Dear Mr. Lang

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): Q LANG (“complainant”) v FURNITURE BARGAINING COUNCIL PROVIDENT FUND (“first respondent”); FURNITURE BARGAINING COUNCIL (“second respondent”) AND PGM KABINETTE & HARDEWARE CC (IN LIQUIDATION) (“third respondent”)

[1] **INTRODUCTION**

1.1 The complaint concerns the non-payment of a withdrawal benefit.

1.2 The complaint was received by this office on 7 April 2009. A letter acknowledging receipt thereof was forwarded to the complainant. On the 22 May 2009 and 14 July 2009 letters were dispatched to the respondents giving them until 10 June 2009 and 3 August 2009 respectively to file their responses. A response was received from the third respondent on 15 July 2009. The second respondent responded on 1 June 2010. Further submissions were received from the complainant on 14 August 2009.

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.

Centralised Complaints Helpline for All Financial Ombud Schemes 0860 OMBUDS (086 066 2837)
1.3 After considering the submissions before this Tribunal it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties they will be repeated only to the extent that they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant was employed by the third respondent and became a member of the first respondent, a Bargaining Council fund (“BC fund”), which was duly registered as a pension fund organisation in terms of section 4 of the Act on 7 January 2009. He left employment upon resigning on 10 June 2008.

2.2 Upon his resignation the complainant became entitled to the payment of a withdrawal benefit from the first respondent. However, upon claiming the withdrawal benefit from the first respondent he was informed that the third respondent never paid any contributions to the fund. Therefore the first respondent could not pay him any benefits.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the non-payment of withdrawal benefits to him and the third respondent’s failure to pay contributions to the first respondent. He states that he was employed by the third respondent from 27 August 2001 to 10 June 2008. He submits that he was informed by the second respondent that the third respondent had never paid any contributions to the first respondent in respect of his membership. He states that deductions were made from his salary on a monthly basis by the third respondent for payment of contributions to the first respondent.
3.2 He seeks an order that the third respondent refund all deductions in respect of pension fund contributions.

[4] RESPONSE

First and second respondents’ response

4.1 In the response dated 1 June 2010 the second respondent advised that the third respondent had gone into liquidation in December 2009. The third respondent never paid any contributions to the first respondent for its employees. The second respondent is in the process of claiming refunds of contributions on behalf of the third respondent’s former employees from the appointed liquidators of the third respondent.

Third respondent’s response

4.2 In the response dated 15 July 2009 the third respondent submits that it attempted obtaining a tax directive from the South African Revenue Services (“SARS”) for the complainant, but it was established that he was not registered as a taxpayer. An application for the complainant’s registration was sent to SARS, but no response was received. The third respondent could not do anything further. It waited for the complainant to be issued with a tax number so that tax could be deducted from his withdrawal benefit prior to it being paid to him. The tax number has not been received.

[5] DETERMINATION AND REASONS THEREFOR

Introduction
5.1 The complainant states that he was not paid his withdrawal benefits due to the third respondent’s failure to pay the contributions deducted from his salary to the first respondent. Upon investigations by this Tribunal, it was established that the first respondent was registered as a pension fund organisation in terms of the Act on 7 January 2009. It was further established that the third respondent went into liquidation in December 2009. Cognisant of these two issues, this Tribunal must first determine whether or not it has jurisdiction to determine the complaint.

_Liquidation_

5.2 The complainant seeks the refund of contributions deducted from his salary on a monthly basis by the third respondent. He requests that the third respondent be ordered to refund to him these contributions. However, upon investigation it was established that the third respondent went into liquidation and a liquidator had already been appointed.

5.3 The fact of the third respondent’s liquidation effectively excludes this Tribunal’s jurisdiction to hear the complaint and issue an enforceable order against the third respondent or the appointed liquidator. Any party who has a claim against the third respondent may lodge his claim with the appointed liquidator. The second respondent has advised that it has already done so. This Tribunal has no jurisdiction to order the third respondent or the appointed liquidator to refund the complainant’s contributions.

[6] **ORDER**

6.1 The complaint is dismissed.
DATED AT JOHANNESBURG ON THIS 19th DAY OF OCTOBER 2011

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

Cc: Furniture Bargaining Council Provident Fund
    C/o J. Friesler
    Dispute Administrator
    Furniture Bargaining Council
    P O Box 32789
    BRAAMFONTEIN
    2017

    Fax: 011 339 5410

    Registered address:
    5th Floor, Rennie House
    19 Ameshoff Street
    BRAAMFONTEIN
    2017

Section 30M filing: Magistrate’s Court
Parties Unrepresented