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Please quote our reference: **PFA/GA/35079/2009/AM**

REGISTERED MAIL

Mrs. M.E. Mphelo
42 Poplar Street
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Dear Mrs Mphelo,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”) – M E MPHELO (“complainant”) v MUNICIPAL EMPLOYEES PENSION FUND (“first respondent”) AND CITY OF JOHANNESBURG (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the arrear interest levied on the complainant’s housing loan account as a result of delays in making repayments.
- 1.2 The complaint was received by this office on 25 May 2009 and a letter acknowledging receipt thereof was sent to the complainant on 11 August 2009. On the same date a letter was dispatched to the first respondent giving it until 11 September 2009 to file its response to the complaint. A

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956

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response was received from the first respondent on 29 August 2009. On 29 March 2011 this tribunal directed that the second respondent be joined as a party to these proceedings in terms of section 30G(d) of the Act. A letter was dispatched to the second respondent requesting it to submit a response to the complaint by no later 12 April 2011. A response was received from the second respondent on 29 June 2011. No further submissions were received from the parties.

- 1.3 After considering all the written submissions presented, it is considered unnecessary to hold a hearing in this matter. The determination and the reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant is a member of the first respondent by virtue of her employment by the second respondent. The complainant applied for and was granted a housing loan of R80 000.00 by the first respondent on 1 February 2005 at an interest rate of 15% *per annum*. Monthly deductions of R1 918.20 over a period of 60 months were supposed to be effected from the complainant's salary with effect from February 2005. However, no deductions were made from the complainant's salary until 2009. This resulted in the increase on the initially agreed monthly repayments of R1 918.20 to R5 794.81 payable over a period of 24 months. Further, the arrear amount accrued interest, the outstanding balance on the loan amount as at 28 August 2009 was R127 880.93.

[3] COMPLAINT

- 3.1 The first part of the complainant's complaint relates to the first respondent's increase in the initially agreed monthly repayments towards her housing loan from R1 918.20 over a period of 60 months to R5 794.81 over a period of 24 months. The complainant has now informed this tribunal that this part of her complaint has been satisfactorily resolved due to the fact that the first

respondent has reduced the monthly deductions from her salary in respect of her housing loan account.

- 3.2 With regards to the second part of her complaint, i.e. the levying of the arrear interest on the housing loan account, the complainant submits that she should not be held responsible for the accrued interest because she was not aware that the second respondent was not making monthly deductions from her salary in respect of her housing loan. She states that this is due to the fact that she never received benefit statements from the first respondent.
- 3.3 Therefore, the complainant requests this Tribunal to direct the respondents to cancel the arrear interest levied on her home loan account.

[4] RESPONSE

The first respondent's response

- 4.1 The first respondent confirmed the facts as summarised above. It submits that immediately after granting the home loan to the complainant it wrote to the second respondent and requested it to effect monthly deductions of R1 918.20 from the complainant's salary over a period of 60 months. The first respondent states that it never received anything from the complainant.
- 4.2 The first respondent states that it is the responsibility of the member to question the employer when she notices on her payslip that the loan account is not being paid.
- 4.3 In response to the complainant's contention that she was not aware that the deductions were not being made from her salary by the second respondent since she was not receiving benefit statements from the first respondent, the first respondent submits that the complainant has been receiving her

monthly payslips from the second respondent and all deductions were reflected thereon.

- 4.4 As for the benefits statements, the first respondent submits that it is not correct that members, including the complainant, have not been receiving them. It is the policy of the fund to send benefit statements to all the members. It states that the members' benefit statements are sent to them at least once a year during the months of October and November. Updated benefit statements are also posted on the fund's website and can be accessed by the members through their allocated usernames and passwords. Further, its marketing department visits the municipality regularly, on invitation or on their own after service visits to members.
- 4.5 Its records show that its marketing department has visited the City of Johannesburg more than any other municipality in the country, with the last visit in December 2008. The Principal Executive Officer of the Fund is a full-time employee of the second respondent and is easily accessible by the members in that municipality. Amongst the things that its marketing department addresses with the members on these visits in the issue of the benefit statements, member queries relating to fund growth, benefits, claims, etc. On 20 and 21 August 2009 the fund held its annual general meeting in Polokwane and benefit statements were distributed there and delegates were requested to also distribute them to the members.
- 4.6 The first respondent concludes by stating that it has been in contact with the member as it had been with the other affected members from the second respondent and advised them to sign an acknowledgement of debt, which would extend the period of repayment to ten years and will then reduce the monthly repayments, but she refused.

The second respondent's response

- 4.4 The second respondent submits that it should be noted that in this matter its role is purely of an administrative nature where it acts as a conduit for making monthly payments by way of deductions from the employees' salaries. This dispute should be between the complainant and the first respondent and not the second respondent. It will gladly reduce the monthly deductions as soon as it receives a request from the first respondent.
- 4.5 The second respondent denies that its Human Resources Transactional Shared Services Centre, which is responsible for arranging employee salary deductions, received notification prior to April 2009 to make monthly deductions from the complainant's salary in respect of her housing loan repayments. It states that it arranged for the increased deductions from the complainant's salary in April 2009 as soon as it became aware of the first respondent's request.
- 4.6 The second respondent states that it should be noted that in 2009 it received letters from the first respondent in respect of the other members of the fund to increase the monthly deductions in respect of their loan repayments and some of these members made arrangements with it and the first respondent to reduce their monthly deductions. It states that it duly reduced those members' monthly deductions on request by the first respondent. Thus, the complainant is the author of her own misfortune by not checking her salary or following up with the respondents.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

- 5.1 The complainant applied for a housing loan of R80 000.00 from the first respondent and it was granted on 1 February 2005. The monthly repayments of R1 918.20 were supposed to commence from 28 February

2005 over a period of 60 months. However, no repayments were made until April 2009. By that time, due to the accrual of interest on the arrear amounts, the outstanding balance on the loan had increased to R127 880.93 as at 28 August 2009. The complainant seeks the reversal of the arrear interest levied on her home loan account.

- 5.2 By accepting the housing loan the complainant accepted that the primary responsibility to repay the loan was hers. It was the complainant's responsibility to check her salary slips and to ensure that amounts were being deducted from his salary and paid to the first respondent by the second respondent (see *Felander v Cape Municipal Pension Fund* (PFA/WE/17425/2007/CN)). It was the complainant's primary responsibility to ensure that the deductions were indeed made and that the monies were paid over to the first respondent. The complainant cannot claim to have been unaware that for a period of almost four years no deductions had been effected on her salary since same would have been reflected on her monthly salary slips. She had the use and enjoyment of the extra money she received each month due to non-payment of her housing loan, so she has not suffered any damages.
- 5.3 It is common cause that the complainant knew at all material times that she has a housing loan, she knew that it had to be re-paid each month and she was aware that no deductions were being made for the repayments. Since no deductions were effected, this meant that the complainant's salary was larger. Therefore, the respondents cannot be held liable for damages, nor can they write off the interest on the outstanding amount because the complainant failed to make monthly payments. The first respondent would not be acting in the interests of its fund members if it wrote off the complainant's arrear interest.

[6] ORDER

- 6.1 In the result, the complaint cannot succeed and is dismissed.

DATED AT JOHANNESBURG ON THIS 20TH DAY OF JULY 2011

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

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