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Please quote our reference: **PFA/WE/35627/2009/MD/SGM**

**REGISTERED POST**

Mr. V. Ndabeni  
59310 Dondonga Maseko Street  
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Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): V NDABENI (“the complainant”) v OLD MUTUAL SUPERFUND PROVIDENT FUND (“the first respondent”), ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD (“the second respondent”) and PELMANCO RECYCLING CC (“the third respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns quantum of the withdrawal benefit paid to a member by a fund.
- 1.2 The complaint was received by this office on 15 July 2009. A letter acknowledging receipt thereof was sent to the complainant on 5 August 2009. On the same date a letter was dispatched to the third respondent

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The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956

-The service offered by the Pension Funds Adjudicator is free to members of the public-

giving it until 4 September 2009 to submit its response to the complaint. A response was received from the second respondent in its capacity as intermediary to the fund on 17 August 2009. The response was forwarded to the complainant on 8 March 2010. The complainant was given until 23 March 2010 to make further submissions if he wished to do so. No further submissions were received from the parties.

- 1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties only those 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 was employed by the third respondent from March 1997 until November 2008. He joined the first respondent by virtue of his employment on 1 March 2004 until 20 November 2008 when his employment was terminated.
- 2.2 Upon termination of his employment he became entitled to receive his withdrawal benefit. He was paid a net benefit of R31 435.23 by the first respondent.

## **[3] COMPLAINT**

- 3.1 The complainant is dissatisfied with the quantum of his withdrawal benefit. He submitted that he was due to receive R100 000.00, but was only paid R31 435.23.
- 3.2 The complainant requests this tribunal to assist him in receiving his correct withdrawal benefit from the first respondent.

**[4] RESPONSE**

4.1 The second respondent confirmed that the complainant was a member of the first respondent. The withdrawal benefit that was paid to the complainant was calculated as follows:

Withdrawal Benefit:	R35 259.23
Tax Deducted:	R 3 856.75
Net benefit paid to the member:	R31 435.23

4.2 The second respondent attached a copy of the complainant’s last benefit statement, dated 1 January 2008. The complainant’s share of fund at that stage amounted to R29 488.03. The complainant withdrew from the first respondent on 31 October 2008, and it is therefore very unlikely that he would be entitled to receive a withdrawal benefit of R100 000.00, especially since the financial markets did not perform well in 2008.

4.3 The second respondent stated that it believes that the complainant may have assumed that the lump sum benefit payable at death or disability was due to be paid to him. An amount of R105 300.00 would have been payable should he have died or become disabled while he was employed by the third respondent, but these benefit events did not arise, so he became entitled to his withdrawal benefit, which was paid to him.

**[5] DETERMINATION AND REASONS THEREFOR**

5.1 The issue to be determined is whether or not the complainant was paid his correct withdrawal benefit.

5.2 The relevant portion of the first respondent’s rules read as follows:

“15.2. AMOUNT OF WITHDRAWAL BENEFIT

The withdrawal benefit of a MEMBER is the amount equal to his or her ACCUMULATED CREDIT at the time that the benefit is dealt with in terms of MASTER RULE 10.1(4). For the purposes of this RULE, ACCUMULATED CREDIT includes INVESTMENT RETURN from the date that the benefit is invested as specified in MASTER RULE 10.1(4) until the date of payment thereof. That portion of the INVESTMENT RETURN added from the effective date of withdrawal up until the date of the application to the REVENUE AUTHORITY for the tax directive will be included in the application to the REVENUE AUTHORITY and that portion of the INVESTMENT RETURN added from the date of the application to the REVENUE AUTHORITY to the date of payment of the withdrawal benefit is subject to taxation in the hands of the recipient of the benefit”

- 5.3 The complainant’s last benefit statement, issued to him on 1 January 2008, indicated the amount due to him if he withdrew from the first respondent on that date as R29 488.03. Approximately 9 months later the complainant withdrew from the first respondent and the withdrawal benefit at that time amounted to R35 259.23 before tax was deducted. The submissions indicate that he was paid his correct withdrawal benefit.
- 5.4 The benefit statement also indicates that the complainant or his beneficiaries would receive a disability or death benefit of R105 300.00 in the event that he is declared disabled or he dies while in the third respondent’s employment. The complainant was not declared disabled in terms of the first respondent’s rules and he is still alive. Therefore, he is not entitled to death or disability benefits from the first respondent. The complainant’s employment was terminated in November 2008, at which time he became entitled to a withdrawal benefit from the first respondent. This is what was paid to him in terms of the first respondent’s rules and no further benefit is due to him.

**[6] ORDER**

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

**DATED AT JOHANNESBURG ON THIS 20<sup>TH</sup> DAY OF JULY 2011**

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

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**Section 30M Filing: Magistrate's Court**

No legal representation