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Please quote our reference: **PFA/WE/11874/2012/ZC**

**REGISTERED POST**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): WF BRUWER ("complainant") v SANLAM UMBRELLA PROVIDENT FUND (PARTICIPATING EMPLOYER: ORANJE VAAL WATERGEBRUIKERSVERENIGING) ("first respondent") AND SANLAM LIFE INSURANCE LIMITED ("second respondent")**

**[1] INTRODUCTION**

- 1.1 This complaint concerns the first respondent's refusal to allow the complainant to exercise the conversion option under the rules after having reached the normal retirement age of 65 years.
- 1.2 The complaint was received by this Tribunal on 4 June 2012. A letter acknowledging receipt thereof was sent to the complainant on 26 June 2012. On the same date, a copy of the complaint was dispatched to the first respondent, affording it an opportunity to submit a response to the complaint by 27 July 2012. No response was received from the first respondent. On 1 August 2012, a follow-up

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letter was sent to the first respondent seeking its response by 17 August 2012. On 28 August 2012, a response was received from the second respondent on the first respondent's behalf. On 30 January 2013, the complainant filed his further submissions.

- 1.3 Having considered 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 all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

## **[2] FACTUAL BACKGROUND**

- 2.1 The complainant was a member of the first respondent by virtue of his employment with Oranje Vaal Watergebruikersvereniging ("the employer"). The employer is a participating employer in the first respondent.

## **[3] COMPLAINT**

- 3.1 The complainant is aggrieved by the first respondent's refusal to allow him to exercise the conversion option under its rules, issuing a new life policy on his life, without proof of good health. He submitted that the first respondent refused to allow this on the basis that his group life cover terminated when he reached the age of 65 years.
- 3.2 He submitted that before his 65<sup>th</sup> birthday on 6 September 2009, he instructed his broker to amend the special rules, in his capacity as the authorised signatory of the employer, to make provision for life cover up to the age of 70 years. He further submitted that his broker sent an email request to the second respondent which noted this request.

- 3.3 He further submitted that the underwriting of the death benefit was later outsourced from the second respondent to Capital Alliance. Capital Alliance informed him that his life cover was calculated to be more than the free cover limit allowed and accordingly instructed him to visit a doctor who took a blood sample and completed a medical questionnaire, which was signed on 14 March 2011. On 25 March 2011, Capital Alliance wrote to him stating that considering his medical condition, his life cover would be restricted to the free cover limit of R500 000. He was 66 years of age at that stage. He submits that he therefore, had no reason to believe that the life cover was not in place.
- 3.4 Furthermore, he submitted that at the end of February 2012, the underwriter once again changed from Capital Alliance to the second respondent. He requested to retire at the end of March 2012. At that stage he applied to make use of the conversion option. The second respondent then advised him that the special rules did not allow for extended life cover up to the age of 70 years. He was further advised that no portion of his contributions were allocated to risk cover; premiums were accordingly not paid to the underwriter.
- 3.5 Capital Alliance further stated that its medical assessment department only acted on medical data and was not aware of the first respondent's rules. It moreover stated that the life cover confirmation of R500 000 was a mistake.
- 3.6 The complainant argued that he was led to believe that life cover was in place and that this would allow him to convert to a life policy upon his retirement.
- 3.7 He requests this Tribunal to investigate the matter.

**[4] RESPONSES**

*First and second respondents*

- 4.1 The first respondent submitted that the complainant continued employment at the employer after reaching the normal retirement age of 65 years. Approximately two months before reaching retirement age, the complainant, via his broker, requested Coris Capital (as it then was) to extend his life cover until the age of 70 years. An employee of Coris Capital noted the request and advised that the complainant's broker would be advised once the request was finalised. It submitted that no confirmation was given that cover would continue.
- 4.2 It submitted that upon retiring from employment on 31 March 2013, at the age of 67 years, the complainant requested to exercise the conversion option in terms of Rule 9 of the general rules, and the second respondent declined on the basis that the risk cover and the conversion option in terms of the rules had ceased at the normal retirement age of 65 years.
- 4.3 With regards to the complainant's 2009 request for extended life cover, it submitted that the second respondent never received an instruction to amend the special rules of the employer. The correspondence only referred to the extension of life cover for the complainant as an individual. Rule 6.3 of the general rules imply that the 'risk death in service benefit' i.e. life cover ceases upon reaching normal retirement age. The general rules require that any 'risk death in service benefit' applicable after the normal retirement age of 65 years must be provided for in the special rules.
- 4.4 It further submitted that in terms of the general rules, the option to effect individual insurance, the conversion option, is available to a member if provided for in the special rules but the option is subject to the limitations contained in the first respondent's insurance policy.

