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Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): CP KLEINHANS (“complainant”) v ALTRON GROUP PENSION FUND (“first respondent”) AND ALEXANDER FORBES FINANCIAL SERVICES (PTY) LTD (“second respondent”)

[1] INTRODUCTION

- 1.1 The complaint concerns the complainant’s wish to exercise the option of a pension on either a defined benefit or defined contribution basis on retirement.
- 1.2 The complaint was received by this Tribunal on 15 May 2009. A letter acknowledging receipt thereof was sent to the complainant on 13 June 2009. On the same date, a letter was sent to the second respondent requesting a response by no later than 13 July 2009. A response dated 9 October 2009 was received from the first respondent. On 8 January 2010, a letter was sent to the complainant requesting a

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reply by no later than 29 January 2010. A reply dated 1 February 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 became an employee of Aberdare Cable (Pty) Ltd ("the employer") and by virtue of his employment became a member of the first respondent from 1 May 1990 until his resignation and withdrawal from the first respondent on 31 May 2006. A withdrawal benefit in the amount of R795 000.00 became payable to the complainant but he did not claim it. The complainant was re-employed by the employer on 1 May 2007 and became a member of the first respondent again. The complainant's withdrawal benefit was reinstated and allocated to his member's share account together with interest.

[3] COMPLAINT

- 3.1 The complainant is aggrieved that he no longer has the right to exercise the option to retire on a defined benefit or defined contribution basis following his re-employment. Before his withdrawal he had an option to retire on a defined benefit basis or defined contribution basis in terms of the rules of the first respondent. He was initially advised that on re-joining the first respondent he would retain the right to exercise the option to retire on a defined benefit or defined contribution basis. He is also claiming a share of the pensioner's medical assistance reserve which was distributed

to members to dispense with the provision of medical assistance to pensioners.

[4] RESPONSE

- 4.1 The first respondent states that the complainant had the option to withdraw his withdrawal benefit in cash which would be taxed or to transfer his withdrawal benefit to another approved fund or to remain a deferred member of the first respondent. These options were clearly communicated to the complainant but the complainant failed to exercise his option. As such, the complainant's withdrawal benefit remained in the first respondent as an unclaimed benefit. The complainant could not be treated as a deferred pensioner because that option should have been exercised at the date of withdrawal. On re-employment, the complainant became a new member of the first respondent and the Altron Group Disability Benefit Fund. The complainant was treated as any other new member joining the first respondent and the rules of the first respondent were applied equally to him as to any other member. The Disability Fund imposed certain limitations on the complainant's benefit in accordance with the policies, which limitations were accepted by the complainant. The complainant was admitted to the first respondent as a defined contribution member in terms of the rules of the first respondent applicable at the date of joining the first respondent.
- 4.2 The complainant became entitled to a withdrawal benefit equal to his member's share on leaving service prior to his normal retirement date in terms of rule 7.1 of the first respondent. The complainant could elect to preserve his withdrawal benefit, purchase a retirement annuity, transfer to another approved fund or if he was a member before the conversion date of 1 September 1996, become a deferred pensioner. The failure by the complainant to make an election has precluded him from being a deferred

pensioner. The distribution of the medical benefit was effected in December 2006 to active members at this date and the complainant was not an active member on the date of distribution.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 The issue for determination is whether or not the complainant is entitled to the option to retire on a defined benefit or defined contribution basis on retirement.
- 5.2 The payment of any benefit that is due to a member of a fund is regulated by the fund's rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E and section 13 of the Act). On resignation, the complainant became entitled to the payment of a withdrawal benefit from the first respondent which equal to his fund credit in terms of rule 7.1 of the first respondent. The withdrawal benefit was never claimed by the complainant and it was treated as an unclaimed benefit by the first respondent. At this stage the complainant's membership of the first respondent was terminated.
- 5.3 Rule amendment 15 of the first respondent defines a category "A" member of the first respondent as follows:

"CATEGORY A MEMBER: a MEMBER who as a MEMBER of the FUND immediately prior to the CONVERSION DATE and who either:

- (a) elects the option in Clause 1 in Appendix A to receive a benefit on retirement calculated in terms of the OLD RULES of the FUND; or
- (b) elects the option in Clause 2 in Appendix A to become a DEFERRED PENSIONER and to receive a benefit in terms of the OLD RULES of the FUND."

- 5.4 'Conversion Date' is defined in the rules of the first respondent as, 1 September 1996 and with effect from this date the funding method as described in the rules in force prior to this date changed from defined benefit to defined contribution. 'Old Rules' is defined in the rules of the first respondent as the rules applied immediately before the conversion date. The complainant was a member of the first respondent before the conversion date and on his withdrawal did not exercise the option in clause 2 in Appendix A to become a deferred pensioner in terms of the old rules. Therefore, the complainant was not a deferred pensioner of the first respondent and hence his withdrawal benefit was placed in the unclaimed benefit account of the first respondent.
- 5.5 The complainant became a new member of the first respondent on his re-employment. His withdrawal benefit was credited to his member's share account. This was after the conversion date and at this stage the funding method as described in the rules had changed from defined benefit to defined contribution. The complainant will be entitled to a retirement benefit equal to his fund credit on retirement in terms of rule 5.1 of the first respondent. Therefore, the complainant was no longer entitled to the option to retire on a defined benefit basis in terms of the old rules.
- 5.6 As regards the payment of the pensioners' medical assistance reserve, this was distributed to the members following a decision by the board of trustees to dispense with the provision of medical assistance to pensioners who elected to receive a pension from the first respondent. This was made in December 2006 to active members and at this date the complainant was not a pensioner member of the first respondent hence payment was not made to him.

[6] ORDER

1. In the result, the complaint is dismissed.

DATED AT JOHANNESBURG ON THIS 8th DAY OF AUGUST 2012

**MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR**

Section 30M Filing: Magistrate's Court

No legal representation