Dear Mrs Nodude

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“the Act”): NS NODUDE (“complainant”) v BOSELE NATIONAL PROVIDENT FUND (“respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the delay in the payment of a death benefit to the complainant by the respondent following the death of her husband, Mr. M Nodude (“the deceased”).

1.2 The complaint was received by this Tribunal on 26 June 2009 from the Office of the Ombudsman for Long Term Insurance. A letter acknowledging receipt thereof was sent to the complainant on 31 July 2009. On 24 July 2009, a letter was dispatched to the respondent giving it until 24 August 2009 to file a response to the complaint. Follow-up letters were sent to the respondent on 19 May 2010, 12 August 2010, 6 July 2011, 10 January 2011 and 26 September 2011 requesting it to respond the complaint. A response was received from the respondent on 28 August 2012.
1.3 After reviewing the written submissions, it is considered unnecessary to hold a hearing in this complaint. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The deceased was employed by Stocks and Stocks (“the employer”). By virtue of his employment, he became a member of the respondent. The deceased passed away on 17 December 1998. Following the deceased’s passing, the respondent became liable to pay a death benefit to his dependants. The respondent admitted that it is liable to pay a death benefit, but it is yet to distribute the death benefit to the deceased’s dependants.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the respondent’s delay in paying the death benefit to the deceased’s dependants.

[4] RESPONSE

4.1 The respondent submits that the matter was handed over to the new administrator Alexander Forbes for payment when they took over in August 2011. However, the trustees took a decision to reconstruct the data of the respondent when they realised the information from the previous administrator was not reliable. The process took longer than anticipated and some payments, included this one, were put on hold. The process for updating the data and uploading it in the Alexander Forbes system for dormant members was completed at the end of July 2012. It submits that it has on various occasions attempted to contact the members on the available contact details. The complaint is
with the administrator and additional information is required to finalise payment.

[5] DETERMINATION AND REASONS THEREFOR

Preliminary issue

5.1 It should be pointed out at the outset that the deceased passed away on 17 December 1998. Thus, a period of more than thirteen years has passed since the deceased’s death. However, this complaint cannot be dismissed on the basis that it is time-barred in terms of section 30I of the Act. This is due to the fact that the respondent has accepted liability for payment of the death benefit. The respondent acknowledged that the delay in the payment of the death benefit is due to the reconstruction of its data system. In previous determinations of this Tribunal, (see Mokgotho v Bosele National Provident Fund [PFA/WE/32706/2009] (unreported)), the Adjudicator held that the complaint is not time-barred in terms of section 30I of the Act because the respondent acknowledged liability to pay the death benefit after the three year period had lapsed.

The merits

5.2 The complaint concerns the unreasonable delay in paying a death benefit by the board of trustees of the respondent.

5.3 Section 37C of the Act governs the disposition of death benefits. It places a duty on the board of trustees to identify the beneficiaries of a deceased member and also vests the board with discretionary powers regarding the proportions and manner of distributing the proceeds of a death benefit. Section 37C(1)(a) puts a responsibility on the fund to make a distribution within 12 months after the death of the member should they become aware or trace dependants of the member.
5.4 A fund is only permitted to act in terms of its registered rules (see Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (SCA) at paragraph [28] and section 13 of the Act). Thus, any benefit that is paid by the respondent must be computed in terms of its rules.

5.5 It is common cause that the respondent has failed to pay the death benefit to the dependants. The respondent failed to submit a written response to this Tribunal irrespective of numerous attempts to obtain a response. However, this Tribunal made a telephonic follow-up and it affirmed that it is due to its delay that the death benefit has not been paid. By its own admission the fund has failed to discharge its duties in terms of the rules and the Act.

5.6 The respondent's negligence cannot be condoned by this Tribunal. The respondent's failure to migrate its data over a lengthy period of time cannot be a justifiable excuse for the delay in the payment of the death benefit. The respondent has unjustifiably delayed the payment of the death benefit to the dependants and should be held liable to pay such benefit, including interest, without any further delay.

5.7 The conduct of the respondent in this matter is unacceptable and amounts to dereliction of its fiduciary duties. The respondent did not advance any convincing reasons for the inordinate delay in the distribution of the deceased's death benefit. As a result, a copy of this determination will be forwarded to the Registrar of Pension Funds as well as the Head of Surveillance and Enforcement for possible action against the trustees of the respondent for what would appear to be a gross dereliction of duties by the trustees.

[6] ORDER

6.1 In the result, the order of this Tribunal is as follows:
6.1.1 The respondent is ordered to trace and identify the deceased’s dependants in terms of section 37C of the Act within four weeks of the date of this determination;

6.1.2 The respondent is ordered to pay the death benefit, together with interest thereon at 15.5% per annum computed from 17 December 1999 to date of payment, to the identified dependants of M Nodude in terms of section 37C of the Act within six weeks of the date of this determination.

DATED AT JOHANNESBURG ON THIS 30TH DAY OF AUGUST 2012

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MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR