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Please quote our ref: PFA/GA/11776/2006/EMD

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 ("the Act"): BED VERWEY ("the complainant") v THE SOUTH AFRICAN RETIREMENT ANNUITY FUND ("the respondent")

1. Introduction

1.1 This complaint relates to the calculation of the amounts transferred from one retirement annuity fund to another prior to the retirement date.

1.2 The complaint was received by this office on 29 November 2006. A letter acknowledging receipt thereof was sent to the complainant on 13 December 2006. On the same date a letter was dispatched to the respondent requesting it to file a response to the complaint. A response was filed on behalf of the respondent by the administrators of the fund, Old Mutual Life Association Company (South Africa) Limited on 27 December 2006, to which the complainant responded on 26 January 2007.

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), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

1.3 After considering the written submissions, 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.

2. Facts in brief

2.1 The complainant was the life insured in terms of two insurance policies issued to the respondent, policies number 2472262 and 3590361, which for the sake of convenience shall be referred to as Policy 1 and Policy 2 respectively.

2.2 Payment of premiums due under Policy 1 ceased on 1 June 1998 and under Policy 2 on 1 July 1998, when both policies were made paid-up. The retirement date for Policy 1 was 1 June 2009 and for Policy 2, 1 July 2009. Prior to retirement date, the complainant requested that the paid-up value of the policies be transferred to another retirement annuity fund, which was duly done with effect from February 2006. This was treated by the respondent as an early retirement.

2.3 The annual benefit statement issued by the administrators on behalf of the respondent as at 5 February 2005, reflected a *death value* for Policy 1 of R184,251.19 and for Policy 2, R99,244.39. The statement contains a note that *Favourable or adverse investment and market conditions, non-payment of remaining premiums and changes you make to your policy could significantly affect the above values.*

2.4 The amount transferred to the transferee fund in February 2006 was R281,563.10 plus a claim adjustment of R7,256.08, a total of R288,819.18.

3. Complaint

The complainant is dissatisfied with the amount of R288,819.18 transferred in February 2006 when compared to the death value on the benefit statement of 5 February 2005 of R283,819.18. He claims payment of the amount of R115,000 being 40,5% growth over the 19 month period from February 2005 to September 2006. Secondly he wants to know in which asset classes the money was invested from February 2005 to February 2006, which may have given rise to the poor growth of his benefit during that period.

4 Respondent's Response

4.1 The administrator, on behalf of the respondent, refers to the Statement of Intent issued by the Long-term Insurance Industry and the Minister of Finance on 12 December 2005, where it was proposed that any retirement annuity policy which was the subject of an early premium cessation, i.e. a reduction or cessation of premiums or a reduction of the policy term, after 1 January 2001 would qualify for an enhancement if the investment value of the policy was reduced by more than 35% as a result of the early premium cessation. This Statement of Intent was subsequently approved by the parties with effect from 1 December 2006.

4.2 The respondent further states that the two policies do not qualify for an enhancement in terms of the Statement of Intent.

4.3 Policy 1 included life cover; Policy 2 did not. The final early retiral value of Policy 1 was R170,721.92, compared to the death value of R184,251.00 quoted in February 2005. The final early retrial value of Policy 2 was R110,841.18, compared to the death value of R99,244.00 quoted in February 2005.

4.4 It is further stated that the internal rate of return over the total period during which Policy 1 was in force, was 12.7% per annum. For Policy 2, the annual internal rate of return was 14.52%.

4.5 In another addendum to the response, addressed to the complainant on 23 October 2006, it is explained that the difference in value is not due to negative growth from February 2005 to February 2006, but due to the fact that the policy was early retired. It is also stated that the values quoted on the statement of February 2005 were for information purposes only and were not guaranteed. The actual values are only available on the actual date of payment.

5. Complainant's response

The complainant denies having taken early retirement and contends that, as two other retirement annuity providers showed growth of 45% and 36% respectively during the same period, he should therefore be entitled to payment of an additional amount of R115,000 as claimed.

6. Determination and reasons therefor

6.1 The Statement of Intent deals with at least two kinds of early premium cessation, a reduction or cessation of premiums or a reduction of the policy term, after 1 January 2001. In this instance, the payment of premiums ceased in 1998 (i.e. before 1 January 2001) and the policy term was reduced from 1 June 2009 (Policy 1) and 1 July 2009 (for Policy 2) to February 2006, after 1 January 2001.

6.2 In the Benefit Statement of 5 February 2005, the values given are death values, i.e. the amounts that would be paid out if the life assured were to pass away at that date. Policy 1 included death cover; Policy 2 did not.

6.3 Death values are not the same as transfer or withdrawal values upon premature termination of a retirement annuity agreement, in this instance referred to as early retirement. Investment growth does not automatically equal growth (or the rate of growth) of the early retiral value. Expenses including, in the case of Policy 1, the cost of risk benefits (life cover), have to be deducted. No new premiums were in this instance forthcoming to cover continuing expenses.

6.4 The respondent, in its reply, did not specify the asset classes in which the funds were invested. In the light of my finding, such an analysis could serve only a limited purpose, as it would not be possible to draw any meaningful conclusion from the information.

6.5 In the result, the complainant's complaint cannot succeed.

DATED at JOHANNESBURG on this day of 2007.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR