Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 ("the Act"): E HAASNOOT ("complainant") v FUNDSATWORK UMBRELLA PROVIDENT FUND – PARTICIPATING EMPLOYER: PREMIER FISHING SA (PTY) LTD ("first respondent") AND MOMENTUM GROUP LIMITED ("second respondent")

[1] INTRODUCTION

1.1 The complaint concerns the quantum of a death benefit that was paid to the complainant by the first respondent.
1.2 The complaint was received by this tribunal on 10 September 2010 and a letter acknowledging receipt thereof was sent to the complainant on 21 October 2010. On the same date a letter was dispatched to the respondents giving them until 30 November 2010 to file their response to the complaint. A response, which was forwarded to the complainant, was received from the second respondent on 30 November 2010. No further submissions were received from the parties.

1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appears below.

[2] FACTUAL BACKGROUND

2.1 The complainant is the widow of the late Mr. J. P. Haasnoot (“the deceased”). The deceased was employed by Premier Fishing SA (Pty) Ltd (“the employer”) until 28 July 2009. He was a member of the first respondent by virtue of his employment. The deceased passed away on 28 July 2009. The deceased was still employed by the employer and also a member of the first respondent at the time of his death. The second respondent is the administrator of the first respondent.

2.2 Upon the deceased’s death, the complainant was paid a lump sum death benefit of R172 935.62 by the first respondent. The benefit comprised only of the deceased’s fund credit. The complainant requested the respondents to also pay out the risk portion of the death benefit to her because the deceased died while still in service. However, the respondents refused to accede to the complainant’s request.

[3] COMPLAINT

3.1 The complainant is not satisfied with the amount of the death benefit that paid to her by the first respondent. She states that the deceased reached
the age of 64 on 17 February 2009. She attached to her complaint a copy of a letter dated 13 July 2009 from the employer advising the deceased that he has exceeded the legal and company policy on retirement age and therefore he would retire on the 31 August 2009. However, the deceased passed away on 28 July 2009.

3.2 The complainant submits that the deceased falls in the category of late retirement since he was fully employed by the employer at the time of his death. The complainant submits that according to the “member benefit guide” issued to members of the fund, since the deceased died while in service the death benefit payable to his beneficiaries should be his retirement savings plus group life insurance cover. However, she was only paid the deceased’s retirement savings by the first respondent. She contends that there is an outstanding amount. Therefore, the complainant requests this tribunal to investigate the matter.

[4] RESPONSE

4.1 The second respondent submitted a response on behalf of the first respondent in its capacity as its administrator. It states that the deceased was born on 17 February 1945 and attained his retirement age of 64 years on 17 February 2009. In terms of the special rules normal retirement age is defined as 64 years. The deceased remained in service and hence, in terms of general rule 10.1.2.1, he was within the late retirement provisions. The employer had agreed that the deceased would remain in service until 31 August 2009 at which point his service would be terminated on the basis of a late retirement. On 28 July 2009 the deceased passed away and a lump sum death benefit became available for distribution.

4.2 The second respondent states that rule 10.4 regulated the payment of a death benefit and reads as follows:

“Subject to the provisions of RULES 10.6.3 and 11, if a MEMBER dies whilst in EMPLOYMENT, the following will become payable:”
10.4.1 his RETIREMENT SAVINGS ACCOUNT, plus
10.4.2 provided the MEMBER dies before the last day of the month in which he attains the INSURANCE BENEFIT CEASE AGE,

10.4.2.1 the lump sum death INSURANCE BENEFIT (if any), plus
10.4.2.2 the lump sum accidental death INSURANCE BENEFIT (if any), plus
10.4.2.3 the SPOUSE’S pension specified in the SPECIAL RULES (if any), plus
10.4.2.4 the CHILD’S pension specified in the SPECIAL RULES (if any).”

4.3 It contends that in terms of rule 10.4.1 the deceased retirement savings account amounted to R179 894.54. In terms of rule 10.4.2 the deceased may have been entitled to a risk insurance benefit provided that he died before the last day of the month in which he attained his insurance benefits age, and in terms of the special rules, this date was defined as 64 years. As the deceased had passed this age at the time of his death, his beneficiaries are accordingly not entitled to the risk portion of the death benefit.

