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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"): TAB HARTLEB ("complainant") v LIFESTYLE RETIREMENT ANNUITY FUND ("first respondent") AND LIBERTY GROUP LIMITED ("second respondent")

[1] INTRODUCTION

1.1 This complaint concerns firstly, the causal event charge imposed on the complainant's fund value when he ceased contributions to the first respondent and secondly, the respondents' refusal to accede to the complainant's request to be paid his retirement annuity fund value prior to reaching the minimum retirement age of 55 years. .

1.2 The complaint was received by this Tribunal on 5 July 2012. A letter acknowledging receipt thereof was sent to the complainant on 10 July 2012. On the same date, the complaint was dispatched to the respondents giving them until 10 August 2012 to file their responses to the complaint. A response, which was forwarded to the complainant,

was received by this Tribunal on 22 August 2012. No further submissions were received.

1.3 After considering all the written submissions it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant applied for and was admitted to membership of the first respondent, which is a registered retirement annuity fund in terms of the Act, on 1 March 2005. The second respondent is the underwriting insurer and administrator of the first respondent. The complainant's membership was to endure until his chosen retirement date of 1 March 2033. However, on 4 July 2012 the complainant decided to cease contributions to the first respondent. The complainant's fund value immediately before his decision to cease contributions to the first respondent was R23 419.18 ("pre-causal event fund value").

2.2 As a result of the complainant's decision to cease contributions to the first respondent as at 4 July 2012, the second respondent imposed a causal event charge of R5 620.56, resulting in the complainant's fund value decreasing to R17 798.62 ("post-causal event fund value").

2.3 With effect from 1 December 2006 the Minister of Finance, in terms of section 72 read with section 54 of the Long-term Insurance Act, No. 52 of 1998 ("LTI Act") amended the regulations under the LTI Act ("the regulations") to make provision for maximum limits regarding the values and charges that may be imposed on long-term policies such as the complainant's retirement annuity fund policies. Pursuant thereto, the second respondent evaluated the complainant's pre- and post-causal event fund values and concluded that no adjustment to the

complainant's fund value was required because it fell within the permissible range stipulated in the regulations.

[3] COMPLAINT

3.1 The complainant is dissatisfied that the second respondent has levied such a high charge on his fund value pursuant to his decision to cease contributions to the first respondent, which reduced his fund value. He is also dissatisfied about the respondents' refusal to pay his retirement annuity fund value at present.

3.2 Therefore, the complainant requests this Tribunal to order the respondents to reverse the causal event charge, and also to pay his benefit without any further delay.

[4] RESPONSE

4.1 The second respondent submitted that on entering into this contract, as the insurer, it incurred certain expenses. The expenses consist of commissions as well as marketing, distribution and acquisition expenses. Its expectation was that the contract would remain in force for the full contractual term and that the selected contributions would be paid during this term. In this way, the costs incurred as a result of the issue of this contract would be fully recovered.

4.2 According to the second respondent, the expenses were set to be recouped over the contractual term of 28 years through the contribution charge and management fee deductions. The contribution charge is calculated as a percentage of the contribution, (4.5%), whereas the management fee is calculated as a percentage of the investment value, (0.16%). When the contract is made paid-up no further expenses can be recouped, by the insurer, through the contribution charge.

4.3 The second respondent submitted that the contract was made paid-up on 4 July 2012, due to the complainant advising that no further contributions will be paid by him, in respect of this contract. The complainant's fund value immediately before his decision to cease contributions to the first respondent was R23 419.18. As a result of the complainant's decision to cease contributions to the first respondent as at 4 July 2012, it imposed a causal event charge of R5 620.56, resulting in the complainant's fund value decreasing to R17 798.62. The imposed causal event charge amounts to 24% of the investment value.

4.4 The second respondent further submitted that Rule 5.1 of the rules of the first respondent provides that when contributions ceased before the member reaches the selected retirement date, the unrecovered expenses must be deducted from the investment value. These unrecovered expenses are in fact causal event charges as provided for in the regulations to the LTI Act. Clause 5.2 of the regulations to the LTI Act permits the deduction of causal event charges in respect of contracts which are made paid-up prior to retirement age. Further, clause 5.4 of the regulations to the LTI Act provides that the imposed causal event charges should not exceed the maximum limit of 30% of the investment value.

4.5 The second respondent concluded by submitting that in terms of the regulations referred to above, the insurers may deduct a maximum of 30% from the investment value of contracts which are made paid-up after 1 December 2006. The 24% deduction that was made, in respect of the un-recouped expenses, from the investment value when the contract was made paid-up with effect from 1 July 2012 falls within the prescribed limit of 30%. Therefore, the complaint against it and the first respondent should be dismissed.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The issues to be determined are firstly, whether or not the causal event charge imposed by the second respondent on the complainant's fund value when he ceased contributions to the first respondent was fair and reasonable and secondly, whether or not the respondents' refusal to accede to the complainant's request to be paid his retirement annuity fund value prior to reaching the minimum retirement age of 55 years is in accordance with the rules of the first respondent and the law.

