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REGISTERED POST

Dear Sir,

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO. 24 OF 1956 (“the Act”): T J SAUERMANN (“complainant”) v QUANTUM ELITE GROUP PENSION FUND – PARTICIPATING EMPLOYER – CAPE GATE FENCE AND WIRE WORKS (PTY) LTD (“first respondent”) AND FAIRSURE FUND ADMINISTRATORS AND CONSULTANTS (PTY) LTD (“second respondent”)

[1] INTRODUCTION

1.1 The complaint concerns the calculation of a withdrawal benefit.

1.2 The complaint was received by this office on 27 June 2007. A letter acknowledging receipt thereof was sent to the complainant on 5 July 2007. On the same date, a letter was sent to the respondents informing them about the complaint and giving them until 27 July 2007 to respond to the complaint. A response was received from the respondent on 17 July 2007. No further submissions were received.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 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 Having considered the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

[2] FACTUAL BACKGROUND

2.1 The complainant was a member of the respondent as a result of his employment with Cape Gate Fence and Wire Works (Pty) Ltd (“the employer”). The complainant was a member of the first respondent with effect from 1 October 2000 until her exit in December 2006.

2.2 Upon his exit from the first respondent, a withdrawal benefit became due and payable to the complainant in terms of the rules of the first respondent. The complainant was paid a withdrawal benefit in the amount of R18 600.29 on 8 March 2007.

[3] COMPLAINT

3.1 The complainant is dissatisfied with the amount of the withdrawal benefit he received from the first respondent. He submits that his withdrawal benefit was incorrectly calculated because it is less than he expected.

[4] RESPONSE

Second respondent's response

- 4.1 The second respondent submitted that the complainant was a category 1 member and was paid his salary weekly. In terms of the first respondent's special rules, the employer contributions are inclusive of risk and administration costs.
- 4.2 The second respondent submitted further that the complainant was provided with a benefit statement annually and at no point did the complainant raise queries with regard to the value of his fund credit.

[5] DETERMINATION AND REASONS THEREFOR

- 5.1 What falls to be determined is whether or not the complainant received his full withdrawal benefit upon his exit from the respondent. The complainant has expressed his dissatisfaction with the amount of the withdrawal benefit that he has been paid. The respondent has submitted that there is no further benefit due and payable to the complainant.
- 5.2 The primary aim of a pension fund is to provide for workers' retirement benefits, but often members leave a fund before retirement, and in these circumstances a withdrawal benefit will be payable in terms of the fund's rules. Members of a fund are entitled to their minimum withdrawal benefit upon exiting a fund and this benefit is calculated in terms of the rules of the fund. A withdrawal benefit becomes payable when a member leaves a fund by reason other than retirement, a section 14 transfer, disability or death. A withdrawal benefit will therefore become payable when a member resigns, is dismissed, or is retrenched.
- 5.3 In *casu*, upon the complainant's exit from the first respondent, the complainant became entitled to a withdrawal benefit in terms of rule 2.3 of the first respondent's special rules. Special rule 2.3 provides as follows:

"2.3 TERMINATION OF EMPLOYMENT OTHER THAN DEATH

On termination of service for reasons other than death, the provisions of

the General Rules shall apply. For the purposes of Rule 8.1 of the General Rules the cash lump sum benefit shall be equal to the MEMBER'S SHARE ACCOUNT.

Subject to a maximum of 100% of the MEMBER'S SHARE ACCOUNT."

- 5.4 Member's share account is in turn defined in the first respondent's special rules as:

"**SHARE ACCOUNT** for each MEMBER at a given date shall mean the value of the MEMBER'S ACCUMULATED UNITS, using the last known price."

- 5.5 With regards to the rate of contributions, rule 1.2 of the first respondent's special rules reads thus:

"1.2 CONTRIBUTIONS BY THE EMPLOYER

The Employer shall contribute to the FUND each month in respect of each MEMBER who has not retired under these RULES an amount equal to 8% of such MEMBER'S monthly FUND SALARY.

All contributions shall include the cost of risk benefits levied by the Insurer and administration charges levied by the ADMINISTRATOR."

- 5.6 The trustees of a fund are bound to do that which is contained in the rules of a fund (See section 13 of the Act and *Tek Corporation Provident Fund v Lorentz and Others* [2000] 3 BPLR 227 (SCA) at 239 D – E). Upon his exit from the first respondent, the complainant became entitled to a withdrawal benefit in the amount of R22 288.15. Tax amounting to R3 687.86 was deducted from the gross benefit and a net withdrawal benefit in the amount of R18 600.29 was paid to the complainant. The first respondent furnished this Tribunal with the complainant's contribution history reflecting the gross contributions, full deductions for risk and administration costs, plus growth on investments derived from the purchase of units in the investment portfolio selected by the

employer. From this it appears that the complainant was paid his correctly calculated share of the fund as at his date of exit from the first respondent. This tribunal further takes note of the fact that the complainant has not advanced any reasons why he submits he is entitled to a greater withdrawal benefit.

- 5.7 Thus, having regard to the submissions before this tribunal, it appears that the complainant received his full withdrawal benefit upon his exit from the first respondent and that there is no further benefit due to him.

[6] ORDER

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

DATED AT JOHANNESBURG ON THIS THE 12TH DAY OF MARCH 2012

DR EM DE LA REY
ACTING PENSION FUNDS ADJUDICATOR

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Parties unrepresented