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Please quote our reference: PFA/GA/5227/2005/JM

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 – MM LETSOALO (late MA LETSOALO) v PICK & PAY NON-CONTRIBUTORY PROVIDENT FUND / NMG CONSULTANTS & ACTUARIES (PTY) LTD**

Introduction

- [1] Your complaint, although not precisely formulated, appears to concern the fund's alleged failure to pay you a benefit subsequent to the death of your late husband. You approached this office requesting our assistance to obtain same from the fund.
- [2] Your complaint was received by this office on 9 September 2005. A letter was sent to the employer and the fund on 1 December 2005 requesting them to reply to your complaint and an acknowledgement letter was sent to you on 20 September 2005. A response was filed on behalf of the fund on 16 January 2006 and no response has been forthcoming from the employer to date.
- [3] You lodged this complaint in your capacity as the wife of the late MA Letsoalo, who was a member of the fund from 1 June 1986. The late member was due to reach his normal retirement on 1 April 2005 and passed away on 8 January 2003.

Complaint

- [4] In your complaint you stated that since the late member passed away, you attended at his former employers offices to request the benefit due as a result of his death but to no avail. You submitted a letter to this office some

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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

three months later stating that you were not satisfied with the amount received from the fund. You submitted that according to the records in your possession, you were entitled to more. When you attended at our offices on or about 15 November 2006, you advised my assistant that the late member was ill around November 2002 and that he did not opt to retire early as contended by the fund. You also advised my assistant that the signature which appeared on the option form dated 5 December 2002 was not the late member's and you made an undertaking to submit the necessary proof to our offices as soon as possible.

### Response

- [5] Mr Chris Nessling of the fund's administrator has submitted the response on behalf of the fund advising that the late member retired on 31 December 2002. He states that as a result of the close proximity between the late member's early retirement and death, they were erroneously notified of a death claim, rather than a withdrawal claim. Prior to the administrator being aware of the error, an advance payment of R10 000.00 was paid to the complainant. On discovery of the error, he submitted that the late member's share of the fund was payable as a lump sum as the benefit accrued to him before his death, and same was thus paid to his estate.
- [6] He further advised that on 16 September 2005, the fund issued a cheque of R46 666.60 plus late payment interest. He also confirmed that you are currently in receipt of a monthly pension of R1490.28 and that a further R11 374.82 one-third commutation was paid into the late member's estate.

### Determination and reasons therefor

- [7] From looking at the date of lodging your complaint with this office and the actual payment of the benefit, it is clear that the complaint was actually the failure to make payment of the benefit and the other incidental issues were raised subsequently. The issue of whether the correct benefit (namely, a withdrawal benefit as opposed to a death benefit) was paid or not was raised in the letter which was received in November 2005 and during your visit to our office in November 2006.
- [8] According to the supporting documentation to the complaint, the late member elected to receive a full cash commutation of his retirement benefit. A cash lump sum of R102 236.71 was due and after deductions, the amount payable was R46 666.60. A further cash lump sum of R11 374.82 was also paid and that you are currently receiving the monthly R1 490.28 from the balance.
- [9] What the trustees of a registered fund may or may not do is determined by

the fund rules (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239-D-G and section 13 of the Act). Therefore it acted within the fund rules (in this regard see *Sanlam Retirement Fund A (office staff) and Another v Pension Funds Adjudicator and Another* [2004]6 BPLR 5790C at 5795-J). The rules of the fund permit its members to retire early. Rule A3.3.0 specifically provides that a member may retire from service any time during the period prescribed preceding his normal retirement date and consent of the member's employer will not be required.

- [10] You advised my assistant that the late member could not have opted for early retirement as he was close to his retirement date and that the signature which is on the option form was forged, but to date you have not submitted any supporting documentation to corroborate this allegation. Despite the fact that the option form does not have an official signature, date or stamp/acknowledgement from the employer, according to the provisions stated in the rule discussed above, the employer's consent was not required. Also seeing that you have not submitted any evidence for me to conclude otherwise, I have to conclude that the late member in fact submitted the option form dated 5 December 2002. This is also supported by the documentation from the administrators which had a few signatures by the late member which, though are not consistent, some in fact appear quite similar to that of 5 December 2002.
- [11] The administrators also submitted a letter dated 8 October 2002 wherein an early retirement quotation was made. From this letter it also appears that the late member also signed next to the various options, which I assume was done when the various options were explained to him. Therefore in light of this fact, it seems quite probable that he was in fact considering retiring early as contended by the administrators. Furthermore, the administrators also submitted an IRP 3 from SARS dated 30 November 2002 which indicated that the reason for same was retirement on 31 December 2002. Thus from the facts before me, I am satisfied that the late member was entitled to his share of the fund which was due as a lump sum since the benefit accrued to him before his death. I am satisfied that the fund paid according to the wishes of the late member.
- [12] In the result, your complaint is dismissed.

Yours faithfully

**VUYANI NGALWANA**  
PENSION FUNDS ADJUDICATOR