



Ground & 1<sup>st</sup> Floors  
23 FREDMAN  
Cnr. Fredman Drive & Sandown Valley Crescent  
Sandown  
**SANDTON**  
2196

P.O. Box 651826, **BENMORE**, 2010  
Tel: 087 942 2700; 011 783 4134 □ Fax: 087 942 2644  
E-Mail: [enquiries@pfa.org.za](mailto:enquiries@pfa.org.za)  
Website: [www.pfa.org.za](http://www.pfa.org.za)

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Please quote our reference: **PFA/KZN/6646/2011/RK**

**REGISTERED POST**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): N P NDIMANDE (“complainant”) v GAUTENG BUILDING INDUSTRY PROVIDENT FUND (“first respondent”), ALEXANDER FORBES FINANCIAL SERVICES (PTY) LIMITED (“second respondent”) AND MARBLE CLASSIC (PTY) LIMITED (“third respondent”)**

[1] **INTRODUCTION**

- 1.1 The complaint relates to the quantum of a withdrawal benefit.
- 1.2 The complaint was received by this office on 6 June 2011. On the same date a letter acknowledging receipt thereof was sent to the complainant. On 9 June 2011 letters were dispatched to the first and third respondents giving them until 11 July 2011 to file their responses to the complaint. On 6 July 2011 a response was received from the second respondent, in its capacity as the first respondent’s administrator, a copy of which was forwarded to the complainant on 8 July 2011. The complainant’s reply was received on 25 July 2011 and

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the second respondent's further submissions were received on 23 August 2011.

- 1.3 This complaint was referred to the conciliation service for hearing on 19 October 2011 in order to afford the parties an opportunity to settle the matter. However, the parties could not reach a settlement and the matter was referred for adjudication. The determination and reasons therefor appear below.

## **[2] FACTUAL BACKGROUND**

- 2.1 The complainant was employed by the third respondent on 15 October 1999 and by virtue of his employment, he became a member of the first respondent. When the complainant was dismissed from his employment on 11 February 2010, he became entitled to a withdrawal benefit in terms of the first respondent's rules. The gross value of the complainant's benefit which was payable upon his exit from the first respondent was R29 804.71 before tax. On 15 December 2010 the complainant was paid a net benefit in the amount of R29 460.44.

## **[3] COMPLAINT**

- 3.1 The complainant submits that he is dissatisfied with the quantum of the withdrawal benefit he received as he was employed by the third respondent for a period of 11 years. The complainant submits that he wrote letters to the second and third respondents requesting a breakdown of his contributions but to no avail.
- 3.2 The complainant further submits that while the employer was deducting pension fund contributions from his salary, the third respondent's contributions were not added to his total contributions. The complainant further submits that the third respondent's contributions appear to be considerably less than his contributions. Implicit in his complaint, is the

complainant's opinion that both he and the third respondent had contributed equal amounts towards his benefit.

- 3.3 The complainant requests the assistance of this tribunal to determine whether or not he was paid a correctly computed withdrawal benefit.

#### **[4] RESPONSE**

4.1 The second respondent submitted that when the complainant's contract of employment was terminated on 11 February 2010, the first respondent's registered rules which applied at that date were the rules effective as of 1 June 2004. In terms of rule 7.1, the complainant was entitled to a benefit equal to his fund credit.

4.2 The second respondent submitted that the definition of fund credit in rule 2 reads as follows:

“Fund credit” shall mean for each Member at any particular date the sum of:

- (a) the accumulated value of
  - (i) his contributions made to the Fund in terms of Rule 4.1.1 and in terms of the Rules which applied between 7 June 1993 and 1 June 2004;
  - (ii) that part of the contributions made by the Employer for the Member's benefit in terms of Rule 4.2.1 which is required to be applied for his retirement benefit in terms of Rule 4.2.2(b); and
  - (iii) that part of the contributions made by the Employer to the Fund after 7 June 1993 until 1 June 2004 which was applied towards retirement funding in terms of the Rules as they then applied;
- (b) the additional voluntary contributions made in terms of Rule 4.5 (if any); and

- (c) any amount transferred to the Fund in terms of Rule 9.1.1 or Rule 9.1.2;

increased or decreased by the Investment Return until the Calculation Date.”

- 4.3 The second respondent submitted that the total accumulated contributions by the complainant and the third respondent, together with investment returns comprised the withdrawal benefit paid out to the complainant. A printout indicating how the benefit was calculated was attached to the response.
- 4.4 The second respondent submitted that rule 4.2.2 provides for the allocation of contributions for the provision of risk benefits and administration expenses. Consequently, it was submitted that part of the third respondent’s contributions received are allocated towards risk and administration costs while 2.51% of the contributions are allocated towards retirement funding.
- 4.5 In response to the complainant’s submissions that he never received a response from the second respondent regarding a breakdown of his contributions, the second respondent provided him with his contribution history for the period from October 1999 until May 2002. It was submitted that during this period the first respondent was administered by Investec Employee Benefits Limited (“Investec”).

## **[5] DETERMINATION AND REASONS THEREFOR**

- 5.1 The complaint relates to the quantum of a withdrawal benefit. It is the complainant’s submission that he is not satisfied with the amount paid to him as he was employed for 11 years by the third respondent.
- 5.2 The second respondent has submitted that the complainant’s benefit was paid in terms of rule 7.1 which reads as follows:

“7.1 Benefit

If a Member who has not reached Normal Retirement Date leaves Service in circumstances not provided elsewhere in these Rules, he shall become entitled to a lump sum benefit equal to his Fund Credit.”

- 5.3 With regards to the complainant’s submission that the third respondent’s contributions were far less than the contributions paid by him, the reason for this has been addressed in the second respondent’s response. This is also provided for in terms of rule 4.2.2 mentioned above. The second respondent submitted that in terms of the rules, the complainant is required to contribute 7.5% of salary and the employer contributes 7.5% of salary in respect of the complainant. However as indicated above, a substantial portion of the employer’s contributions is allocated towards the provision of risk benefits and administration expenses. Therefore 2.51% of the employer’s contributions are allocated towards retirement funding.
- 5.4 The above rules were applicable and relevant at the date of the complainant’s withdrawal from the first respondent. The benefit received accorded with the first respondent’s rules. It comprised contributions received on behalf of the complainant, less risk benefit costs and administration costs, together with investment returns. The complainant has not disputed that he received his benefit entitlement in terms of the rules of the fund. 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). Section 13 of the Act further provides that:

“Subject to the provisions of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming.”

5.5 It is this tribunal's opinion that the complainant was paid his full withdrawal benefit and there is no further benefit payable to him from the first respondent.

[6] **ORDER**

1. In the result, the complaint cannot succeed and is hereby dismissed.

**DATED AT JOHANNESBURG ON THIS 21<sup>ST</sup> DAY OF FEBRUARY 2012**

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**DR. E.M. DE LA REY**  
**ACTING PENSION FUNDS ADJUDICATOR**

**Cc:** The Principal Officer  
Gauteng Building Industry Provident Fund  
c/o Legal Services Department  
Alexander Forbes Financial Services (Pty) Limited  
P.O. Box 651938  
**BENMORE**  
2010

**Registered office of the fund:**

Alexander Forbes Place  
61 Katherine Street  
**SANDOWN**  
2146

**Cc:** Marble Classic (Pty) Limited  
P.O. Box 1254  
**ISANDO**  
1600

**Section 30M filing: Magistrate's Court**

*Parties unrepresented*