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Please quote our reference: PFA/WE/5251/2005/TT

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“Act”): J PELSER V CENTRAL RETIREMENT ANNUITY FUND (“the fund”)/ SANLAM LIFE INSURANCE LTD (“insurer”)

Introduction

1. This matter concerns the payment of a benefit by a retirement annuity fund prior to the member attaining the age of 55 years. Your complaint was received by this office on 30 August 2005. On 13 September 2005 a letter was sent to the respondents with your complaint, giving them until 4 October 2005 to file a response. A response was received from the respondents on 4 October 2005.
2. In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the insurer on 19 January 2006. The parties were given 30 days to settle the matter failing which this office would determine the complaint in the ordinary course. It is with that brief background that I now determine this complaint in the ordinary course.
3. After considering the written submissions before me, I consider it

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

unnecessary to hold a hearing in this matter.

Complaint

4. You became a member of the fund on 1 September 1991, at the age of 36. With effect from 1 December 2001 (at age 46) you made your policy "paid-up". Your fund value as at March 2005 was R15 877.86.
5. You would like to receive your retirement benefit now as you are experiencing financial difficulties. Your complaint is that the fund refuses to accede to your request.

Response

6. The fund states that the rules of the fund and the policy contract, in particular clauses 3 and 7 thereof, do not allow you to withdraw from the fund before reaching the age of 55.

Determination and reasons therefor

7. In order for a retirement annuity fund to obtain tax approval status as such from the Receiver of Revenue, part (b)(v) of the definition of "retirement annuity fund" in the Income Tax Act requires that the rules of the fund must provide that no member will become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years.
8. The rationale is that in exchange for the various tax concessions granted to retirement annuity funds and its members, the legislature restricts a member's access to his retirement savings to ensure that the monies are utilized for retirement and no other purpose.
9. In terms of section 1.1 of part 8 of the fund's rules, a member is entitled to a pension on the "member's retirement date". The latter, in accordance with the requirements of the Income Tax Act, is defined in the rules as follows:

"RETIREMENT DATE for each MEMBER shall mean a date, on or after the MEMBER's 55th birthday, but before the MEMBER's 70th birthday, that the MEMBER selects from time to time as the date on which the MEMBER becomes entitled to benefits in terms of the rules."
10. You have not reached the age of 55 nor are you disabled as defined. Therefore in terms of the rules you are not entitled to any benefit from the fund at this stage.

Relief

11. In the result your complaint cannot succeed.

SIGNED AT CAPE TOWN ON THIS DAY OF 2006

Yours faithfully

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VUYANI NGALWANA
PENSION FUNDS ADJUDICATOR