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Please quote our ref: PFA/GA/8216/06/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): J MNGUNI (“the complainant”) v CORPORATE INSURED SERIES (“the first respondent”)/CORPORATE SELECTION RETIREMENT FUND (“the second respondent”)/ SALES AND MERCHANDISING DETAILS (“the third respondent”) AND SGRP MERIDIAN (“the fourth respondent”)

1. Introduction

[1.1] The complaint concerns the complainant’s allegation that the first and the second respondents failed to pay the complainant his withdrawal benefit following the complainant’s exit from the first and the second respondents.

[1.2] The complaint was received by this office on 6 March 2006. A letter acknowledging receipt of the complaint was sent to the complainant on 12 June 2006. On the same date a letter was dispatched to the fourth respondent giving it until 3 July 2006 to file a response to the complaint. On 20 June 2006, a letter was dispatched to the third respondent giving it until 11 July 2006 to file a response to the complaint. On 12 September 2006, a letter was dispatched to the first and the second respondents giving them until 3 October 2006 to file a response to the complaint. On 18 August 2006, this office received a response furnished by the fourth respondent. 18 October 2006, we received a response furnished by Liberty Life on behalf of the first and the second respondents. On 17 May 2007, this office forwarded all responses received to the complainant for his further submissions. The complainant has to date not furnished his further submissions.

[1.3] After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing. The determination and reasons therefor appear below.

2. Factual background

M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shroobree (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

[2.1] The complainant was previously employed by the third respondent on or about March or April 2002. With effect from 1 April 2003, the third respondent commenced its participation in the first and the second respondents. By virtue of the complainant's employment with the third respondent, he became a member of the first respondent.

[2.2] On 31 December 2003 the complainant resigned from the third respondent.

[2.3] On 1 April 2004 the complainant commenced his employment with the fourth respondent which is also the participating employer in the second respondent.

[2.4] The first and the second respondents are administered by Liberty Life.

3. The complaint

[3.1] The complainant's complaint is that the first and the second respondents failed to pay him a withdrawal benefit upon his resignation from the third respondent.

4. The first and the second respondent's responses

[4.1] Ms L Wenman, Senior Legal Advisor of Liberty Group Life furnished a response on behalf of the first and the second respondents.

[4.2] The first and the second respondents contend that by virtue of the complainant's employment with the third respondent, the complainant became a member of the first respondent which is an "unapproved free standing risk scheme" ("the scheme"). Further, the respondents contend that the scheme was taken out by the third respondent on behalf of its employees. Furthermore, it is contended that as a result of the complainant's resignation from the third respondent, the complainant's membership of the first respondent also terminated.

[4.3] The respondents further aver that upon the complainant's termination of membership of the scheme, because the scheme is unapproved, the scheme did not become liable to pay a withdrawal benefit upon the complainant's exit from the first respondent. Further, the respondents make the point that a death or disability claim would have been payable provided that at the time the complainant was still a member of the scheme when such event giving rise to the claim occurred.

[4.4] The respondents contend that as the scheme is unapproved, it is not governed in terms of the Act but in terms of the Long-Term Insurance Act 52 of 1998. Moreover, the respondents submit that this office lacks the power to investigate the complaint and adjudicate on it.

[4.5] Further, the respondents submit that according to the second respondent's records, while the complainant was employed by the third respondent, he has never been a member of the second respondent.

[4.6] Furthermore, the respondents contend that upon the complainant assuming employment with the fourth respondent and by virtue of the complainant's employment with the fourth respondent, the complainant became a member of the second respondent. Further, the respondents submit that as the complainant is still employed by the fourth respondent the complainant is not as yet entitled to his withdrawal benefit as it has not yet accrued.

5. The third respondent's response

[5.1] In terms of section 30A of the Act, the third respondent was afforded an opportunity to respond to the complaint. However, the third respondent failed to respond.

6. The fourth respondent's response

[6.1] Ms H K Brown, the Human Resources Manager of the fourth respondent submitted a response on behalf of the fourth respondent.

[6.2] The fourth respondent confirms that the complainant was its employee from April 2002 until December 2003.

[6.2] The fourth respondent avers that during the complainant's employment with it, the complainant became a member of the first respondent with the scheme number 0030100443.

7. Determination and reasons therefor

[7.1] The Act defines a pension fund organization as:

“pension fund organization” means-

- (a) any association of persons established with the object of providing annuities or lump sum payments for members or former members of such association upon their reaching retirement dates, or for the dependants of such members or former members upon the death of such members or former members; or
- (b) any business carried on under a scheme or arrangement established with the object of providing annuities or lump sum payments for persons who belong or belonged to the class of persons for whose benefit that scheme or arrangement has been established, when they reach their retirement dates or for dependants of such persons upon the death of those persons,

and including any such association or business which in addition to carrying on business in connection with any of the objects specified in paragraph (a) or (b) also carries on business in connection with any of the objects for which a friendly society may be established, as specified in section 2 of the Friendly Societies Act, 1956, or which is or may become liable for the payment of any benefit provided for in its rules, whether or not it continues to admit, or to collect contributions from or on behalf of, members;”

- [7.2] On 21 August 2007, Liberty Group Life submitted a copy of the first respondent's rules. Upon perusal of the first respondent's rules it is clear that the first respondent was not established in terms of the Act but in terms of a separate agreement between the first respondent's underwriter, Liberty Group Life and the third respondent. Therefore, this office lacks jurisdiction to investigate and adjudicate on this leg of the complaint.
- [7.3] It is commons cause that during the complainant's term of employment with the third respondent, the complainant did not become a member of the second respondent. The second respondent submitted in its response that the reason/s the complainant was excluded from becoming its member are unknown to it and that the third respondent should respond in this respect. In terms of the second respondent's rules there are no sections of the rules that made it possible that the complainant may be excluded from becoming a member of the second respondent. Therefore, it can only be assumed that it is the third respondent that can provide a logical explanation regarding the complainant's exclusion as a member of the second respondent from 2002 to 2003.
- [7.4] In the result, the appropriate order of this Tribunal is to order the second respondent to give clarity as to the reason/s the complainant was excluded from membership of the second respondent.

[7.4.1] It is hereby ordered that the Sales and Merchandising Details furnish reason/s to this Tribunal and to the complainant as to why it excluded the complainant from becoming a member of the Corporate Selection Retirement Fund from April 2003 until December 2003 within 14 days of the date of this determination.

DATED AT JOHANNESBURG ON THIS DAY OF 2007

Yours faithfully

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MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR