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PER REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 ("the Act"): AC DE JAGER ("complainant") v MCDONALDS (SA) PROVIDENT FUND ("first respondent") AND AON SOUTH AFRICA (PTY) LTD ("second respondent")

[1] INTRODUCTION

1.1 The complaint concerns the mode of payment of a death benefit in terms of section 37C of the Act.

1.2 The complaint was received by this Tribunal on 6 July 2011. A letter acknowledging receipt thereof was sent to the complainant on 7 October 2011. On the same date, a letter was sent to the first respondent requesting a response by no later than 7 November 2011. A response was received from the second respondent on 15 November 2011. No further submissions were received from the parties.

1.3 After reviewing the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. This Tribunal's determination and its reasons therefor appear below.

[2] BACKGROUND FACTS

2.1 The complainant is the father of the late Mr. LBJ De Jager ("the deceased"), who passed away on 22 September 2009. The deceased was a member of the first respondent at the time of his demise. The deceased is survived by his minor daughters, Lucille Willemse ("Lucille") and Terencine Felicia De Jager ("Terencine").

2.2 Subsequent to the deceased's demise, a death benefit in the amount of R195 880.46 became available for distribution to the deceased's beneficiaries. The board of trustees resolved to allocate the death benefit equally between the deceased's children and placed it in a beneficiary fund on their behalf. A monthly income of R2000.00 per child is payable by the trust to the mothers of the deceased's children.

[3] COMPLAINT

3.1 The complainant is aggrieved by the mode of payment of the death benefit payable subsequent to the deceased's passing. The deceased's children will not be able to complete their tertiary studies with the manner the death benefit is payable at present. The complainant seeks the reversal of the trustees' decision in paying the death benefit.

[4] RESPONSE

4.1 The second respondent filed a response in its capacity as the administrator of the first respondent. It advised that subsequent to the deceased's passing, an investigation was conducted in terms of

section 37C of the Act to identify his dependants. The investigations revealed that the deceased's children were his only dependants and were currently residing with their natural mothers. The mother of Lucille earns R300.00 per month and the mother of Terencine is unemployed. The trustees resolved that the death benefit be allocated equally between the deceased's children and be placed in a beneficiary fund. The trustees also resolved that a monthly income of R2000.00 each be payable to the mothers of the deceased's children until they reach 18 years of age. Affidavits were received from the mothers of the deceased's children regarding their financial position.

4.2 The trustees also approached the beneficiary fund to obtain an estimation of the duration of the funds based on the current R2000.00 per month allowance. It is estimated that the allowance in respect of Terencine will be continued to December 2013 and in respect of Lucille to February 2014. The deceased's children will reach the age of 18 during 2012. The trustees are of the opinion that their decision of providing an allowance of R2000.00 per month per dependant until they reach the age of 18 years is valid and does not need to be reconsidered.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue for determination is whether or not the board of trustees' decision to place the benefit awarded to the deceased's minor dependants into a beneficiary fund should be set aside.

5.2 The payment of death benefits by a pension fund organisation is regulated by section 37C of the Act. In terms of section 37C, a death benefit shall not normally form part of the estate of the deceased, but shall be dealt with in terms of the section. Section 37C gives the trustees discretion, to be exercised fairly and reasonably, insofar as the distribution and mode of payment of death benefits is concerned.

5.3 The main object of the section is to ensure that those persons who were dependent on the deceased during his lifetime, irrespective of whether or not the deceased was legally required to maintain them, are not left destitute and without financial support after his death. Section 37C imposes three primary duties on the trustees when distributing a death benefit. They need to first identify and trace all the dependants and nominated beneficiaries of the deceased. Secondly, the trustees must effect an equitable distribution of the death benefit and finally the trustees must determine an appropriate mode of payment of the benefit. The present complaint concerns the mode of payment of the minor children's benefit, the complainant asserting that the mode of payment will not be enough to cover the tertiary studies of the deceased's children.

5.4 Section 37C(2) of the Act is relevant to the present complaint and reads as follows:

> "(a) For the purposes of this section, a payment by a registered fund for the benefit of a dependant or nominee contemplated in this section shall be deemed to be a payment to such dependant or nominee, if payment is made to-
>
> (i) a trustee contemplated in the Trust Property Control Act, 1988, nominated by-
>
> (aa) the member;
>
> (bb) a major dependant or nominee, subject to subparagraph (cc); or
>
> (cc) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a minor dependant or nominee, or a major dependant or nominee not able to manage his or her affairs or meet his or her daily care needs;

(ii) a person recognised in law or appointed by a Court as the person responsible for managing the affairs or meeting the daily care needs of a dependant or nominee; or

(b) No payments may be made in terms of this section on or after 1 January 2009 to a beneficiary fund which is not registered under this Act."

5.5 In distributing death benefits, the trustees may pay benefits allocated to a minor dependant to such a dependant's legal guardian, or a trust or a beneficiary fund. In the present matter the trustees considered the modes of payment available to them and decided to place the minor children's benefit in a beneficiary fund. Section 37C(2)(a) of the Act provides that payment of benefits into beneficiary funds is deemed to be payment to the dependant. Therefore, the first respondent's trustees were permitted to place the minor children's benefits in the beneficiary fund, which they duly did. This Tribunal cannot set aside their decision because they are entitled to do so in terms of the Act.

[6] ORDER

1. The complaint cannot succeed and is dismissed.

SIGNED IN JOHANNESBURG ON THIS 14TH DAY OF AUGUST 2012

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MA LUKHAIMANE

DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M Filing: Magistrates Court

No legal representation