



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 ref: PFA/EC/10466/2006/TW

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): P BRACHER (“the complainant”) v LIFESTYLE RETIREMENT ANNUITY FUND (“first respondent”) / LIBERTY LIFE (“second respondent”)

1. Introduction

- 1.1 The complaint concerns the complainant’s dissatisfaction with the early retirement values of policies purchased from the second respondent.
- 1.2 The complaint was received by this office on 14 September 2006. A letter acknowledging receipt thereof was sent to the complainant on 26 September 2006. On 10 May 2007 a letter was dispatched to the first respondent and the second respondent informing them about the complaint and giving them until 11 June 2007 to respond to the complaint. A response was received from the second respondent and the first respondent on 28 May 2007 and 6 June 2007. The complainant sent replies on 6 October 2006, 30 May 2007 and 11 June 2007.
- 1.3 After considering the written submissions filed before this tribunal, it is unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

2. Factual Background

- 2.1 The complaint was submitted by one Peter Fenix, on behalf of the

M Mohlala (Adjudicator), C Nkuhlu (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), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), AP Lehana (Assistant Adjudicator), S Mokgara (Assistant adjudicator), L Molete (Assistant Adjudicator), T Nawane (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat

complainant in his capacity as financial advisor. The complainant had purchased several retirement annuity policies with the second respondent and he was happy with the returns from the policies save for two with-profit retirement annuity policies. When the complainant turned 55 in 2003, he took early retirement and decided to surrender his retirement annuity policies. The complainant's normal retirement would have been in June 2013, so he retired ten years before his normal retirement date.

- 2.2 On 1 June 2003, the cash value of policy number 60001177700 (hereinafter referred to as "policy 1") was R157 635.00 and R87 823.00 for policy number 60001548800 (hereinafter referred to as policy 2").

3. The Complaint

- 3.1 The complainant avers that he has been penalised for taking early retirement. He is requesting this office to advise him how best to deal with this matter as he believes that he was treated unfairly by the second respondent.
- 3.2 In his reply, the complainant contends that his complaint was lodged within the prescribed period in terms of the Act and thus falls within the ambit of the Adjudicator's jurisdiction. He is aggrieved by the amounts paid out by the second respondent as he argues that, in his own words "a penalty of this magnitude is most unfair".

4. First Respondent's Response

- 4.1 Mr Joe Wolmarans, the Principal Officer of the first respondent filed a response on behalf of the first respondent. He reiterates the points raised by the second respondent and it is therefore unnecessary to canvass them again here.
- 4.2 He submits that under the circumstances and for reasons set out in the documents submitted by the first respondent, the Board of Trustees is of the opinion that the complaint should be dismissed.

5. Second Respondent's Response

- 5.1 Nazneen Dawood, an actuarial assistant of the second respondent submitted a response on behalf of the second respondent. She confirms that the complaint relates to the complainant's early retirement benefits being lower than the illustrative maturity value reflected in the complainant's letters. She avers that a Statement

of Intent was forwarded to this tribunal as well as to the complainant as she was informed that the complaint was concerning the charges and penalties for taking an early retirement benefit on the complainant's policies.

- 5.2 She raises the issue of prescription and avers that in light of this, the complaint falls to be dismissed. She proceeds to address the complainant's complaint and submits that the policies in dispute are unlinked endowment retirement annuity policies which do not yield any returns. She further submits that the policies do however participate in profits credited to the death value each year, thus they are not directly affected by market conditions.
 - 5.3 Ms Dawood submits that due to the structure of the policies, they do not incur deductions in the same way as investment linked policies when retirement benefits are taken prematurely. On this premise, she denies that charges were levied on outstanding expenses. She further submits that the complainant erred with respect to the policy values he stated in his complaint. She contends that the amounts paid for policy 1 were R158 883.87 and R 88 399.64 for policy 2.
 - 5.4 She further explains that the projected maturity values quoted are illustrative and not for payment purposes. It is only if the complainant had retained the investment until maturity, she argues, that he would have been entitled to full retirement benefits of R1 166 584 on policy 1 and R583 781 on policy 2.
 - 5.5 She submits that the full value of the policies was applied and thus the early retirement benefit that was paid is correct. In the premise, she submits that this complaint should be dismissed.
6. Determination and reasons therefor
- 6.1 The second respondent refers to the Statement of Intent issued by the Long-term Insurance Industry and the Minister of Finance on 12 December 2005, where it was proposed that any retirement annuity policy which was the subject of an early premium cessation, i.e. a reduction or cessation of premiums or a reduction of the policy term, after 1 January 2001 would qualify for an enhancement if the investment value of the policy was reduced by more than 35% as a result of the early premium cessation. It is my view that the second respondent is of the opinion that the two policies do not qualify for an enhancement in terms of the Statement of Intent.

6.2 The second respondent raises the procedural point of prescription and argues that the Adjudicator does not have jurisdiction to hear this matter as any claim that the complainant might have had against the second respondent has prescribed. Section 30I of the Act provides for the following:

“(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing;

(2) If the complainant was unaware of the occurrence of the act or omission contemplated in subsection (1), the period of three years shall commence on the date on which the complainant became aware or ought reasonably to have become aware of such occurrence, whichever occurs first;

(3) The Adjudicator may on good cause shown or of his or her own motion-

(a) either before or after expiry of any period prescribed by this Chapter, extend such period; or

(b) condone non-compliance with any time limit prescribed by this Chapter.”

6.3 In terms of section 30I of the Act, this office shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by us in writing. Further, this tribunal has been given authority to condone non-compliance with time periods.

6.4 It is clear from the complaint that the event to which it relates occurred more than three years before this complaint was received by or lodged at this office. The complainant's benefit was paid in July 2003 and the complaint was lodged in September 2006, more than three years out of time. Thus the complaint is time-barred for the purposes of section 30I (1).

6.5 However, that the complaint has become time-barred in terms of section 30I is not the end of the matter as the tribunal still has a discretion to extend the three-year period or to condone non-compliance therewith. But the complainant needs to show good cause to enable the Adjudicator to do that. The Supreme Court of Appeal has pronounced upon the standard that must be met for condonation to be granted in circumstances like these in *Melane v Santam Insurance Company Limited* 1962 (4) SA 531 (A).

6.6 The appropriate time for the complainant to lodge a complaint was in July 2006. However, it is apparent from the addendum to the complainant's response that there has, prior to the lodgement of the complainant's complaint with this office, been communications between the complainant and the second respondent regarding the early retirement values of the policies. However, in light of the

view this tribunal takes with regard to the complainant's prospect of success it is found that the period of delay in lodging this complaint is inordinately long. The reasons for this view appear in the succeeding paragraphs.

- 6.7 It is common cause that the complainant surrendered his policies 10 years before maturity date. The effect of advancing the maturity date is that an adjusted benefit will then become payable. It follows therefore, that in terms of the above the complainant would be entitled to reduced benefits.
- 6.8 I am satisfied that the amounts reflected in the projections document refers to the benefit the complainant would have received on the normal retirement date had he continued with his contributions until maturity date as opposed to an early retirement date. The complainant's case is clearly distinguishable on the facts from those cases dealing with so-called "early termination charges" and non-payment of the illustrative values where the member remained a contributing member until normal retirement date and all conditions have been met.
- 6.9 In any event, the relief the complainant seeks is aimed at securing advice on how best to handle this matter. I cannot grant such a relief because the object of the Adjudicator is to investigate actual disputes and rule on them, it is not to offer advice. In the premises, this tribunal finds that the complainant's complaint cannot succeed and is therefore dismissed.

DATED AT JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR