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Please quote our reference: PFAWE/6809/2006/RM

Mr. I.J. Pienaar  
13 Fitzpatrick Street  
Parow-North  
7500

**BY REGISTERED MAIL**

Fax: 021 930 3123

Dear Sir

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 ("The Act"): I J PIENAAR ("complainant") v GIRLS AND BOYS TOWN PENSION FUND ("respondent")**

1.0. Introduction

- 1.1. The complaint concerns the quantum of a withdrawal benefit paid to the complainant by the respondent, which is a defined benefit fund.
- 1.2. The complaint was received by this office on 13 January 2006. A letter acknowledging receipt of the complaint was sent to the complainant on 23 January 2006. On the same date letters seeking a response to the complaint were sent to the respondent, via the two administrators on record, namely Liberty Group Limited ("Liberty") and Glenrand MIB Benefit Services (Pty) Ltd ("Glenrand"). Both administrators submitted responses dated 9 February 2006. Glenrand submitted a further response on 9 March 2007. The present administrator also sent a response attaching a computation from its actuary, ABSA Consultants and Actuaries, dated 7 September 2009. The complainant sent replies dated 16 February 2006 and 23 August 2006. No further submissions were received from the parties.
- 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.

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Dr. EM de la Rey (Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), S Mothupi (Snr Assistant Adjudicator), T Dooka (Snr Assistant Adjudicator), M Ramabulana (Snr Assistant Adjudicator), C Seabela (Snr Assistant Adjudicator), P Mphephu (Snr Assistant Adjudicator), T Nawane (Snr Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), S Mokgara (Assistant Adjudicator), A Mnginya (Assistant Adjudicator), B Mahlalela (Assistant Adjudicator), G Mothibe (Assistant Adjudicator), P Mogashoa (Assistant Adjudicator), T Mbhansa (Assistant Adjudicator), T Tlooko (Assistant Adjudicator), R Kikine (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat, HR Manager: P Mhlambi

## 2.0. Factual Background

- 2.1. The complainant was an employee of Girls and Boy Town (“the employer”) and by virtue of his employment became a member of the respondent. The respondent was administered by Liberty until 31 May 2004, whereafter Glenrand took over administration. Glenrand was liquidated in June 2009. Aon South Africa (Pty) Ltd presently administers the respondent.
- 2.2 The complainant resigned from employment in March 2004, whereafter the respondent became liable to pay him a withdrawal benefit. Liberty, on behalf of the respondent, paid the complainant a withdrawal benefit in February 2005 that was computed as follows:

Gross benefit	R58 558.74
Less: Tax	<u>R12 493.97</u>
Net benefit paid	<u>R46 064.77</u>

- 2.3 On 31 March 2006 the complainant received a further payment from Glenrand, presumably as a result of its investigations after receipt of the complaint. This amount comprised a gross benefit of R14 680.46, less tax of R3 033, leaving a net benefit paid to the complainant of R11 647.46.

## 3.0 Complaint

- 3.1 The complainant is aggrieved about the quantum of the withdrawal benefit paid to him following his resignation from employment in March 2004.
- 3.2 The complainant avers that, according to his calculations, he should have received not only his contributions plus interest, but also the employer’s contributions. He prays that the respondent pays him his additional withdrawal benefit to which he is entitled.

## 4.0 Responses

- 4.1 The respondent, *via* its administrators, confirmed the background facts as summarised above.
- 4.2 Liberty confirmed that it administered the respondent until 31 May 2004, whereafter administration was transferred to Glenrand. Liberty advised that as a defined benefit fund, the respondent required triennial valuations, with the last valuation date being 1 September 2002. However, by May 2004 the Liberty valuator was unable to complete this valuation because the Financial Services Board (“FSB”) had not yet published the guidelines to valuers regarding the assumptions to be used in valuations involving surplus apportionments, per the Pension Funds Second Amendment Act, 2001. As a consequence thereof, and although the complainant was entitled to benefit equal to his minimum individual reserve in terms of section 14A(2)(b)(i) of the Act, the minimum reserve could not be calculated before the transfer of administration to Glenrand.

