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Mr. J W Du Toit
P.O. Box 8173
LYDENBURG
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REGISTERED POST

Dear Sir

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“The Act”): J W DU TOIT (“complainant”) v CENTRAL RETIREMENT ANNUITY FUND (“first respondent”) AND SANLAM LIFE INSURANCE LIMITED (“second respondent”)

1.0. Introduction

- 1.1. The complaint concerns the complainant’s dissatisfaction that he did not receive his full maturity value from the first respondent in cash and that his maturity value was less than the total monthly contributions he made to the first respondent.
- 1.2. The complaint was received by this office on 22 July 2005. A letter acknowledging receipt of the complaint was sent on 03 October 2005. On the same date letters were dispatched to the respondents, giving them until 24 October 2005 to file responses to the complaint. A response from the second respondent, which was also forwarded to the complainant, was received on 21 October 2005. A reply from the complainant was received on 01 December 2005.
- 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.

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 Mnqinya (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 applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 01 November 1994. The second respondent is the underwriting insurer and administrator of the first respondent. The complainant's membership was to endure until his chosen retirement date of 01 November 2003. On 01 November 2003 the complainant's membership reached its maturity date, and his maturity value was R26 815.61. The complainant decided to take one-third of this amount in cash and the remaining two-thirds was used to purchase a pension that pays him R155 per month.
- 2.2. With effect from 1 December 2006 the Minister of Finance, in terms of section 72 read with section 54 of the Long-term Insurance Act, no. 52 of 1998 ("LTI Act") amended the regulations under the LTI Act ("the regulations") to, *inter alia*, make provision for maximum limits regarding the values and charges that may be imposed on long-term policies such as the complainant's retirement annuity fund policy. Pursuant thereto, the second respondent evaluated the complainant's pre- and post-causal event fund values and concluded that no adjustment to the complainant's fund value was required because there was no causal event and therefore the regulations are inapplicable.

3.0 Complaint

- 3.1 The complainant is aggrieved that on maturity date of his contract, his maturity value was less than the contributions he had made towards the first respondent. The complainant is aggrieved by the fact that at maturity date of his contract, he was entitled to only one-third of his maturity value in cash and not the whole proceeds. He avers that although he knows the maximum limit for cash payment in full, the second respondent advised him at inception that he could receive the full maturity value in cash. Further, the complainant complains about the advice he received from his broker. Furthermore, the complainant is complaining about the fact that the second respondent has advised him that in the event of his death within the years of his retirement date (01 November 2003), his dependants will only receive the remaining pension up to 01 November 2013 and no capital amount will be paid to his dependants.

4.0 Responses

Second Respondent's Response

- 4.1. The second respondent confirmed the background facts as summarized in paragraphs 2.1 and 2.2 *supra*.
- 4.2 As regards the complainant's complaint that his contributions exceeded his maturity value, the second respondent advised that the illustrative maturity values are calculated using the assumption that all contributions expected to be paid will be paid until the maturity date, with illustrative investment growth at the illustration rate. Illustrative values were based on illustrative growth rates, illustrative annuity rates and inflation rates applicable at the respective times at

which the illustrations were made. The illustrative values were not guaranteed. The second respondent only guaranteed a maturity value of R21 664.00, but the final maturity value was R26 815.61.

- 4.3 As regards the complainant's complaint about the one-third that he received on maturity, the second respondent advised that the policy document stated that the full maturity value will not be available to be taken in cash. The limit as set out in the Income Tax Act would be applicable on maturity. According to the complainant's letter, the complainant was aware of the limit imposed by the law, but now ignores it.
- 4.4 As regards the complainant's complaint about his pension being payable for a maximum of 10 years from his retirement date to his family after his death with the ten year period, the second respondent has advised that it is not possible for it to give all the available options in the maturity letter, therefore it recommended that the complainant's contact his financial adviser who will assist him with the rest of the available options.

5.0. Determination and reasons therefor

Points in limine

- 5.1. Even though the respondents did not specifically raise the *points in limine* of jurisdiction and whether this constitutes a valid complaint in terms of the definition in section 1 of the Act, it is considered necessary, and for the sake of completeness, to mention that two judgments of the High Court of South Africa, viz. *Central Retirement Annuity Fund v Adjudicator of Pension Funds and Others* [2005] 8 BPLR 655(C) at 660C-E and *Old Mutual Life Assurance Company (SA) Limited v Pension Funds Adjudicator and Others* [2007] 1 BPLR 117 (C) at 124B-C, as well as the recent judgment of the Supreme Court of Appeal in the matter of *Mungal v Old Mutual* (56/09) [2009] ZASCA 141 (unreported) confirm this tribunal's jurisdiction to adjudicate complaints concerning retirement annuity fund members' fund values and any charges levied by underwriting insurers and administrators on members' contracts.
- 5.2 The merits of the complaint will now be considered.

