balance as at 26 October 2005, the last monthly instalment of R239.00 being received from you on 4 October 2005. This statement shows that the system created a monthly debit for the interest charged on the loan. From 28 February 1997, a month after the first loan was taken out, up to 26 October 2005, when the full balance of the last loan was repaid, you had in fact paid R24 676 to Standard Bank, of which R11 033 was the interest component due on the loans.

Determination and reasons therefor

- [7] In terms of section 1 of the Act, a “complaint” must relate to the administration of the fund, the investment of its funds or the interpretation or application of its rules. Further, the complaint must essentially allege:

- “(a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;
- (b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;
- (c) that a dispute of fact or law has arisen in relation to the fund between the fund or any person and the complainant; or

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant;"

[8] Your grievance is not a "complaint" as defined above. It does not relate to your membership in the fund or your fund value. Even if it concerns deductions made from your salary by the employer to repay the housing loan, it does not pertain to the employer's duties in terms of the rules of the fund. The fund only secured your loan with Standard Bank. Your grievance concerns the terms and conditions of the contract between you and Standard Bank, which is not a "pension fund organization" as defined in the Act. For these reasons your grievance does not amount to a "complaint". I therefore lack jurisdiction to investigate or adjudicate it.

[9] Your complaint cannot succeed and your file is hereby closed.

Dated at Cape Town on this the day of 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator