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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”): MR HLALATU (“complainant”) v MOMENTUM RETIREMENT ANNUITY FUND (“first respondent”) AND MOMENTUM GROUP LIMITED (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the first respondent’s refusal to commute the full value of a retirement benefit for cash.
- 1.2 The complaint was received by this Tribunal from the Ombudsman for Long-Term Insurance on 5 April 2012. A letter acknowledging receipt thereof was sent to the complainant on 20 April 2012. On 24 April 2012, a letter was sent to the second respondent requesting a response by no later than 23 May 2012. A response dated 25 April 2012 was received from the second respondent. No further submissions were received from the parties.

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)

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 became a member of the first respondent on 1 July 1993. The second respondent, in its capacity as the underwriting insurer and administrator of the first respondent, issued policy number, 87456415 ("the policy") to the first respondent in order to underwrite the first respondent's obligation to the complainant in terms of its rules. On the complainant's retirement date, the retirement value of the policy was R78 021.00. One third (R26 007.00) of the retirement value was commuted for cash and two third (R52 014.00) thereof was utilised to buy an annuity on behalf of the complainant. The annuity will provide the complainant with a monthly income of R369.85.

[3] COMPLAINT

3.1 The complainant seeks the payment of the full value of his retirement benefit as a cash lump-sum.

[4] RESPONSE

4.1 The second respondent confirmed the background facts as summarised above. It advised that the value of the complainant's retirement benefit, i.e. R78 021.00, exceeds the maximum limit (R75 000.00) for a full cash lump-sum payment as stipulated by the Income Tax Act, 58 of 1962 ("Income Tax Act"). Therefore, the complainant is compelled to take a maximum of one-third of his retirement benefit in cash and the remainder must be used to purchase a compulsory life annuity.

[5] **DETERMINATION AND REASONS THEREFOR**

- 5.1 The issue for determination is whether or not the complainant is entitled to the payment of the whole value of his retirement benefit in cash.
- 5.2 The second respondent contended that the Income Tax Act does not permit the commutation of the full value of a retirement annuity benefit above a certain threshold in cash. The definition of a “retirement annuity fund” in section 1 of the Income Tax Act is relevant for determining the maximum maturity value permissible for a full cash commutation of a retirement annuity fund benefit. The relevant section reads as follows:

“**retirement annuity fund**” means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question and, in the case of any such fund established on or after 1 July 1986, is registered under the provisions of the Pension Funds Act, 1956 (Act 24 of 1956): Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied-

- (a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the dependants or nominees of deceased members; and
- (b) that the rules of the fund provide-
- (i) for contributions by the members, including contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;
- (ii) that not more than one-third of the total value of the retirement interest may be commuted for a single payment and that the remainder must be taken in the form of an annuity (including a living

annuity) except where two-thirds of the total value does not exceed R50 000 or where the member is deceased; ..." (underlining added)

5.3 In the present complaint, two-thirds of the complainant's maturity value is R52 014.00. This exceeds the maximum of R50 000 stipulated in the Income Tax Act. Therefore, the complainant is not permitted to take his full maturity value in cash. The respondents have correctly informed him that he is only permitted to take a maximum of one-third of his maturity value in cash and the remaining amount must be used to purchase a compulsory life annuity.

[6] **ORDER**

1. In the result, the complaint is dismissed.

SIGNED IN JOHANNESBURG ON THIS 14TH DAY OF AUGUST 2012

MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M Filing: Magistrates Court

Parties unrepresented