5.2 The basis for imposing causal event charges needs to be determined and it must be decided whether or not the causal event charges levied by the second respondent were fair and reasonable. In this regard Fourie J, in *Old Mutual Life Assurance Company (SA) Ltd v Pension Funds Adjudicator and Others* [2007] 1 BPLR 117 (C) at paragraph 35, noted that:

> "The fact that the policy does not specify a formula according to which the paid-up reduced benefit is to be calculated, does not mean that Applicant has an unfettered discretion to arbitrarily determine a value in a manner that is unfair, unreasonable or capricious. In this regard, I am in agreement with Applicant's submission that the provisions of the LTIA, referred to hereunder, dictate that the paid-up reduced benefit to which Second Respondent is entitled has to be calculated in accordance with generally accepted actuarial principles and practice."

5.3 The learned judge having confirmed that causal event charges may be imposed by underwriting insurers, what remains is to ascertain the fairness and reasonableness of the causal event charges levied by the second respondent. This Tribunal takes cognisance, firstly, of the provisions of section 46 of the LTI Act, which reads as follows:

> "A long-term insurer shall not-
>
> (a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof

are actuarially sound;

(b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or

(c) award a bonus or similar benefit to a policy-holder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose."

5.4 Further, section 52 of the LTI Act prescribes the manner in which long-term policies are to be dealt with in the event of premature cessation of contributions. The insurer must have rules approved by the statutory actuary that prescribe a sound actuarial basis and the method to be used to value a long-term policy in the event of a causal event occurring. Thus, the benefits and values attaching to a prematurely terminated policy, and any distinctions between it and policies that do not prematurely terminate, must be actuarially sound.

5.5 Lastly, in addition to the requirement that causal event charges must be computed using generally accepted actuarial principles that ensure the actuarial soundness of the insurer, on 1 December 2006 the Minister of Finance promulgated regulations in terms of the LTI Act that stipulate maximum causal event charges in respect of causal events that occurred on or after 1 January 2001.

5.6 Therefore, in determining the fairness and reasonableness of the causal event charges imposed by the second respondent, this Tribunal considered the first respondent's rules, the policy terms, the provisions of the Act and LTI Act, generally accepted actuarial principles and the regulations before reaching a conclusion on the reasonableness of the causal event charges. The complainant contributed to the first respondent for seven years and four months. He still has twenty eight years left before he reaches his chosen maturity date of 1 March 2033. The causal event charge of R5 620.56 represented 24% of his fund

value on 4 July 2012, which is below the maximum limit of 30% stipulated in the regulations. Therefore, this Tribunal finds that the causal event charge imposed by the second respondent when the complainant ceased contributions to the first respondent was fair and reasonable.

5.7 Thus, after careful consideration of the facts placed before this Tribunal it is evident that the second respondent acted in accordance with generally accepted actuarial practice, the provisions of the rules, the provisions of the policy documents, the provisions of the LTI Act and the regulations. This Tribunal accordingly finds that the submissions do not support the complainant's submission that the causal event charge imposed by the second respondent was unfair, unreasonable or capricious in nature.

5.8 Regarding the payment of the complainant's fund value at present, the issue is whether it can be done in terms of the rules of the first respondent and the law. The definition of "retirement annuity fund" in section 2 of the Income Tax Act prohibits a retirement annuity fund from paying any benefits to a member before the age of 55 years, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation or if the lump-sum fund value is equal to or less than R7 000.00. Part (b)(v) of the definition of retirement annuity fund in the Income Tax Act provides that:

> "no member shall become entitled to the payment of any annuity or lump sum benefit prior to reaching normal retirement age"

5.9 In turn, 'normal retirement age' is defined in the Income Tax Act as follows:

> "in the case of a member of a retirement annuity fund, a pension preservation fund or a provident preservation fund, the date on which the member attains 55 years of age"

5.10 The selected retirement date is defined under definitions in the rules of the first respondent as follows:

> "a prospective retirement age, not younger than 55, selected by the MEMBER at the time of application for MEMBERSHIP."

5.11 In the present matter the complainant is currently 35 years old. So, he does not qualify for retirement from the first respondent. In addition, his total fund value on 4 July 2012 was already R23 419.18, so it exceeded the R7 000.00 maximum for cash payment prior to a member reaching the minimum retirement age. He has not claimed ill-health, nor has he submitted to the respondents an application for ill-health early retirement. Therefore, neither the rules nor the provisions of the Income Tax Act permit the respondents to pay the complainant his fund value in cash at present.

5.12 It follows therefore that since the complainant has not yet reached the age of 55 years, is not permanently disabled and his fund value is greater than R7 000.00, the respondents are bound by the law and the rules of the first respondent and they cannot pay the complainant his fund value at present.

[6] <u>ORDER</u>

1. The complaint cannot be upheld and is dismissed.

DATED AT JOHANNESBURG ON THIS 29th DAY OF OCTOBER 2012

MA LUKHAIMANE

DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M filing: High Court

Parties unrepresented