



HEAD OFFICE

Johannesburg  
2nd Floor, Sandown House  
Sandton Close 2, Sandton, 2196  
PO Box 651826, Benmore, 2010  
Tel (011) 884-8454 □ Fax (011) 884-1144  
E-Mail: [enquiries-jhb@pfa.org.za](mailto: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](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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Please quote our ref: PFA/GA/11253/06/FM

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): T C SENNE (“the complainant”) v PLANNED PARENTHOOD ASSOCIATION OF SOUTH AFRICA (“the first respondent”)/ CORPORATE SELECTION RETIREMENT FUND (“the second respondent”)/ LIBERTY LIFE (“the third respondent”)**

1. Introduction

[1.1] The issue in this complaint is the alleged failure by the first respondent to pay contributions to the second respondent and the second respondent’s consequent inability to pay a withdrawal benefit due to the complainant.

[1.2] The complaint was received by this office on 30 October 2006. A letter acknowledging receipt of the complaint was sent to the complainant on 30 November 2006. On the same date a letter was dispatched to the third respondent giving it until 29 December 2006 to file a response to the complainant’s complaint. A response dated 8 January 2007 on behalf of the second and the third respondents was received from the third respondent on 11 January 2007. On 29 January 2007 a letter was addressed to the complainant asking him to file a reply to the third respondent’s response by no later than 12 February 2007. No reply was received from the complainant. Having considered the submissions filed of record, the tribunal considers it unnecessary to hold a hearing. The determination and reasons therefor appear below.

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M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E de la Rey (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator)

Office Manager: L Manuel, Financial Manager: F Mantsho, Accountant: R Soldaat

[1.3] As the background facts are well-known to the parties, the tribunal shall not burden this determination by repeating same.

## 2. Complaint

[2.1] The complainant is aggrieved by the first respondent's failure to pay all the contributions which are due to the second respondent in terms of the rules, and consequently precluding the second respondent from paying the complainant a withdrawal benefit that he is entitled to. The complainant contends that at the time the complainant left the service of the first respondent and exited the second respondent, the first respondent was in arrears with contributions for 36 months until August 2005.

[2.2] In his own words, the complainant states: "My former employers "**PLANNED PARENTHOOD ASSOCIATION OF S.A**" have failed to successfully claim contributions which were salary contributions for the 36 months to August 2005".

## 3. Response

[3.1] This office received a response from the third respondent on behalf of itself and the second respondent.

[3.2] The third respondent states that the first respondent was a participating employer in the second respondent, an umbrella fund sponsored by the third respondent.

[3.3] It is averred by the third respondent that the first respondent was unable to meet its contribution commitments to the second respondent in full resulting in the second respondent's inability to pay the complainant a withdrawal benefit. The first respondent has, so says the third respondent, given undertakings to pay the arrear contributions but has reneged on that promise resulting in the contributions being outstanding to date.

[3.4] The third respondent further states that the first respondent has, by way of a letter dated 5 October 2006, expressed a desire to discontinue fund contributions and to terminate its participation in the second respondent with effect from 31 March 2006. However, no steps have to date been taken to apply to the Registrar of Pension Funds for the appointment of a liquidator in terms of section 28 of the Act.

[3.5] Finally, the third respondent makes the statement that it currently awaits payment of the arrear contributions by the first respondent, alternatively, the prosecution of the first respondent by the authorities in terms of the provisions of the Act.

## 4. Determination and reasons therefor

[4.1] In terms of the rules, the complainant joined the second respondent on a non-contributory basis, meaning that the members of the first respondent do not

contribute to the second respondent. The first respondent is obliged to pay contributions to the second respondent at a rate prescribed in the rules.

- [4.2] It appears that other than the failed undertakings by the first respondent alluded to by the third respondent, the first respondent has not made any further payment arrangements with, or contributions to the second respondent, and consequently, the second respondent has not paid the complainant a withdrawal benefit. The first respondent remains in breach of its duty to make contributions to the second respondent, regardless of its own financial circumstances.
- [4.3] Following the termination of the complainant's service with the first respondent, the complainant became entitled to a withdrawal benefit. To date no payment of a withdrawal benefit has been effected to the complainant.
- [4.4] As a result of the first respondent's failure to comply with its obligations in terms of the fund rules, the second respondent could not effect payment of the complainant's withdrawal benefit. The first 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.”
- [4.5] 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.
- [4.6] As the first respondent is in arrears to the extent that the second respondent does not hold sufficient cash reserves to pay the complainant's benefit, the complainant is entitled to recover any financial loss he has suffered from the first respondent. In other words, the first respondent is liable to the complainant for the benefit the complainant would have received had the contributions been timeously invested in the second respondent portfolios less any monies held by the second respondent on the complainant's behalf (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839 F-G).
- [4.7] Thus, the appropriate relief is that which has the effect of placing the complainant in the position he would have occupied had the first respondent regularly and timeously paid the contributions due.

