



Ground & 1st Floors
23 FREDMAN
Cnr. Fredman Drive & Sandown Valley Crescent
Sandown
SANDTON
2196

P.O. Box 651826, **BENMORE**, 2010
Tel: 087 942 2700; 011 783 4134 □ Fax: 087 942 2644
E-Mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our ref: **PFA/GA/857/2010/CMS**

PER REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): PC DISTIN (“complainant”) v MOMENTUM RETIREMENT ANNUITY FUND (“first respondent”), MOMENTUM GROUP LIMITED (“second respondent”) AND G RADEMEYER (“third respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the refund of the premiums paid to the first respondent.
- 1.2 The complaint was received by this Tribunal from the Ombudsman for Long-Term Insurance on 2 July 2010. A letter acknowledging receipt thereof was sent to the complainant on 16 August 2010. On the same date, a letter was sent to the second respondent requesting a response. A response dated 30 August 2010 was received from the second respondent. Submissions were received from the third respondent on 30 August 2010. On 22 September 2010, a letter was sent to the complainant requesting a reply by no later than 12 October 2010. A

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)

reply dated 11 October 2010 was received from the complainant. 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] FACTUAL BACKGROUND

2.1 The complainant is the owner of Ezechut Products CC. The complainant is the third respondent's employer. The third respondent became a member of Self Financed Retirement Annuity Fund, now amalgamated with the first respondent, during October 1995 and remains a member of the first respondent. The second respondent, in its capacity as the underwriting insurer and administrator of the first respondent, issued a policy number, SL049140303 ("the policy") to the first respondent in order to underwrite the first respondent's obligation to the third respondent in terms of its rules.

[3] COMPLAINT

3.1 The complainant states that the premiums of the policy are being billed against Ezechut Products CC by a stop order without his authority. He has no knowledge of the inception of the policy and never signed the application form on behalf of the third respondent. He seeks the repayment of the policy premiums.

[4] RESPONSES

Second respondent's response

4.1 The second respondent filed a response in its capacity as the administrator of the first respondent. It advised that when the policy was applied for in October 1995, the debit order instruction was not signed by the complainant, however, the application form was duly signed by

the third respondent. Correspondence signed and received from the complainant reasonably confirmed that the complainant was aware of the policy on which the complainant is noted as the premium payer. Annual statements and communication regarding the policy were sent to the address of the complainant which was provided on the application form. The third respondent consented that the proceeds may be paid to the complainant but this is not possible in terms of section 37A of the Act. Neither is it possible to cancel the policy from inception since it was duly applied for. The tax implications attached to the policy and tax certificates issued over 15 years also prevents this from being a feasible option. Tax certificates have been issued to the third respondent which he could use to claim a deduction from his taxable income. Because of the time period involved, the tax certificates cannot be cancelled.

Third respondent's response

4.2 The third respondent confirmed that he is not a party to the complaint and does not want to make any submissions.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issue for determination is whether or not the complainant is entitled to the refund of the premiums paid to the first respondent.

5.2 Section 37A of the Act provides that a pension benefit may not be reduced in any form, other than the limited instances as set out in the Act itself. It reads as follows:

“(1) Save to the extent permitted by this Act, the Income Tax Act, 1962 (Act No.58 of 1962), and the Maintenance Act, 1998, no benefit provided for in the rules of a registered fund (including an annuity purchased or to be purchased by the said fund from an insurer for a member), or right to such benefit, or right in respect of contributions made by or on behalf of a member, shall, notwithstanding anything to the contrary contained in the rules of such a fund, be capable of being reduced, transferred or otherwise

ceded, or of being pledged or hypothecated, or be liable to be attached or subjected to any form of execution under a judgment or order of a court of law, or to the extent of not more than three thousand rand per annum, be capable of being taken into account in a determination of a judgment debtor's financial position in terms of section 65 of the Magistrate's Court Act, 1944 (Act No. 32 of 1944), and in the event of the member or beneficiary concerned attempting to transfer or otherwise cede, or to pledge or hypothecate, such benefit or right, the fund concerned may withhold or suspend payment thereof: Provided that the fund may pay any such benefit or any benefit in pursuance of such contributions, or part thereof, to any one or more of the dependants of the member or beneficiary or to a guardian or trustee for the benefit of such dependant or dependants during such period as it may determine."

5.3 None of the exceptions permitted in the Act, the Income Tax Act, 58 of 1962 and the Maintenance Act, 99 of 1998 are applicable in this instance. Therefore, the first respondent is not entitled to reduce the policy value in any way not permissible in terms of section 37A of the Act. The fund value and/or premiums cannot be paid to the complainant. There is a dispute as to how the policy was applied for and issued. The application form indicates that a financial broker was involved during the application stage. It could be that the Office of the Ombud for Financial Services Providers has jurisdiction over the matter. To that extent a copy of the complaint and this determination will be forwarded to it with a note that the complainant may expect to hear from that office.

[6] ORDER

1. In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 23RD DAY OF AUGUST 2012

MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M filing: Magistrate's Court

No legal representation