Dear Madam,


[1] INTRODUCTION

1.1 This complaint concerns the failure of the first respondent to pay the complainants their withdrawal benefits, which is ascribed to the third respondent’s failure to pay all contributions to the first respondent on behalf of the complainants.

1.2 The complaint was received by this Tribunal on 25 August 2008. On 23 September 2008, the complaint was dispatched to the second respondent giving it until 23 October 2008 to file its response to the complaint. On 18 February 2010, the complaint was sent to the first respondent, giving it until 18 March 2010 to file its response to the complaint. A response was received from the first respondent on
26 March 2010. The response was forwarded to the complainant on 11 May 2010. On 23 August 2010, a further letter was sent to the third respondent, giving it until 30 September 2010 to file a response. An undated response was received from the third respondent. No further submissions were received.

1.3 This complaint was referred to the conciliation service for hearing on 23 February 2012 and 20 July 2012 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 complainants were employed by the third respondent from 1 January 2006 until 30 April 2008.

[3] COMPLAINT

3.1 The complainants are:

- Reginah Bahule;
- Eunice Tshauku; and
- Christian Modiswa.

3.2 The complainants submitted that following the termination of their employment, they were not paid their withdrawal benefits. The complainants submitted that provident fund contributions were deducted from their salaries by the third respondent during the tenure of their employment.

3.3 They seek this Tribunal to investigate this matter.

[4] RESPONSE
First respondent's response

4.1 The first respondent in its initial response submitted that its membership-data does not show that the complainants made contributions to it. It further submitted that it also does not show that the third respondent made contributions in relation to the complainants. It requested to investigate this matter further to verify on whether or not the complainant were its members.

4.2 The first respondent filed a further response and submitted that the third respondent joined it on 1 January 2005 and that the last payment made to it was in November 2005. It further submitted that the third respondent defaulted on payments of contributions and submission of contribution schedules on behalf of the complainants. It submitted that even though the third respondent was its member, the complainants were never registered as its members.

Third respondent’s response

4.3 The third respondent confirmed that it deducted provident fund contributions from the complainants' salaries and paid it over to the second respondent, the erstwhile administrator of the first respondent. It provided copies of the bank deposit slips indicating the amounts it paid to the first respondent in 2005 and 2006.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue which falls for determination by this Tribunal is whether or not the third respondent should be held accountable for having failed to register the complainants with a provident fund and invariably failing to pay contributions on their behalf.
5.2 The rules of a fund are supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund (See Section 13 of the Act and *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]).

5.3 The relevant sub-rules of rule 3 of the first respondent's rules dealing with membership of a fund provide as follows:-

"3.2 Member Participation

3.2.1 Subject to 3.3 below, all Employees in the Private Security Sector shall participate in the Fund with effect from the commencement of the Fund or the commencement of the Employer's business in the Private security Sector, whichever is the later."

5.4 The third respondent registered with the first respondent on 1 January 2005. The complainants commenced their employment with the third respondent on 1 January 2006. The complainants ought to have been registered by the third respondent as members of the first respondent from 1 January 2006 when they commenced their employment with the third respondent.

5.5 The third respondent has a duty placed on it by the provisions of section 13A(1)(a) of the Act and the rules of the first respondent to pay contributions and submit schedules to the first respondent indicating on whose behalf payment is being made, and the first respondent in turn has a duty to pay out benefits to the members. Section 13A(3)(a)(i) states that such contributions must be paid directly into the fund's account and section 13A(3)(a)(ii) states that the contributions must be paid directly to the fund in such a manner as to have the fund receive the contributions not later than seven days after the end of that month for which such contributions are payable.
5.6 According to the submissions of the first respondent, the third respondent failed to register the complainants as members in terms of the rules during the period in question.

5.7 The appropriate relief is that which has the effect of placing the complainants in the position they would have occupied had the third respondent registered them as members and regularly and timeously paid the contributions due (see *Orion Money Purchase Pension Fund (SA) v Pension Funds Adjudicator and Others* [2002] 9 BPLR 3830 (C) at 3839F-G) and *Mabale v Feedmix Provident Fund and Others* [2008] 1 BPLR 29 at 37E-F).

[6] **ORDER**

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

6.1.1 The third respondent is ordered to register the complainants as members of the first respondent with effect from 1 January 2006 to 30 April 2008, within one week of this determination;

6.1.2 The third respondent is ordered to submit all outstanding contribution schedules to the first respondent due from 1 January 2006 to 30 April 2008 in order to facilitate the computation of the complainants’ arrear contributions, within two weeks of this determination;

6.1.3 Should the third respondent fail to comply with paragraph 6.1.2, the first respondent is ordered to reconstruct the complainants’ contribution schedules based on the information already in its possession within two weeks of the third respondent’s failure to submit the schedules;

6.1.4 The first respondent is ordered to compute the complainants’ withdrawal benefits plus late payment interest owed by the third
respondent in terms of section 13A(7) of the Act, within one week of receiving the contribution schedules in terms of either paragraphs 6.1.2 or 6.1.3 (whichever is applicable);

6.1.5 The first respondent is ordered to transmit to the third respondent its computations in paragraph 6.1.4 within three days of completing them;

6.1.6 The third respondent is ordered to pay the first respondent the complainants' withdrawal benefit plus late payment interest as computed in paragraph 6.1.4, within one week of receiving the computations from the first respondent; and

6.1.7 The first respondent is ordered to pay the complainants their withdrawal benefits, less any deductions permitted in terms of the Act, within one week of receiving payment from the third respondent.

DATED AT JOHANNESBURG ON THIS 2ND DAY OF AUGUST 2012

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Section 30M Filing: Magistrate’s Court

Complainant: unrepresented
First respondent: represented
Second and third respondents: unrepresented