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REGISTERED POST

Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): F N ZAMA ("complainant") v COATS SA PENSION FUND ("first respondent") AND ALEXANDER FORBES FINANCIAL SERVICES ("second respondent")

[1] INTRODUCTION

1.1 This complaint concerns payment of a monthly pension.

1.2 A complaint was received by this office on 3 November 2009. An acknowledgement letter was sent from this office to the complainant on 19 February 2010. On the same date, a letter was sent to the respondents informing them about the complaint and giving them until 19 March 2010 to respond to the complaint. A response, which was also forwarded to the complainant, was received from the first respondent on 13 April 2010. No further submissions were received.

1.3 This complaint was referred to the conciliation service on 4 June 2010 in order to afford the parties an opportunity to settle the matter. However, the parties could not reach a settlement and the matter was referred for adjudication. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The deceased, Mr. M J Lefa, passed away on 24 June 2008. The complainant is the deceased's surviving spouse. The deceased was a member of the Threadworkers Pension Fund from 1 January 1989 until his retirement on 31 March 1992. Upon his retirement, the deceased commenced receiving a monthly pension from the Threadworkers Pension Fund on 1 April 1992.

2.2 With effect from 1 July 1998, members, including pensioners of the Threadworkers Pension Fund transferred to the first respondent. The deceased continued receiving his monthly pension from the first respondent until his death. Following his death, the first respondent ceased payment of the monthly pension to the complainant.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the fact that the first respondent ceased payment of the monthly pension following the death of the deceased.

3.2 The complainant requests this tribunal to compel the first respondent to resume payment of the monthly pension that was payable to the deceased.

[4] FIRST RESPONDENT'S RESPONSE

4.1 The first respondent submitted that rule 6.2 of the fund's rules provide for a minimum guaranteed continued pension for only five years after date of retirement. The deceased continued receiving a pension from the first respondent until his death in June 2008.

4.2 Further, the first respondent submitted that the rules pertaining to members (including pensioners that transferred in from the Threadworkers Pension Fund) make no provision for a spouse's pension. The trustees acted in terms of the rules of the fund, which are binding on all members of the first respondent including pensioners that transferred in from the Threadworkers Pensioners Fund.

4.3 Furthermore, the first respondent submitted that the complaint should be dismissed on the grounds that the full retirement benefit due and payable to the deceased was paid to him in accordance with the applicable rules at the time that the deceased retired from the first respondent.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue that falls to be determined is whether or not the first respondent should resume payment of the monthly pension to the complainant now that the deceased has passed away. The complainant has submitted that by virtue of her being the deceased's spouse, she ought to receive payment of the monthly pension now that the deceased has passed away. The first respondent submitted that the rules of the first respondent only provide for a guaranteed payment of a monthly pension for a period of five years after retirement. The rules of the first respondent do not make provision for a spouse's pension.

5.2 On attaining the normal retirement age as stipulated in the rules of a fund, a member is entitled to receive a retirement benefit as provided for in the rules. This benefit may be in the form of a monthly income to the

member for the remainder of the member's life after retirement, for a specified period or as a once-off cash lump sum.

5.3 In the instance, rule 6 of the first respondent's rules deals with death of a pensioner and it reads thus:

> "**6.2 DEATH OF A PENSIONER**
>
> 6.2.1 (a) If a Pensioner dies within five years of the date of commencement of his Pension then payment of his Pension shall be continued until the end of the five-year period. If in terms of an election under Rue 9 the Pensioner had selected a period other than five years as the minimum period for payment of his Pension, then payment of his Pension shall be continued until the end of that period."

5.4 The trustees of a fund are bound to do that which is contained in the rules of a fund (See *Tek Corporation Provident Fund and others v Lorentz and Others* [2000] 3 BPLR 227 (SCA) at 239 D – E). The crux of rule 6.2.1 is that it guarantees a pensioner a guaranteed monthly pension for a period of five years commencing on the date of his retirement. In *casu*, the deceased retired in March 1992 and assumed pensioner status in April 1992. From April 1992 until April 1997, the complainant received a guaranteed minimum monthly pension from the first respondent. The deceased passed away in June 2008. In effect, the deceased passed away sixteen years after his retirement. Following his death, the first respondent ceased payment of the monthly pension.

5.5 Rule 6.2.2 reads as follows with regards to the death of a pensioner within five years after the commencement of his pension:

> "6.2.2 If a Pensioner dies leaving an Eligible Spouse a Pension shall be payable, subject to the provisions of Rule 10.4, to the Eligible Spouse equal to one-half of the Pensioner's pension entitlement at the date of his retirement before the exercise of any option permitted in terms of these Rules."

5.6 As canvassed in paragraph 5.4 above, the deceased passed away sixteen years after commencement of his pensioner status. As a result, rule 6.2.2 is inapplicable to the complainant since the deceased passed away more than five years after he assumed his pensioner status. Had the deceased passed away within five years after the deceased assumed his pension status, the complainant would have received a monthly pension equal to one-half of the deceased's pension entitlement as at the date of his retirement.

5.7 Thus, having considered the facts of the matter and the rules of the first respondent, this tribunal finds that the first respondent has discharged its duties to the deceased and there is no monthly pension payable to the complainant.

[6] <u>ORDER</u>

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

DATED AT JOHANNESBURG ON THIS 17th DAY OF OCTOBER 2011

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DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

Cc: The Principal Officer
Coats SA Pension Fund

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Section 30M filling: Magistrate's Court
Parties unrepresented