- 4.3 Liberty calculated and paid the complainant a withdrawal benefit based on the rules at the valuation date. The rule reflected the benefit as a return of the complainant's own contributions together with compound interest at a rate of 4% per annum up to 1 October 1998 and a rate of 8% per annum thereafter. The benefit was calculated and paid to the complainant. The benefit accords with the IRP5 tax certificate as well as his benefit statement of April 2004.
- 4.4 In taking over administration Glenrand accepted accountability for the finalisation of the 2002 valuation, the surplus distribution at 1 September 2002, as well as payment of members who left on or after 1 September 2003.
- 4.5 Glenrand initially responded by confirming the payment as made by Liberty. Upon further enquiry by this office, Glenrand advised in March 2007 that it had made a further payment of R14 680.46 (less tax of R3033) to the complainant on 31 March 2006.
- 4.6 As regards the surplus apportionment scheme for the respondent, this had almost been completed by 9 March 2007 and was to be forwarded to the FSB. Members and former members would be paid any surplus once the scheme was approved by the FSB.
- 5.0. Determination and reasons therefor
- 5.1 The complaint has been summarised in paragraphs 3.1 and 3.2, but for the sake of clarity it is noted that the complaint is that the withdrawal benefit the complainant received when he exited the respondent was less than what he anticipated. The complainant submits that according to his knowledge, he should have received his contributions, the employer's contributions, plus growth thereon, plus any "free Old Mutual shares."
- 5.2 At the outset it must be noted that the complainant's assumptions regarding the withdrawal benefit he became entitled to when he exited the respondent is incorrect. All benefits payable by registered pension funds are paid in terms of the Act and the rules of the fund (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). Thus, in determining the correct withdrawal benefit that the complainant became entitled to when he exited the respondent on 31 March 2004 this tribunal takes cognisance of the rules and the Act.
- 5.3 As is evident from the responses and the benefit statement dated 1 April 2004 that was attached to the complaint, in terms of the rules at the time the complainant became entitled to a withdrawal benefit equal to the return of his own contributions plus interest thereon. The benefit statement dated 1 April 2004 reflected that the cash withdrawal benefit amounted to the following:

“Return of your compulsory contributions	R46 919.70
Interest on your compulsory contributions	<u>R 9 199.08</u>
Benefit payable	R56 118.78”

- 5.4 Pursuant to the registered rules of the respondent, Liberty paid the complainant's withdrawal benefit in terms of the rules. However, in terms of section 14A(1)(a) of the Act the complainant, who withdrew from the respondent more than twelve months after its first surplus apportionment date, became entitled to an amount not less than his minimum individual reserve in the respondent on 31 March 2004. The withdrawal benefit paid by Liberty, while paid in terms of the rules at the time, was significantly less than the complainant's minimum individual reserve. The new administrator, Glenrand, compensated the complainant with a further R14 680.46. However, this was not done in terms of the minimum benefits legislation introduced by section 14A of the Act.
- 5.5 Following the woes experienced by Glenrand and its liquidation in June 2009, Aon South Africa (Pty) Limited ("Aon") took over administration of the respondent. After enquiry from this office Aon sent an actuarial benefit calculation for the complainant's withdrawal benefit prepared by the fund actuaries, ABSA Consultants and Actuaries ("ABSA"). The actuary confirmed that the complainant's withdrawal benefit should have been computed as his minimum individual reserve in the respondent on his exit date. To this effect the actuary advised that the complainant's minimum individual reserve on his exit date was R99 087.24. The complainant was paid R58 558.74. Therefore, the difference owed to the complainant on his exit date was R40 528.50. To this amount the actuary added investment returns from 1 April 2004 to 1 June 2009 and concluded that the complainant is still owed R71 042.03. This tribunal notes that Aon and ABSA have not only computed the complainant's correct withdrawal benefit, but they also added investment returns up to 1 June 2009. However, Aon and ABSA appeared to have omitted from their calculations the additional (gross) amount of R14 680.46 that Glenrand paid to the complainant on 31 March 2006. The respondent has not yet paid the outstanding amount to the complainant, so they can effect this change to their computation and thereafter pay the complainant the remainder of his withdrawal benefit.

## 6.0. Order

6.1 This tribunal makes the following order:

- 6.1.1 The respondent is ordered to compute the complainant's withdrawal benefit and pay to the complainant the amount owing, less all amounts already paid to the complainant and less any deductions in terms of sections 37A and 37D of the Act, together with interest on the balance owing calculated at a rate of 15.5% *per annum* computed from 1 June 2009 to date of payment, within 14 days of the date of this determination.

Dated at Johannesburg on this                      day of                      2010

Yours faithfully

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

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Section 30M Filing: Magistrate's Court  
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