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Please quote our reference: **PFA/GA/7779/2011/CMS**

**REGISTERED POST**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): G J KUBEKA (“complainant”) v MARCOPOLO SOUTH AFRICA PROVIDENT FUND (“first respondent”) AND NMG CONSULTANTS AND ACTUARIES ADMINISTRATORS (PTY) LTD (“second respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the delay in transferring the complainant’s fund membership in terms of section 14 of the Act.
- 1.2 The complaint was received by this Tribunal on 18 August 2011. A letter acknowledging receipt thereof was sent to the complainant on 14 September 2011. On the same date, letters were sent to the respondents requesting a response by no later than 14 October 2011. A response was received from the second respondent on 13 October 2011. No further submissions were received from the parties.

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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 This matter was referred to conciliation on 21 June 2012 in order to afford the parties an opportunity to settle it, but it remained unresolved. Therefore, the complaint was referred to adjudication.

1.4 After considering the 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 Marcopolo South Africa (Pty) Ltd and by virtue of his employment became a member of the first respondent from 1 May 2003 until contributions were stopped on 31 October 2009. The complainant is part of a group of employees that elected to transfer their membership in terms of section 14 of the Act to the Motor Industry Provident Fund ("Provident Fund") effective 1 November 2009.

## **[3] COMPLAINT**

3.1 The complainant is dissatisfied with the delay in transferring his membership to the Provident Fund. The process commenced in 2009 and is yet to be finalised.

## **[4] RESPONSE**

4.1 The second respondent filed a response in its capacity as the administrator of the first respondent. It advised that the previous administrator of the first respondent, AON South Africa (Pty) Ltd ("AON"), had to prepare the required section 14 documentation to transfer the complainant's share of fund to the Provident Fund. As at 31 October 2009 the provisional amount to be transferred on behalf of the complainant was R41 474.31. AON also advised that there has been a delay in valuing the first respondent, due to the delay in AON finalising

various outstanding administration issues. These issues have contributed to the delays experienced in finalising the section 14 transfer before the actuary signs the section 14 documentation. The complainant is not prejudiced in any way as the transfer monies remain invested in the first respondent's Investment Solutions Banker Portfolio.

**[5] DETERMINATION AND REASONS THEREFOR**

5.1 The complainant is dissatisfied with the delay in transferring his membership from the first respondent to the Provident Fund. The respondents contended that AON is currently evaluating the first respondent before the application is submitted to the Registrar of Pension Funds ("Registrar"). The Registrar will not issue a certificate of approval in terms of section 14(1)(e) of the Act until he is satisfied that all the requirements in terms of sections 14(1)(a) to (d) of the Act have been met (see *Meyer v Ladismith Landboukooperasie Retirement Fund and Another* [2011] 3 BPLR 381 (PFA)). One of the conditions that the Registrar had to be satisfied with in terms of section 14(1)(b) of the Act is that he must be furnished with such additional particulars or such a special report by a valuator, as he may deem necessary for the purposes of this subsection.

5.2 The investigation conducted by this Tribunal indicates that AON is currently responding to the enquiries by the Registrar before the application for the transfer can be lodged. The latest enquiry by the Registrar is dated 14 February 2012. The enquiries by the Registrar relates to *inter alia*, his dissatisfaction with the report furnished by the valuator of the first respondent regarding the financial affairs of the first respondent in terms of section 16(1) of the Act, and the need for the submission of a scheme in terms of section 18(1) of the Act to bring the first respondent into a sound financial position because he is of the view that it is not in a sound financial condition.

5.3 The delay in the transfer is caused by the legal requirement in terms of the Act that must be met before the transfer could take place. The respondents should monitor the progress of the transfer to ensure that the delays are not protracted to the prejudice of the complainant. One of the steps taken by the first respondent to prevent financial prejudice to the complainant is that his share of fund is invested in the Investment Solutions Banker Portfolio and is currently earning interest.

**[6] ORDER**

6.1 In the result, the complaint is dismissed.

**DATED AT JOHANNESBURG ON THIS 2<sup>ND</sup> DAY OF AUGUST 2012**

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**MA LUKHAIMANE  
DEPUTY PENSION FUNDS ADJUDICATOR**