Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 1956 ("the Act"): C COELHO ("complainant") v AMORETTI DESIGNS CC PROVIDENT FUND ("first respondent"), LIBERTY GROUP LIMITED ("second respondent") AND AMORETTI DESIGNS CC ("third respondent")

[1] INTRODUCTION

1.1 The complaint concerns the payment of a withdrawal benefit.

1.2 A complaint was received by this office on 9 November 2009. A letter acknowledging receipt thereof was sent to the complainant on 8 February 2010. On 20 January 2010, a letter was sent to the second respondent informing it about the complaint and giving it until 18 February 2010 to respond to the complaint. On 9 July 2010, a letter was sent to the third respondent informing it about the complaint and giving it until 9 August 2010 to respond to the complainant. A response was received from the second respondent on 2 February 2010. No response was received from the third respondent. No further submissions were received.
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 wellknown to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

[2] FACTUAL BACKGROUND

2.1 The complainant was a member of the first respondent as a result of his employment with the third respondent from April 2007 until he left his services in September 2008. The complainant’s membership endured from 1 June 2007 until July 2007 when the first respondent was liquidated. The second respondent is the first respondent’s previous administrator. Following his exit from the first respondent, the complainant became entitled to a withdrawal benefit in terms of the rules of the first respondent. However, no withdrawal benefit was paid.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the fact that he did not receive payment of his withdrawal benefit following his exit from the first respondent. He submits that the third respondent commenced deductions on his salary in May 2007 until he left the services of the third respondent in September 2008.

3.2 The complainant requests this tribunal to investigate the reasons for the non-payment of his withdrawal benefit.

[4] RESPONSE

Second respondent’s response
4.1 The second respondent submitted that according to the new entrant application, the complainant became a member of the first respondent on 1 June 2007. The complainant was loaded on the system on 31 July 2007. This was after the monthly bill was run and the contribution for July 2007 collected from the third respondent’s bank account.

4.2 The second respondent submitted further that it continued to generate bills and collect contributions for the months of August, September, October and November 2007. Upon receipt of the notice to terminate the first respondent from the third respondent as at 31 July 2007, the second respondent reversed the bills and refunded the contributions to the third respondent. The complainant’s contributions were also refunded to the employer. There was no benefit held in the fund for the complainant.

[5] DETERMINATION AND REASONS THEREFOR

5.1 What falls to be determined is whether or not the complainant is entitled to a withdrawal benefit following his exit from the first respondent. The complainant has expressed his dissatisfaction with the fact that he did not receive his withdrawal benefit following his exit from the first respondent.

5.2 This tribunal takes cognisance of the fact that the first respondent has been liquidated. Once a liquidation of a fund has been finalized and the fund is deregistered, there is no longer any legal ground on which a complaint can be brought against it (See section 28 of the Act and the definition of a complaint in section 1 of the Act). This can be attributed to the fact that once deregistration of a fund takes place, there is no longer a fund in existence.

5.3 This tribunal lacks jurisdiction to hear matters where the fund in question is no longer in existence.

Contributions post liquidation
As regards the complainant’s contributions post the liquidation of the first respondent, this tribunal takes cognizance of the fact that the complainant submitted payslips in support of his claim that the third respondent continued with the deductions on his salary until September 2008. However, it appears that the third respondent did not forward these to a fund and that the complainant was not registered as a member of a fund. The Act prescribes the types of issues that can be investigated and determined by this tribunal. These are contained in the definition of a complaint, which provides as follows:

“complaint” means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging -

(a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;

(b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;

(c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund;

but shall not include a complaint which does not relate to a specific complainant;”

Taking into account the fact that the complainant was never a member of a fund subsequent to the first respondent’s liquidation, it therefore follows that the complaint at hand does not relate to a pension fund, the administration of its funds or the interpretation and application of its rules. Having regard to the fact that this part of the complaint does not relate to a pension fund, this
Tribunal lacks jurisdiction to hear this complaint. The complainant may approach the South African Police Service ("SAPS") to lodge a charge of theft against the employer.

[6] ORDER

1. In the instance, the complaint cannot succeed and is hereby dismissed for lack of jurisdiction.

DATED AT JOHANNESBURG ON THIS THE 6TH DAY OF FEBRUARY 2012

__________________________
DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

Cc: Mr. R Gultig
Liberty Group Limited
P.O. Box 10499
JOHANNESBURG
2000

Fax: 011 408 2726

Section 30M filing: Magistrate’s Court
Parties unrepresented