4.4 According to the second respondent upon attaining the age of 64 years, the deceased had the option to continue to be covered for the risk benefit lump sum by taking out an individual policy from the insurer (see general rule 11.4). In the instant matter, the deceased did not take out such a policy and hence his beneficiaries were not covered for the risk portion of the benefit. Accordingly, the death benefit only consisted of the member’s retirement savings account. In this regard, the board of the fund passed a resolution on 8 October 2009 distributing the entire benefit to the complainant.

4.5 The complainant in her complaint refers to a member guide that was issued to members, which is not dated and the entire document is not provided. It
emphasises that the beneficiaries of the deceased were only entitled to the risk portion of the death benefit prior to the deceased attaining the age of 64 on 17 February 2009. The beneficiaries of the deceased were no longer entitled to the risk portion of the death benefit after 17 February 2009. As the entire benefit guide is not provided, the disclaimer is excluded. Further, in the event that there is a conflict between the member benefit guide and the rules of the fund, the rules will prevail.

4.6 In conclusion, it submits that they are satisfied that the death benefit was correctly computed in terms of the first respondent’s rules. The deceased’s beneficiaries have received their full entitlement in terms of the said rules. Therefore, it requests that the complaint should be dismissed.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The complainant’s complaint is that upon the deceased’s death, the first respondent only paid out the fund credit to her. She submits that she is also entitled to payment of the insured death benefit by the first respondent because the deceased died while in service. She further submitted that the respondents are refusing to pay her the insured death benefit and their conduct is contrary to the member benefit guide which confirms that she is also entitled to be paid an insured death benefit.

5.2 The issues are, firstly, whether or not the complainant was paid the correct death benefit by the first respondent in terms of its rules, and secondly, whether or not the member benefit guide document supersedes the rules of the first respondent.
Quantum of the death benefit

5.3 Section 13 of the Act provides that the rules of a registered fund are binding on the fund, its members, shareholders and officers, and on any person who claims under the rules or whose claim is derived from a person so claiming. Because of the binding effect of the rules on the fund, the fund may only pay out to its members those benefits provided for in its rules. That was emphasized by the Supreme Court of Appeal in Tek Corporation Provident Fund and Others v Lorentz [2003] 3 BPLR 227 (SCA), at 239D-E, where Marais JA stated as follows:

“What the trustees may do with the fund’s assets is set forth in the rules. If what they propose to do (or have been asked to do) is not within the powers conferred upon them by the rules, they may not do it.”

5.4 The cessation age of the insurance benefit is defined in the rules of the first respondent as the age specified as such in the special rules in respect of death benefits or disability benefits. In turn, the special rules define risk benefit termination age as 64 years.

5.5 It terms of rule 10.4.2 in paragraph 4.2 above the first respondent would only be obliged to pay the insured portion if the deceased died before the last day of the month in which he attained his insurance risk benefit age of 64 years, i.e. before 28 February 2009. He passed away on 28 July 2009. Thus, he had passed the age of 64 years at the time of his death. The facts also indicate that the deceased did not take out an individual policy from the insurer to continue the risk cover in terms of rule 11.4 of the first respondent’s rules upon attaining the age of 64 years. Therefore, the first respondent cannot pay a lump sum insurance death benefit to the deceased’s beneficiaries because the rules do not provide for such a payment.
The provisions of the member benefit guide

5.6 It appears the member benefit guide document the complainant referred to in her complaint is inconsistent with the rules of the first respondent. The question which arises is whether or not the member benefit guide document supersedes the first respondent’s rules.

5.7 The powers of the trustees of the fund are set out in the fund’s rules. The board of trustees are bound by the fund’s rules in the same way as a member or a beneficiary. It follows that the rules of the fund will prevail over any document which is in conflict with its provisions. Thus, the first respondent is not bound by the terms and conditions of the member benefit guide document. In terms of the first respondent’s rules there is no lump sum death insurance benefit payable to the beneficiaries of the deceased.

[6] ORDER

6.1 In the result, the complaint cannot be upheld and is dismissed.

DATED AT JOHANNESBURG ON THIS 12th DAY OF OCTOBER 2011

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

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