Dear Mrs. Thompson

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): A THOMPSON (“complainant”) v SAMWU NATIONAL PROVIDENT FUND (“respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the allocation of a death benefit.

1.2 The complaint was received by this office on 3 September 2008. A letter acknowledging receipt thereof was forwarded to the complainant on 5 December 2008. On the same date a letter was dispatched to the respondent giving it until 13 January 2009 to file its response. A response was received from the respondent on 20 January 2009. The response was forwarded to the complainant on 21 May 2010. Further submissions were received from the complainant on 3 June 2010.
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 shall 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 Mr. G. Thompson (“deceased”) passed away on 15 April 2004. During
his lifetime, he was employed by the Lekwa-Teemane Local
Municipality (“employer”). He was a member of the respondent by
virtue of his employment. He remained a member until the date of his
death.

2.2 The deceased had been involved in an intimate relationship with Ms.
Sinah Cupido (“Sinah”) who predeceased him. Sinah had a child, Ms.
Catharina Cupido (“Catharina”). The deceased was not her biological
father, but he took her as his step daughter. The complainant is the
deceased’s sister. The deceased had nominated two people in his
nomination of beneficiary form (“nomination form”) to receive death
benefits upon his death, i.e. Namri Thompson (whom he described as
his wife) and Lolo Thompson who was described as his child.

2.3 Upon the deceased’s death, a death benefit became available for
distribution. The respondent resolved to allocate 60% of the death
benefit to Catharina and 40% to the complainant. However, there is a
dispute regarding payment of the 40% to the complainant.

[3] COMPLAINT

3.1 The complainant submits that the respondent advised that payment of
the death benefit was made to the two persons nominated in the
nomination form, but these persons do not exist. The deceased was never married, but he had an intimate relationship with Sinah. The parties referred to in the nomination form and their relationships to the deceased are incorrect. The complainant states that she has not received the 40% allegedly allocated to her.

3.2 The complainant seeks an order that the respondent’s decision to allocate the benefits to Lolo Thompson and Namri Thompson be set aside and that she be allocated the entire benefit. She also seeks to be furnished with proof of payment of her 40% share of the benefit.

[4] RESPONSE

4.1 The respondent submits that 60% of the death benefit was allocated to Catharina, the deceased’s step daughter. She is the same person nominated by the deceased in the nomination form as Lolo Thompson. Catharina was financially dependent on the deceased. The allocation was made to Catharina and not Lolo Thompson.

4.2 It is correct that the deceased was never married. However, he was staying with Sinah as husband and wife. Sinah could have been a beneficiary had she not predeceased him.

4.3 Forty percent of the benefit was allocated to the complainant. Although she did not live with the deceased and was working at the time of his death, there was interdependence between them and they helped each other from time to time. The funeral benefits too were paid to her because she and Catharina took care of the funeral arrangements.

[5] DETERMINATION AND REASONS THEREFOR
5.1 The complainant is dissatisfied with the allocation of the death benefit. It needs to be determined whether or not the respondent’s trustees acted reasonably and equitably in distributing the death benefit.

5.2 The payment of death benefits by a pension fund organisation is regulated by section 37C of the Act. In terms of section 37C a death benefit shall not normally form part of the estate of the deceased, but shall be dealt with in terms of the section. Section 37C gives the trustees discretion, to be exercised fairly and reasonably, insofar as the distribution of death benefits is concerned.

5.3 The main object of the section is to ensure that those persons who were dependant on the deceased during his lifetime, irrespective of whether or not the deceased was legally required to maintain them, are not left destitute and without financial support after his death. Section 37C imposes three primary duties on the trustees when distributing a death benefit. They need to first identify and trace all the dependants and nominated beneficiaries of the deceased. Secondly, the trustees must effect an equitable distribution of the death benefit; and finally the trustees must determine an appropriate mode of payment of the benefit.

5.4 This tribunal has to determine whether or not the trustees properly discharged their duties imposed by section 37C of the Act, i.e. that they considered all the relevant factors to the exclusion of the irrelevant factors and that they did not fetter their discretion. Where it is found that the trustees failed to take into account relevant factors, or took into account irrelevant factors, their decision shall be reviewable on the grounds that they exceeded their powers or that the decision constituted an improper exercise of their powers (see Jordaan v Protektor Pension Fund [2001] 2 BPLR 1593 (PFA) at 1596 F-G and 1597B-D (“Jordaan”)).
5.5 The main grounds upon which the complainant relies for her dissatisfaction with the distribution of the benefit is that payment was made to two non-existent people. The respondent submitted that 60% of the benefit was allocated to Catharina. She is the same person referred to as Lolo Thompson in the nomination form. Therefore, it is found that 60% of the benefit was allocated to Catharina, a person in existence and who was known to the deceased and the complainant.

5.6 Catharina was financially dependent on the deceased at the time of his death. The complainant does not dispute this and by her own admission she acknowledged that Catharina was Sinah’s daughter. Thus, it is accepted that Catharina was financially dependent on the deceased. The respondent acted equitably in making the allocation to Catharina.

5.7 The respondent’s investigations also established that there was interdependence between the complainant and the deceased. On these premises it made an allocation of 40% to her. However, the complainant denies ever receiving the 40% allocation made to her. Although the respondent initially stated that it paid the complainant her 40% share of the benefit, it later confirmed during a telephonic conversation with my assistant that payment of the benefit allocated to the complainant was never effected. Therefore, the respondent has to discharge its liability to the complainant by paying her 40% share of the benefit.

[6] ORDER

6.1 In the result, this Tribunal makes the following order:

6.1.1 The respondent is ordered to pay the complainant her 40% share of the death benefit, less any deductions in terms of the Act, within 14 days of the date of this order.
6.1.2 The benefit to be paid in terms of paragraph 6.1.2 supra shall be paid together with interest thereon computed at the rate of 15.5% per annum from the date of this order to the date of payment.

DATED AT JOHANNESBURG ON THIS 11th DAY OF AUGUST 2011

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

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Section 30M filing: High Court
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