



Ground & 1st Floors
23 FREDMAN
Cnr. Fredman Drive & Sandown Valley Crescent
Sandown
SANDTON
2196

P.O. Box 651826, **BENMORE**, 2010
Tel: 087 942 2700; 011 783 4134 □ Fax: 087 942 2644
E-Mail: enquiries@pfa.org.za
Website: www.pfa.org.za

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REGISTERED POST

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT
NO. 24 OF 1956 (“the Act”): M S AREND (“complainant”) v CAPE MUNICIPAL
PENSION FUND (“respondent”)**

[1] INTRODUCTION

- 1.1 The complaint concerns the value of a fund credit.
- 1.2 The complaint was received by this office on 21 February 2008. A letter acknowledging receipt thereof was sent to the complainant on 7 March 2008. On 12 March 2008, a letter was sent to the respondent informing it about the complaint and giving it until 11 April 2008 to respond to the complaint. On 3 April 2008, the respondent’s legal representative sent a letter to this office requesting that it be granted an extension to submit the response. An extension to submit the response by 9 May 2008 was granted by this office. A response was received from the respondent’s legal representative on 21 July 2009. No further submissions were received from the complainant.

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 Having reviewed the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

[2] FACTUAL BACKGROUND

2.1 The complainant is an employee of The City of Cape Town (“the employer”) and has been a member of the respondent from 1988. Members of the respondent were given an option to either remain a member of the respondent or transfer their membership to the IMATU pension fund (currently known as the National Fund for Municipal Workers (“NFW”). On 13 October 1998, the complainant transferred his membership to the NFW. However, the complainant transferred his membership back to the respondent before the expiration of the window period of 30 October 1998.

2.2 Despite the complainant having transferred his membership back to the respondent, the deductions on his salary continued to be made in favour of the IMATU pension fund. In 2001, the IMATU pension fund transferred the complainant’s fund credit to the respondent, but, the fund credit transferred was incorrectly calculated.

2.3 In May 2009, the complainant received a benefit statement which indicated that his fund credit as at 30 April 2009 was R558 042.88.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the fact that although he changed his membership back to the first respondent, his contributions are still being paid over to the IMATU pension fund.

3.2 Further, the complainant is dissatisfied with the fact that as at 31 May 2008, his fund credit amounted to R605 518.45. However, as at 30 April 2009 his fund credit had decreased to R558 042.00. The complainant would therefore like to be provided with a guarantee that in the event that he exits the respondent, he will receive his full fund credit from the respondent and not be told that some of his fund credit still has to be recovered from the IMATU pension fund.

[4] RESPONSE

4.1 Jonathan Mort Attorney Inc, submitted a response on behalf of the respondent. It was submitted that following the complainant's transfer debacle, the respondent investigated the complaint and settled the matter by offering the complainant an amount of R123 014.00 to restore the value of his fund credit. The complainant agreed to accept this amount in a letter dated 23 July 2008. This amount was backdated to 30 April 2008, increasing the complainant's total fund value to R599 923.97.

4.2 The respondent submitted further that as at 31 May 2008, the complainant's fund credit amounted to R606 405.41. This amount is higher than the amount of R605 518.45 quoted in the letter sent by the respondent to the complainant on 15 July 2008 because it reflects the positive returns earned on the investment over the month of May 2008. However, the investment return for the period 1 June 2008 to 30 April 2009 was negative 12.3% and this resulted in the complainant's fund credit as at 30 April 2009 being lower than R605 518.45. The complainant's fund credit is invested in a market linked portfolio and this means that the negative returns impact negatively on the value of the complainant's fund credit.

4.3 Further, the respondent submitted that as at 30 April 2009, the complaint's fund credit had increased from R558 042.88 to R592 494.72 due to the positive investment returns earned by the fund. As regards the

complainant's complaint that upon exiting the first respondent he wants payment of his full fund credit, the second respondent submitted that the complainant is a member of the defined contribution section of the first respondent and accordingly when he resigns, he will receive the full fund value of his fund credit as at date of resignation or exiting the fund. However, there can be no guarantee what the value of his fund credit will be as at date of his resignation as this will fluctuate over time depending on the market conditions.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 What stands to be determined is whether or not the complainant's fund credit as at 30 April 2009 was correctly calculated. The complainant expressed his dissatisfaction with the decrease in his fund credit for the period of 1 June 2008 to 30 April 2009. The respondent has submitted that the decrease in the complainant's fund value was a result of negative investment returns earned due to a downturn in the markets.
- 5.2 It appears from the facts of the matter that the complainant's contributions towards his membership of the first respondent were erroneously paid to the IMATU pension fund for a period of ten years. Upon realizing that such a material error had occurred and in a bid to settle the matter, the respondent offered the complainant an *ex gratia* amount of R123 014.00 to restore the value of his fund credit. The complainant accepted this offer in a letter dated 23 July 2008. Therefore this leg of the complainant falls to be dismissed.
- 5.3 As regards the complainant's complaint that his fund credit has decreased from R605 518.45 as at 31 May 2008 to R558 042.00 as at 30 May 2009, this tribunal takes cognizance of the respondent's response that the decrease in the complainant's fund credit was due to the negative investment returns earned by the fund during that period. Attached to the respondent's response was a summary of the fund's investment returns from 1 April 2008 until 30 June 2009. From this, it appears that the

complainant's fund credit is invested in a market-linked portfolio and that during the months of March 2008, June 2008, September 2008 to November 2008, January and February 2009, the respondent achieved negative investment returns. These negative investment returns totalled -12.3% of the complainant's investment and had a significant impact on the complaint's fund credit hence the decrease in the complainant's fund credit. Further, this tribunal is of the view that the negative investment returns achieved by the respondent is not attributable to the respondent but to the vagaries of the markets. Market-linked portfolios are exposed to the volatility of the markets and as a result, the performance of such portfolios depends on how the markets perform.

- 5.4 It further appears from the summary submitted in the respondent's response that the complainant's fund credit as at 30 April 2009 of R558 042.88 has increased as at 30 May 2009 to R592 494.72 as a result of the positive investment returns earned by the first respondent. As explained above in paragraph 5.3 *casu*, the first respondent cannot guarantee how much the complainant will receive upon his exit from it as this will fluctuate over time depending on how the markets perform.

[6] **ORDER**

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

DATED AT JOHANNESBURG ON THIS THE 12TH DAY OF MARCH 2012

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

Cc: Ms Vanessa Bell
Jonathan Mort Attorneys Inc
P.O. Box 5600
CAPE TOWN
8000

Fax: 012 431 3599

Registered office of fund:

18th Floor
Main Tower
Standard Bank Center
2 Heerengracht
CAPE TOWN
8001

Section 30M filing: Magistrate's Court

Parties unrepresented