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Please quote our ref: PFA/GA/5885/05/LCM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the ACT”): T A RANYANE (“the complainant”) v ISCOR PROVIDENT FUND (“the respondent”)

1. Introduction

[1.1] The complaint concerns the alleged unlawful deductions from the complainant’s fund credit in the respondent in respect of his home-loan.

[1.2] The complaint was received by this office on 13 October 2005 and a letter acknowledging receipt thereof was sent to you on 20 October 2005. On the same date a letter was dispatched to the respondent giving it until 10 November 2005, to file a response to the complaint. On 11 November 2005, the respondent furnished the response. On 26 June 2007, the response was forwarded to the complainant. The complainant failed to furnish his further submissions.

[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.

2. The factual background

[2.1] The complainant is employed by Mittal Steel (“the employer”). By virtue of his

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

employment the complainant is a member of the respondent. The respondent stands as guarantor in favour of its members in respect of home-loans granted by Standard bank (“the bank”). It is common cause that the complainant applied and was duly granted a home-loan by the bank. Further, the complainant defaulted on the payment of his home-loan. On 7 February 2002, pursuant to defaulting on his home-loan payments the bank demanded that the respondent reimburse the amount which represents the complainant’s home-loan debt payments to it. The respondent duly reimbursed the bank with such an amount deducting it from the complainant’s fund credit.

3. The complaint

- [3.1] The complainant objects to the respondent’s decision in deducting an amount in respect of his home-loan from his fund credit.
- [3.2] The complainant submits that after he had defaulted on his home-loan payments he requested that the respondent make “arrangements for the payment of the arrears”. However, the complainant submits that pursuant to his default of the home-loan the bank demanded from the respondent that it be reimbursed with an amount of R73 000 from his fund credit.
- [3.3] The complainant contends that his home-loan was in the amount of R40 000,00 and not R73 000,00. Therefore, he submits that the respondent paid the bank more than he owed it.
- [3.4] Further, the complainant submits that as a result of the respondent’s decision to “blacklist” its home-loan defaulters which included him for a period of 5 years, the complainant finds this decision discriminatory as he now finds it difficult to make a loan in respect of property. Furthermore, the complainant submits that the respondent made an error by blacklisting him as he had already completed paying his loan. Therefore, the complainant wants this office make an order instructing the respondent to remove you’re his name from its blacklist.

4. The respondent’s response

- [4.1] Ms A Groenewald, the respondent’s legal representative, submitted a response on behalf of the respondent.
- [4.2] The respondent submits that during or about 7 February 2002, pursuant to the complainant’s default of the payment of his home-loan, the bank provided the respondent with a list of home-loan defaulters and requested the respondent to settle those accounts within 21 days. Further, the respondent submits that as a result of default of his home-loan payments the bank requested the respondent to settle his outstanding account.

[4.3] Furthermore, the respondent says that as a result of the complainant's failure to pay his outstanding home-loan payments on 5 April 2003, the respondent in terms of the respondent's trustees' resolution resolved to prevent (blacklist) the complainant from utilizing his fund credit in respect of future home-loans for a period of five years.

[4.4] Moreover, the respondent confirms that the complainant ceded his fund credit in the respondent to the bank.

5. Determination and reasons therefor

[5.1] It is common cause that the complainant was indebted to the bank in respect of his home-loan. The quantum of the home-loan was in the amount of R47 542.23.

[5.2] In terms of section 19(5)(a) of the Act the respondent furnished a guarantee to the bank in respect of his home-loan.

[5.3] The respondent's rules are not explicit in providing for a home-loan in line with section 19(5)(a). However, rule 12.12(a) of the respondent's rules provide for instances where the respondent had granted a loan to a member in respect of purchasing a dwelling or land for purposes of erecting a dwelling on it.

[5.4] The apposite of section 37D(1) provides:

"A registered fund may –

- (a) deduct any amount due on the benefit in question by the member in accordance with the Income Tax Act, 1962 (Act No. 58 of 1962), and any amount due to the fund in respect of-
 - (i) ...
 - (ii) ...
- (aa) ...
- (bb) ...
- (cc) in case of default on the repayment of any such loan by the member concerned in circumstances where his or her membership of the fund is not terminated, the amount of the benefit which the member would have received on termination of membership on the date of default, if such a deduction is only effected as a last resort after the board of the fund is satisfied that no other arrangement for the required repayments can be made;"

[5.5] Since the complainant took the home-loan from the bank he has not left the services of the employer nor exited the respondent. However, upon defaulting on his home-loan payment to the bank, the respondent made

a decision to reimburse the bank with the equivalent amount that the complainant owed to the bank in respect of his home-loan. In terms of section 37(D)(1)(cc) the respondent was authorised to deduct the home-loan amount the complainant owed to the bank by deducting it from his fund credit, which it appears was the last resort as other options considered by the board of the respondent were found to be inadequate.

[5.6] Upon the respondent being required to reimburse the bank with the complainant's home-loan it was also obliged to apply for a tax directive in respect of his home-loan amount payable to the bank. The complainant's settlement amount in respect of his home-loan as at 31 August 2002 was R47 542.23 and the tax amount payable and calculated on the basis of his home-loan amount was R25 626.58. Therefore, the respondent deducted the total sum of R73 168.81. I am satisfied that the deduction effected from the complainant's fund credit by the respondent, and paid to the bank in respect of his home-loan together with the tax paid thereon, in the circumstances, were lawful.

[5.7] In the result, the complaint cannot succeed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**