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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): P van Schalkwyk (“the complainant”) v Private Security Sector Provident Fund (“the first respondent”) and Lochner’s Security Services CC (“the second respondent”)

1. Introduction

- 1.1 This complaint concerns the failure of the second respondent to pay contributions to the first respondent, with the consequent inability of the first respondent inability to pay the complainant a withdrawal benefit. The complaint was received on 15 February 2006 and a letter acknowledging receipt thereof was sent to the complainant on 25 April 2006. On the same date a letter was dispatched to the first respondent requesting it to submit a response to the complaint by 16 May 2006. The first respondent's response was received on 18 May 2006. The response was sent to the complainant on 24 May 2006 for a reply by 9 June 2006. The reply was received on 29 May 2006.
- 1.2 After considering the written submissions it is considered unnecessary to hold a hearing in this matter.
- 1.3 The determination and reasons therefor appear below.

2. Complaint

- 2.1 The complainant is dissatisfied that he has not received his withdrawal benefit from the first respondent subsequent to the termination of his employment (date not given) after two years' service with the second respondent. The complainant states that the second respondent made

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)

regular deductions from his salary for pension fund purposes, and the complainant submitted a copy of his January 2005 payslip to support this. The complainant contends that the second respondent paid only a single contribution of R110 to the first respondent on his behalf. This tribunal is called upon to investigate the matter.

3. First respondent's response

- 3.1 The first respondent confirms that it received only one contribution on the complainant and all the other members' behalf, this being the September 2004 contribution.

4. Determination and reasons therefor

- 4.1 Following the termination of the complainant's service with the second respondent, the complainant became entitled to a withdrawal benefit. According to the payslip the complainant attached to his complaint, the second respondent deducted a certain amount from his salary for pension fund purposes. It is clear from the evidence that the second respondent failed to pay all the complainant's contributions to the first respondent. As a result of the second respondent's conduct, the complainants fund share is much less than what it ought to be.

- 4.2 The second respondent's conduct is in contravention of section 13A of the Act and is a punishable offence in terms of section 37 of the Act. Section 13A of the Act provides that the employer of any member of a registered fund shall pay the following to the fund in full, namely:

- (a) any contribution which, in terms of the rules of the fund, is to be deducted from the member's remuneration; and
- (b) any contribution for which the employer is liable in terms of those rules."

- 4.3 Section 13A (3) (a) (i) also states that such contribution must be paid directly into the fund's account and section 13A (3) (a) (ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contribution not later than seven days after the end of that month for which such a contribution is payable.

- 4.4 It is evident that the second respondent did not pay over all the complainant's contributions to the first respondent. To the extent that the first respondent apparently does not hold sufficient cash reserves to pay the benefit, the complainant is entitled to recover the loss of his benefits from the second respondent (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839 F-G).

- 4.5 Thus, the appropriate relief is that which has the effect of placing the complainant in the position he would have been had the second respondent regularly and timeously paid the contributions due. To that end, the administrator must calculate the benefit to which the complainant would have been entitled had the second respondent made regular contributions less any deductions permitted by the Act. Taking the contribution the first respondent received on behalf of the complainant into account, the second respondent must then be ordered to pay the complainant the amount calculated by the administrator.
- 4.6 Although all our efforts to locate the complainant's former employer, the second respondent, have been fruitless, I am prepared to make an order against it in the event that the complainant is successful in this regard.

5. Relief

5.1 In the result thereof it is ordered as follow:

- [5.1.1] The first respondent is ordered to compute the value of the withdrawal benefit that the complainant would have been entitled to had the second respondent timeously made the pension contributions due in terms of the rules, and to inform the complainant, this office, and the second respondent of such amount, within two weeks of the date of this determination;
- [5.1.2] further the first respondent is ordered to pay the complainant the amount it is presently holding on behalf of the complainant, within two weeks of the date of this determination;
- [5.1.3] The second respondent is ordered to pay the complainant the amount of the benefit computed in paragraph [5.1.1], less the amount paid by the first respondent in terms of paragraph [5.1.2] within one week of the first respondent forwarding the calculation to it, together with interest thereon calculated at 15.5% per annum from the date of termination of service until the date of payment.

Dated at Cape Town on this the _____ day of _____ 2007.

Yours faithfully

**Mamodupi Mohlala
Pension Funds Adjudicator**