Dear Madam,


[1] INTRODUCTION

1.1 This complaint concerns the failure of the first respondent to pay the complainant her withdrawal benefit, which is ascribed to the third respondent’s failure to pay all contributions to the first respondent on behalf of the complainant.

1.2 The complaint was received by this office on 25 March 2009 and a letter acknowledging the receipt thereof was forwarded to the complainant on 20 April 2009. On 21 April 2009 the complaint was forwarded to the second respondent which was given until 21 May 2009 to file its response. A response dated 19 May 2009 was received
from the first respondent. No response was received from the third respondent. No further submissions were received.

1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this matter. Save for setting out only those essential facts that are pertinent to the issues raised herein, this tribunal shall not repeat the background facts as they are well-known to all the parties. The determination and reasons therefor appear below.

[2] **FACTUAL BACKGROUND**

2.1 The complainant was employed by the third respondent and was as a result a member of the first respondent from 1 June 2006 until 31 May 2010.

2.2 Provident fund contributions were deducted from the complainant's salary by the third respondent. The third respondent has failed to pay over all the contributions in respect of the complainant to the first respondent.

[3] **COMPLAINT**

3.1 The complainant submits that third respondent deducted contributions from her salary for pension fund purposes since 1 June 2006.

3.2 She further submits she has been informed by the second respondent that the third respondent has defaulted on the payment of contributions and that the last contribution received from it was in March 2007.

3.2 The complainant seeks the intervention of this tribunal to compel the third respondent to pay over arrear contributions to the first respondent.

[4] **RESPONSE**
First and second respondents

4.1 The respondents submit that the third respondent is non-compliant in terms of section 13A of the Act. They further submit that a complaint was lodged with this Tribunal under case number PFA/GA/14693/2007/MR against the third respondent regarding its failure to pay contributions.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complaint concerns the third respondent’s failure to transmit monthly contributions in respect of the first respondent’s members including the complainant timeously or at all. The submission that the third respondent has not paid contributions in full is uncontested. The complainant has since left the services of the third respondent and is now seeking payment of her withdrawal benefit.

5.2 The third respondent was afforded an opportunity to comment on the allegations made against it, in terms of section 30F of the Act, but failed to do so.

5.3 The third respondent has a duty placed on it by the rules of the first respondent and the provisions of section 13A(1)(a) of the Act to pay contributions and submit schedules to the first respondent indicating on whose behalf payments are being made, and the first respondent in turn has a duty to pay out benefits to members. Section 13A(3)(a)(i) states that such contributions must be paid directly to the fund in such a manner as to have the fund receive the contributions not later than seven days after the end of that month for which the contributions are payable.
5.4 It has come to the notice of this tribunal that judgment was granted in favour of the first respondent against the third respondent on 10 August 2007 in the unreported case of The Private Sector Security Provident Fund (sic) v Naphtronics (Pty) Limited and Private Security Industry Regulatory Fund (Bophuthatswana Provincial Division) Case No 971/2005. The judgment included an order for the delivery of contribution schedules from 1 May 2004 until the date of judgment, 10 August 2007.

5.5 It is uncontested that the complainant’s employment commenced on 1 June 2006 and that her employment terminated on 31 May 2010. The period of 11 August 2007 to 30 May 2010 therefore falls beyond the scope of Naphtronics supra.

5.6 Judgment has already been granted against the third respondent for the payment of arrear contributions and the submission of contribution schedules to the first respondent from 1 May 2004 until 10 August 2007. However the period of 11 August 2007 to 31 May 2010 falls beyond the purview of this judgement.

[6] ORDER

In the result, the order of this tribunal is as follows:

6.1 The third respondent is ordered to submit all outstanding schedules and contributions to the first respondent for the period September 2007 to May 2010 within seven days of the date of this determination.

6.2 Should the third respondent fail to submit the schedules to the first respondent, the first respondent shall reconstruct the complainant’s schedules based on the information already in its possession within two weeks of the third respondent’s failure to submit the schedules and forward a copy of these calculations to the third respondent.
6.3 The first respondent is hereby directed to calculate the amount of the withdrawal benefit due to the complainant on the assumption that the contributions were paid timeously and had the contribution been invested in the fund portfolios, together with interest at the rate of 15.5% per annum, calculated from the last day of employment to date of determination, within seven days from the date of this determination. That amount must be submitted to all parties.

6.4 The third respondent is directed to pay over to the first respondent the amount of the benefit computed in terms of either paragraph 6.3 supra within seven days of receipt of the amount contemplated in paragraph 6.3 supra.

6.5 The first respondent is ordered to pay the complainant the benefit, less any deductions permitted in terms of the Act, as and when it receives payment from the third respondent.

DATED AT JOHANNESBURG ON THIS 17th DAY OF OCTOBER 2011

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DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Parties: Unrepresented