Dear Mr Motswadi

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – E J MOTSWADI (“the complainant”) v SYNERGY RETIREMENT FUND (“the first respondent”) AND LIBERTY LIFE (“the second respondent”)

1. Introduction

1.1 The complaint concerns the non-payment of the complainant’s withdrawal benefit pursuant to the termination of his employment.

1.2 The complaint was received by this office on 12 June 2006. A letter acknowledging receipt thereof was sent to the complainant on 20 September 2006. On the same date a letter was dispatched to the first respondent giving it until 19 October 2006 to file its response to the complaint. Another letter was dispatched to the second respondent on 14 August 2008 giving it until 14 September 2008 to file its response to the complaint. A response was received from the first respondent on 18 October 2006. Another response was received from the second respondent on 9 September 2009. These responses were forwarded to the complainant. The complainant did not make any further submissions.
1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. **Factual Background**

2.1 The complainant was employed by Nashua Yabatho ("the employer") on 20 August 1992. He was a member of the respondent by virtue of his employment. On 30 September 2003 his employment was terminated by the employer.

2.2 Upon the termination of the complainant’s employment and exit from the fund, the complainant was paid a withdrawal benefit in the amount of R 3 742.73 by the first respondent.

**Complaint**

3.1 The complainant is essentially unhappy about the value of the withdrawal benefit he received. He states that this benefit is not the true reflection of the contributions he made during his membership of the fund. He further states that the employer has failed to give him a certificate of service and also a notice of termination of his service.

3.2 The complainant is accordingly requesting this tribunal to direct the respondents to pay his withdrawal benefit, and also to provide him with a certificate of service and a notice of termination of his service.

4. **Responses**

The first respondent

4.1 The first respondent states the fund paid to the complainant a withdrawal benefit in respect of his membership of the fund, which included the period 1 June 2002 to 30 September 2003, on 16 March 2004. The first respondent states that the complainant’s benefit was made up as follows:

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Member contributions    R 2 434.32
Employer contributions  R 1 032.88
Investment growth       R   701.33
Gross benefit           R 4 168.53
Less tax paid           R   425.80
Net benefit paid        R 3 742.73
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4.2 The first respondent states that the benefit was paid to the complainant’s bank account and the funds were never returned to the administrator.
The first respondent has annexed a proof of payment in support of the above contention.

4.3 The first respondent states that the fund was administered by Alexander Forbes with effect from 1 June 2002, and the members were transferred to the fund in terms of section 14 of the Act. The first respondent states further that the section 14 transfer had not been completed at the time of the complainant’s withdrawal and the remainder of his benefit is payable by the former administrator of the fund, being Liberty Life.

The second respondent

4.4 The second respondent states that the complainant was paid his benefit by cheque on 30 May 2009. The second respondent states that the complainant’s benefit was made up as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross</td>
<td>R 25 235.37</td>
</tr>
<tr>
<td>Less tax</td>
<td>R 4 218.36</td>
</tr>
<tr>
<td>Net</td>
<td>R 21 017.01</td>
</tr>
</tbody>
</table>

4.5 The second respondent has annexed proof of payment in support of the above contention. The second respondent submits that the complaint should be dismissed as there are no legal grounds of admitting the complaint.

5. **Determination and reasons therefor**

5.1 The complainant requests payment of his withdrawal benefit and also be provided with a certificate of service and a notice of termination of his service.

**Payment of withdrawal benefit**

5.2 The first respondent has shown that an amount of R3 742.73 was paid to the complainant on 16 March 2004. The second respondent has also shown that an amount of R21 017.01 was paid to the complainant on 30 May 2009. The respondents have shown that these amounts represent the complainant’s withdrawal benefit. The complainant did not dispute this.

**Certificate of service and notice of termination of service**

5.3 In terms of section 1 of the Act, any complaint lodged with this office must relate to one of the three aspects of a pension fund organisation, namely, the administration of a fund, the investment of its funds or the interpretation and application of its rules (see Armaments
It follows that the aspect of the complaint that relates to the issuing of a certificate of service and a notice of termination of service do not qualify as a complaint in terms of the Act, and is a matter that the complainant would need to take up with his employer. Thus, this Tribunal has no jurisdiction to investigate and adjudicate over this aspect of the complaint as it relates to employment law matters.

In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS DAY OF 2009.

Yours faithfully

DR E.M. DE LA REY
Pension Funds Adjudicator