



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

CASE NO: PFA/KZN/5668/2005/NS

In the complaint between:

RICHARD NORMAN MARTIN

Complainant

and

BERGMAN INGEROP SA STAFF PENSION FUND

First Respondent

ALEXANDER FORBES GROUP (PTY) LTD

Second Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT,
24 OF 1956 ("The Act")**

INTRODUCTION

[1] This complaint concerns the calculation of a withdrawal benefit. The parties are

cited as above. The complaint was received by this office on 3 October 2005 and a letter acknowledging receipt thereof was sent to the complainant on 4 October 2005. On the same date a letter was dispatched to the respondents requesting them to file a response to the complaint by no later than 25 October 2005. A response submitted on behalf of both respondents, dated 17 October 2005, was received on 28 October 2005. The response was sent to the complainant on 3 November 2005 requesting him to file a reply by no later than 16 November 2005. A reply was received from the complainant on 11 November 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

COMPLAINT

- [2] The complainant commenced service with Ingerop Africa (Pty) Ltd on 14 February 1994. By virtue of his employment, the complainant became a member of the first respondent until he resigned with effect from 30 June 2004. Upon termination of his service, the complainant received a withdrawal benefit of R489 198.06 from the first respondent.
- [3] The complainant is dissatisfied with the benefit he received. He states that in May 2004, prior to his resignation, he contacted the second respondent telephonically requesting his fund balance, and he was advised that the value as at 30 April 2004 was R502 212.61. He was further advised that the actual amount on payout would be more than the quoted value due to the contributions for May and June which were due to be added. The complainant also states that his financial adviser independently sought and obtained a value similar to the one he was provided with by the second respondent. His financial adviser then arranged to transfer his benefit from the first respondent into a preservation fund. The complainant states that he was surprised when he was informed by his

financial adviser that the amount actually transferred was only R489 198.06. The complainant accordingly requests this tribunal to investigate the matter and make an order against the first respondent or the second respondent to pay him the difference between the value that was quoted to him and what was actually paid.

RESPONSE

- [4] The first respondent submits that it is a defined contribution fund which employs a system of declared, interim and final rates in allocating investment return. It submits that such practice allows for efficient administration and facilitates payment of a member's benefits as is required by the rules.
- [5] The first respondent explains that for the period of 1 September 2001 to 31 August 2002 a final rate of 10.6% per annum was in place. The interim rate applicable from 1 September 2002 onwards was 7%. It says that when the figure of R502 212.21 was quoted to the complainant, directly from the administration system, it was based on the first two rates set out above. The first respondent states further that at the time the complainant requested the quotation he was still recorded as an active member. It contends that the complainant had no vested right to the quoted benefit as it was merely an estimated figure.
- [6] According to the first respondent the interim rate of 7% was changed to 5% in June 2004 by the trustees in consultation with its actuary. The first respondent contends that when the complainant's withdrawal benefit was finalized on 1 July 2004, the calculations were based on the final rate of 10.6% per annum for the period of 1 September 2001 to 31 August 2002 and an interim rate of 5% from 1 September 2002 until 30 June 2004. It submits that the 2% difference in the interim rate explains how the calculation of the transferred benefit was arrived at.

- [7] The first respondent advises that the complainant's withdrawal benefit was regulated by rule 21 which states as follows:

"AMOUNT OF WITHDRAWAL BENEFIT

In the event of a MEMBER leaving the FUND for a reason other than retirement or death, he will be entitled to the value of the MEMBER SHARE OF FUND on the day of payment thereof."

- [8] It states that a member share of the fund is defined to mean the amount standing to the credit of the member in his member share of fund account.

- [9] In this regard rule 14 states:

"MEMBER SHARE OF FUND ACCOUNTS

A member share of fund account will be kept for each MEMBER and will contain:

- (a) In respect of a MEMBER who was a MEMBER as at September 2001, the MEMBER'S STARTING VALUE as at 1 September 2001;
- (b) All MEMBER'S contributions made by the MEMBER in terms of Rule 9;
- (c) The NET EMPLOYER CONTRIBUTION made on behalf of the MEMBER;
- (d) Any amount transferred to the FUND for the MEMBER in terms of Rule 13;
- (e) together with FUND INTEREST as declared by the TRUSTEES."

- [10] The first respondent submits that its practice of using the applicable interim rate at the date of a member's exit is in accordance with its rules and is of equal application to every member of the fund. It states that this is done in order to ensure that all members (including the complainant) receive correct benefit entitlements in terms of the rules, being the amount that had accumulated in the fund as at the date of withdrawal (i.e. the member's share of the fund).

- [11] The first respondent confirms that the complainant was not entitled to the quoted benefit value in terms of the rules, but only to the fund value at his date of exit, as adjusted for late payment interest. It states that there was no error in the quoted benefit, which represented the complainant's share of the fund at that date. According to the first respondent the complainant's withdrawal form dated 24 June 2004 was received by the Alexander Forbes Group (Pty) Ltd on 25 June 2004, after the quotation was given to him, and after the interim rate was changed by the trustees.
- [12] The first respondent concludes that the complainant received the correct benefit in accordance with the rules of the fund.
- [13] The first respondent has requested that the complaint be dismissed.

DETERMINATION AND REASONS THEREFOR

- [14] Section 13 of the Act states that the rules of a registered fund are binding on the fund's members, shareholders and officers thereof, and any person claiming under the rules, or whose claim is derived from a person so claiming. Furthermore, the trustees' powers are circumscribed by the rules of the fund (see *Tek Corporation Provident Fund and Others v Lorentz* [2002] 3 BPLR 227 (SCA) at 239 D-H).
- [15] The complainant's withdrawal benefit was calculated using a rate that had been adjusted downwards subsequent to the date of the quotation. This is the reason for the "reduction" in the benefit. The question which arises is whether the fund was authorised in terms of its rules to adjust the interim interest rate in June 2004.

[16] In this regard “Fund Interest” is defined in rule 6 as follows:

“FUND INTEREST means the returns allocated from time to time by the TRUSTEES on the advice of the ACTUARY having regard to the investment return earned by the FUND. It is specifically provided that FUND INTEREST may be negative amounts.”

[17] This rule confers a discretion on the trustees to review an interim rate of interest from time to time on the advice of the actuary.

[18] The difference of R13 013.55 between the fund value quoted on 30 April 2004 and the withdrawal benefit as finalised on 1 July 2004, has been explained. There is no reason on the submissions before me to doubt the correctness or prudence of the downward adjustment of the interim rate from 7% to 5% in June 2004.

[19] Statutory valuations of a fund are required to be done and submitted to the Registrar tri-annually (section 16(1) of the Act). The interim rate as adjusted to 5% was for the period from 1 September 2002 until 30 June 2004. In March 2003, which falls within this period, there was a drastic fall in the Johannesburg Stock Exchange which would have had a negative impact on the value of most pension funds.

ORDER

[20] In the instance, the complaint cannot succeed and it is hereby dismissed.

DATED AT JOHANNESBURG ON THIS 30TH DAY OF NOVEMBER 2010

DR EM DE LA REY

ACTING PENSION FUNDS ADJUDICATOR

Cc: Principal Officer: Bergman Ingerop SA Staff Pension Fund

Attention: Ms Lizzie Vambe

Alexander Forbes Group (Pty) (Ltd)

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Section 30M filing: Magistrate's Court