Dear Madam


1.0. Introduction

1.1 This complaint concerns the cash payment of the complainant’s fund value in the first respondent.

1.2 The complaint was received by this office on 22 January 2009. A letter acknowledging receipt of the complaint was sent on 16 March 2009. On the same date a letter was dispatched to the respondents seeking a response by 17 March 2009. A response, which was also forwarded to the complainant, was received on 20 March 2009. There were no further submissions.

1.3 After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. This tribunal’s determination and its reasons therefor appear below.
2.0. Factual Background

2.1 The complainant applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 October 1998. The second respondent is the underwriting insurer and administrator of the first respondent. The contractual maturity date chosen by the complainant is 1 October 2030. The complainant chose to invest in the second respondent’s Variable Portfolio and her fund value on 3 February 2009 was R25 375.33. The complainant is presently thirty seven years of age.

3.0 Complaint

3.1 The complainant is aggrieved that she has not been permitted to take in cash her fund value of R25 375.33.

4.0 Response

4.1 The respondents confirmed the background facts as summarised above. They further averred that in terms of the Income Tax Act, no. 58 of 1962 ("Income Tax Act") a member is only eligible for retirement at earliest age 55 years. The complainant has not reached the minimum age as yet. Further, the complainant’s fund value is greater than R7 000, so she does not qualify for a cash payout before 55 years of age.

4.2 The respondents also refer to rule 6.1.2, which makes it clear that the earliest age that a member can exit the first respondent is at age 55.

5.0 Determination and reasons therefor

5.1 The issue to be determined is whether or not the complainant is presently entitled to receive a cash payment of her fund value in the first respondent.

5.2 The rules of a fund are paramount and binding on all concerned when determining what benefit members are entitled to receive. The fund or board of management can only do what is set forth in the registered rules (see section 13 of the Act and Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA) at 239D-F and Mostert NO v Old Mutual Life Assurance Company (SA) Ltd [2001] 8 BPLR 2307 (SCA) at paragraph 30). Section 13 of the Act, reads as follows:

"Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming."

5.3 It is common cause that the complainant is presently 37 years of age, so she cannot retire from the first respondent until she turns at least 55 years of age. This is so because in terms of the definition of “retirement annuity fund” in section 1 of the Income Tax Act, a retirement annuity fund member can only retire from a fund between the ages of 55 and 70. The exception to this minimum age restriction is if the member is disabled and the retirement annuity fund accepts
the member’s disablement in terms of its rules. The complainant has not made an application for disability to the first respondent, so this exception is inapplicable to the present complaint. The complainant has also not averred that she wishes to transfer her fund value to another approved retirement annuity fund. The first respondent’s rules are clear on the earliest retirement date from the fund. Rule 6.1.2 applies to retirement from the first respondent and reads as follows:

“A MEMBER may, subject to such reasonable notification as the ADMINISTRATOR may require, choose to retire from the FUND at the SELECTED RETIREMENT DATE or at any other date on or after having attained age 55 years,”

5.4 The complainant’s chosen retirement date is at age 58, on 1 October 2030. Thus, the complainant has not reached her selected retirement date, nor has she reached 55 years of age. So, she cannot presently receive a cash payment of her fund value in the first respondent.

5.5 Furthermore, sub-section (b)(x)(cc) of the definition of “retirement annuity fund” in the Income Tax Act is also inapplicable to the complainant because her fund value is greater than the R7 000 limit on cash withdrawals placed by the Minister of Finance in terms of government notice 467, published in Government Gazette number 29913 of 1 June 2007.

5.6 Sub-paragraph (b)(x)(dd) of the definition of “retirement annuity fund” in section 1 of the Income Tax Act is also inapplicable to this complaint because the complainant has not emigrated.

5.7 Thus, neither the rules nor the definition of “retirement annuity fund” in the Income Tax Act come to the complainant’s aid. The complainant is under 55 years of age, she has not claimed disability from the respondents, her fund value is greater than R7 000 and she has not emigrated. Therefore, the earliest date the complainant can receive a cash benefit from the respondents is on or after her 55th birthday.

6.0. Order

6.1 The complaint is dismissed.

Dated at Johannesburg on this day of 2010

Yours faithfully

DR. E.M. DE LA REY
Pension Funds Adjudicator