



Ground & 1st Floors
Corporate Place
Cnr. Fredman Drive & Sandown Valley Crescent
Sandown
Sandton
2196

P.O. Box 651826, Benmore, 2010
Tel: 087 942 2700 ☐ Fax 087 942 2644
E-Mail: enquiries-jhb@pfa.org.za
Website: www.pfa.org.za

Please quote our reference: PFA/GA/10813/2006/MR/RK

Mr. M. Truter
20 Louis Trichardt Street
NELSPRUIT
1200

PER REGISTERED MAIL

Dear Sir

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”) – M TRUTER (“the Complainant”) V STONESHACK PROVIDENT FUND (“the Respondent”)

1. Introduction

1.1 The complaint concerns a claim for funeral expenses.

1.2 The complaint was received by this office on 30 October 2006. A letter acknowledging receipt was sent to the complainant on 15 November 2006. On the same date a letter was dispatched to the respondent giving it until 14 December 2006 to file its response to the complaint. A response was received from the respondent on 12 November 2007.

1.3 An attempt to have the matter conciliated was made on 6 April 2009, which attempt was unsuccessful. The determination and reasons therefor appear below.

Dr. EM de la Rey (Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), S Mothupi (Snr Assistant Adjudicator), T Dooka (Snr Assistant Adjudicator), M Ramabulana (Snr Assistant Adjudicator), C Seabela (Snr Assistant Adjudicator), P Mphephu (Snr Assistant Adjudicator), T Nawane (Snr Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), S Mokgara (Assistant Adjudicator), A Mnqinya (Assistant Adjudicator), B Mahlalela (Assistant Adjudicator), G Mothibe (Assistant Adjudicator), P Mogashoa (Assistant Adjudicator), T Mbhansa (Assistant Adjudicator), T Tlooko (Assistant Adjudicator), R Kikine (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat, HR Manager: P Mhlambi

2. Factual background

- 2.1 The complainant is a manager at D & L Patrols (“the employer”) a company whose head office was based in Nelspruit. The employees of the employer also contributed to the respondent, whose administrator is Liberty Life (“the administrator”).
- 2.2 The complainant submits that following the death of one of his employees, Mr. JKM Lubbe (“the deceased”) he was not reimbursed for expenses which he had incurred in respect of the deceased’s funeral. Mr. Lubbe was also a contributor to the first respondent.

3. Complaint

- 3.1 The complainant submits that the deceased passed away on 14 June 2006 and that on 15 June 2006, he had spoken to the fund’s representative in its local office in Nelspruit with a request that the administrator assist employer with money so that they in turn could assist the deceased’s family with the funeral expenses.
- 3.2 The complainant submits that while the fund’s representative informed him that the administrator would not be able to forward such monies, she indicated that if the employer itself gave the deceased’s family the money that was needed for the funeral, the administrator would reimburse the employer upon settlement of the death claim to the deceased’s widow. The complainant explained that the fund’s representative informed that the employer had to write a letter to the administrator and attach all the receipts for expenses incurred and upon settlement of the claim, the administrator would deduct the monies spent by the employer.
- 3.3 The complainant in his capacity as an employer paid for all the costs for the funeral in the amount of R11 702.00 and handed in the letter and receipts to the fund’s representative at the local office. However on 8 August 2006, the administrator paid the death benefit claim directly into the deceased’s widow’s account without making the deduction for the funeral expenses incurred by the employer.

- 3.4 It is the complainant's further submission that the administrator's head office in Johannesburg is blaming the local office in Nelspruit for non-payment while it is the administrator who has made a mistake.

4. Responses

- 4.1 This office received a response from the administrator on behalf of the respondent. The administrator submitted that all death benefits are payable in terms of the trustees' resolution and that the full benefit was paid out to the spouse of the late member. It was further submitted that the death benefit was paid in terms of section 37C of the Act.
- 4.2 The respondent further submitted that the trustees' resolutions did not mention any pay-out due to the employer in respect of the funeral expenses and therefore this issue was not taken into account when the death benefit claim was paid out. It was further explained that the fund itself does not have a funeral benefit.

5. Determination and reasons therefor

- 5.1 The issue that falls for determination is whether or not a deduction from the death benefit for funeral expenses incurred by the complainant is permissible in terms of the Act.
- 5.2 Section 37 of the Act, read in its entirety provides various protective measures which ensure that pension assets are afforded additional protection under different circumstances. The distribution in this present matter is regulated by section 37C(1)(bA), which reads,

"Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit (other than a benefit payable as a pension to the spouse or child of the member in terms of the rules of a registered fund, which must be dealt with in terms of such rules) payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(5)(i) and subject to the provisions of sections 37A(3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:

- (a) ...
- (b) ...

If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board

