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Please quote our ref: PFA/GA/15794/2007/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): THE BOARD OF MANAGEMENT OF THE PRIVATE SECURITY SECTOR PROVIDENT FUND (“the complainant”) v C J SMITH (“the respondent”)

1. Introduction

- 1.1 This complaint, received by this office on 4 July 2007, concerns the payment of contributions to a pension fund and the furnishing of information regarding the contributions. The complainant also claims as ancillary relief an order that the respondent be prohibited from applying for the liquidation of the business.
- 1.2 On 16 July 2007, a copy of the complaint was sent to the respondent, but no response was received. On 1 April 2008, a member of my staff spoke to a certain Clifford Smith at 012-540 0998 and requested a response. No response has been received.
- 1.3 Having considered the written submissions filed before this tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

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

1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

2. Complaint

The complainant, a provident fund established in terms of a sectoral determination, asked for an order that

- 2.1 the respondent be prohibited from applying for liquidation of the business;
- 2.2 the respondent be compelled within 7 working days to make the payment of contributions from **31 January 2007** to date, to the complainant's banking account;
- 2.3 The respondent be compelled within 7 working days to submit schedules from **31 October 2006** to date of determination to the complainant.
- 2.4 the administrator of the complainant, NBC Holdings (Pty) Limited, be compelled to calculate late payment interest and submit the calculations to the respondent for payment;
- 2.5 the respondent to pay late payment interest within 7 working days of receipt of the calculations;
- 2.6 the administrator to calculate repudiated amounts for death and disability claims ("Repudiated Amounts") plus late payment interest in terms of the complainant's policy and to revert to the respondent within 7 working days of receiving this determination; and
- 2.7 the respondent to pay the Repudiated Amounts within 7 working days of receipt of the information from the administrator.

3. Respondent's Response

- 3.1 On 1 April 2008, a member of my staff spoke to a certain Clifford Smith at 012-540 0998 and requested a response. No response has been received.

4. Determination and reasons therefor

Prohibition against applying for liquidation

- 4.1 The complainant requests an order that the respondent be prohibited from applying for liquidation of the business.
- 4.2 As the respondent is a natural person, his estate could at best be sequestrated upon application to a court. An order restraining him from applying for the liquidation of the business could be described as an attempt at restraining him from doing the impossible.
- 4.3 Such an order would be inappropriate.

Late transmission of contributions and submission of schedules

- 4.4 The complainant is a fund established in terms of Sectoral Determination 6: Private Security Sector, South Africa issued by the Minister of Labour under the Basic Conditions of Employment Act, 75 of 1997, and registered as a pension fund with the Registrar of Pension Funds.
- 4.5 Section 13A of the Act requires every employer to transmit member and employee contributions to a fund within seven days from the end of the month for which it was due.
- 4.6 The relief sought is that
 - 4.6.1 the respondent be compelled within 7 working days to make the payment of contributions from 31 January 2007 to date, to the complainant's banking account;
 - 4.6.2 the respondent be compelled within 7 working days to submit schedules from 31 October 2006 to date of determination to the complainant.
- 4.7 The respondent was on two occasions invited to submit a response, but no response was received. If the respondent has made the necessary payment of contributions to the complainant and submitted the schedules, it was the respondent's duty to bring this to the attention of this Tribunal. As the respondent failed to make any submission, the complainant is entitled to relief.
- 4.8 Participation by the respondent in the complainant is not voluntary. The converse of the obligation of the respondent to participate in the complainant is the complainant's duty to take the necessary steps to ensure that the respondent transmits contributions regularly and submits the necessary schedules on time.

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**