Dear Madam,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 ("the Act"): J MAPHAKELE ("complainant") v THE CONTRACT CLEANING NATIONAL PROVIDENT FUND ("respondent"), NBC FUND ADMINISTRATION SERVICES (PTY) LIMITED ("second respondent") AND MAPHELE BUSINESS ENTERPRISE CC ("third respondent")

[1] INTRODUCTION

1.1 The complaint concerns the employer's alleged non-payment of contributions to a fund and the fund's failure to issue benefit statements to members.

1.2 The complaint was received by this office on 4 September 2009. A letter acknowledging receipt thereof was sent to the complainant on 23 June 2009. On 12 June 2009, a letter was dispatched to the second respondent informing it about the complaint and giving it until 26 July 2009 to file its response to the complaint. On 21 October 2010, a letter was dispatched to the third respondent informing it about the complaint and giving it until
1 December 2010 to file its response. A response was received from the second respondent on 16 January 2012. No further submissions were received.

1.3 Having reviewed the written submissions before this tribunal, 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 was a member of the first respondent as a result of his employment with the third respondent from January 2007 until February 2009. On 1 July 2009, the third respondent was taken over by Mapgem Specialised Cleaning Services CC (“Mapgem”).

[3] **COMPLAINT**

3.1 The complainant submits that the third respondent deducted monies from its employees, including the complainant, but failed to transmit these to the first respondent. The complainant submits that some employees do not appear on the first respondent’s data-base as registered members. The complainant is dissatisfied with the third respondent’s failure to transmit contributions to the first respondent and to register some employees as members of the first respondent.

3.2 Further, the complainant is dissatisfied with the fact that she and other employees of the third respondent have not received benefit statements from the first respondent.

3.3 The complainant is requesting this Tribunal to investigate this matter.
RESPONSE

Second respondent’s response

4.1 A response was received from the first respondent confirming that the complainant is a member of the first respondent.

4.2 As regards the complainant’s complaint that the third respondent defaulted on contributions to the first respondent, the second respondent submitted that since its registration as a participating employer in the first respondent, the third respondent has paid contributions to the first respondent and has not defaulted on contributions payments. All the employees, including the complainant, in respect of whom the third respondent paid contributions, appear on the first respondent’s data-base. The third respondent was taken over by Mapgem with effect from 1 July 2009. Mapgem continued contributing to the first respondent on behalf of its employees. Mapgem has ceased its participation in the first respondent.

4.3 As regards the complainant’s complaint that the first respondent has failed to provide benefit statements, the second respondent submitted that the 2007 benefit statements were sent to the third respondent and it emerged that it was not collected from the post office. The 2008 benefit statements had been issued towards the end of 2009 to Mapgem as the new employer.

DETERMINATION AND REASONS THEREFOR

Locus Standi and Mandate
5.1 The complainant purports to act on behalf of all the employees of the third respondent. However, no power of attorney was obtained to act on their behalf, nor were the employees’ names provided. The complainant has therefore not disclosed the basis of her legal standing to represent members of the fund (see *Epol Pension Fund v Premier Retirement Fund* [2002] 3 BPLR 3148 (PFA) at paragraph 15). The Act defines a complainant as:

“(a) any person who is, or who claims to be -

(i) a member or former member of a fund;

(ii) a beneficiary or former beneficiary of a fund;

(iii) an employer who participates in a fund;

(b) any group of persons referred to in paragraph (a) (i), (ii) or (iii);

(c) a board of a fund or member thereof; or

(d) any person who has an interest in a complaint;”

5.3 This Tribunal is bound in terms of the above definition to address the issue before it can deal with the merits of the matter.

5.4 Although the complainant has not established her mandate to act on behalf of other members of the fund, she is also a member and therefore qualifies as a complainant. Thus, this Tribunal will investigate this complaint only insofar as it concerns the complainant’s membership of the fund.

*Merits*

5.5 The second respondent has submitted that since its participation in the
first respondent, the third respondent has never defaulted on contribution payments and that all of its employees reflected on the first respondent's records as registered members. The third respondent has been taken over by Mapgem which continued paying contributions to the first respondent on behalf of its employees. The complainant has failed to submit the names of the employees whom she alleges do not appear on the first respondent’s records as registered members. The complainant appears on the first respondent’s records as a registered member and contributions were made on her behalf on a regular basis. In the instance, this part of the complaint falls away.

5.6 This tribunal takes further cognisance of the fact that the complainant has since exited the first respondent and as a result, a withdrawal benefit is due to her in terms of the rules of the first respondent. Thus, in order to receive payment of his withdrawal benefit, the complainant should send a completed withdrawal claim form, a copy of her identity document and a copy of her bank statement to the second respondent.

5.7 Further, this tribunal takes cognisance of the second respondent’s submission that the benefit statements were issued and sent to the third respondent for forwarding to its employees. In terms of section 7D(c) of the Act the fund is required to provide adequate and appropriate information to members. Issuing benefit statements to members is crucial for the fund in complying with this provision of the Act.

ORDER

6.1 In the result, the order of this Tribunal is as follows:
6.1.1 The complainant is directed to complete the attached withdrawal claim form and to provide a copy of his identification document, as well as a recent copy of his bank statement. The complainant is directed to send the above documentation to the following address:

NBC Administration Services (Pty) Limited
P.O. Box 32528
BRAAMFONTEIN
2017

6.1.2 The first respondent is ordered to pay the complainant’s withdrawal benefit, less any deductions permitted in terms of the Act, within 7 days of the receipt of the documentation requested in terms of paragraph 6.1.1 above.

6.1.3 The first respondent is directed to issue the complainant with a copy of her last benefit statement within 14 days of the date of this determination.

DATED AT JOHANNESBURG ON THIS THE 8TH DAY OF FEBRUARY 2012

________________________________________
DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Section 30M filing: Magistrate’s Court
Parties unrepresented