Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 ("the Act"): P WILLIAMS ("complainant") v CORPORATE SELECTION UMBRELLA RETIREMENT FUND ("first respondent"), LIBERTY GROUP LIMITED ("second respondent") AND LUSITANIA MANAGEMENT SERVICES (PTY) LTD ("third respondent")

[1]  INTRODUCTION

1.1 This complaint concerns the failure by a fund to pay a withdrawal benefit due to the employer’s failure to sign and submit a withdrawal notification form on behalf of the complainant.

1.2 The complaint was received by this office on 20 May 2009. A letter acknowledging receipt thereof was sent to the complainant on 30 June 2009. On the same date, the complaint was dispatched to the first and second respondents giving them until 29 July 2009 to file their response to the complaint. On 1 July 2009, the complaint was also
dispatched to the third respondent giving it until 31 July 2009 to file a response. A response dated 15 July 2009 was received from the second respondent, the first respondent’s administrator. Another response dated 17 July 2009 was received from the third respondent on 20 July 2009. A copy of this response was forwarded to the complainant, in the event that he wished to submit a reply. No further submissions were received.

1.3 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

[2] FACTUAL BACKGROUND

2.1 The complainant was in the employ of the third respondent from September 2007 until 22 March 2009 whereupon he resigned from his employment.

2.2 The complainant had been a member of the first respondent during the tenure of his employment. Upon his resignation and withdrawal from the first respondent, the complainant expected to receive his withdrawal benefit from the first respondent.

[3] COMPLAINT

3.1 The complainant submits that following his resignation, the third respondent has not submitted a withdrawal claim form to the first respondent.

3.2 He further submits that the third respondent has informed him that he owes it some money that is why it is withholding the payment of his benefit by refusing to sign his claim form.
3.3 He accordingly requests this Tribunal to assist him in compelling the third respondent to sign and submit his withdrawal notification form to the first respondent so that he can receive his benefit.

[4] RESPONSES

First and second respondents

4.1 The second respondent submitted a response on its behalf. Therefore no response was received from or on behalf of the first respondent.

4.2 The second respondent submitted that it had not received a withdrawal notification form in respect of the complainant and that it had requested the third respondent to submit a signed withdrawal notification form. It stated that it would do a follow-up with the third respondent until the withdrawal notification form is submitted.

Third respondent

4.3 The third respondent submitted that following the complainant’s resignation, it had advised him to bring the necessary documents in order for his withdrawal benefit to be processed. It further submitted that the complainant arrived with the said documents but could not be attended to as his former manager was about to knock off.

4.4 It submits that on 29 May 2009, the complainant was presented with the form authorising the deductions, with which he disagreed. It further contends that the complainant did not submit a copy of his identity document though he submitted his banking details.

[5] DETERMINATION AND REASONS THEREFOR
5.1 The issue that falls to be determined by this Tribunal is whether or not the third respondent’s conduct of refusing to sign and stamp the complainant’s withdrawal claim form is justifiable.

5.2 It is not disputed that the complainant is entitled to his withdrawal benefit and ought to have received it after his resignation. However, the complainant’s submission is that the administrative requirement of the fund, namely the completion of a withdrawal notification form, has not been met by the third respondent.

5.3 An employer at the very least owes a duty of good faith to its employees (see Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA) at 235C).

5.4 It is essential for the employer to complete the withdrawal notification form indicating the cause of the termination of the employment which, in turn, allows the fund to determine which benefit is payable (see Rwexana v Idaho Spur Provident Fund And Others [2005] 7 BPLR 640 PFA at 642 paragraph 11.

5.5 The reasons advanced by the third respondent indicating that the complainant did not submit a copy of his identity document but only his banking details, as an excuse for not signing and submitting the withdrawal notification form, are not convincing and unsustainable.

[6] ORDER

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

6.1.1 The complainant is directed to request, complete and submit to the first and second respondents a withdrawal claim form and to provide them with a certified copy of his identification document, as well as a copy of his latest bank statement.
6.1.2 The first respondent is directed to condone the absence of the third respondent’s signature and stamp on the complainant’s claim form.

6.1.3 The first respondent is directed to pay the complainant his withdrawal benefit, less any deductions permitted in terms of the Act, within seven days of receipt of the documentation above.

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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Section 30M Filing: Magistrate’s Court
Parties: Unrepresented