The merits

- 5.3 The complainant's membership of the first respondent commenced on 01 November 1994 with a maturity date of 01 November 2003. The complainant's maturity value on this date was R26 815.61. The complainant's complains as follows:
- 5.3.1 his contributions exceeded his maturity value
- 5.3.2 while he knows the law stipulates a maximum one-third cash payment for retirement annuity fund benefits, a representative of the second respondent promised him he could receive his full maturity value in cash;

5.3.3 the complainant is aggrieved that if he dies within ten years of his retirement date (i.e. before 01 November 2013) his dependants will only receive his monthly pension up to 01 November 2013.

5.3.4 the complainant complains about the broker advice he received;

5.4 In order to determine the first and second legs of the complaint, this tribunal engaged the services of an independent actuary. The actuary found as follows:

“Analysis

A response from Sanlam dated 3 July 2006 shows contributions paid up to 31 October 2003 of R24 383.61 with a corresponding fund value R26 815.61. It must be noted that his contributions were subject to policy charges and administration costs to recoup expenses incurred on issuing a policy. Therefore, of the contributions of R24 383.61, only R21 515.54 was available for investment. Mr. du Toit is incorrect to say that his payout was less than contributions. Our calculation estimates an IRR of 5.6% per annum against average inflation over the period of 6.9% per annum.

Conclusion

We agree with Sanlam’s calculations and the reasons given for not paying out full benefit, as his retirement benefit is higher than the limit stipulated in the Income Tax Act of R22, 500.”

5.5 The actuary has shown that contrary to the complainant’s belief, the complainant’s maturity value was actually more than the contributions he had made towards his membership and that the complainant received an internal rate of return of 5.6% *per annum*.

5.6 As regards the complainant’s complaint about receiving one-third of his maturity value in cash and not the whole amount, this tribunal notes that the law , in particular the Income Tax Act, stipulates the manner in which a retirement annuity fund benefit is payable on maturity date. Section 1 of the Income Tax Act reads thus:

“retirement annuity fund” means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act No. 24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied –

(b) that the rules of the fund provide –

(ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed R1 800 or such other amount as the Minister of Finance may from time to time fix by notice in the *Gazette*;

5.7 The amount referred to in the Government Gazette above is currently R22 500.00. Rule 3.1 of the first respondent's rules reads thus:

"Commutation

A maximum of one-third of the PENSION referred to in paragraphs 1.1 and 1.2.2 may be commuted to a lump sum, but should the PENSION not exceed R1 800 per annum or any other amount which the Minister of Finance may determine and announce in the Government gazette from time to time, the full PENSION may be commuted."

5.8 The trustees of a fund are bound to do that which is contained in the rules of a fund (See *Tek Corporation provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E). In terms of the rules of the first respondent and the Income Tax Act, the second respondent could not pay the complainant his full maturity value in cash because it exceeded the R21 500.00 threshold. This part of the complaint falls to be dismissed.

5.9 The complainant also complains that in the event of his death before 01 November 2013, his dependants will only receive his monthly pension up to 01 November 2013. This tribunal notes that the second respondent has advised that this is only one of the insurance options available to the complainant and that it is not possible for it to state all the options available to members upon maturity date in the maturity letters. Further, the second respondent advised that the second respondent should consult his financial adviser who will advise him on all the options available to him. This part of the complaint concerns insurance business, so this office lacks jurisdiction to consider it. The complainant is referred to the Long-Term Insurance Ombudsman whose details appear at the foot of this determination, if he chooses to proceed with this leg of the complaint.

5.10 As regards the complainant's complaint relating to the advice he received from his broker, this tribunal lacks jurisdiction to make a ruling concerning brokers and their conduct since this does not relate to pension fund matters. The appropriate forum is to direct this part of the complaint to the FAIS Ombudsman whose details appears at the foot of this determination.

5.11 Thus, on a sober consideration of the facts placed before this tribunal it has been shown that the second respondent did act in accordance with generally accepted actuarial practice, the provisions of the rules, the provisions of the policy document, the provisions of the LTI Act and the regulations. This tribunal accordingly finds that the evidence does not justify the complainant's allegation that his membership was maladministered by the respondents.

6.0. Relief

6.1 In the instance the complaint cannot succeed and it is hereby dismissed.

Dated at Johannesburg on this day of 2010

Yours faithfully

E.M DE LA REY
Pension Funds Adjudicator