Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): I KOURELLIS (“complainant”) v LIFESTYLE RETIREMENT ANNUITY FUND (“first respondent”) AND LIBERTY GROUP LIMITED (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the reduced retirement value that became payable to the complainant at the date when he requested a transfer of his funds to the South African Retirement Annuity Fund (“SARAF”)

1.2 The complaint was received by this Tribunal on 26 July 2010. A letter acknowledging receipt thereof was sent to the complainant on 19 August 2010. On the same date, a letter was dispatched to the respondents giving them until 30 September 2010 to file a response. A response on behalf of the respondents, which was originally sent to the Ombudsman for Long-Term Insurance and copied to this Tribunal, was
received on 20 August 2010. On 2 September 2010, this Tribunal received further submissions from the complainant.

1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties, only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complaint was lodged by Mr. EG Kolovos (“Mr Kolovos”) on behalf of the complainant in his capacity as his financial advisor. Mr Kolovos also has power of attorney to lodge the complaint on behalf of the complainant.

2.2 The complainant applied and was granted a retirement annuity policy by the first respondent which commenced on 1 April 1979. On 4 March 2009, the complainant requested the second respondent to mature his policy and to convert the proceeds to an annuity. On 6 May 2009, the complainant was provided with a quotation of his retirement value which was reflected as R423 172.90. On 7 May 2009, the complainant changed his initial request and indicated that his retirement value should be transferred to SARAF, which is administered by Old Mutual Life Assurance Company SA Ltd (“Old Mutual”).

2.3 During November 2009, the complainant was requested to sign a declaration form which reflects his current retirement value as R383 752.98. The complainant refused to sign the declaration form due to the fact that it reflects a reduced retirement value than the one quoted to him in May 2009.

[3] COMPLAINT
3.1 The complainant submits that he decided to have his retirement value transferred to SARAF based on the amount of R423 172.90 that was quoted to him. He states that he completed transfer documents on 30 June 2009 based on the amount of R423 172.90. However, no transfer was made despite repeated reminders for the transfer of his funds to SARAF. He states that Old Mutual also sent reminders to the second respondent to effect the transfer.

3.2 During November, the complainant received a transfer form which reflects a reduced amount. He states that he refused to sign the transfer form as it reflected a reduced retirement value than the amount of R423 172.90 that was quoted to him. He contends that it was also unacceptable to wait for up to six months for the transfer forms.

3.3 Therefore, the complainant requests that the second respondent should remain liable to pay the amount of R423 172.90 plus interest from 30 June 2009 until the date of payment. This is due to the fact the reduction in his retirement value would have been avoided had the second respondent acted immediately on his transfer documents. He states that the second respondent’s attempt to secure the monthly annuity through its office was the principal reason for the delay in the transfer.

[4] RESPONSE

4.1 The second respondent submits that the complainant sent conflicting information on what was required from him. It avers that the complainant’s financial advisor requested a transfer from the complainant’s funds from the first respondent to SARAF in terms of section 14 of the Act. It subsequently requested that the complainant should sign a client declaration form which reflected his current retirement value as
R383 752.98.

4.2 It states that it tried to contact the complainant in order to verify if he was informed of the implications of a section 14 transfer. This is due to the fact that a section 14 requires that the trustees must ensure that the member is aware of all the implications prior to approving any transfer. It states that it never tried to secure an annuity for the complainant as he did not request a retirement option form. The complainant failed to submit a signed declaration form, which it requested on 18 and 28 December 2009. It was thus impossible to continue with the transfer process as there were outstanding requirements.

4.3 It confirms that it received a letter dated 28 December 2009 from the complainant in which he raised his concerns. It contends that it responded to the letter on 31 December 2009 by advising him that it is unable to freeze his values on a section 14 transfer as the client declaration form states as follows:

“This value is subject to market fluctuations and the amount eventually transferred will therefore differ from this value.”

4.4 The application form also states that the assets will remain invested in the selected portfolio unless the member request portfolio re-allocations in writing and submits this to the second respondent. However, it appears from the current complaint that the complainant does not want the transfer of funds in terms of section 14 of the Act anymore, but rather an annuity to provide him with a monthly income for life. The initial request that was received by it and Old Mutual however indicated that the complainant requested a section 14 transfer of his funds. On 11 March 2010, Old Mutual sent a letter to the complainant’s financial advisor requesting information as to whether or not he is still interested in proceeding with the
section 14 transfer. It also advised him that the client declaration form was still to be completed and signed.

4.5 In conclusion, the second respondent submits that the complainant’s financial advisor requested a section 14 transfer. However, it seems that the complainant actually wanted a retirement in order to purchase an annuity which will provide him with a monthly income for life. It states that it cannot be held liable for the request that was sent in error by the financial advisor. The financial advisor was acting on behalf of the complainant in terms of a power of attorney. The complainant’s policy is still in force and the value that will be payable is the value on the date when all the outstanding requirements are received.

[5] DETERMINATION AND REASONS THEREFOR

Introduction

5.1 The issue that falls to be determined is whether or not the second respondent should be held liable for the reduced value of the complainant’s retirement policy. The complainant contends that the second respondent delayed the transfer of his retirement value which caused him to suffer financial losses.

The complainant’s request

5.2 The facts indicate that the complainant was provided with a quotation of his retirement value on 6 May 2009 when he requested that his policy should be matured. The retirement value that was quoted to him amounted to R423 172.90. However, the statement that was provided to him indicates that the quotation was for information purposes only and this was not an offer but a summary of the product’s feature. On
30 June 2009, the complainant through his financial advisor completed and signed an application form for a section 14 transfer of his retirement value to SARAF. The application form stated the following under the condition of transfers:

“No assets will be transferred prior to receipt of the required Certificate of Approval in terms of section 14 issued by the Financial Services Board. The assets will remain invested in the selected portfolio unless the member request a portfolio re-allocation in writing and submits this to Liberty Life...This is an application to transfer funds to another approved Retirement Annuity/Preservation Fund and transfer will only take place if approved by the Board of Trustees of the transferor fund."

5.3 Thus, the complainant’s funds were required to remain invested in his selected portfolio until such time that the section 14 transfer was approved by the Financial Services Board. The retirement value that was quoted to the complainant was not a fixed and final value as it was subject to market fluctuations. The retirement value that was transferable to SARAF was the complainant’s asset value at the date of transfer.

5.4 The submissions indicate that the complainant was requested to complete a client declaration form in order to process the section 14 transfer. However, the complainant refused to sign the form due to the fact that it reflected a reduced amount. Old Mutual also advised the complainant of the need to complete and sign the client declaration form on 11 March 2010. Thus, the delay in the transfer was occasioned by the complainant’s refusal to submit the required documents in order for the transfer process to proceed. The delay was also caused by the fact that the complainant’s financial advisor requested that the funds should be transferred through section 14 of the Act.

5.5 The complainant’s fund remained invested in his selected portfolio and he
could not prove that he suffered any financial loss on his retirement value as a result of the delay in the transfer. The second respondent cannot be held liable for the delay as it had to comply with the requirements of section 14 in order to transfer the complainant’s funds. The respondents were also bound to act in terms of the complainant’s application for transfer which indicated that the transfer was in terms of section 14 of the Act.

5.6 In light of the submissions, the respondents cannot be held liable to transfer or pay the quoted amount of R423 172.90 as it does not represent the complainant’s asset value in the fund as at the date of transfer.

[6] ORDER

1. In the result, the complaint cannot be upheld and is dismissed.

DATED AT JOHANNESBURG ON THIS 1ST DAY OF AUGUST 2012

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MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR

Section 30M Filing: Magistrate’s Court
No legal representation