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Please quote our reference: **PFA/GA/7262/2011/PGM**

**REGISTERED MAIL**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): T L BHILA (“complainant”) v IMPERIAL GROUP PROVIDENT FUND (“first respondent”) AND CEDAR EMPLOYEE BENEFITS & CONSULTANTS (PTY) LTD (“second respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the first respondent’s refusal to pay the complainant a withdrawal benefit while he still remains in service.
- 1.2 The complaint was received by this office on 15 July 2011. A letter acknowledging receipt thereof was sent to the complainant on 3 August 2011. On the same date a letter was dispatched to the respondents giving them until 5 September 2011 to file their response to the complaint. A response to the complaint, which was forwarded to the complainant, was received from the second respondent on 22 August 2011. No further submissions were received from the parties.

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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 This complaint was referred to conciliation on 18 January 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 appears below.

**[2] FACTUAL BACKGROUND**

- 2.1 The complainant commenced employment with Imperial Security Solutions (Pty) Ltd (“the former employer”) on 31 August 2006. He became a member of the first respondent by virtue of his employment. The second respondent is the administrator of the first respondent.
- 2.2 On 1 December 2010 the former employer sold its business to Stallion Security (“current employer”). All the employees, including the complainant, were transferred to the current employer, which participates in the Genesis Umbrella Provident Fund. The fund credits of all the employees, including the complainant, are in the process of being transferred from the first respondent to the Genesis Umbrella Provident Fund in terms of section 14 of the Act. Following the takeover of the business of the former employer by the current employer, the complainant requested the first respondent to pay him a withdrawal benefit. However, the first respondent refused to comply with his request, citing that he is still in service.

**[3] COMPLAINT**

- 3.1 The complainant is dissatisfied with the first respondent’s refusal to pay his withdrawal benefit because he remains in service. He is also dissatisfied by the first respondent’s failure to explain the two provident fund deductions reflected on his payslip as opposed to one provident fund contribution.
- 3.2 Therefore, the complainant requests this tribunal to assist him in this regard.

**[4] RESPONSE**

- 4.1 The second respondent submitted a response on behalf of itself and the first respondent in its capacity as the administrator. It confirms the background facts as summarised above.
- 4.2 The two deductions shown on the complainant's payslip are in respect of contributions made to the first respondent. The first deduction of R477.38 is the member's contribution and equals 7.5% of his pensionable fund salary. The second deduction of R518.75 is for the employer's contribution of 5% plus the costs of the death and disability benefits and the administration and investment fees. The reason the employer's contribution is shown on the complainant's payslip is because this amount is included in the complainant's total cost to company package. The second respondent submits that both these deductions are in terms of the rules and both these amounts were, prior to 1 December 2010, paid over to the first respondent.
- 4.3 The second respondent confirms that the complainant's benefit, comprising both the member's contributions and the employer's contributions, will be transferred to the Genesis Umbrella Provident Fund under the current employer once the section 14 transfer application has been approved. The second respondent submits that as this is a section 14 transfer and the complainant is in service, he cannot be paid out his benefit in cash.

**[5] DETERMINATION AND REASONS THEREFOR**

- 5.1 The issues that fall for determination are firstly, whether or not the complainant is entitled to be paid a withdrawal benefit while he still remains in service, and secondly, whether or not the first respondent has complied with its statutory obligation to provide the complainant with the requested relevant information regarding the two provident fund contributions reflected on his salary advice.

- 5.2 The rules of a fund are paramount and binding on all parties (see *Tek Corporation Provident Fund and Others v Lorentz* 1999 (4) SA 884 (SCA) at 894-B-C and section 13 of the Act). Due to the binding effect of the rules on the fund, the fund may only pay its members the benefits provided for in its rules. Therefore, in order for the complainant to be paid a withdrawal benefit while he still remains in service, the fund's rules must allow payment of a withdrawal benefit.
- 5.3 Rule 3.6 of the rules of the first respondent provides that a member may not withdraw from membership of the fund whilst still in employment. The facts show that the former employer sold its business to the current employer. All the employees, including the complainant, were transferred to the current employer in terms of section 197 of the Labour Relations Act, 66 of 1995. So, the complainant has never left employment and his transfer value in the first respondent is in the process of being transferred to the Genesis Umbrella Provident Fund ("Genesis Fund"). Neither the first respondent nor the Genesis Fund can pay a withdrawal benefit while the complainant is still in employment and a section 14 transfer is in progress. It follows that the first respondent is correct in its contention that the complainant is not entitled to withdraw from its membership while he still remains in service. Therefore, this tribunal is satisfied that the first respondent acted in accordance with its rules and the complainant is not entitled to a withdrawal benefit at present.
- 5.4 The facts show the complainant has since received a detailed explanation regarding the two provident fund deductions shown on his salary advice from the first respondent. These deductions are in accordance with the rules of the first respondent. In light of the provision of the explanation regarding the two provident fund deductions shown on the complainant's salary advice, this tribunal is satisfied that the first respondent has complied with its statutory duty to provide the complainant with relevant information. Therefore, this portion of the complaint has been resolved.

**[6] ORDER**

1. In the result, the complaint cannot succeed and is dismissed.

**DATED AT JOHANNESBURG ON THIS 7<sup>TH</sup> DAY OF MARCH 2012**

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

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*Parties unrepresented*