



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR
(HELD IN JOHANNESBURG)**

PFA/NW/11385/2006/EMD/md

In the complaint between:

F JENNINGS

Complainant

and

NATIONAL FUND FOR MUNICIPAL WORKERS

First Respondent

RETIREMENT FUND SOLUTIONS HOLDINGS (PTY) LIMITED **Second Respondent**

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION
FUNDS ACT, 24 OF 1956 (“the Act”)**

Introduction

[1] The complaint concerns the continued membership of a provident fund.

- [2] The complaint was received by this office on 7 November 2006. On 30 November 2006, a copy of the complaint was sent to the respondent, which responded on 7 December 2006. The complainant replied to this response on 27 February 2007.
- [3] After considering the submissions, it has been found to be unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. Both the determination and reasons therefor appear below.

Factual Background

- [4] The complainant has been in the employ of the Ditsobotla Local Municipality since 1 March 1993 and is currently still so employed.
- [5] As part of her conditions of service, she became a member of the Municipal Gratuity Fund. A month later she exercised the option to join the respondent as well, as a Category A (2%) Fund Member.
- [6] The complainant now wishes to withdraw from the respondent whilst still in the employ of her present employer.

Complaint

- [7] The complainant has established that her fund credit in the respondent is less

than the total contributions made by her and her employer since April 1993.

- [8] She emphasises that her dispute is not about the fund credit, but about being compelled by the fund, and not by her employer, to remain a member.

First and Second Respondents' Response

- [9] A response was received from *Sean Samons, Legal Services of the National Fund for Municipal Workers Retirement Fund Reg No 35064; Pension Fund Reg no 35469*. The complainant is a member of the former fund.

- [10] In the response it is stated that the National Fund for Municipal Workers (2% Fund) is a fund established by the Bargaining Council, now called the South African Local Government Bargaining Council. The Council was established as per Gazette 10843 of 31 July 1987.

- [11] On behalf of the first respondent, it is submitted that in terms of the rules of the first respondent, the complainant may not withdraw from the fund whilst still in the employ of her present employer.

- [12] The legal arguments advanced will be dealt with in more detail below.

Complainant's reply

[13] The complainant, in her reply dated 27 February 2007, does not submit any further arguments.

Determination and reasons therefor

Jurisdiction

[14] No mention is made in the rules of the first respondent that it is a bargaining council fund, nor that it was established and is being continued pursuant to a bargaining council agreement, as envisaged by section 2(a) of the Pension Funds Act, 24 of 1956, prior to its amendment on 13 September 2007 by the Pension Funds Amendment Act, 11 of 2007.

[15] Section 2(a), as amended, provides that the Act shall apply to all registered pension funds, including a pension fund established or continued in terms of a collective agreement concluded in a council in terms of the Labour Relations Act, 66 of 1995.

[16] I am therefore satisfied that I have jurisdiction to determine this matter.

Merits

[17] The first respondent purported to respond by way of a letter signed by *Sean Samons, Legal Services*. According to the records of the Registrar of Pension Funds, the first respondent is not an approved administrator, as envisaged by

section 13B of the Pension Funds Act. It therefore cannot have employees. Responses from the first respondent would therefore have to be signed by the principal officer, the chairperson and one trustee.

[18] The Registrar has confirmed that according to its records, the administrator of the first respondent is Retirement Fund Solutions (Pty) Limited. Although no such company could be found in the records of the Registrar of Companies and Close Corporations, it is assumed to be a reference to Retirement Fund Solutions Holdings (Pty) Limited, registration no 1999/006909/07. The postal address matches that of the first respondent.

[19] Any determination made against the first respondent may have to be executed by the administrator. The difference in name would appear to be an administrative error. Retirement Fund Solutions Holding (Pty) Limited is therefore joined as the second respondent. A copy of this determination will be brought to the attention of the Registrar of Pension Funds for further action.

[20] The rules of the first respondent provide for the termination of a member's membership under the following circumstances:

3.3 Termination

3.3(1) A member's membership may not be terminated as long as he/she remains an employee, subject to rule 3.3(2)(d).

3.3(2) A member's membership terminates:

(a) at the member's death; or

(b) as soon as the member, after he/she has ceased to be an employee, ceases to be entitled to a benefit in terms of the rules;

(c) as soon as the Local Authority in whose service the member is employed ceases to participate in the fund in terms of rule 11.18; or

(d) as soon as a member transfers to another retirement fund in which the local authority participates; or

(e) at the dissolution of the fund,

whichever event occurs first.

[21] In terms of rule 3.3(2)(d), the membership of a member employed by a local authority which ceases to participate in the fund, is terminated.

[22] Nothing in the Act precludes a person from being a member of more than one registered pension fund simultaneously.

[23] It would therefore seem that the only circumstances under which the membership of a member still employed by a participating local authority could be terminated, would be if the employer ceases to participate in the fund in terms of rule 11.18.

[24] The rules of a pension fund constitute a public document, open for public inspection at the offices of the Registrar of Pension Funds (section 22 read with section 35(1) of the Act). The rules of a fund are binding on the fund, its members and its officers (section 13).

[25] The limitation on withdrawal from a fund whilst a member is still employed by a participating employer is imposed in terms of the Income Tax Act, 58 of 1962.

