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REGISTERED POST

Mrs. V L Burjins
113 St Adams Street
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Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, NO. 24 of 1956 (“the Act”): V L BURJINS (“complainant”) v SOUTH AFRICAN RETIREMENT ANNUITY FUND (“first respondent”) AND OLD MUTUAL LIFE ASSURANCE COMPANY (SA) LIMITED (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns payment of a retirement annuity benefit before attaining the age of 55.
- 1.2 The complaint was received by this office on 18 November 2009. A letter acknowledging receipt thereof was sent to the complainant on 19 January 2010. On 20 January 2010, a letter was sent to the second respondent

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

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informing it about the complaint and giving it until 22 February 2010 to respond to the complaint. A response was received from the second respondent on 3 February 2010. No further submissions were received.

- 1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant applied for and became a member of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 13 July 2009. The complainant's membership was contracted to continue for a minimum term as required by the rules of the first respondent. The second respondent is the underwriting insurer and administrator of the first respondent. Upon commencement of her membership, the complainant made a once off payment of R62 878.78. Further, the complainant had an option to make further contributions.
- 2.2 The complainant wishes to withdraw her funds from the first respondent due to financial constraints. However, the second respondent refused to accede to her request.

[3] COMPLAINT

- 3.1 The complainant is aggrieved by the second respondent's refusal to allow her to withdraw funds from her retirement annuity fund despite the fact that she has not reached the age of 55. The complainant submits that she wants to further her studies and does not want to borrow money when she has funds invested in the first respondent.

- 3.2 The complainant requests this Tribunal to compel the respondents to pay her the proceeds of her retirement annuity.

[4] RESPONSE

Second respondent's response

- 4.1 The second respondent, in its capacity as underwriting insurer and administrator of the first respondent submitted that the complainant cannot receive payment of the proceeds of her retirement annuity from the first respondent because legislation, in particular the Income Tax Act No. 58 of 1962 ("the Income Tax Act") only permits the benefits to be paid to a member upon reaching the relevant age of 55 and before attaining the age of 70. The complainant is 31 years old and therefore does not qualify to receive payment of her retirement annuity. Legislation does not make an exception in respect of members who experience financial difficulties and want to be paid their benefit before reaching the legal retirement age. The only exception considered, is in the case of members who become permanently incapable through infirmity of mind or body of carrying his/her occupation.
- 4.2 Further, the second respondent submitted that the Income Tax Act permits commutation of the full value of the retirement annuity in cash provided that the surrender value (before any tax) does not exceed R7000.00. The complainant's fund value as at 3 February 2010 was R65 160.97. The complainant's fund value thus exceeds the specified limit. Therefore, the complainant does not qualify to surrender her membership.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The crux of this complaint is that the complainant would like to withdraw from the first respondent and receive a cash payment of her fund value. At inception of her fund membership, the complainant contracted to have her

membership continue for a minimum term required by the rules of the first respondent and the Income Tax Act. However, the complainant has since advised the second respondent that she wishes to receive a cash withdrawal from her retirement annuity. The Income Tax Act No. 58 of 1962 (“the Income Tax Act”) prohibits members who are younger than 55 from withdrawing from the fund and claim a cash payment (See *Tshabalala and Others v South African Retirement Annuity Fund* [2001] 1 BPLR 1534 (PFA) at paragraph 10). The relevant section of the Income Tax Act reads as follows:

“**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 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 –

- (a) ...
- (b) That the rules of the fund provide –
 - (i) ...
 - (v) That no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;”

5.2 Rule 4.1 of the first respondent’s rules also prohibits members of the first respondent from withdrawing from the first respondent and claim a cash refund before attaining the age of 55. Rule 4.1 reads thus:

“4. Retirement Benefits

4.1 Retirement Age

(a) In respect of a MEMBER

The retirement age applicable to a MEMBER in terms of any annuity POLICY shall be in accordance with the provisions of the Income Tax Act.”

5.3 In 2006, section 3(1)(p) of the Revenue Laws Amendment Act No. 20 of 2006 (“the Revenue Laws Amendment Act”) which amended the definition of a retirement annuity fund in the Income Tax Act, made it possible for members of a retirement annuity fund to withdraw from the fund and claim a cash withdrawal benefit if the fund value is R7 000.00 or less or, if a member becomes permanently incapable of carrying out his normal occupation.

5.4 In the instance, the complainant is 31 years of age and her fund value as at 3 February 2010 was R65 160.97, an amount which is over the R7 000.00 threshold. The complainant has not become disabled, in which event the second respondent would have been allowed access to the proceeds of her retirement annuity. Legislation does not permit the payment of a cash benefit to the complainant before she attains the age of 55. On the facts placed before this tribunal it has been shown that the second respondent acted in accordance with the provisions of the rules of the first respondent, the provisions of the policy document and the provisions of the Income Tax Act. Therefore, the complainant cannot receive a cash payout of her retirement annuity before attaining the age of 55.

[6] ORDER

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

DATED AT JOHANNESBURG ON THIS THE 25th DAY OF MARCH 2011

DR. EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrate's Court

Parties unrepresented