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PER REGISTERED POST

Dear Madam

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 (“the Act”): M V KOFA (“the complainant”) v CHEMICAL INDUSTRIES NATIONAL PROVIDENT FUND (“the first respondent”) NBC HOLDINGS (PTY) LTD (“the second respondent”)

Introduction

- [1] This complaint concerns the manner of the distribution and allocation of the death benefit by the first respondent to the complainant.
- [2] The complaint was received by this tribunal on 6 August 2009. A letter acknowledging receipt of the complaint was sent to the complainant on 6 August 2009. On 7 August 2009 a letter was dispatched to the first respondent giving it until 8 September 2009 to file a response to the complaint. A response dated 29 September 2009 was received from the first respondent.
- [3] After considering all the written submissions, it is unnecessary to hold a hearing in this matter. 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), L Molete (Assistant Adjudicator), A Mnginya (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

Factual Background

- [4] The complainant is the surviving spouse of the late Mr. M. A. Kofa (“the deceased”) who passed away on 28 December 2007.
- [5] The deceased died while he was a contributing member to the first respondent.

Complaint

- [6] The complainant is aggrieved by the manner in which the trustees of the first respondent distributed the death benefit.
- [7] The complainant is not satisfied with the amount of monthly payments that she is receiving from the trust for her two children. She is requesting this tribunal to order the trust to pay her the money placed to it in full.

Response

- [8] The first respondent’s submissions are as follows:
- [8.1] That the relevant rule stipulates that the amount payable following the death of a member shall be the Fund Credit plus the insured amount, which presents three times the member’s salary.
- [8.2] That a death benefit in the sum of R282 340.48 became available for distribution and was calculated as follows:
- | | |
|------------------------------------|--------------------|
| Fund Credit | R104 405.48 |
| Insured Portion (3x Annual Salary) | <u>R177 935.00</u> |
| Total | R282 340.48 |
- [8.3] That the distribution of a death benefit is regulated by section 37C of the Act, read together with the definition of a dependant.
- [8.4] That in *Bruce Lifestyle Retirement Annuity Fund [2001] 7 BPLR 2193 (PFA)*, this tribunal listed the relevant factors that the board of trustees need to take into account when making an equitable distribution to be as follows:
- The ages of the beneficiaries
 - The extent of dependency
 - The relationship with the deceased
 - The financial affairs of the beneficiaries including their future earning capacity/potential and

- The wishes of the deceased expressed in his nomination form or last will

[8.5] That the benefit was allocated as follows:

Beneficiary	Allocation
M V Kofa (spouse)	48%
M C Kofa (child-21yrs old)	15%
N P Kofa (child-14yrs old)	17%
R K Kofa (child-5yrs old)	39.3%

[8.6] That the benefits of the two minor children was placed into the NBC Umbrella trust that is being administered by Fairheads, but M V Kofa is however receiving a monthly income from the trust on behalf of her minor children. Hence, the first respondent suggests that the complaint relating to dissatisfaction about the monthly allowance payable to the complainant be directed to Fairheads.

Determination and reasons therefor

- [9] This complaint relates to the complainant's dissatisfaction with the monthly allowance paid to her by a beneficiary trust.
- [10] This tribunal lacks jurisdiction to adjudicate complaints relating to trust funds but the complainant may however approach the trust or the administrators of the trust with regards to her monthly payment from the trust and motivate for an increment.

ORDER

- [16] In the result, the complainant's complaint cannot succeed and is therefore dismissed.

Dated at Johannesburg on this **08** day of **FEBRUARY**
2010

Yours faithfully

DR E.M. DE LA REY
Pension Funds Adjudicator

Cc: Attention: Mr. Monyane Qhali (Legal Advisor)
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Section 30M filing Magistrate's Court.
Parties unrepresented