



Ground & 1st Floors
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/KZN/28400/2008/CMS**

REGISTERED POST

Mrs. M. Boucher
7 Zenith Park
26 Uitsig Road
DURBAN NORTH
4051

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, NO. 24 OF 1956 (“the Act”): M BOUCHER (“complainant”) v MOMENTUM RETIREMENT ANNUITY FUND (“first respondent”) AND MOMENTUM GROUP LIMITED (“second respondent”)

[1] INTRODUCTION

- 1.1 This matter concerns the first respondent’s alleged failure to pay the complainant pension interest assigned to her in terms of a court order made in terms of section 7(8) of the Divorce Act, No. 70 of 1979 (“the Divorce Act”).
- 1.2 The complaint was received by this office on 21 October 2008. On 30 June 2009 a letter was sent to the second respondent requesting it to respond to

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

-The service offered by the Pension Funds Adjudicator is free to members of the public-

the complaint within forty five days. A response dated 6 July 2009 was received from the second respondent. A reply dated 26 April 2010 was received from the complainant. No further submissions were received from the parties.

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

[2] BACKGROUND FACTS

- 2.1 The complainant was married to Mr. M. C. Boucher ("the former spouse") and on 13 May 1991 the marriage between the parties was dissolved by a decree of divorce ("the court order") issued by the Durban and Coast Local Division of the High Court of South Africa.
- 2.2 Paragraph 4 of the court order, dealing with pension consequences of the divorce, reads as follows:

"That an endorsement be made in the records of the Sothern Life Association Limited Retirement Annuity Fund that One Hundred Percent (100%) of the Defendant's interest in Policy No. 25495632 is payable, upon its maturity, to the Plaintiff."

[3] COMPLAINT

- 3.1 The complainant states that despite the retirement annuity policy being ceded to her in terms of the court order, she was told by the second respondent that it cannot be ceded. She requests payment of the proceeds from the contract.

[4] RESPONSE

- 4.1 The second respondent states that recent changes to the legal position (effective from 1 November 2008) now allow a more flexible approach to divorce orders. It states further that it can now give effect to the court order, bearing in mind that only ‘pension interest’ as defined in the Divorce Act and in accordance with previous advices can and will be paid out. The complainant will be contacted to make an election in terms of section 37D of the Act.

[5] REPLY

- 5.1 The complainant seeks the payment of the full value of the retirement annuity policy.

[6] DETERMINATION AND REASONS THEREFOR

- 6.1 The issue for determination is whether or not the complainant is entitled to the payment of the full value of the retirement annuity policy, number SL025495632. The second respondent contended that the complainant is only entitled to pension interest as defined in section 1 of the Divorce Act. Section 7(7)(a) of the Divorce Act reads as follows:

“In the determination of the patrimonial benefits to which the parties to any divorce action may be entitled, the pension interest of a party shall, subject to paragraphs (b) and (c), be deemed to be part of his assets.”

(Own emphasis)

- 6.2 The term “pension interest” is defined in section 1 of the Divorce Act as follows:

“pension interest”, in relation to a party to a divorce action who-

(a) ...

- (b) Is a member of a retirement annuity fund which was *bona fide* established for the purpose of providing life annuities for the members of the fund, and which is a pension fund, means the total amount of that party's contributions to the fund up to the date of the divorce, together with the total amount of annual simple interest on those contributions up to that date, calculated at the same rate as the rate prescribed as at that date by the Minister of Justice in terms of section 1 (2) of the Prescribed Rate of Interest Act 1975 (Act 55 of 1975), for the purposes of that Act." (Own emphasis)
- 6.3 Firstly, the retirement annuity fund policy cannot be ceded to the complainant. Section 37A of the Act provides that a pension benefit may not be reduced or ceded in any form whatsoever other than the limited instances provided for in the Act.
- 6.4 One of the instances where a pension benefit may be reduced is the payment of pension interest in terms of the Divorce Act. As the second respondent has explained, the complainant is only entitled to pension interest as defined in the Divorce Act and calculated at the date of divorce. In accordance with the "clean break" principle, pension interest can only be claimed and calculated up to the date of divorce. It does not include any contributions, fund returns or interest that accrues after the date of divorce.
- 6.5 It follows therefore that the complainant is only entitled to the total amount of the former spouse's contributions to the first respondent up to the date of divorce, together with annual simple interest on those contributions up to the date of divorce. The respondents have already agreed to pay the amount. The complainant is not entitled to the entire proceeds of the policy up to the maturity date.

[7] **ORDER**

1. The complaint is dismissed.

SIGNED IN JOHANNESBURG ON THIS

DAY OF MAY 2010

CHARLES PILLAI
PENSION FUNDS ADJUDICATOR

Cc: Momentum Retirement Annuity Fund

C/o Mrs. Isabel Rademan

Momentum Group Limited

PO Box 7400

CENTURION

0046

Fax: (012) 675 3970

Registered Address of the Fund:

268 West Avenue

CENTURION

0157

SECTION 30M FILING: MAGISTRATE'S COURT

No legal representation