From the email correspondence attached to the complaint, it is evident that Capital Alliance, the underwriters of risk benefits during September 2009, did not provide risk cover after the normal retirement age and that no risk premiums were received in respect of the complainant after reaching the age of 65.

- 4.5 It further submitted that the complainant's request for extended life cover in terms of the first respondent's rules can only be requested by the participating employer and the amendment to the special rules will only be effective once registered by the Registrar of Pension Funds.
- 4.6 It further disputes that the respondents created an impression that the complainant enjoyed continued life cover after normal retirement age since no premiums in respect of risk cover were deducted by the first respondent and paid over to the underwriter from the contributions received on behalf of the complainant, after normal retirement age. The 2011 benefit statement of the complainant further did not reflect any risk benefits in respect of the complainant.
- 4.7 It accordingly prayed that the complaint be dismissed.

## [5] **REPLY**

- 5.1 The complainant submitted that as the authorised signatory of the employer, he sought the amendment of the special rules to extend life cover up to the age of 70 years.

## [6] **DETERMINATION AND REASONS THEREFOR**

- 6.1 The issue which falls for determination is whether or not the first respondent's refusal to allow the complainant to exercise the

conversion option under the rules after having reached the normal retirement age of 65 years is unlawful.

6.2 The rules of a fund are supreme and binding on its officials, members, shareholders and beneficiaries and anyone so claiming from the fund (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E and section 13 of the Act).

6.3 Rule 9 of the first respondent's rules provides as follows:

"9.1 The option to effect individual insurance (often referred to as a conversion option) is only available to a MEMBER if it is provided for in terms of the SPECIAL RULES.

9.2 The INSURER may, in terms of its policy the RISK DEATH IN SERVICE BENEFIT, grant a MEMBER who ceases to be an EMPLOYEE, the option to effect individual risk insurance on the MEMBER's life with the INSURER without proof of good health of the MEMBER.

9.3 The option is subject to the limitations and conditions contained in the policy of insurance effected by the FUND with the INSURER."

6.4 The apposite portion of rule 6.3 of the general rules provides that:

**"6.3 Death after the NORMAL RETIREMENT DATE while an EMPLOYEE**

If a MEMBER dies after the NORMAL RETIREMENT DATE and while he/she is an EMPLOYEE –

a) The RISK DEATH IN SERVICE BENEFIT applicable to the MEMBER that has specifically been provided after NORMAL RETIREMENT DATE in terms of the SPECIAL RULES;"

- 6.5 It is therefore, evident that the ‘risk death in service benefit’ ceases upon reaching normal retirement age, unless otherwise provided for in terms of the special rules.
- 6.6 The special rules provided 65 years as the normal retirement age for members to enjoy the ‘risk death in service benefit’. It, however, provided for a conversion option subject to the limitations and conditions applicable to the insurance. In an email dated 18 April 2012, annexed to the complaint, addressed to the complainant’s broker by one Andrew Baird of Capital Alliance, he states, *inter alia*, as follows:

“If the withdrawal date is 29 February 2012, then the member is too old to qualify for the conversion option … as per the below extract from the policy. The cut off would be to the retirement age of the fund.

#### **2.4 Conversion Option**

- 2.4.1 Subject to the appropriate premium for this option having been paid by the Fund and if the Conversion Option has been selected in the Schedule, a Member may exercise the Conversion Option in respect of his Death Benefit in the event of him leaving Service:
- 2.13.1.1 at least 5 years prior to his Retirement Age for any reason other than retirement; or
- 2.13.1.2 up to and including the earlier of his Retirement Age and the Maximum Cover Age.”
- 6.7 It is therefore, evident that the limitations and conditions attached to the insurance precluded the complainant from exercising the conversion option as he was already over the normal retirement age of 65 years as provided for in the rules of the first respondent.

6.8 Further, whilst much has been made of whether or not an amendment was sought in respect of the special rules to extend cover until the age of 70 years, no evidence has been provided that the employer indeed requested such amendment. Moreover, the rules that were applicable at the time are binding and the said rule precluded the complainant from exercising the conversion option after reaching retirement age. It is further common cause that the 2011 benefit statement furnished to the complainant did not provide for death cover and that no portion of his premiums was allocated for risk cover.

**[7] ORDER**

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

**DATED AT PRETORIA ON THIS 16<sup>TH</sup> DAY OF APRIL 2013**

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**MA LUKHAIMANE**  
**DEPUTY PENSION FUNDS ADJUDICATOR**

**Section 30M filing: High Court**

Parties: *Unrepresented*