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Please quote our ref: PFA/MP/6985/06/FM

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): W A BRENT (“the complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“the first respondent”)/ OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED (“the second respondent”)

1. Introduction

[1.1] This complaint concerns the complainant’s dissatisfaction with the maturity values of his retirement benefits compared to the illustrative values provided to the complainant by the second respondent in respect of the underlying policy of insurance issued by the second respondent to the first respondent during the subsistence of the complainant’s membership of the first respondent.

[1.2] The complaint was received by this office on 9 January 2006. A letter acknowledging receipt of the complaint was sent to the complainant on 3 March 2006. On the same date letters were dispatched to the respective respondents giving each until 2 April 2006 to file a response to the complainant’s complaint. A response dated 15 March 2006 on behalf of both respondents was received from the second respondent on the same date.

[1.3] In December 2005 an announcement was made of a Statement of Intent between the Minister of Finance, on the one hand, and the Life Offices Association and five large life assurers on the other, in terms of which the life assurers would commit themselves to certain minimum standards in respect of retirement annuity funds and endowment policies. Although the

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

statement is not binding on this office, we nevertheless referred all retirement annuity fund complaints (including this one) back to the management boards and life assurers administering these funds with a view to facilitating an amicable resolution of the complaint between the parties without the intervention of this office. This matter was referred for settlement to the second respondent on 3 March 2006. The parties were given 30 ordinary days of the date of the letter to settle the matter failing which this office would determine the complaint in the ordinary course. Many complaints were settled on this basis but the settlement terms were not divulged to this office. However, on 15 March 2006 we were informed that the parties in this complaint had failed to reach a settlement in this case. The details of disagreement were not communicated to us. It is with that brief background that we now determine this complaint in the ordinary course. Having considered the written submissions filed of record, the tribunal considers it unnecessary to hold a hearing. The determination and reasons therefor appear below.

[1.4] As the background facts are well-known to the parties, only those facts that are pertinent to the issues raised herein shall be repeated.

2. Facts in brief

[2.1] The complainant was a holder of five retirement annuity fund policies falling under the rubric of the first respondent. The first respondent is underwritten and administered by the second respondent.

[2.2] In 1998 the complainant was quoted by the second respondent projected maturity values in respect of his five policies on his selected retirement dates to be in the amount of R798 415.00.

[2.3] On attainment of the age of 55 years in 2005 but prior to his selected retirement age of 65 years, the complainant transferred the proceeds of his policies to an underwriter of his own choice.

[2.4] The maturity values as projected by the second respondent now form the subject matter of this complaint.

3. Complaint

[3.1] Although the complaint is not properly formulated and the facts, as set out by the complainant in his complaint, are fairly muddled, the essence of the complainant's complaint appears to be that he is dissatisfied by the fact that the maturity values illustrated by the second respondent have failed to eventuate at the time that the complainant transferred the proceeds of his benefits in 2005.

[3.2] In his own words, the complainant expresses his dissatisfaction in the following terms: “What recourse do I have against OM and OM’s employee G.K. van Niekerk to comply with the amounts stated in van Niekerk’s letter of 28.03.96, when I was considering retiring at the age of 55, and which influenced my decision. This letter is a “no frills”, no “ifs and buts”, merely a calculated “estimate at maturity”...”

4. Response

[4.1] The third respondent states in its response that when the complainant’s policies were taken out, a particular economic backdrop prevailed which was characterised by a relatively high inflation environment. It is further stated that in illustrating future values, the life insurance companies use two illustrative growth rates, one higher to illustrate future values against a higher inflationary backdrop and one value at an assumed lower growth rate. The second respondent further avers the illustrative values were not guaranteed.

[4.2] The second respondent makes the point that as a general proposition, investment returns move with the inflation rate. It demonstrates the investment returns with respect to each of the complainant’s policies in the following terms:

- policy no 2926310 which endured from 01/08/1975 to 01/02/2005 = 15,37%
- policy no 3431655 which endured from 01/09/1979 to 01/02/2005 = 13,81%
- policy no 3722163 which endured from 01/03/1981 to 01/02/2005 = 14.13%
- policy no 4074202 which endured from 01/10/1982 to 01/02/2005 = 13,01%
- policy no 4837635 which endured from 01/10/1985 to 01/10/2004 = 12,32%.

[4.3] Finally, it is submitted that the benefits of the policies that were held by the complainant are in line with similar policies of other policyholders invested in the same underlying investment portfolio.

5. Determination and reasons therefor

[5.1] The issue for determination is whether the complainant is entitled to the benefits projected by the second respondent during the subsistence of the respective policies or at any other time. From the extracts of the policy documents, which are incorporated into the rules of the first respondent by reference, it is evident that the complainant was advised that the illustrative

