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**BY REGISTERED POST**

Mr. T.G. Mogupudi

P.O. Box 2476

**WITBANK**

1035

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”) – T G MOGUPUDI (“complainant”) v OLD MUTUAL SUPERFUND PENSION FUND (“first respondent”) AND OLD MUTUAL CORPORATE (“second respondent”)**

**[1] INTRODUCTION**

1.1 The complaint concerns the first respondent’s failure to pay the complainant a death benefit following his withdrawal from the fund.

1.2 The complaint was received by this tribunal on 25 February 2009. A letter acknowledging receipt thereof was sent to the complainant on 3 June 2009. On the same date a letter was dispatched to the respondents giving

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them until 3 July 2009 to file their responses to the complaint. A response on behalf of the respondents was received on 3 July 2009. This response was forwarded to the complainant on 23 July 2009. No further submissions were received from the parties.

- 1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties, only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

## **[2] FACTUAL BACKGROUND**

- 2.1 The complainant was employed by Midbank Bus Services (Pty) Ltd (“the employer”) from November 2000 until his employment was terminated on 29 February 2008. He was a member of the first respondent from 1 March 2001 until his employment was terminated.
- 2.2 Upon the termination of his employment, the complainant became entitled to receive a withdrawal benefit from the first respondent. The first respondent subsequently paid the complainant a withdrawal benefit in the amount of R25 428.53.

## **[3] COMPLAINT**

- 3.1 The complainant states that he became entitled to receive a death benefit following his withdrawal from the first respondent. He contends that a death benefit was part of his contributions to the first respondent. Thus, the complainant requests that this tribunal should order the respondents to pay him a death benefit over and above the withdrawal benefit that was paid to him.

## **[4] RESPONSES**

### First respondent's response

- 4.1 The first respondent submits that the death benefit that the complainant is referring to is not part of the withdrawal benefit, but a group life assurance cover. The group life assurance cover would have become payable to the complainant if he had died while still in service.
- 4.2 Therefore, it asserts that the complainant does not understand his withdrawal entitlement in terms of the rules of the fund. The withdrawal benefit that was paid to the complainant was his full and final entitlement from the fund.

### Second respondent's response

- 4.3 The second respondent confirms that the death cover forms part of the benefits enjoyed as a living member of the first respondent. It only becomes payable on the death of a member. The complainant is not entitled to the death benefit as he is still alive and no longer a member of the first respondent. The withdrawal benefit paid to the complainant was in full and final settlement of his claim payable by the first respondent.

## **[5] DETERMINATION AND REASONS THEREFOR**

### *Introduction*

- 5.1 The essence of the complainant's complaint is that he was not paid a death benefit following his exit from the first respondent. Thus, the issue is whether or not the complainant is entitled to receive a death benefit in terms of the first respondent's rules following his withdrawal from the fund.

*The first respondent's rules*

5.2 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E and section 13 of the Act).

5.3 Rule 15 of the first respondent's rules regulates the payment of a withdrawal benefit upon the withdrawal of a member from the fund. The apposite portion of the rule reads as follows:

**"15.1 RIGHT TO A WITHDRAWAL BENEFIT**

A MEMBER is entitled to receive a withdrawal benefit-

- (1) when he or she ceases to be an ELIGIBLE EMPLOYEE; and
- (2) he or she is not eligible for any other benefit as described in the RULES."

5.4 Thus, a withdrawal benefit is payable to a member of the first respondent upon his withdrawal from the fund if he is not entitled to any other benefit in terms of the fund's rules. The submissions indicate that the complainant was paid a withdrawal benefit in the amount of R45 366.82 following his withdrawal from the first respondent. Upon the termination of his employment and subsequent withdrawal from the first respondent, the complainant ceased to be an eligible employee as set out in rule 15.1 above. The facts indicate that there was no other benefit to which the complainant became entitled to receive, except a withdrawal benefit as set out in rule 15.

5.5 In terms of the first respondent's rules a death benefit is only payable to a member if he dies before his withdrawal from the fund. Rule 13 regulates the payment of death benefits. The apposite portion of rule 13 reads as

follows:

**“13.1 DEATH BEFORE RETIREMENT**

If a MEMBER dies before retirement, a death benefit is payable. The death benefit comprises the ACCUMULATED CREDIT of such MEMBER, which includes the amount paid in terms of the RISK POLICY if the RISK BENEFIT applies in terms of the SPECIAL RULES.”

5.6 In terms of rule 13.1 above a death benefit is payable to a member's beneficiaries if he dies before retirement. Put simply, a death benefit is payable to a member's beneficiaries if he dies prior to his exit from the first respondent. The complainant was still alive when he exited the first respondent. He was also still alive when his withdrawal benefit was paid. A death benefit is only payable after the member's death and while he is still a member of the fund.

5.7 In light of the above, the complainant is not entitled to receive a death benefit in terms of the first respondent's rules and the respondents paid the correct benefit to him.

**[6] ORDER**

6.1 In the result, the complaint cannot be upheld and is dismissed.

**DATED AT JOHANNESBURG ON THIS 1<sup>ST</sup> DAY OF APRIL 2011**

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**DR. E.M. DE LA REY  
ACTING PENSION FUNDS ADJUDICATOR**

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**Section 30M filing: Magistrate's Court**