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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 1956 (“the Act”) – SANDRA VELDTMAN v CENTRAL RETIREMENT ANNUITY FUND (“the fund”)

Introduction

1. This matter concerns the distribution of a death benefit in terms of section 37C of the Act, in particular, the board of management’s decision that you were not dependent on the deceased.
2. The complaint was received by this office on 10 October 2005. On 17 October 2005 a letter was dispatched to the fund giving it until 7 November 2005 to file its response to the complaint. The fund’s response was received by this office on 2 November 2005. On 8 November 2005 a copy of the fund’s response was sent to you for a reply by 22 November 2005. A reply was received from you on 21 November 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

The Factual Background and Complaint

3. You were in a relationship with the late Johannes Vermaak (“the deceased”), a member of the fund, until 2001. The deceased moved in with his parents after your relationship ended.
4. The deceased passed away in September 2004 while he was still staying with his parents.
5. When he passed away a death benefit became payable by the fund. The fund identified you, Stella Smith, the deceased’s mother, and the deceased’s former wife, Lorraine Vermaak, as potential beneficiaries. However the board of management resolved to award the full benefit to the deceased’s mother.

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

6. You are dissatisfied with the trustees' decision not to award any portion of the benefit to you. You state that the benefit or part thereof should have been awarded to you because:
- you and the deceased stayed together for three years during which period you regarded yourself as his "common law wife"
 - you were the sole beneficiary in the deceased's last testament
 - it was the deceased's wish that you receive a portion of the death benefit and
 - the Master of the High Court allegedly stated that the benefit should be paid to you as you are the appointed executor of the deceased's estate

The response

7. Mrs M May of Sanlam Life Insurance Limited, the administrator of the fund, states that the fund followed the process in paragraph 7.3 of part 8 of the fund rules read in conjunction with section 37C of the Act when it dealt with the distribution of the benefit.
8. She states further that the reason why the trustees did not award any portion of the benefit to you is because you were not regarded as having been dependent on him at the time of his death.
9. According to Mrs May, in deciding to award the entire benefit to the deceased's mother to the exclusion of yourself and the other beneficiaries, the following factors were also considered:
- the fact that the deceased's mother was financially dependent on the deceased both before and after the deceased moved in with you
 - the fact that the relationship between you and the deceased was terminated some three years before his death
 - the fact that the deceased lived with his mother for the last three years of his life during which period he did not have any contact with you
 - the fact that you are in receipt of a monthly pension
 - the fact that you have been appointed as the sole beneficiary in the deceased's estate and
 - the fact that the deceased did not appoint any nominees

Determination and reasons therefor

10. The distribution and payment of pension benefits upon the death of a member is provided for in section 37C of the Act.
11. The main object of the section is to ensure that those persons who were dependent on the deceased during his lifetime, irrespective of whether the

deceased was legally required to maintain them, are not left without support on his death.

12. The fact that you were nominated as the sole beneficiary in the deceased's testament and were also appointed as the executor of his estate does not automatically entitle you to a portion of the death benefit. You need to show that you were dependent on the deceased at the time of his death in order to qualify.

13. The term "dependant", for the purposes of section 37C, is defined in section 1 of the Act to mean:

- "(a) a person in respect of whom the member is legally liable for maintenance;
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person-
 - (i) was, in the opinion of the board, upon the death of the member in fact dependent on the member for maintenance;
 - (ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;
 - (iii) is a child of the member, including a posthumous child, an adopted child and an illegitimate child;
- (c) a person in respect of whom the member would have become legally liable for maintenance, had the member not died;"

Paragraph (a) dependants

14. Paragraph (a) dependants are those persons in respect of whom the deceased had a legal obligation to maintain. There is nothing in the papers before me to suggest that there was a legal duty on the deceased to maintain you. As such you do not qualify as a paragraph (a) dependant.

Paragraph (b) dependants

15. Paragraph (b) dependants include the spouse of the deceased member, his or her children and also those persons in respect of whom the deceased did not have a legal duty to maintain but who were in fact dependent on him for maintenance. You have not adduced any evidence to show that prior to the deceased's death, you were in fact dependent on him for maintenance. The fact that you were the deceased's "common law wife" does not by itself bring you under the scope of this paragraph. In the circumstances you can also not be regarded as a paragraph (b) dependant.

Paragraph (c) dependants

