



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

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
Website: www.pfa.org.za

Please quote our reference: PFA/WE/8370/2006/PGM

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – I SWARTBOOI (“the complainant”) v PRIVATE SECURITY SECTOR PROVIDENT FUND (“the first respondent”) AND ARCHER SECURITY SERVICES (“the second respondent”)

1. **Introduction**

1.1 The complaint concerns the failure of the first respondent to pay the complainant’s withdrawal benefit.

1.2 The complaint was received by this office on 5 May 2006. A letter acknowledging receipt thereof was sent to the complainant on 26 May 2006. On the same date a letter was dispatched to the first respondent giving it until 16 June 2006 to file its response to the complaint. Another letter was dispatched to the second respondent on 24 January 2007 giving it until 26 February 2007 to file its response to the complaint. A response was received from the first respondent on 13 February 2007. No response was received from the second respondent. The first respondent’s response was forwarded to the complainant on 12 July 2007. The complainant however omitted to reply.

1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. **Factual Background**

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

- 2.1 The complainant was employed as a lost control manager by the second respondent from 3 March 2001 until his resignation on 31 December 2005. At the same time the complainant was a member of the first respondent. The complainant states that the second respondent effected monthly deductions from his salary for contributions to the first respondent.
- 2.2 When the complainant's employment was terminated on 30 June 2006, the first respondent did not pay his benefit. According to the complainant, he was informed that the reason therefore is that the second respondent had failed to pay monthly contributions over to the first respondent for a period of three and the half years.

Complaint

- 3.1 The complainant is essentially unhappy about the first respondent's failure to pay his withdrawal benefit.

Response

- 4.1 This office received a response from the first respondent.
- 4.2 The first respondent states that the administrator has requested a claim form from the employer herein, to enable the claim to be processed. The first respondent states that as soon as it is in possession of the correct information the claim will be processed.
- 4.3 The first respondent confirms that there was no indication on its records that the contributions by the second respondent were arrears.

Determination and reasons therefor

- 5.1 Section 13 states that subject to the provisions of the Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from the person so claiming. The Supreme Court of Appeal reiterated this principle in *Tek Corporation Provident Fund & Others v Lorentz* [2002] 3 BPLR 227 (SCA), at paragraph 28, when it stated that the trustees may only do with the Fund's assets what is set forth in the rules. If what they propose to do is not within the powers conferred on them by the rules, they may not do it.
- 5.2 The relevant rule regulating payment of a withdrawal benefit in the rules of the fund is Rule 7.3.1, which reads as follows:

“The benefit in terms of this Rule shall be paid to the Member as a lump sum after a period of six months from the date on which the Member left Service.”

5.3 In the present matter, the complainant’s services were terminated by the second respondent in December 2005. Rule 7.3.1 *supra* of the rules of the fund provides that a member’s withdrawal benefit shall be paid to him after a period of six months from the date of termination of service. It follows that the complainant’s benefit should have been paid by the first respondent after six months from the date he left the employ of the second respondent. More than twenty three months have elapsed since the termination of the complainant’s employment. However, the complainant to date has still not been paid his withdrawal benefit by the first respondent. This delay is wholly unreasonable. The appropriate relief will be to order the first respondent to pay the complainant’s withdrawal benefit.

6. **Relief**

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is ordered to pay the complainant’s withdrawal benefit, less any deductions permitted by the Act, together with interest at a rate of 15,5% from 1 July 2006 until the date of payment, within 14 days of the order.

DATED AT CAPE TOWN ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR