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PER REGISTERED POST

Mr. G.S. Coetzee
P.O. Box 95446
WATERKLOOF
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Dear Mr. Coetzee

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): G S COETZEE (“complainant”) v NATIONAL TERTIARY RETIREMENT FUND (“first respondent”) AND ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the quantum of a retirement benefit.
- 1.2 The complaint was received by this office on 4 May 2010. A letter acknowledging receipt thereof was forwarded to the complainant on 9 July 2010. On the same date a letter was dispatched to the respondents giving them until 9 August 2010 to file their responses. The due date of the response was extended to 14 April 2011. A

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response was received from the second respondent on 15 October 2010. The response was forwarded to the complainant on 5 April 2011. No further submissions were received from the parties.

- 1.3 After considering the submissions before this tribunal it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties they will be repeated only to the extent that they are pertinent to the issues raised herein. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The complainant was employed by Tshwane University of Technology (“employer”) from 1 January 1985 to 30 September 2009. He became a member of the first respondent, a defined benefit fund (“DB fund”), by virtue of his employment. The second respondent is the first respondent’s administrator.
- 2.2 Upon his retirement the complainant became entitled to payment of a retirement benefit by the first respondent. The first respondent quoted a retirement benefit of R1 947 817.96 on 15 October 2009. The complainant elected to commute a portion thereof (R300 000.00) for a single cash payment and to have the remaining balance (R1 647 817.96) of his retirement benefit applied towards purchasing an annuity in his name from whence he now receives a monthly pension.

[3] COMPLAINT

- 3.1 The complainant is dissatisfied with the retirement benefit which became payable to him by the first respondent. He submits that on 19 August 2009 he received a “retirement options letter” wherein a total retirement benefit of R2 050 534.82 was quoted to him as at his

proposed retirement date of 30 September 2009. He submits that he elected to retire in terms of option 4 as reflected in the letter. When he had elected to retire, a retirement benefit of R1 947 817.96 was quoted to him. He submits that there is a difference of R102 717.00 between the retirement benefit quoted to him as at 30 September 2009 and the one quoted to him on 15 October 2009. For this reason, he believes the benefit paid to him is incorrect and ought to comply with the quotation as at 30 September 2009.

3.2 He seeks an order that he be paid an additional benefit of R102 717.00 for his benefit to equate to the amount of R2 050 534.82 quoted to him earlier.

[4] RESPONSE

4.1 The second respondent submits that prior to his retirement the complainant had been provided with a quotation setting out the various options available to him on retirement. The quotation gave the complainant four options on retirement. On 19 October 2009 the first respondent received a retirement notification form from the complainant reflecting that he had elected option three. As the complainant elected option three, his benefits were calculated in accordance with this election.

4.2 In terms of option three the complainant would take R300 000.00 of his benefit in cash and the remaining R1 674 817.96 would be applied towards purchasing an annuity outside the first respondent. The total retirement benefit due to him was thus R1 947 817.96 and is the exact benefit due under his election of option three. Although the complainant states that he elected option 4, the first respondent has no record of him having elected option 4. There is therefore no basis for the complainant to claim any other benefit save for the one paid to him.

- 4.3 The benefit provided for in the quotation was just an illustrative figure and only provides an estimate of the value on the day the benefit is issued. It provides no guarantee for a benefit that may become payable in future. Even if the complainant had elected option four where the quotation reflected a higher benefit and he was subsequently paid a lesser benefit, he would still not be entitled to the quoted benefit.
- 4.4 The complainant having retired from employment was entitled to a retirement benefit in terms of Rule 4.5. The complainant had an option to commute up to one-third of his benefit for a single cash payment. He availed himself of this option by taking an amount of R300 000.00 of his benefit in cash. The balance of R1 674 817.00 was applied towards purchasing a compulsory annuity. The provisions of the rules are binding on the fund and members. Benefits payable are determined by the provisions thereof. The benefit paid to the complainant was paid in accordance with the first respondent's Rules. The complaint should be dismissed.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The complainant is dissatisfied with the quantum of retirement benefits paid to him. It needs to be determined whether or not the retirement benefit paid to the complainant represented his correct entitlement in the first respondent
- 5.2 The complainant submitted that the quotation letter reflected a retirement benefit of R2 050 534.82 if he elected option 4. The first respondent provided this tribunal with a copy of the quotation letter referred to by the complainant. Option one provided for the commutation of one-third of the benefit and payment of a monthly pension by the first respondent. Option 2 provided for a monthly pension payable by the first respondent. Option three provided for a

one-third commutation of the retirement benefit and purchase of an annuity outside the first respondent. Option 4 provided for payment of a gratuity and a monthly pension (in the instance that the complainant elected to retire in the first respondent).

- 5.3 The complainant submitted that he elected option 4 and ought to have received a benefit of R2 050 534.82 in terms of this option. The first respondent provided this Tribunal with a copy of the option form signed by the complainant. He was therein requested to make an election of one of the four options presented to him. The option form indicated that the complainant elected option 3, i.e. to commute one-third of his retirement benefit for a single cash lump sum and have the remaining two-thirds applied towards purchasing an annuity outside the first respondent from whence he would receive a pension.
- 5.4 Therefore, it is incorrect that the complainant elected option 4. He elected option 3 and therefore became entitled to payment of his retirement benefit calculated in accordance with his election in terms of the Rules. Rule 4.1 of the first respondent's Rules provides that a retiring member becomes entitled to his member's share. The calculated member's share at the time of his retirement was R1 947 817.96. Therefore he became entitled to this amount and not the R2 050 534.82 that had allegedly been quoted to him prior to his retirement. The complainant should also note that the first respondent could only provide illustrative maturity benefits to him in the first quote, but these are not guaranteed. The complainant was entitled to his actual retirement benefit, not the illustrative benefit, and this is what was paid to him. Therefore the retirement benefit paid to the complainant was calculated in accordance with the provisions of the Rules and paid in accordance with his instructions. The complainant is not entitled to the relief sought.

[6] **ORDER**

1. The complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 3RD DAY OF FEBRUARY 2012

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

Cc: National Tertiary Retirement Fund
C/o Mr. S. Maphalala
Alexander Forbes Financial Services (Pty) Ltd
P O Box 653198

BENMORE

2010

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Section 30M filing: High Court

Parties unrepresented