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PER REGISTERED POST

Mr. R. Hobohm
18 Van Jaarsveld Street
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Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 ("The Act"): R HOBOHM ("complainant") v LIFESTYLE RETIREMENT ANNUITY FUND ("first respondent") AND LIBERTY GROUP LIMITED ("second respondent")

[1] INTRODUCTION

1.1 This complaint concerns the respondents' decision to switch the complainant's investment portfolios on maturity without informing him.

1.2 The complaint was received by this office on 9 April 2010. A letter acknowledging receipt thereof was sent to the complainant on 14 June 2010. On the same date a letter was dispatched to the second respondent giving it until 28 July 2010 to file a response to the complaint. A response dated 14 July 2010 were received from the

respondents. Further submissions were received from the complainant on 11 August 2010.

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] FACTUAL BACKGROUND

2.1 The complainant applied for and was admitted to two memberships of the Prudent Retirement Annuity Fund ("Prudent"), i.e. 60004234400 ("first membership") and 60003566100 ("second membership") on 1 July 1985 and 1 December 1983 respectively. On 1 March 2007 Prudent merged with the first respondent. The second respondent is the underwriting insurer and administrator of the first respondent. The complainant's memberships endured until his chosen retirement dates of 1 July 2009 and 1 December 2009 respectively. The complainant's maturity values were R1 991 551.65 on his first membership and R1 066 918.28 on his second membership.

2.2 On maturity of the two memberships, the complainant was of the view that these memberships should continue to be invested in their pre-retirement portfolios until further notice.

2.3 The complainant's contributions were invested in a conventional 'with profits' portfolio managed by the second respondent from inception to maturity dates. After maturity, the complainant's maturity values were transferred to the Standard Bank Money Market Portfolio.

[3] COMPLAINT

3.1 The complainant is dissatisfied about the respondents' decision to transfer his memberships from a 'with profits' portfolio to the Standard

Bank Money Market Portfolio on maturity without him being informed about it. He states that he only became aware of the transfer in August 2009. Therefore, he requests payment of a higher return after the maturity date.

3.2 The complainant further states that the maturity values are incorrect. He is dissatisfied about the causal event charge that would have been imposed on his first membership by the second respondent had he decided to take early retirement on 1 June 2009.

[4] RESPONSE

4.1 The respondents confirmed the facts as summarised above.

4.2 The respondents' response is summarised as follows:

4.2.1 Initially the complainant was a member of Prudent, which obtained a fund member policy from the Prudential Insurance Company of South Africa to fund its liability to the complainant. Prudent was subsequently merged with the first respondent.

4.2.2 The complainant's first membership made no provision for extension on a 'with profits' basis after its maturity date. The "Rate Book" in force at inception of the membership indicates that a member could defer retirement after maturity and the proceeds could be left to accumulate compound interest at a rate determined by the Prudential from time to time. This would have been disclosed to members at the commencement of membership. The Standard Bank Money Market portfolio was a more transparent way of ensuring the members who opted to defer retirement continued to get growth on their proceeds after maturity.

4.2.3 On reaching the maturity date, without further instructions from the complainant, the maturity value was transferred to the Standard Bank Money Market portfolio, awaiting payment in accordance with the provisions for deferred retirement, so that the complainant could still participate in growth after the maturity date. Had the complainant's membership not been transferred to a money market account he would not have received any growth after the original maturity date.

4.2.4 The second respondent confirms that it advised the complainant that his membership would continue automatically until he requested payment. The complainant misunderstood this to mean that his membership would continue on a 'with profits' basis, whereas the intent was actually that his membership with the first respondent would continue, but the investment after retirement would be in a money market account.

4.2.5 In response to the complaint about the management fee in respect of the Standard Bank Money Market portfolio, the second respondent states that fees were implicitly charged under the previous portfolio. Therefore, these are not additional fees, they are merely an amount now explicitly expressed. The second respondent further states that it made an initial offer to the complainant to reduce the management fee of 1.92% levied on the Standard Bank Money Market portfolio to 0.5% *per annum*. Should the offer be accepted, the adjustment to the management fee will be processed retrospectively from the maturity date of 1 July 2009 to the current date. This offer was subsequently revised after meeting with the complainant, and an offer to cancel the management fee in totality was made to the complainant, but only for as long as the complainant invested in the Standard Bank Money Market portfolio.

