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Please quote our reference: PFA/MP/10054/2006/RM/tc

Mr. I. M. Nkosi  
P O Box 6428  
**NELSPRUIT**  
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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”): I M NKOSI (“complainant”) v METROPOLITAN RETIREMENT ANNUITY FUND (“first respondent”) AND METROPOLITAN LIFE LIMITED (“second respondent”)**

1.0. Introduction

- 1.1. This complaint concerns the charges imposed on the complainant’s retirement annuity fund value when he took early retirement from the first respondent.
- 1.2. The complaint was received by this office on 20 August 2006. A letter acknowledging receipt of the complaint was sent on 23 October 2006. On the same date letters were dispatched to the respondents, giving them 30 days to resolve the complaint with the complainant failing which this tribunal proceeds with the investigation. The matter was not resolved and this tribunal proceeded with the investigation. Responses from the respondents, which were also forwarded to the complainant, were received on 11 December 2006. No further submissions were received.
- 1.3. This matter was set down for a conciliation hearing on 26 February 2009 at 11:30 am in our offices but it was however not resolved. 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 applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 January 1992. 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 31 December 2010. However, on 1 October 2006 the complainant decided to take early retirement from the first respondent. The complainant's fund value immediately before his decision to take early retirement from the first respondent was R59 962.53 ("pre-causal event fund value").
- 2.2. As a result of the complainant's decision to take early retirement from the first respondent, the second respondent imposed a charge of R459.47 for this causal event, resulting in the complainant's fund value reducing to R59 503.06 on 1 October 2006.
- 2.3. 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 it fell within the permissible range stipulated in the regulations.

## 3.0 Complaint

- 3.1 The complainant is aggrieved about the charges imposed by the second respondent when he took early retirement on 1 October 2006. He alleges that he was not aware of the retirement date stipulated in his contract as he will be retiring at an earlier date from his employer than the date stipulated in his contract with the first respondent.

## 4.0 Responses

- 4.1. The respondents submit that the projected values are not guaranteed and also, that the complainant cannot rely on the projected figures because he breached his policy contract as he did not retire at the date stipulated in his contract and he therefore, according to the respondents qualifies for reduced benefits.
- 4.2 On the point that the complainant will be turning 65 years in 2006, the second respondent submits that although the complainant's official working retirement age is 65 years with his employer, he elected at inception of the policy a planned retirement age of 70 years and draws the complainant's attention to the application form which is annexed on their response where he signed a declaration agreeing to be bound by, amongst other things, the rules of the first respondent and the contract between the first respondent and the second respondent. Further, on this point, the

respondents submit that the retirement date elected by the complainant is within the parameters set out in the rules of the first respondent as well as the Act and in the Income Tax Act.

- 4.3 Further, the respondents submit that the computation of the early retirement value is correct and *inter alia* refers to rule A2.2 of the first respondent which mentions amongst other things, that a member's contributions are payable to maturity, failing which, the policy converts to a paid up status with reduced benefits.

## 5.0. Determination and reasons therefor

### 5.1 *The merits*

- 5.1.1 The issue to be determined here is whether or not the charges imposed by the second respondent on the complainant's fund value when the complainant took early retirement on 1 October 2006 were fair and reasonable, as the complainant alleges that he was not aware of the retirement date stipulated in his contract and that he will be retiring at an earlier date from his employer than the date stipulated in his contract with the first respondent.

- 5.1.2 The basis for imposing a causal event charge needs to be determined and it must be decided whether or not the causal event charge levied by the second respondent represented a reasonable basis for the determination thereof. In this regard Fourie J, in *Old Mutual Life Assurance Company (SA) Ltd v Pension Funds Adjudicator and Others* [2007] 1 BPLR 117 (C) at paragraph 35, noted that:

"The fact that the policy does not specify a formula according to which the paid-up reduced benefit is to be calculated, does not mean that Applicant has an unfettered discretion to arbitrarily determine a value in a manner that is unfair, unreasonable or capricious. In this regard, I am in agreement with Applicant's submission that the provisions of the LTIA, referred to hereunder, dictate that the paid-up reduced benefit to which Second Respondent is entitled has to be calculated in accordance with generally accepted actuarial principles and practice."

- 5.1.3 Therefore, in ascertaining the reasonableness of the causal event charge levied by the second respondent this tribunal takes cognizance, firstly, of the provisions of section 46 of the LTI Act, which reads as follows:

"A long-term insurer shall not-

- (a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;
- (b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified;  
or
- (c) award a bonus or similar benefit to a policy-holder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose."

- 5.1.4 Further, section 52 of the LTI Act prescribes the manner in which long-term policies

are to be dealt with in the event of cessation of contributions. The insurer must have rules approved by the statutory actuary that prescribe a sound actuarial basis and the method to be used to value a long term policy in the event of a causal event occurring. Thus, the benefits and values attaching to a prematurely terminated policy, and any distinctions between it and policies that do not prematurely terminate, must be actuarially sound.

- 5.1.5 Lastly, in addition to the requirement that causal event charges must be computed using generally accepted actuarial principles that ensure the actuarial soundness of the insurer, on 1 December 2006 the Minister of Finance promulgated regulations in terms of the LTI Act that stipulate maximum causal event charges in respect of causal events that occurred on or after January 2001.
- 5.1.6 Therefore, in determining the reasonableness of the causal event charges imposed by the second respondent, this tribunal engaged the services of an independent actuary to assess the charges imposed. The actuary considered the first respondent's rules, the policy terms, the provisions of the Act and LTI Act, generally accepted actuarial principles and the regulations before reaching a conclusion on the reasonableness of the causal event charges.
- 5.1.7 The actuary found that the causal event charges of R459.47 imposed by the second respondent when the complainant took early retirement from the second respondent on 1 October 2006 were fair and reasonable.
- 5.1.8 With regard to the complaint that the complainant was not aware of the retirement date stipulated in his contract, it is unfortunate that this tribunal cannot help the complainant because when the complainant appended his signature on the contract, he purported to agree to the terms and conditions thereof. The complainant cannot now state that he did not know the contents of the contract. By agreeing to the terms and conditions of the contract, either stand or fall by the contract entered into.
- 5.1.9 Thus, on a careful consideration of the facts placed before this tribunal it has been shown that the second respondent acted in accordance with generally accepted actuarial practice. This tribunal accordingly finds that the submissions do not justify the complainant's allegation that the causal event charges imposed by the second respondent were unfair, unreasonable or capricious in nature.

## **6.0. Order**

- 6.1 In the result, the complainant's complaint cannot succeed and is dismissed.

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  
*Parties unrepresented*