4.2.6 With regard to the 18% tax deduction, the second respondent states that this was quoted in error. It is inapplicable to money market portfolios.

4.2.7 In response to the illustrative early retirement values, the second respondent responded as follows:

1. The initial policy was a conventional ‘with profits’ investment with an initial sum assured, to which accrued bonuses payable on the normal pension date or on the prior death of the complainant. The early retirement value is the basic cash value plus the cash value of the bonuses at the date of the claim. Therefore, it does not include the full bonuses.

2. The second respondent also noted that the complainant’s membership printouts did not extract the correct early retirement values from the system. Only the correct death and illustrative maturity values were extracted. This error was not known until after maturity. One month to maturity, as at 9 June 2009, the values were reflected as R1 808 480.00 for a death claim, R1 717 538.00 as an early retirement value and R1 991 551.00 as the maturity value.

3. The difference between the illustrative early retirement value of R1 104 651.18 and the actual retirement value of R1 991 551.65 is R886 900.47. Firstly, the complainant incorrectly added this difference to the early retirement value of R1 717 538.27 reflected on his membership printouts to arrive at the opinion that his maturity value should be R2 604 438.74.

4. Secondly, the complainant was provided with a table reflecting the reversionary, terminal and performance bonuses. Based on this the complainant concluded that the

bonus of 'R886 900.47' includes R391 108.00 reversionary bonuses and R8 134.00 performance bonus. The difference of R487 658.47 must then be seen as the erroneous calculation. Adding this value to the early retirement value of R1 717 538.27 as at 1 June 2009, the maturity value will still be greater than the actual maturity value. Both the theories used by the complainant are inapplicable as the early retirement value and the actual retirement value are calculated differently. The second respondent attached an actuarial certificate confirming the complainant's retirement value of R1 991 551.65.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue to be determined is whether or not the complainant should be compensated for the respondents' decision to transfer his retirement values from a 'with profits' portfolio to the Standard Bank Money Market Portfolio after the retirement date without him being informed about it.

5.2 In determining whether or not the complainant suffered any loss, this tribunal procured the services of an independent actuary. The actuary considered the policy terms, the provisions of the Act and Long term Insurance Act No 52 of 1998, generally accepted actuarial principles and the long-term insurance regulations.

5.3 Regarding the complainant's first membership the actuary was satisfied that the maturity value was correctly computed. However, he suggests that the second respondent add returns of 11.55% *per annum* from 1 July 2009 to 1 December 2009 and money market returns thereafter until a new portfolio is chosen. On the second membership the actuary was of the view that the claim should be rejected as the information about switching investment portfolios to a money market portfolio was known prior to the maturity date of the membership.

5.4 This tribunal is satisfied that with regard to the first membership the policy documents do not clearly state that there would be a switch to a money market portfolio after retirement. However, by 19 November 2009 the second respondent had explained by letter to the complainant that his retirement benefit would remain in the money market portfolio until he advised of an alternative portfolio. The complainant should have given further instructions about investing his retirement value from his first membership by 1 December 2009. With regard to the second membership, no relief can be granted to the complainant because he knew before his policy matured that he must select a new portfolio after the maturity date. This information was provided by the second respondent in its letter dated 19 November 2009, addressed to the complainant. The complainant should consult with his financial advisor and give instructions regarding the investment of his retirement benefits as a matter of urgency.

5.5 The complaint about the difference between the early retirement value and the normal retirement value is moot because the complainant did not retire early. However, the second respondent has provided a detailed explanation for the difference in values. This tribunal does not intend traversing this aspect because it is satisfied that the complainant's normal retirement value was correctly computed.

[6] ORDER

6.1 This tribunal makes the following order:

6.1.1 The second respondent is ordered to add a net return of 11.55% *per annum* to the complainant's normal retirement value in respect of his first membership from 1 July 2009 to 30 November 2009, plus Standard Bank Money Market Portfolio returns on this amount from 1 December 2009 to the date of

credit of the complainant's fund value, within fourteen (14) days of the date of this determination.

DATED AT JOHANNESBURG ON THIS 23rd DAY OF MAY 2011

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

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Section 30M Filing: Magistrate's Court
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